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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)

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

[1] Adopted by the 8th meeting of the C198-COP, Strasbourg, 25 – 26 October 2016

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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 of 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). COP reports are in fact not intended to duplicate but complement the work of other assessment bodies. 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] At its sixth meeting in September 2014, it agreed that Armenia, Belgium and Bosnia and Herzegovina would be the next countries to be assessed under this mechanism.

4. The monitoring questionnaire was sent for completion to the Armenian authorities in January 2015. The responses to the questionnaire were coordinated by the Financial Monitoring Centre of Armenia (FMC) and were received in April 2015. The draft report was prepared by the rapporteurs: Mr. Artan Shiqerukaj (Albania) on the issues of the functioning of FIU, Mr. Jacek Łazarowicz (Poland) on new legal aspects under the CETS no°198 and Ms. Anna Ondrejova (Slovakia) on international co-operation.

5. This monitoring report by the COP is based primarily on a desk review of the replies by Armenia to the monitoring questionnaire. However, further to the decision taken in 2012 by the COP and MONEYVAL to pilot new procedures whereby the COP could benefit from MONEYVAL processes, questions by the Secretariat on the implementation of Convention requirements have been raised in the context of the MONEYVAL on-site visit in Armenia (25 May to 5 June 2015). The information obtained has thus been reflected in the COP assessment of Armenia. Public information available in MONEYVAL's 5th round Mutual Evaluation Report (MER), published in January 2016 has also been considered and taken into account.

6. Armenia signed the Convention on 17 November 2005 and ratified it on 2 June 2008. It entered into force in respect of Armenia on the 1st of October 2008. Armenia has deposited a series of declarations (see Annex I)[3] in connection with the ratification.

[2] Countries that ratified the Convention on the same day are in principle assessed in alphabetical order.

[3] A list of declarations and reservations to CETS No. 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. The draft report was discussed at a pre-meeting on 10 and 11 September 2015. Due to parallel preparations for the Armenia 5th round MER, discussed by the MONEYVAL Plenary in December 2015, it was decided to postpone discussion of the COP report to 2016. A second pre-meeting took place on 22 September 2016. The COP report was submitted for discussion and adoption by the COP in October 2016**.**

8. Armenia is a member of MONEYVAL and has been the subject of four evaluations by MONEYVAL, including the recent 5th round evaluation under the revised FATF Methodology, of which the report was discussed and adopted by MONEYVAL in December 2015.[4] The report is available on MONEYVAL's website (www.coe.int/MONEYVAL). Its findings can be synthesized as follows:

    - Armenia has a broadly sound legal and institutional framework to combat money laundering (ML) and terrorism financing (TF).

    - The predicate offences which were identified as posing the biggest ML threat are fraud (including cybercrime), tax evasion, theft, embezzlement, corruption and smuggling. The number of ML investigations and prosecutions has increased since the last evaluation in 2009. However, it appears that law enforcement authorities (LEAs) target the comparatively easy self-laundering cases mainly involving domestic predicate offences. Overall, law enforcement efforts to pursue ML are not fully commensurate with the ML risks faced by the country.

    - The legal provisions relating to the confiscation of property involved in the commission of ML, TF and predicate offenses largely meet all criteria of the international standard. However, the confiscation and seizing provisions do not seem to be implemented effectively. The assessors doubt that LEAs are in a position to effectively identify, trace and seize assets at the earliest stages of an investigation, since proactive parallel financial investigations for ML and predicate offences are not conducted on a regular basis.

    - Provisions that regulate access of LEAs to information subject to financial secrecy meet the international standard. However, the availability of certain operative measures to LEAs is subject to unduly burdensome conditions. In practice, this inhibits the obtaining of necessary financial evidence to identify and trace property that is or may become subject to confiscation.

    - The legal framework for mutual legal assistance (MLA) is sound and the provision of MLA is not subject to any unreasonable or unduly restrictive conditions. However, LEAs have not been actively seeking legal assistance for international cooperation, since there is a limited practice in investigating and prosecuting ML/TF domestically.

9. Following the Plenary discussion on the 5th round MER, Armenia was invited to report back to MONEYVAL in April 2018 on the follow-up measures.

[4] MONEYVAL at its 44th plenary meeting agreed that Armenia would be exempted from the 4th round evaluation and would instead be among the first countries to be evaluated under MONEYVAL's 5th round of evaluations against the FATF's 2012 Recommendations and 2013 Methodology.

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 the proof of the predicate offence, Article 9 paragraphs 5 and 6 establish new legally binding standards to facilitate the prevention of money laundering: clarification that a prior or simultaneous conviction for the predicate offence is not required [Article 9(5)], and 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)].

Description and analysis

10. Money laundering is criminalised under Article 190 of the Armenian Criminal Code (CC):

Article 190 Legalisation of illicit proceeds (money laundering)

1. The conversion or transfer of property (knowing that such property is the proceeds of criminal activity) for the purpose of concealing or disguising the illicit origin of the property or of helping any person to evade the responsibility for the crime committed by him; or the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property (knowing that such property is the proceeds of criminal activity); or the acquisition or possession or use or disposition of property (knowing, at the time of receipt, that such property is the proceeds of criminal activity) is punishable with imprisonment for a maximum period of four years, plus confiscation of property defined by part 4, article 55 of this Code.

2-4 (…)

5. For the purposes of this Article, property constituting proceeds of criminal activity shall be the property specified under Part 4 of Article 103.1 of this Code, directly or indirectly derived from or obtained through the commission of crimes as stipulated in this Code.

11. MONEYVAL's 5th round mutual evaluation report (MER) on Armenia has found that the ML offence was fully in line with relevant international standards, except for the issue of criminal liability for legal persons (which are discussed under analysis of the Articles 10 and 17, 18 and 19 of the Convention) elsewhere in this report). However, a low level of effectiveness for ML investigation and prosecution was noted. While there are no legal obstacles to the investigation of ML, practitioners generally assume that ML cases require a high evidentiary threshold and a level of certainty that the laundered proceeds derived from a specific predicate offence.

Article 9 (3)

12. Armenian legislation does not provide for a lesser mental element of either suspicion or negligence of the fact that property is proceeds of crime in the context of the offence of ML (as made possible by Article 9(3) of the Convention). Under Article 28 CC, crimes provided for under the CC require the perpetrator to act wilfully[5] unless the offence set out in the special part of the CC explicitly foresees its commission with negligence. Under Article 190 CC, ML is committed only in cases where knowledge and direct intention is ascertained. Moreover, as concerns the acts of conversion and transfer of property, the purposive element of concealment or disguising the illicit origin of the property is required. ML, therefore, cannot be committed with a lesser mental element of suspicion or negligence. This interpretation has been confirmed by the Armenian Court of Cassation in in its decision of 24 February 2011 (case EKD/0090/01/09) which stated that direct intention was a mandatory subjective element of ML.

Article 9 (4)

13. Further to the adoption of amendments to the CC in 2014, Armenia has abandoned its previous list approach in defining predicate offence for ML in favour of an "all crimes approach". Article 190 section 5 CC provides that "property constituting proceeds may be derived from or obtained through the commission of (all) crimes stipulated in the Code". The Armenian authorities informed the COP that all the categories of offences listed in the Appendix to the CETS No. 198 were provided for under the CC of Armenia as indicated in the table below.

Designated categories of offences in the Appendix to the CETS 198	**Offences in domestic legislation (in the CC)**
a. participation in an organised criminal group and racketeering;	Articles 41, 222 and 223
b. terrorism, including financing of terrorism;	Articles 217 and 217.1
c. trafficking in human beings and migration smuggling;	Article 132
d. sexual exploitation, including sexual exploitation of children;	Articles 132.2, 166 and 261
e. illicit trafficking in narcotic drugs and psychotropic substances;	Article 266
f. illicit arms trafficking;	Article 235
g. illicit trafficking in stolen and other goods;	Article 216
h. corruption and bribery;	Articles 311, 311.1, 312, 312.1 and 313
i. fraud;	Article 178
j. counterfeiting currency;	Article 202
k. counterfeiting and piracy of products[6];	Articles 158, 159, 197 and 207

[5] Article 29 CC distinguishes between "direct wilfulness" where the person understood the potential danger of the crime to be committed foresaw the consequences of s/his action and desired these consequences and "indirect wilfulness" where a person "did not desire those consequences but knowingly allowed them to take place".

[6] The rapporteur had certain concerns whether counterfeiting and piracy of products and insider trading and market manipulation were criminalised in full in the Armenian CC. However, given the language of the Explanatory Report of the CETS No. 198 – paragraph 310 ('*the Convention contains an Appendix containing a list of categories of offences to which reference is made to in articles 3.2, 9.4 and 17.5, and which is textually taken from the Glossary to the FATF Recommendations. When deciding on the range of offences to be covered in each of the categories contained in the Appendix, each Party may decide, in accordance with its domestic law, how it*

l. environmental crime;	Articles 281-298
m. murder, grievous bodily injury;	Articles 104 and 112
n. kidnapping, illegal restraint and hostage-taking;	Articles 131, 133 and 218
o. robbery or theft;	Articles 175, 176 and 177
p. smuggling	Article 215
q. extortion	Article 182
r. forgery	Article 325
s. piracy; and	Articles 220 and 221
t. insider trading and market manipulation[5]	Articles 195, 199, 204 and 214

Article 9 (5)

14. The Court of Cassation ruling of 24 February 2011 (case number EKD/0090/01/09) clarified that a prior or simultaneous conviction for the predicate offence was not a prerequisite for a conviction for ML. This judgement specifies that it is *"not necessary to have a lawful conviction for the predicate offense, neither that the person accused of legalisation of the proceeds of crime has any relation to the predicate offense".* There has been one case in 2014 in which an autonomous ML conviction has indeed been achieved (ARD/0071/01/14). In this case there was no indictment for the underlying predicate crime, committed by the perpetrator of ML himself.

Article 9 (6)

15. The Armenian criminal legislation does not specify the level of proof required to establish a predicate offence in a ML prosecution. According to the Armenian authorities, the above referred Court of Cassation ruling of 24 February 2011 (case number EKD/0090/01/09) clarified that a conviction for ML was possible where it was proven that the laundered property originated from a predicate offence, without it being necessary to establish precisely which offence. However, in its ruling, the Court of Cassation found that in order to hand down a conviction for ML *"the court should first of all establish the committal of a predicate offence and should verify that the object of money laundering has derived from the predicate offence."* The court's interpretation seems to imply that the particulars of the predicate offense may need to be established (legal designation of the offence, the timeframe when the predicate offense was committed, the perpetrator, the types of assets that originated from the predicate offense). In view of this, the court stated that '*legalisation of illicit proceeds should come after (in terms of timing) this (i.e. predicate) offence, and the illicit proceeds should be the object of the predicate offence. The absence of a predicate offence excludes the possibility of legalisation of illicit proceeds; therefore, before issuing a conviction in such cases, the court should first of all establish the committal of a predicate offence and should verify that the object of money laundering has derived from the predicate offence*.' It appears that such jurisprudence may result in a limited number of autonomous ML cases. Indeed, in the autonomous ML case achieved in Armenia (as described in paragraphs 14 and 15 of this report), the accused had admitted to committing the predicate offence, and the court judgement appears to attach great weight to the clear evidence for the commitment of a specific predicate offence and the clear link between the underlying offence and the laundering activity. Therefore, this case forms no strong confirmation that a conviction

will define these offences and the nature of any particular elements of these offences that make them serious offences') these considerations were not reflected in the report.

for ML is possible without it being necessary to establish precisely which predicate offence the laundered property originated from.

Effective implementation[7]

16. Although there are no legal obstacles to the investigation of ML, it appears that an element of uncertainty still exists among practitioners as to the expectations of the courts in terms of evidentiary thresholds for ML cases. This may have the effect of discouraging the authorities from pursuing more complex ML cases. The view seems to exist among practitioners that, for instance, in order to secure a ML conviction, it is necessary to prove that the predicate offence is carried out with a "mercenary" (i.e. profit-making) purpose, as also concluded in the MONEYVAL 5th round MER (page 53, paragraph 162). This view is based on a court judgment (EKD/0090/01/09) and is perceived by practitioners as requiring an additional element of proof. This may potentially cause a serious limitation to effective implementation.

17. Since the ratification of CETS No. 198, 13 final convictions for ML have been secured (2010: 2, 2011: 2, 2012: 6, 2013: 2 and 2014: 1). The statistics provided by the Armenian authorities indicate a slight but progressive decline in number of investigations and convictions. As concerns effective implementation of Article 9(5) of the Convention, the authorities indicated that 6 cases of stand-alone/autonomous ML were investigated in the reference period 2010 – 2014, 4 of these cases were suspended, 1 was dismissed and only 1 resulted in a conviction. One ML conviction (described as autonomous) was secured, although the judiciary appears to have based its ruling on the admission that the predicate offence had been committed.

Recommendations and comments

18. In the light of the above, it is thus recommended to the Armenian authorities:

- to consider providing for a lesser mental element of either suspicion, negligence or both that property is proceeds of crime in the context of the offence of ML.

- to issue clear guidance for practitioners to ensure that it is understood in practice that all designated categories of offences in the Appendix to the CETS No. 198 are predicate offences to ML, regardless of whether they have a profit-making purpose.

- to consider issuing clear guidance for practitioners on the level and types of evidence in respect of the underlying predicate criminality which are likely to be sufficient to adduce in an autonomous ML prosecution in order to strengthen the understanding of mandatory requirements of Article 9 paragraphs 5 and 6 and encourage LEAs and prosecutors to investigate stand-alone ML offences.

[7] The issue of effectiveness in applying AML legislation with regard to criminal liability was also a subject of MONEYVAL 5th MER. Given the broader scope of issues elaborated in the MONEYVAL MER this section of the COP report shall be read in conjunction with the MONEYVAL MER on Armenia, and more specifically parts under Immediate Outcome 7.

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.

- 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

19. Article 10 paragraph 1 of CETS No. 198 does not stipulate the type of liability required for legal persons engaged in ML practices; this can be criminal, administrative or civil. Indeed, under Article 31 of the AML/CFT law, Armenia provides for administrative liability of legal persons as follows[8]:

    Article 31
    1-4 (…)
    5. ***Involvement of legal persons*** *in money laundering may arise when:*
    1) The action, or the failure to act, by ***any representative*** *of the legal person for* ***the benefit or on behalf of the legal person*** *results in a deed stipulated under Article 190 of the Republic of Armenia Criminal Code, for which a conviction has been passed by the court with regard to the said person; or*
    2) The representative of the legal person has not been subjected to criminal responsibility due to circumstances not excluding criminal proceedings or criminal prosecution, except for the cases of withdrawing or terminating criminal prosecution due to an amnesty act or the person's decease; or
    3) ***In the reasonable judgment of the supreme management body of the Authorised Body, money laundering has taken place due to the action, or the***

[8] Emphasis (text in bold) in this report when quoting various articles of Armenian laws and regulations, were made by the assessment team as to better distinguish the important points of these laws with regard to their importance for implementation of the Convention.

failure to act, on behalf of the legal person by any representative of the legal person.

6. Involvement of legal persons in terrorism financing may arise when:

1) The action, or the failure to act, by any representative of the legal person on behalf of the legal person results in a deed stipulated under Article 217.1 of the Republic of Armenia Criminal Code, for which a conviction has been passed by the court with regard to the said person; or

2) The representative of the legal person has not been subjected to criminal responsibility due to circumstances not excluding criminal proceedings or criminal prosecution, except for the cases of withdrawing or terminating criminal prosecution due to an amnesty act or the person's decease; or

3) In the reasonable judgment of the supreme management body of the Authorised Body, terrorist financing has taken place due to the action, or the failure to act, on behalf of the legal person by any representative of the legal person.

*7. **When substantiating involvement of a legal person in money laundering and terrorism financing, the supreme management body of the Authorised Body may ground its decision on the circumstance that the action, or the failure to act, by the representative of the legal person fully or partially matches with the typologies.***

8. Responsibility measures defined under this Article shall be applied to legal persons registered or operating in the territory of the Republic of Armenia.

*9. Responsibility measures defined under this Article **shall be applied by the Authorised Body**, in the manner established by the law. At that, in the cases stipulated under Clause 3 of Part 5 and Clause 3 of Part 6 of this Article, responsibility measures defined under this Article shall be applied by the **supreme management body of the Authorised Body**.*

10-13 (…)

20. Criminal liability is not foreseen as the Armenian authorities deem that it is contrary to two principles of Armenian criminal law, namely the principles of "personal liability" and *nullum crimen sine culpa.* Under Article 31 of the AML/CFT Law, three alternative options for corporate liability are provided:

    a) According to Article 31(5)(1) and (6)(1) of the AML/CFT law, legal persons can be held administratively liable by the Central Bank of Armenia (CBA) if any representative of the legal person has committed ML or FT for the benefit or on behalf of the legal person, through an action or an omission, and has been convicted for these offences. For the latter (i.e. the need for a conviction of the natural person who has committed ML/TF), the Explanatory Report to CETS No. 198 clarifies that corporate liability does not exclude individual liability. According to the AML/CFT Law, individual liability does not exclude corporate liability meaning that individual liability may trigger a corporate liability as well.
    b) According to Article 31(5)(2) and (6)(2) of the AML/CFT law, legal persons can be held administratively liable by the CBA if any representative of the legal person has not been subjected to criminal responsibility due to circumstances not excluding criminal proceedings or criminal prosecution, except for the cases of withdrawing or terminating criminal prosecution due to an amnesty act or the person's decease (i.e. there is no need for a conviction of the natural person who has committed ML/TF). In line with the AML/CFT Law, there is, consequently, no need for individual liability to trigger a corporate liability.
    c) According to Article 31(5)(3) and (6)(3) of the AML/CFT law, a legal person may also be held liable for ML/TF upon decision of the Board of the CBA, when it deems that any representative of the legal person has committed ML or FT for the

benefit or on behalf of the legal person, through an action or an omission – regardless of whether he/she has been convicted for these offences.

21. In order for corporate responsibility to apply, Article 10(1) of the Convention requires ML to have been committed for the benefit of the legal person by a natural person, acting either individually or as part of an organ of the legal person, who has a leading position. The leading position is assumed to exist in three specific situations (see the box text on p. 8). The Armenian authorities indicated that, for the purpose of assessing corporate liability for ML/TF, the law did not restrict the range of relevant persons to those holding a "leading position within the legal entity". The aforementioned condition was included in the Convention in order to limit the scope of corporate liability. Therefore, by omitting this requirement, Armenia admittedly extends the scope of application of corporate liability to any representative, including those holding a leading position, who acts or fails to act for the benefit or on behalf of the legal person. However, there is no jurisprudence confirming this interpretation. It is also to be noted that Article 31 of the AML/CFT Law does not make any reference to cases where ML/TF has been committed for the benefit of the legal person by a natural person acting as part of an organ. The authorities stated that the wording of the provision encompasses any representative acting as part of an organ. However, this has not yet been tested before the courts of law.

22. The Armenian authorities stated that corporate legal liability can also arise in cases where the representative of the legal entity had acted as an accessory or instigator of ML/TF. They referred to Article 38 CC on accomplices of crime including accessories (co-perpetrators) and instigators and Article 39 (1) and (2) CC providing that co-perpetrators and abettors are subject to liability under the articles of the CC which criminalises the specific crime. Therefore, if the representative of a legal person acts as an accessory or an instigator, he or she can be convicted for the ML offence which triggers the liability of a legal entity under Article 31(5)(1).

23. Under Article 10(2) of the Convention, liability of legal persons can be triggered by any other person acting under the authority of persons mentioned in Article 10(1) of the Convention if the lack of supervision or control made it possible to commit money laundering or terrorist financing offence for the benefit of the legal person. Article 31 of the Armenian AML/CFT Law specifies that corporate liability would be ensued in cases ML[/TF] "has taken place due to […] the failure to act, […] by any representative of the legal person. The authorities deem that the wording of the provision is broad enough to encompass cases of lack of supervision. However, there is no jurisprudence of the Armenian Court of Cassation to clarify this point. The COP evaluation team deems that the country would benefit from further clarification in this respect.

Effective implementation

24. Despite the fact that more than seven years have passed since the adoption of the legislation that introduced corporate liability of legal persons, there have been no cases of ML or FT in which corporate liability has been applied. Hence, it seems that there is a lack of effective application of corporate liability in the Republic of Armenia..

Recommendations and comments

25. In the light of the above, it is thus recommended that the authorities:

- carry out a stock-taking initiative to identify any legal, evidentiary and institutional impediments to apply corporate liability under the AML/CFT Law;
- provide further instructions/guidance/training to the relevant authorities on how to use corporate liability mechanisms;
- ensure that the concept of representative under Article 31 is applied in line with the requirements of Article 10(1) of the Convention and that it encompasses persons acting as part of an organ of the legal person.

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

26. The authorities cited Article 17 of the CC which provides the ability to take into account foreign court rulings.

Article 17
1. The court ruling in a foreign country can be taken into account, provided the Armenian citizen, foreign citizen or a stateless person was convicted for a crime committed outside the Republic of Armenia, and again committed a crime in the Republic of Armenia.
2. In accordance with part 1 of this article, recidivism, unserved punishment or other legal consequences of a foreign court ruling are taken into account when qualifying the new crime, assigning punishment, and exempting from criminal liability or punishment.

27. Article 17 of the CC implies that a foreign decision can be taken into account when the person committed a subsequent criminal offence in the Republic of Armenia.

Recommendations and comments

28. The Armenian legislation is in compliance with Article 11 of the Convention.

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

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). Although not 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

29. The Armenian CC provides both - for confiscation under Article 55 and for forfeiture under Article 103.1. While the former provision was amended in 2014, the latter is a new provision introduced in 2014.

Article 55 Confiscation of property

1. Confiscation of property is the enforced and uncompensated deprivation of the property considered to be the ***convict's property*** *or part thereof in favor of the state.*
2. The amount of confiscation is determined by the court, taking into consideration the damage to property inflicted by the crime, as well as amount of criminally acquired property. The amount of confiscation cannot exceed the amount of criminally acquired property or profit.
3. Confiscation of property can be assigned in cases envisaged in the Special Part of this Code and for grave and particularly grave crimes committed with mercenary motives.

Article 103.1 Forfeiture

1. The property derived from or obtained, directly or indirectly, through the commission of crime, the income or other types of benefit gained through the use of such property; the instrumentalities and means used in or intended for use in the commission of crimes, ***which have resulted in gaining property****; the property allocated for use in the financing of terrorism, the income or other types of benefit gained through the use of such property; the objects of smuggling transported*

*through the customs border of the Republic of Armenia as specified under Article 215 of this Code and, **in case of absence thereof**, other property of corresponding value, except for the property of bona fide third parties and the property necessary for compensation of the damage inflicted on the aggrieved party and the civil claimant due to the crime, shall be subject to forfeiture for the benefit of the state.*

2-3 (…)

4. In the meaning of this Article, as well as, in the cases stipulated by other articles of this Code, in the meaning of such other articles property shall mean material goods of every kind, moveable or immoveable objects of civil rights, including monetary (financial) funds, securities and property rights, documents or other instruments evidencing title to or interest in property, any interest, dividends, or other income generated by or accruing from such property, as well as neighboring and patent rights.

30. The Armenian authorities clarified the scope and purpose of these two provisions. Confiscation is discretionary and serves as a criminal punishment measure. It can be applied only to the property of the convicted person in cases provided by the Special Part of the CC and for grave and particularly grave crimes committed with mercenary motives. Forfeiture, on the other hand, serves the purpose of depriving criminals of property obtained through the commission of a crime. More specifically, it is ordered whenever there are direct/indirect proceeds of crime, income or other benefits derived from such proceeds, instrumentalities used in or intended for use in the commission of a crime, property of corresponding value, with the exception of property of bona fide third parties and property necessary for compensation of the damage inflicted on the aggrieved party and the civil claimant due to the crime. Under Article 103.1(4), the definition of property is in line with that provided by Article 1 section b) of the Convention. Furthermore, the wording of Article 103.1 ensures that forfeiture extends to ML, FT and to predicate offences.

Forfeiture of Instrumentalities

31. Article 1c of the Convention defines instrumentalities as any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence/s. Article 103.1 provides for the forfeiture of "*instrumentalities and means used in or intended for use in the commission of crimes which have resulted in gaining property".*

Proceeds or property the value of which corresponds to such proceeds

32. Article 103.1 section 1 of the CC also provides for forfeiture of direct and indirect proceeds, as well as income or other types of benefit gained through the use of such property. Given the broad definition of "property" provided for under Article 103.1 Armenian legislation appears to fully cover the requirement of confiscation of proceeds of crime as contemplated under Article 3 Paragraph 1 of the Convention.
33. Forfeiture of equivalent value is also provided for by Article 103.1 section 1 of the CC in respect of proceeds of crime, the income or other types of benefit gained through the use of such property and instrumentalities (in addition to property allocated for use in the financing of terrorism, and smuggled objects through the customs border). The authorities clarified that "the non-disclosure of property subject to forfeiture" should be read as "in the absence of property subject to forfeiture". Consequently, when property deriving from crime is not available, forfeiture of equivalent value may be ordered.

Laundered property

34. The Convention explicitly provides for the confiscation of "laundered property" to ensure that property laundered in the context of a stand-alone ML case could be subject to confiscation. Laundered property can neither qualify as proceeds – direct or indirect (as it is proceeds of the predicate offence - not of the ML offence) nor as an instrumentality (as it is the object of the offence – not property used to commit an offence).

35. Although Article 103.1 does not appear to explicitly cover laundered property, the Armenian authorities advised that laundered property is considered to be property derived from crime regardless of the presence or absence of a conviction for the predicate offence. This interpretation is only carefully supported by one case, described earlier in paragraphs 14 and 15. Four cases are pending in which the Armenian authorities will seek forfeiture of "laundered property" and if necessary take the point to the Court of Cassation for final ruling.[9]

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

36. On 2 June 2008, Armenia made a declaration pursuant to paragraph 2b) of Article 3 of the Convention and stated that Article 3, paragraph 1 will be applied only to offences specified in the appendix to the Convention. Nonetheless, Article 103.1 is located in the General Part of the CC and therefore applies to all offences provided under the Special Part of the CC.

Mandatory Confiscation for Particular Offences – Article 3(3)

37. As stated above, Article 103.1 of the CC has a mandatory character and is applicable to all of the offences provided under the Special Part of the CC. This provision of the Convention is not mandatory.

Burden of Proof – Article 3(4)

38. Under Article 3 paragraph 4 of the Convention, States are in a position to declare that they will not apply this provision (providing for the possibility to reverse the burden of proof regarding the lawful origin of property liable to confiscation in serious offences). The declaration should be made at the time of signature or when depositing the instrument of ratification, acceptance, approval or accession. Upon depositing its instrument of ratification, Armenia did not make a declaration in respect of Article 3(4) of the Convention.

39. Nonetheless, the Armenian authorities informed the COP assessment team that a reversed burden of proof was contrary to the principle of the presumption of innocence as set out in the Constitution of Armenia and the Criminal Procedure Code (CPC) and that the burden of proof with regard to establishing the illicit origin of proceeds liable to forfeiture rests with the prosecution.

[9] With regard to Article 103.1 the MONEYVAL 5th Round MER stated that *[t]he wording of Article 103.1(1) does not directly address this issue. In the view of the Armenian authorities, laundered property is considered to be property derived from crime regardless of the presence or absence of a conviction for the predicate offence. In the one autonomous ML case secured by the courts (ARD/0071/01/14), the court ordered the confiscation of the laundered property, indicating that the courts appear to be inclined to interpret Article 103.1 of the CC as extending to the laundered property regardless of the presence or absence of a conviction for the predicate offence.*

40. The Armenian Constitution, under its Article 6, provides that "(…) *International treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. International treaties contradicting the Constitution cannot be ratified"*.

41. Given that Armenia has not made a declaration concerning the non-application of Article 3(4) upon ratification of CETS No 198, the country is in principle under an obligation to implement it in the legal order, also in light of Article 6 of the Constitution.

Effective implementation

42. The Armenian authorities provided the following statistics on confiscation under Article 55 of the CC (i.e. imposed as a criminal punishment) to illustrate effective implementation of Article 3 of the Convention:

		2010	**2011**	**2012**	**2013**	**2014**
Number of confiscation orders (following ML conviction)		0	2	6	2	1
Value of proceeds of crimes, instrumentalities or property of equivalent value confiscated (AMD)		0	26.113.579 (495,368 Euros)	238.697.785 (452 503 Euros)	25.079.666 (47,539 Euros)	283.600 (537,577 Euros)
Types of ML	Stand-alone	0	0	0	0	1
	Third party	0	0	1	0	0
	Self-laundering	0	2	5	2	0
Foreign offence		0	0	2	0	0
Domestic offence		0	2	4	2	0

No statistics on the use of mandatory forfeiture under Article 103.1 were available given its recent introduction.

43. Statistics on confiscation were only provided in respect of ML cases and not on predicate offences in the appendix to the Convention. No statistics exist for confiscation with regard to FT, since authorities advised that there are no FT cases identified in Armenia so far. The statistics indicate that the confiscation regime has remained underused. The above data indicates that the sums confiscated are relatively small and refer to a limited number of ML cases. Moreover, the value of confiscated assets has been declining over the past 3 years and confiscation has only been executed with regard to one autonomous cases of money-laundering. The COP assessment team sees the introduction in 2014 of the mandatory character of forfeiture for all offences listed under the Special Part of the CC as a welcome step forward, and hopes to be able to consider statistics on forfeiture under this article in the future.

Recommendations and comments

44. In the light of the above, it is thus recommended to the authorities to:

- take appropriate legislative measures to implement Article 3 paragraph 4 of the Convention;
- improve the quality and scope of statistics of confiscation/forfeiture with regard to predicate offences.

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

45. The Armenian authorities reported that the management of frozen and seized property was regulated under Chapter 32 of the CPC on seizure (arrest) of property. Article 236 of the CPC provides the general legal framework for the management of seized property. The management of seized property during the pre-trial stage falls within the responsibility of multiple agencies according to the nature of the property.

46. The Armenian authorities also referred to Article 5 of the Law on Compulsory Enforcement of Judicial Acts (LCEJA) which in their view authorised enforcement officers to manage seized or confiscated property.

CPC - Article 236

Except real estate and large-sized items, other seized property as a rule is taken away. Precious metals and stones, diamonds, foreign currency, cheques, securities and lottery tickets are handed for safe keeping to the Treasury of the Republic of Armenia, cash is paid to the deposit account of the court which has jurisdiction over this case, other taken items are sealed and kept at the body which made a decision to seize the property or is given for safe keeping to the apartment maintenance office or local self-government representative. The arrested property that has not been taken away is sealed and kept with the owner or manager of the property or his full-age members of his family who are advised as to their legal responsibility for spoiling or alienation of this property, for which they undersign.

LCEJA - Article 5 Compulsory enforcement measures

Compulsory enforcement measures shall be:
1. Levy of execution on property of the debtor by attachment and realisation thereof;
2. Levy of execution on salary, pension, scholarship, and other types of income of the debtor;

3. Levy of execution on the debtor's monetary funds and other property held by other persons;
4. Seizure from the debtor and passing to the claimant certain objects specified in the writ of execution;
(41) Applying a fine for failure to comply with the decisions of a compulsory enforcement officer;
1. Other measures ensuring the enforcement of the writ of execution.

47. It is the view of the COP assessment team that the LCEJA does not address management of seized property, since it explicitly refers to court judgments and decisions, whereas seizure of property is applied on the basis of the decree of the investigating body, the investigator or the prosecutor (Article 233 of the CPC). The measures of property management foreseen in the LCEJA can be applied to property only after the court's decision on confiscation is rendered.

48. Whereas the pre-trial management of the seized property falls within the ambit of CPC, its Article 236 provides that items of value including precious metals and stones, diamonds, foreign currency, cheques, securities and lottery tickets are handed for safe keeping to the Treasury of the Republic of Armenia, and cash is paid to the deposit account of the court which has jurisdiction over the case. Other items are sealed and kept at the institution which issued the decision to seize the property or are given for safe keeping to the 'apartment maintenance office' or local self-government representative. The authorities clarified that the term 'apartment maintenance office' used here refers to the 'apartment community service', which was the responsible organisation for the maintenance of seized immovable property. Under the same provision, real estate and large-sized items which have been seized are sealed and kept with the owner or manager of the property or members of his/her family who are of age – and are accordingly advised about their legal responsibility for deteriorating or alienating the property.[10] Apart from these, Article 236 of the CPC does not provide any further guidance as to how seized real estate or large-sized items should be managed.

49. Although Article 236 of the CPC provides some indications as to how seized assets should be secured and stored, it does not specify how they should be managed in order to prevent their deterioration or decline in value. This concerns in particular rapidly depreciating assets or assets the storage of which would entail unreasonable expense or excessive hardship. The same applies to assets which would require complex management as business structures, enterprises etc.

50. Some basic rules of management are provided for under Chapter 15 of the CPC concerning material evidence (Articles 116-120 CPC). However, the safe-keeping rules referred to material evidence cannot be applied to seized assets. Thus, it is concluded that the management of seized property is not subject to systematic management.

Effective implementation

51. The Armenian legal framework does not include sufficient implementing measures for the proper management of seized or frozen property. Assessors have not been

[10] The Cassation Court ruling of 27 August 2010 found that in light of the significance of the Constitutional right to property, the bodies imposing arrest shall consider the possibility of leaving the property for the safekeeping of the owner or the legal possessor. Whenever the property is taken away, the proportionality of interference with the right to property shall be considered.

provided with the information explaining how the Armenian legal framework prevents the decline of value of the seized assets and ensures the management of assets of a complex nature. On the whole it remains unclear whether the system in place is capable to ensure the proper management of frozen or seized property.

Recommendations and comments

52. In the light of the above, it is recommended:

- to review the national legal framework that is in place and take legislative or institutional steps to introduce a clear and comprehensive procedure for managing frozen and seized assets in conformity with requirements of Article 6 of CETS No. 198.

6. Investigative powers and techniques – 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 *"[t]o 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

53. Before a formal investigation has been initiated, the operational intelligence measure of access to financial data and secret monitoring of financial transactions under the Law on Operational Intelligence Activity (LOIA) (Article 14 paragraph 15 and Article 29) may be used by some investigative bodies. It is not available to tax and customs investigative authorities. Authorities advised that, in case of need, other inquest bodies might conduct the mentioned measures for customs and tax related predicate offences, upon the written instruction of the prosecutor (Clause 4, Part 3, Article 53 of the CPC).

54. Under Article 31(4) LOIA, the financial investigative measures of Articles 14 (15) and Article 29 LOIA are subject to two conditions. They may be used only 1) with respect to grave and particularly grave crimes (meaning that the ML offence, which is not qualified as *grave or particularly grave* as per provisions of the CC[11], is excluded); and 2) provided there is substantial evidence that it would be impossible for the investigation body to perform duties assigned to it by law through any other means of operational work. Such limitations apply also to cases when the inquest body is instructed by the prosecutor and/or investigator to carry out operational measures (Clause 7 in Part 4 of Article 55 CPC).

55. When it is necessary to take articles and documents significant for the case and provided their location or possession is known, the investigator who has sufficient grounds to suspect that in some premises (…) *there are documents which can be significant for the case, conducts a search in order to find and seize them.* No subject (*"*enterprise, institution, organization, official or citizen") has the right to refuse to hand over such documents (Articles 225, 226, 228 CPC). Article 172(3) of the CPC states that "*persons who are asked by the body in charge of the criminal proceedings to communicate or present information constituting secrecy protected by the law, cannot refuse fulfilling that requirement by referring to the provisions on securing information constituting official, commercial and other secrecy protected by the law; however, they can request the court, prosecutor, investigator or inquest body to provide beforehand proof of the necessity of such disclosure."*

56. Under Article 228(1) and Article 279 of the CPC a court decision is required for conducting search and seizure in respect of information that constitutes banking, insurance and notarial secrecy. In addition, according to Article 172 paragraphs 3.1 and 3.3 criminal prosecution authorities can obtain information constituting notarial secrecy, and information on credits or credit histories[12], concerning any person, on

[11] Article 19 of the CC states that: *1. Crimes are categorized, by nature and degree of social danger, as not very grave, medium gravity, grave and particularly grave. 2. The wilful acts, for the committal of which this Code envisages maximal imprisonment of two years, or for which a punishment not related to imprisonment is envisaged, as well as acts committed through negligence, for which this Code envisages a punishment not exceeding three years of imprisonment, are considered not very grave crimes. 3. Medium-gravity crimes are those wilful acts for which this Code envisages a maximum punishment not exceeding five years of imprisonment, and the acts committed through negligence, for which this Code envisages a maximal punishment not exceeding ten years of imprisonment. 4. Grave crimes are those wilful acts for which this Code envisages a maximal punishment not exceeding ten years of imprisonment. 5. Particularly grave crimes are those wilful acts for which this Code envisages a maximal imprisonment for more than ten years or for life.* Under Article 190 of the CC, the basic form of ML is punished with a term of imprisonment between two and five years, qualifying it as a crime of medium gravity.

[12] Under Article 172(3.3) of the CPC, mentioned information can be obtained only from the credit bureau.

the basis of a court decision. On the other hand, paragraph 3.2 of the same article specifies that:

> *With regard to persons **suspected or accused** in a criminal case, criminal prosecution authorities can obtain information constituting banking secrecy, information on transactions with securities conducted through the Central Depository as defined by the Republic of Armenia Law on Securities Market constituting official secrecy, as well as information constituting insurance secrecy on the basis of a court decision for search or seizure.*

Similar provisions are foreseen in the Law on Insurance and Insurance Activities with Regard to Insurers, Reinsurers and Insurance Intermediaries and the Securities Market.

57. The Banking Secrecy Law also provides, under Article 10 section 1, that Banks, based on a court decision, in accordance with this Law and the Criminal Procedures Code, shall provide the criminal prosecution authorities with information that constitutes banking secrecy of persons involved in criminal cases as a suspect or an accused. In the case of tax authorities (namely the Investigations Department of the Ministry of Finance, which integrated the State Revenue Service in 2014), the powers granted under Article 13 of the Law on Banking Secrecy are broader, as it states that the providing an information is subject to "a court decision as well as a lawful final judgment of a court effected for impounding customer bank accounts".

58. Thus, after the formal investigation has been instigated under the provisions of the CPC, criminal prosecution authorities can obtain, subject to court's approval, any information constituting notarial secrecy and information on credits or credit histories on *any person* - whereas information constituting banking secrecy, insurance secrecy and information on transactions with securities can be obtained only concerning the "suspect" or the "accused" person. However, the authorities provided the essence of a verdict brought by the Court of Cassation (No. EKD/0223/07/14) which concerns the interpretation of the Article 172, paragraph 3.2 of the CPC. The interpretation of the aforementioned article puts a question if the access to bank accounts is limited only to suspect or accused. Namely, the Court stated that the fact that *court decisions can be used to obtain bank account information of suspects or accused persons only, unnecessarily narrows down the nature and application of that provision. Such an interpretation does not support the objectives of judicial (investigative) activities and limits the role and purpose of these activities from the perspective of legal procedures around a criminal case. In this situation, private interests become unfairly dominating over the public interest of uncovering crimes (combating crime). The analysis of the concept 'for suspects or accused persons in the criminal case', as specified in Part 3.2, Article 172 of the Criminal Procedure Code of the Republic of Armenia, suggests that the provision in question shall apply not only to bank account information of suspects or accused persons but also of legal entities directly associated in the crimes for which charges are pressed against the suspects or accused persons, given there a reasonable assumption that the activity of the legal person has been fully or partially managed, controlled or directed in another way by the suspect or accused person*. Such interpretation provides good basis for proper application of Article 7(1) and it remains to be seen if the law enforcement and judiciary will apply this in practice.

59. Bank, financial or commercial records may also be made available under Article 10 Section 4 of the AML/CFT Law. Under this provision, the FIU has the power to request and obtain from reporting entities documents which are relevant for the purposes of AML/CFT, including "classified" information. The authorities advised that

this referred to information that constitutes *any* secrecy as defined by AML/CFT Law regardless of the type of secrecy. The provision further sets out that information covered by confidentiality requirements under this law, which regulates the activities of certain non-financial businesses and professions is exempted[13], unless their advisory services were rendered for ML or TF purposes. Bank, financial or commercial records are made available by the FIU to criminal prosecution authorities, either on its own initiative and together with the notification filed on suspicion of ML/TF (Article 13 Section 3 of the AML/CFT Law), or upon request of criminal prosecution authorities when the request sufficiently substantiates a suspicion of ML or TF.

Article 7 paragraph 2 a)

60. Article 7(2)(a) of the Convention requires States to have procedures in place to enable them to trace accounts held by specified beneficiaries.

61. In practice, in Armenia three mechanisms are available to LEAs which provide them with access to information related to accounts held by natural or legal persons. Notably, under the first mechanism[14], LEAs would request the FIU to provide such information in line with Articles 10 and 13 of the AML/CFT Law as further elaborated under paragraph 59 of this report. It must be noted that the material provided by the FIU on this basis is not an evidence, thus LEAs need to convert this intelligence into evidence, using standardised law enforcement methods. It means that LEAs have to to formally turn a person into a suspect or an accused and then seek an order from the court to obtain financial information which may otherwise be covered by financial secrecy. As concerns the other two mechanisms, these are regulated by Articles 14(15) and Article 29 of LOIA and by Articles 172, 225, 226, 228 and 279 of the CPC – as discussed under paragraphs 53-57 of this report. Investigative powers under the AML/CFT Law cover ML, predicate offences to ML, and TF. Powers under the CPC cover all the offences as listed in the Appendix to CETS No. 198. They are available only against the suspect or accused person[15]. Again, it is important to reiterate that powers under LOIA for access to financial data are not available for basic ML (see paragraph 54).

Article 7 paragraph 2 b)

62. As mentioned above, under Article 10 section 1 of the Banking Secrecy Law, banks must provide criminal prosecution authorities[16] with information covered by bank secrecy of persons involved in criminal cases as a suspect or an accused and upon presentation of a court order.

63. Under Article 4 of the Banking Secrecy law, bank secrecy covers all the information that becomes known to the bank in the course of its official activity with its customer, such as *information on customer's accounts, transactions made by instruction or in favour of the customer (…) any other information which the customer has intended to keep in secret and that the bank becomes aware or may have become aware of such intention*. Article 4 therefore covers the particulars of bank accounts and of banking

[13] Notably, notaries, attorneys, accountants, auditing firms (etc.).
[14] These mechanisms were also elaborated in the MONEYVAL 5th MER on Armenia, page 162.
[15] Please see the extract from the verdict of the Court of Cassation elaborated under paragraph 58 of this report.
[16] According to Article 13 of the Banking Secrecy Law "*Banks, […], shall submit confidential bank information on their customers to the Tax Authorities of the RA only on the ground of a court decision […] as well as on a lawful final judgment of court effected for impounding customer bank accounts*."

operations. Furthermore, under Article 15 section 1, *if names of other persons or organizations, terms of transactions and other similar data appear in the bank documents of a customer, such information is considered as information on the customer.*

64. Thus, Armenian banks are empowered to provide law enforcement authorities with particulars of sending and recipient accounts indicated in the bank record of the person(s) in question.

Article 7 paragraph 2 c)

65. According to Article 14 paragraph 1(15) of LOIA, monitoring financial transactions is a special investigative measure that, as an operational intelligence measure, is available before and after instigation of a criminal case. Under Article 29 of LOIA, access to financial data and secret monitoring of financial transactions consists of the acquisition of information on bank and other type of accounts (deposits) from banks or other financial institutions, as well as the permanent monitoring of financial transactions without the knowledge of the persons engaged therein. However, such monitoring is, in practice, not available for basic ML offence or predicate crimes that are not qualified, by a virtue of the CC, as a grave or particularly grave, which presents a serious limitation with respect to Article 7(2c) of CETS No. 198.[17]

Article 7 paragraph 2 d)

66. Under Article 6 section 5 of the AML/CFT Law, reporting entities, their employees, and representatives are prohibited from informing the person, on whom a report or other information is being *filed* with the Authorised Body, as well as other persons, about the fact of filing such report or other information. Failure to comply with this obligation is sanctioned under Article 30 section 4, subsection 4 of the AML/CFT Law by a warning or a fine equal to the 600-fold amount of the minimum salary. The wording of Article 6 section 5 of the AML/CFT Law also covers the instances in which information on the client has been *sought by the Financial Monitoring service (*FMC), but was not provided (e.g. due to the luck of information) by the reporting entity, as per Article 7(2)d of the standard.

67. Article 10 Section 2 of the Law on Banking Secrecy also provides that a bank is prohibited from informing its customers that it has provided confidential information to criminal prosecution authorities. Under Article 18 of the Law on Banking Secrecy, persons and organizations who fail to comply with Article 10 can be sanctioned with a fine amounting to 2,000-fold up to 10,000-fold the minimum salary and may also be criminally liable under Article 332(2) of the CC if committed with the purpose of hindrance to the comprehensive, complete and objective investigation of the case, with a fine in the amount of 200 to 300 minimal salaries, or with imprisonment for a term of 1 to 3 years. The prohibition of informing the customer is limited to cases in which confidential information has been *provided* to criminal prosecution authorities while the Armenian authorities advised that cases in which information had been *sought* were covered by the Article 342 of the CC. In this context, the referred article[18] provides that "*data of inquiry or investigation includes any information, evidence*

[17] See footnote 11.

[18] Armenian authorities informed the COP assessment team that such interpretation of the referred article was provided in the *Textbook for the Higher Educational Institutions: Criminal Law of the Republic of Armenia: Special Part: second edition: Erevan-2006.*

acquired, as well as investigative action carried out under the LOIA or CPC directed at the acquisition of operative information or evidence."

68. Disclosure of any information related to data of inquiry and investigation carried out by the LEAs to any third party constitutes divulgation of inquiry and or investigation, and is punished as per Article 342 of the CC. However, it is in the opinion of rapporteurs that this provision criminalises disclosure of data (evidence) collected in the course of inquiry or investigation, not disclosure of the fact that information has been sought or obtained for investigative purposes.

69. Armenia has not extended investigative assistance related to the requests for information on bank accounts, on banking transactions and on the monitoring of banking transactions to non-bank financial institutions as only banks are allowed to open and maintain accounts.

Effective implementation

70. It appears that the practical use of powers by LEAs under Articles 14(15) and 29 of LOIA could be hindered by the two seemingly cumbersome conditions that need to be fulfilled before the powers are available, (as elaborated in paragraph 54). Concerns remain with the fact that they are not available for basic ML offences. The investigative powers to obtain information covered by banking secrecy, insurance secrecy and information on transactions with securities as per the CPC can only be used in relation to a person suspected or accused in a criminal case. This does not seem broad enough to allow for effective implementation of Article 7 of the Convention, although a broader interpretation of Article 173 CPC has been provided by the Court of Cassation (see paragraph 58 of this report). The assessment team, nonetheless, cannot evaluate to what extent such interpretation of the CPC's article has been applied in practice. Therefore, it has to be concluded that in practice, investigative powers to access financial information for LEAs for the purposes of Article 7 of the Convention are restricted and that LEAs thus need to rely to a large extent on the powers of the FIU under the AML/CFT Law.

71. The authorities have provided statistics (table below) to the COP assessment team on exchange of information between the FIU and LEAs that concern banking secrecy. According to the Armenian FIU, all these requests for information by LEAs were taken into account and each of them resulted in proper and timely feedback by the FIU. Thus, it might be concluded that, within the scope of powers provided by the legislation, this aspect of Article 7, paragraph 2 b) has been effectively implemented.

72. ***Statistics on FMC Cooperation with Competent Domestic Authorities***

		2010	2011	2012	2013	2014	Total
	Information requests from LEA to FMC	**53**	**58**	**61**	**36**	**66**	**274**
	Including, from:						
	NSS	*14*	*19*	*26*	*12*	*18*	89
	SRC	*9*	*15*	*9*	*6*	*21*	60
	GPO	*24*	*7*	*9*	*10*	*13*	63
	Police	*5*	*15*	*13*	*5*	*6*	44
	Interpol National Bureau	*1*	*2*	*3*	-	*5*	11
	Special Investigative Committee	-	-	*1*	*3*	*2*	6
	Investigative Committee	-	-	-	-	*1*	1

Recommendations and comments

73. In the light of the above, and with the aim to empower LEAs to take urgent investigative actions in order to identify property subject to confiscation and to ensure a successful seizure and confiscation of proceeds of crime and instrumentalities, it is recommended:

- to ensure that access to information covered by banking secrecy, insurance secrecy and information on transactions with securities, which may be required for evidentiary reasons is available to LEA in line with the fundamental principles of national law (e.g. upon judicial approval for application of special investigative techniques) not only on "suspect" or the "accused" but also on other natural or legal persons - holders or beneficial owners of bank accounts. This recommendation needs to be read in conjunction with the statements of the paragraph 58 of this report concerning the Court of Cassation verdict no. EKD/0223/07/14;

- to ensure that the monitoring of banking operations by LEAs is available in respect of cases of suspicion of basic ML offences and all predicate offences to ML[19];

- that the authorities maintain statistics on the application of investigative powers and techniques regarding the lifting of banking secrecy (including powers to make available or seize bank, financial or commercial records for assistance in actions for freezing, seizure or confiscation; power to determine who are account holders; power to obtain historic banking information, and the power to conduct prospective monitoring of accounts).

7. International co-operation

Legal framework

74. The core legislative acts which provide the legal basis for international judicial co-operation are Chapter 54 of the CPC, notably its Articles 474 Part 2 and 475, together with relevant international treaties.

Article 474: Rules for legal assistance in criminal matters within interstate relations

2. When conducting procedural actions stipulated by this Code in the territory of the Republic of Armenia pursuant to the request of competent authorities of foreign states, the court, prosecutor, investigator or inquest body of the Republic of Armenia shall apply the norms of this Code in combination with the exceptions provided by the relevant international treaties. In the course of conducting procedural actions in the territory of the Republic of Armenia pursuant to the request of competent authorities of foreign states, the court, prosecutor, investigator or inquest body of the Republic of Armenia may apply the norms of the criminal procedure legislation of the respective foreign state, provided that such application is stipulated by the international treaties which the Republic of Armenia and the foreign state have accessed to. Requests of competent authorities of foreign states shall be executed within the timeframes prescribed by this Code, unless specified otherwise in the relevant international treaty.

[19] Armenia applies an all crimes approach to ML.

75. Article 474 Part 2 of the CPC allows for the provision of mutual legal assistance (MLA) in criminal matters on the basis of bilateral or multilateral agreements. In the absence of such agreements, under Chapter 54.1 of the CPC, MLA can be provided in exceptional cases on the ground of mutuality between the competent authorities in accordance with agreements made via diplomatic channels, along with correspondence with the General Prosecutor's Office or the Ministry of Justice, as applicable.

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. The Article 23 paragraph 5:

"The Parties shall co-operate to the wides 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 constitues proceeds or other property in the meaning of Article 5 of this Convention."

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

76. The legal framework, and more specifically Article 474 of the CPC, is also applied to international cooperation for confiscation purposes. Foreign requests for search, seizure or confiscation are executed pursuant to domestic law provisions, unless the applicable treaty expressly provides for the application of the procedural law of the requesting State.

77. Armenia has not adopted any specific measure to implement Article 23 paragraph 5 of the Convention on co-operation concerning the execution of measures leading to confiscation, which are not criminal sanctions. It therefore appears that civil forfeiture orders cannot be recognized. Authorities have informed the assessors that no requests for civil forfeiture orders have been received by the Ministry of Justice or the General Prosecutor's Office.

78. As concerns the implementation of Articles 25(2) of the Convention, there are no specific legal provisions in Armenian legislation giving priority consideration to returning the confiscated property to the requesting party so that it can give compensation to the victims of the crime or return such property to their legitimate owners. However, according to the Armenian authorities, given the absence of provisions that would prevent giving such priority, it would be possible to do so, if requested by the counterpart.

79. There are no agreements or arrangements in place giving special consideration to sharing confiscated property with other countries on a regular or case-by-case basis. However, according to the Armenian authorities, no provisions of the law prohibit or obstruct the ability of the authorities to share assets in this way on an ad-hoc basis.

Effective implementation

80. Civil forfeiture orders cannot be executed and the assessment team has been informed that such requests have never been received. It also appears that there have been no instances where confiscated property has been returned to the requesting party so that it can give compensation to the victims of the crime or return such property to their legitimate owners. So far, there has been no case when the confiscated property was shared with other countries.

Recommendations and comments

81. In the light of the above, it is thus recommended that:

- Armenia should ensure that specific measures are in place as foreseen by the Article 23 paragraph 5 of the Convention to enable co-operation to the widest extent possible under domestic law with the 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;

- Armenia should ensure that effective measures/mechanisms are in place to enable giving priority consideration to returning confiscated property to the requesting party so that it can give compensation to the victims of the crime or return such property to their legitimate owners;

- Armenia is encouraged to consider concluding agreements or arrangements on sharing confiscated property with other Parties either on a regular or case by case basis.

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

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 value here 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

82. The Armenian authorities have informed the COP assessment team that the legal framework for international cooperation described earlier in this section of the report (paragraphs 74-75) also applies to the foreign requests for information on bank accounts, on banking transactions and on monitoring of banking transactions. Further to requests for investigative assistance, the authorities would therefore apply Articles 474 Part 2 and 475 of the CPC, together with international treaties and the relevant provisions of the CPC described under section 6 of this report (Article 7 of the Convention - Investigative powers and techniques).

83. Article 474 of the CPC, provides that *when conducting procedural actions stipulated by this Code in the territory of the Republic of Armenia pursuant to the request of competent authorities of foreign states, the court, prosecutor, investigator or inquest body of the Republic of Armenia shall apply the norms of the CPC.* Thus, in principle, all the investigative techniques that are available under the CPC are also available for the purpose of MLA.[20] This includes the search and seizure of information constituting bank secrecy with regard to persons suspected or accused in a criminal case and on the basis of a court order (Article 172 of the CPC). As described in the section 6 of this report, the CPC, and more specifically its articles 53 and 55, prescribe that LEAs can carry out investigative techniques under LOIA, including the monitoring of bank accounts. It must be noted that some of the limitations identified in the context of implementation of Article 7 of the Convention apply also in the context of MLA when it concerns investigations. Most notably, techniques under LOIA cannot be executed with regard to basic ML, and this can form an obstacle to the full implementation of Article 19. On the other hand, Article 17(1) refers only to natural or legal person 'that is subject of a criminal investigation' therefore concerns raised under Article 7(1) and (2a) and respective recommendation '*to ensure that access to information covered by secrecy banking secrecy, insurance secrecy and information on transactions with securities, which may be required for evidentiary reasons but concerns a person other than the "suspect" or the "accused", is available to LEA…*' shall not be applied to Article 17(1).

[20] MONEYVAL 5th MER (page 177): *Domestically available information (including banking secrecy) may be collected by LEAs either through operational intelligence measures based on LOIA (Article 14 (1) and 15), or through investigatory measures conducted under the Criminal Procedure Code. The first category may be disseminated (exchanged) with foreign counterparts based on the provisions of Article 10 (2) of the LOIA. For the second, although no provision in this respect is available under the CPC, the authority to exchange it with foreign LEAs should be based on the general cooperation rule provided by the AML/CFT Law (Article 14(1)).*

84. As concerns Articles 17(6), 18(5) and 19(5) of the Convention, Armenia has not extended investigative assistance related to the requests for information on bank accounts, on banking transactions and on the monitoring of banking transactions to non-bank financial institutions as only banks are allowed to open and maintain accounts.

Effective implementation

85. The absence of criminal liability for legal persons in Armenia could limit the cooperation that Armenia provides in answering to a request sent by another Party for banking information of legal persons that are the subject of criminal investigation in the requesting Party. These limitations might be partially remedied if the interpretation of the Article 172, paragraph 3.2 is applied in line with the decision no. EKD/0223/07/14 of the Armenian Court of Cassation (as elaborated under Article 7 - paragraph 58 of this report). However, even if (as per virtue of the aforementioned verdict of the Court of Cassation) bank information of legal persons linked to suspects can be provided to investigators, a necessary precondition for such action is to have an on-going investigation against a natural person.

86. Armenian authorities however, informed the COP assessment team that, due to the fact that the country made no reservation to CETS No. 198, such requests could always be executed on the bases of the Convention (see also under section 11 - Article 28 of the Convention – Grounds for refusal). However, given that Armenian authorities interpret that the criminal liability of legal entities is contrary to the fundamental principles of their national law[21], it remains questionable if Armenia would provide MLA upon request by another state party for investigative measures against legal person(s).

87. The Armenian authorities state that no instances exist in which it has received and executed MLA requests on information on bank accounts, on banking transactions and on the monitoring of banking transactions. Thus, it is impossible to assess the practical implementation of these provisions of the Convention.

Recommendations and comments

88. Armenia can provide international assistance with regard to investigative means foreseen within the framework of its national legislation. The issues identified under Article 7 can impact the scope of investigative means available for MLA purposes. Recommendations made under Article 7 (with the exception elaborated under paragraph 83) are equally relevant for proper implementation of these articles).

[21] This has also been elaborated under paragraph 37, page 113 of the MONEYVAL 5th MER.

7.3 Procedural and other rules (Direct Communication) Article 34 paragraphs 2, 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."

Description and analysis

89. Article 475 of the CPC part 4, paragraphs 1 and 4, provides as follows:

    In cases provided by international treaties of the Republic of Armenia, filing and delivery of the request for conducting procedural actions and submission of the outcomes of their execution can be carried out through direct communication between the relevant competent authority of the foreign state and the relevant court, prosecutor, investigator or inquest body of the Republic of Armenia.

    In cases stipulated by this Part, the court, prosecutor, investigator or inquest body of the Republic of Armenia shall notify the relevant competent authority specified in Part 1 of this Article about each request through direct communication, its receipt and execution, briefly specifying the name of the requesting authority (name and position of the official), the content of the request, the authority or official that executed the request, the outcomes of execution, the dates of receiving and executing the request.

90. It appears that under these provisions, the foreign judicial authorities can formally contact and send requests for investigative assistance directly to Armenian courts, prosecutors, investigators or inquest bodies and vice versa. This is subject to bilateral/multilateral treaties being in place. The court, prosecutor, investigator or inquest body would then notify the authority specified in the law – in the case of Armenia these are *the Prosecutor General's Office* - for requests for conducting procedural actions with regard to cases in pre-trial proceedings; and *the Ministry of Justice* for trial proceedings. The authorities advised that such direct communication between competent authorities was always possible; in practice, it is executed in urgent cases.

91. As concerns compliance with Article 34(6) of CETS No. 198, the authorities indicated that prior to a formal request being sent, the competent authorities of the requesting state could communicate with the Armenian competent authorities in order to obtain the necessary information, in line with Article 475 of the CPC.

92. The contacts of the competent authorities can be found in the Directory of Competent National Authorities of the UNODC. The directory allows authorities to access up-to-date contact information on means of communication, legal requirements for cooperation, and specific measures to be followed in urgent cases.

Effective implementation

93. According to data available to the Ministry of Justice in 2015, 3 outgoing requests have been sent as direct communication by the judicial authorities/prosecutors/investigators of Armenia to such authorities of the requested

Party. In addition, the Armenian authorities advised that in the period 2014-2015 (until 1 April 2015), the Ministry of Justice had received 10 responses to MLA requests via e-mail, including 4 responses from the Russian Federation, 2 from the Czech Republic, 2 from Georgia, 1 from Poland, and 1 from Belgium. Although the Armenian competent authority had directly communicated the competent authority of a requested state, the latter had not answered the requests directly. Instead, the Armenian Ministry of Justice received the answer from the requested state via e-mail, as a matter of urgency, and forwarded it to the Armenian competent authority, before receiving the official response.

Recommendations and comments

94. The Armenian legal order is in compliance with Article 34 of CETS No. 198.

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

It is considered that the added value of the Convention in A.46 is that it sets out a "detailed machinery for FIU to FIU cooperation, which is not subject to the same formalities as judicial cooperation." 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

Article 46 paragraphs 1, 2 and 3

95. The Financial Monitoring Center (FMC) was set up in 2005 and serves as the Armenian FIU. As provided under Article 10 of the AML/CFT Law and Chapters 1 (paragraphs 1-3) and Chapter 2 (paragraph 6.1) of the FMC Statute, the FMC is a structural unit established within the Central Bank of Armenia (CBA) and acts as a national centre for receiving and analysing suspicious transaction reports (STRs) and other information relevant to ML/TF and associated predicate offences, and for disseminating the results of that analysis to criminal prosecution authorities. In line with Article 10 of the AML/CFT law, the FMC may also request and obtain from reporting entities (regardless if the entity has previously filed an STR), supervisory authorities and criminal prosecution authorities information relevant for AML/CFT purposes, including classified information as defined by the law. FMC may also conclude cooperation agreements with international organizations and foreign FIUs, as well as exchange information, including classified information, for AML/CFT purposes.

96. The head and the staff members of the FMC are appointed by the Board of the CBA[22]. The CBA also approves its statute, the annual operations plan, and the budget. The FMC has a distinct budget from the CBA, in order to cover both operational and administrative expenses, as well as capital expenditures.

97. Article 14 of the AML/CFT Law and Chapter 2 of the FMC Statute provides the legal basis for international cooperation and information exchange with foreign FIUs:

Article 14 AML/CFT Law - International cooperation

1. The Authorized Body and relevant state bodies shall cooperate with international structures and relevant bodies of foreign countries (including foreign financial intelligence bodies) involved in combating money laundering and terrorism financing within the framework of international treaties or, in the absence of such treaties, in accordance with international practice.

2. The Authorized Body shall, on its own initiative or upon request, exchange information (including documents), including classified information as defined by the law, with foreign financial intelligence bodies, which, based on bilateral agreements or commitments due to membership in international structures, ensure an adequate level of confidentiality of the information and use it exclusively for the purposes of combating money laundering and terrorism financing.

3. The Authorized Body shall not be authorized to disclose to any third party the information received within the framework of international cooperation, as well as to use it for criminal prosecution, administrative, or judicial purposes, without the prior consent of the foreign structure or body having provided such information.

4. For the purposes of this Article, the Authorized Body shall be authorized to conclude agreements of cooperation with foreign financial intelligence bodies.

Chapter 2 FMC Statute. Objective, tasks, functions and authorities of the FMC

(…) cooperating with criminal investigation authorities, supervisory and other authorized state bodies at national level and cooperating with foreign financial intelligence units at international level through or without entering into mutual agreements for the purpose of contributing to effective criminal prosecution and supervision for the detection of cases of ML/TF.

98. Based on these provisions, the FMC cooperates and exchanges information – both spontaneously and upon request - with foreign FIUs. Such cooperation can be based on bilateral agreements and international treaties. In the absence of such treaties, the cooperation could be set based on international practice in this matter. Thus, the existence of a MoU, in principle, is not a necessary prerequisite for exchanging

[22] The Law "On the Central Bank of the Republic of Armenia" (art. 19 and 21) provides that: *the Board shall be comprised of the Chairman of the Central Bank, his/her deputy and five members, appointed by the President of the Republic of Armenia for a term of five years. Board member of the Central Bank may not hold any other position in the Central Bank, may not be a member of a managing body of any party, be involved in political activities, hold any other state position, or perform any other paid work, besides work of scientific, pedagogical and creative nature. The Meetings of the Board of the Central Bank shall be convened as deemed necessary and at the request of the Chairman, the Deputy Chairman or at least three Board members of the Central Bank no less than once a month. The Board is authorized to take decisions if at least five members of the Board are present at session (including the Chairman and the Deputy Chairman of the Central Bank) and a decision can be considered as passed if more than half of the members present at the meeting have voted for.*

information with a counterpart. Nevertheless, the FMC has signed 30 MoUs and indicated MoUs were used for cooperation purposes as a matter of practice. The authorities advised that when concluding MoUs, the Egmont Group sample MoU text was used and minor amendments can be made upon mutual agreement with a foreign FIU. There is no provision in the law which would condition cooperation with a foreign FIU depending on its internal status or nature (i.e. whether it is an administrative, law enforcement or judicial type FIU). The authorities have provided the COP assessment team with a list of signed MoUs which included foreign FIUs of various types. As concerns information requests, the FMC can either make requests for its own analytical purposes, request it on behalf of other national authorities (mainly the LEAs) or upon request from a foreign FIU.

Article 46 paragraph 4

99. With regard to the requirement that the requests need to be accompanied by a brief statement of relevant facts known to the requesting FIU and specifying how the information sought will be used, no provisions in the AML/CFT Law and in the Statute of the FMC concern this matter. Nevertheless, the FMC is a member of the Egmont Group since 2007 and the authorities have informed the COP assessment team that it generally exchanged information via the Egmont Secure Web (ESW). Other channels of information exchange are used only for co-operation with the FIUs that are not members of the Egmont Group. As a result, the exchange of information is performed on the basis of the Egmont Group Principles of information exchange and the Operational Guidance, using the Egmont Group information exchange template. According to these Principles, FIUs are required to make their best efforts to provide complete, factual and, as appropriate, legal information including the description of the case being analysed and the potential link with the country receiving the request. The authorities have indicated that similar provisions are used in the MoUs signed by the FMC, requiring parties to substantiate their request. Moreover, the FMC indicated that the Egmont Group information exchange template used by FMC contained a field indicating the purpose of the request and how the data received would be used. The authorities advised and that they consistently filled-in this field. The assessment team has been provided with an example of a MoU between the FMC and a foreign counterpart, and of a sanitized request sent by the FMC to a foreign FIU, which confirm that information.

Article 46 paragraph 5

100. As already indicated in the analysis of article 46(1-3), 14 and 10 of the AML/CFT law provide that the FMC may, inter alia, request and obtain from reporting entities (regardless if the entity previously filed an STR), supervisory authorities and criminal prosecution authorities, information relevant for AML/CFT purposes, including classified information as defined by the law. This could be done for FMC own purposes, as well as in the context of international cooperation. Once information is requested, Article 13(5) of the AML/CFT law states that *reporting entities, state bodies, including supervisory and criminal prosecution authorities, should provide such information to the Authorised Body within a 10-day period, unless a different timeframe is specified in the request or, in the reasonable judgment of the state body, a longer period is necessary for responding to the request. Criminal prosecution authorities shall provide information constituting preliminary investigation secrecy, provided that the request of the Authorised Body contains sufficient substantiation of a suspicion or a case of money laundering or terrorism financing.*

101. In practice, the authorities have explained that on receipt of a request from a foreign FIU, the FMC verified the availability of data in its own databases, other available databases and, where necessary, obtained relevant information from national authorities or reporting entities. The FMC has access to a wide range of databases for financial, administrative, law enforcement and other types of information.

102. A prior consent of domestic authorities to the FMC to disseminate obtained information to third parties is not a mandatory requirement under law. However, the authorities indicated that, whenever FMC provided information obtained from domestic authorities to foreign counterparts, it needed a prior consent of these authorities as a matter of commonly accepted practice. Although there is a practice at the domestic level to obtain the prior consent of the competent authorities, there is no evidence that this consent has ever been refused for the FMC to disseminate the information to the requesting FIU.

Article 46 paragraph 6

103. There are no provisions in the AML/CFT Law and the Statute of the FMC providing in which cases the FIU can refuse to divulge information to foreign counterparts. The FMC advised that there had never been any instances in which information exchange with foreign FIUs had been refused. Nevertheless, the authorities clarified that based on relevant provisions of bilateral MoUs, a request from a foreign counterpart might be refused:

- *If judicial proceedings have already been initiated domestically in relation to the same facts indicated in the request;*
- *If provision of the requested information could unduly prejudice an investigation or proceeding;*
- *If provision of such information is likely to prejudice the sovereignty, security, national interest or other essential interest of Armenia;*
- *If information cannot be protected effectively (as provided for under the FATF Recommendations and the Egmont Group Principles of Information Exchange);*
- *On grounds of lack of reciprocity or inadequate cooperation.*

104. The first ground of refusal listed above is not foreseen by the Convention and may therefore not be in compliance with the Convention. The authorities have indicated that this ground is only included in 6 out of the 30 agreements signed by Armenia (with Australia, Bermuda, Saudi Arabia, Thailand, China and Iran) and it is thus not included in the MoUs with the Parties to the Convention. There is no provision in the law indicating that refusal of requests should be appropriately explained to the requesting FIU. Authorities advised that, if a request for information would ever be refused, it would, be appropriately justified to the requesting FIU, with application of the EGMONT principles.

Article 46 paragraph 7

105. In line with the Convention, Article 14(3) of the AML/CFT Law provides that the FMC is not authorised *to disclose to any third party the information received within the framework of international cooperation, as well as to use it for criminal prosecution, administrative, or judicial purposes, without the prior consent of the foreign structure or body having provided such information.* Article 14(2) also provides

that the information received shall be used *exclusively for the purposes of combating money laundering and terrorism financing*.

Article 46 paragraph 8

106. According to the provisions cited by the authorities, as well as the explanation provided, it does not appear that restrictions and conditions are systematically imposed on the use of information, thereby obstructing cooperation. They have further explained that the template for the response contained a disclaimer note regarding the limitations in the use of the information provided and the requirement to obtain a prior consent of the FMC should the information be used for purposes other than those already specified in the request or by other authorities. Additional restrictions could be imposed on the basis of MoUs with foreign counterparts, but authorities advised that there were no further restrictions imposed by the MoUs so far.

107. As concerns the requirement that the FMC complies with possible restrictions or conditions imposed by foreign counterparts, the FMC advised that item 32 of the Egmont Group Principles of Information Exchange was applied, providing that *exchanged information should be used only for the purpose for which the information was sought or provided. Any dissemination of the information to other authorities or third parties, or any use of this information for administrative, investigative, prosecutorial or judicial purposes, beyond those originally approved, should be subject to prior authorisation by the requested FIU.* Authorities informed the COP assessment team that the FMC requested a prior consent of the foreign FIU to use the provided information whenever it was required in order to disseminate information to third parties or use it for analysis of another case than was described originally. There have been cases of refusal from the foreign FIUs to the FMC to provide information to domestic LEAs.

Article 46 paragraph 9

108. There are no specific provisions concerning the use of transmitted information for criminal investigations or prosecutions purposes. As described in the previous paragraph, the authorities indicated that in application of the Egmont Group Principles of Information Exchange, an authorisation from the FMC to use the information for criminal investigations or prosecution purposes was required if it had not been previously indicated in the request. Consent is refused in the cases specified in the analysis of Article 46(6).

109. Under Article 12(2) of the AML/CFT Law, notifications and other information submitted by the FMC to criminal prosecution authorities shall be considered as intelligence and can be used only in the manner established by the law. From this provision it can be inferred that the FMC shall give its consent to the use of such data by foreign FIUs for criminal investigations or prosecutions only for intelligence purposes.

110. If the requesting party would like to use the transmitted information for evidence purposes, a rogatory letter must be submitted, via official channels of

communications that for CETS No. 198. For these purposes official channel of communication is the FMC.[23]

Article 46 paragraph 10

111. As indicated in the analysis of Article 47(7), under Article 14(3) of the AML/CFT Law, the FMC is not authorised "to disclose to any third party the information received within the framework of international cooperation, as well as to use it for criminal prosecution, administrative, or judicial purposes, without the prior consent of the foreign structure or body having provided such information".

112. Below are the relevant provisions of articles 10 (7-8) 12 of the AML/CFT law; and Chapter 3 of the FMC Statute which concern security measures that the information submitted is not accessible by other authorities, agencies and departments:

- *The FMC ensures the conditions necessary for safekeeping the information received, analysed and disseminated and such information may only be accessed by relevant bodies or persons, as defined by the law. Such information may be used only for the purposes of the AML/CFT Law;*
- *The FMC is prohibited to disclose any information received, analysed or disseminated and to allow direct or indirect access of third parties to such information, except for the cases stipulated by the AML/CFT Law.*
- *Staff members of the FMC are obliged to maintain confidentiality (as defined by the law and the legal statutes) and observe established rules of conduct;*
- *Only the staff of the FMC shall have access to the information received and analysed for the purposes of the AML/CFT Law;*
- *In the course of exercising its functions and authorities the FMC is independent of any structural unit of the Central Bank or of any other body.*

113. In addition to these legal provisions, the CBA was assessed and found fully compliant in 2012 with the ISO Standard 27001:2005 (Information Technology – Security Techniques – Information Security Management Systems – Requirements Standard).

114. All premises of the FMC are under its full possession and physical access to the FMC is restricted to special entry pass holders. The staff of the FMC has clear instructions governing security, confidentiality and the handling of information. FMC staff members sign agreements on confidentiality of information, defining information access level and responsibilities.

115. Breaching confidentiality duties may constitute a disciplinary infringement, established by the Code of Administrative Violations, or a criminal offence under Article 144 of the CC for dissemination, collection and keeping data constituting personal secrecy and under Article 199 of the CC for illicit collection and dissemination of banking secrecy.

[23] Based on the declaration of Republic of Armenia, in accordance with Article 33, paragraph 1, of CETS No. 198, the FMC is the central authority responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.

116. The FMC possesses its own information system and facilities, which are distinct from those of the CBA. In particular, the FMC uses domain, database, information storage and software systems (including own separate server systems) supporting the FMC business procedures. There is a case management system (ACMS) used in the FMC in order to protect and ensure confidentiality of the whole process of information receipt, analysis and dissemination. Any information received by the FMC is processed via the ACMS ensuring control over the whole information processing from the receipt of a signal to the sending of (intermediate and final) responses to relevant stakeholders.

Article 46 paragraph 11

117. The Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108) was signed by Armenia on 8 April 2011, ratified on 9 May 2012 and entered into force on 1 September 2012. The authorities advised that Article 1(2) of the Republic of Armenia Law on Personal Data Protection of 18 May 2015 provided that specificities of dealing with state and official secrecy, bank secrecy, notarial secrecy, attorney-client privilege, insurance secrecy, as well as personal information used in relation to national security or protection operations*, anti-money launder and counter terrorism financing measures*, operational-intelligence activities or judicial proceedings are regulated by their specific legislation. Thus, the provisions of the Law on Personal Data Protection do not apply to the operations of the FMC.

118. Requirements for the protection of information and confidentiality in the operations of the FMC are stipulated under Parts 7 and 8 of the Article 10 and Part 1 of the Article 12 of the AML/CFT law. These provisions (described in paragraph 112 of this report) apply to any information dealt with by the FMC, regardless if it has been obtained domestically or through international cooperation.

119. Furthermore, the FMC uses ESW to exchange information with Egmont Group members and in this context is subject to the Egmont Principles for Information Exchange. These principles require FIUs receiving information to protect and keep secure information received, and lay down various measures which ought to be in place to ensure this.

Article 46 paragraph 12

120. The authorities advised that the FMC could request feedback from foreign FIUs on the information it had provided on a case-by-case basis. As concerns the provision of feedback by the FMC to its foreign counterparts, the authorities have stated that this was done whenever requested. Being a member of EGMONT Group, FMC provides such feedback in accordance with clause 19 of the Egmont Principles for Information Exchange.

Effective implementation

121. Statistics on cooperation between the FMC with foreign FIUs have been provided by the authorities. The authorities advised that in the period covered by this assessment, no query received by the FMC from foreign counterparts were left unanswered. Responses were provided within a period of 15 days on average, depending on whether the requested information was available in the FMC database, or additional inquiries to the reporting entities or relevant national authorities were

required. This was not applied to urgent requests which were responded in line with the indicated time limits. Prioritisation of requests depends on the urgency specified by the requesting authority, or on the nature of the request (for example, requests related to bank account balances are dealt with urgently). The authorities further advised that there were about 20 cases in the reference period which involve provision of information received from LEAs to foreign FIUs, and that it usually took up to 10 days to obtain the information along with the (prior) consent from the respective authorities. The FMC indicated that there were no instances in which exchange of information with a foreign FIU was refused.
As concerns information requests sent by the FMC to foreign counterparts, the majority of them were responded to within an average of 40 days.

Statistics on FMC Cooperation with Foreign FIUs

Requests received by FMC										
	2010		**2011**		**2012**		**2013**		**2014**	
	Country	*Number*	*Country*	*Number*	*Country*	*Number*	*Country*	*Number*	*Country*	*Number*
		25		***36***		***11***		***32***		***17***
1	Russia	8	Montenegro	4	Russia	2	Moldova	7	USA	3
2	USA	2	Argentina	3			Lithuania	4	Russia	2
3	Slovakia	2	Russia	3			Ukraine	3		
4	Greece	2	Moldova	2			Russia	3		
5	Croatia	2	Venezuela	2						
6			UAE	2						
	Other	9	Other	20	Other	9	Other	15	Other	12

Requests made by FMC										
	2010		**2011**		**2012**		**2013**		**2014**	
	Country	*Number*	*Country*	*Number*	*Country*	*Number*	*Country*	*Number*	*Country*	*Number*
		28		***30***		***38***		***24***		***39***
1	Latvia	5	Iran	3	UK	4	BVI	3	HK	5
2	Russia	4	USA	3	Latvia	3	UK	3	Latvia	5
3	Georgia	3	Cyprus	2	Ukraine	3	HK	2	BVI	3
4	Switzerland	3	Georgia	2	USA	3	Russia	2	Russia	3
5	BVI	2	Austria	2	Russia	3	China	2		
6	Kazakhstan	2								
7	Iran	2								
	Other	7	Other	18	Other	22	Other	12	Other	23

Number of Spontaneous dissemination cases by FMC			
2011	**2012**	**2013**	**2014**
2	3	5	2

122. In practical terms there are no indications that a foreign FIU has ever refused to provide information following a request for information made by the FMC on the basis that insufficient information was made available or no indication was made on how the information sought would be used.

123. Under the analysis for Article 46(12) (paragraph 120 of this report), it was concluded that feedback from foreign FIUs on information that the FMC had transmitted could be requested on a case-by-case basis. The authorities informed the assessment team that the FMC has requested such feedback in 8 instances. As concerns the provision of a feedback by the FMC to its foreign counterparts, the authorities stated that this was done whenever requested, and that there have been 20 such instances. The authorities have provided the COP assessment team with (sanitized) practical examples on instances in which the FMC has either sought feedback from foreign FIUs on information it had transmitted, or provided feedback on the use of data which it had received from a foreign counterpart.

Recommendations and comments

124. It appears that Armenia has implemented to a large extent the requirements of Article 46 of the Convention.

125. The authorities are encouraged to consider providing clearly under the law cases in which refusal to divulge information to foreign counterparts is justified and provide that such refusals should be appropriately explained to the requesting FIU, in line with Article 46 paragraph 6 of the CETS No. 198.

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

126. The postponement of domestic suspicious transactions is provided under Article 10(6) and (11), Article 13 and Article 26 of the AML/CFT law.

127. Under Article 26(2) of the AML/CFT law, the CBA Board decides on the proposal of the FMC to suspend a suspicious transaction or business relationship for a period of up to 5 days, based on the analysis of:

- filed reports (i.e. STRs and CTRs submitted by reporting entities);
- requests from foreign financial intelligence bodies;
- information provided by supervisory and criminal prosecution authorities or of other information.

128. More specifically, the FIU analyses information for such proposals in accordance with the procedure established in the FMC Operational Manual and the rules of analysis as provided in the FMC Case Analysis Guidance. The analysis of the case is carried out within a reasonable timeframe, on the basis of the information provided, criteria of ML/TF suspiciousness, and national and international AML/CFT

typologies. If, further to the analysis, the ML/TF suspicion is considered to be founded, a draft decision is submitted to the CBA Board to suspend/extend the suspension of the transaction or business relationship. If in the course of the analysis, the information available proves to be insufficient and if there is a high risk that the assets are dissipated, the FMC may also submit a draft decision to the CBA Board to suspend the funds.

129. Upon the decision of the CBA Board, the reporting entities are obliged to suspend the transaction or business relationship for 5 days and must immediately file a report with the FMC on a suspicious transaction or business relationship.

130. Under Article 10(6) of the AML/CTF law, the FMC may also request reporting entities to recognize as suspicious, to suspend, refuse or terminate a transaction or business relationship, based on identification data, criteria, or typologies of suspicious transactions or business relationships as provided by the FMC.

131. Furthermore, in the presence of a suspicion of money laundering or terrorism financing, financial institutions are authorised to suspend a transaction or business relationship for a period up to 5 days.

132. General rules of reporting provide that STRs shall be submitted within the same day when grounds or criteria of suspicion are identified with regard to a transaction or business relationship or, if impossible, by 12:00 pm of the following business day.

133. Within 5 days following the reporting of an STR or from the suspension of a transaction or business relationship by the CBA Board, the FMC shall adopt one of the following decisions:

- to postpone the transaction for an additional period of 5 days (in exceptional cases – 10 days) in order to determine whether criminal prosecution authorities should be notified, or
- to repeal the decision on suspension.

134. Customs Authorities are required, for AML/CFT purposes, to suspend the transportation of currency and/or bearer securities based on information received, inter alia, from the FMC. FMC shall be promptly notified about the suspension (Article 3 of the EEU Agreement on Measures for Counteracting Legalization (Laundering) of Proceeds of Crime and the Financing of Terrorism in Transportation of Cash and (or) Monetary Instruments through the Customs Border of the Customs Union, adopted in Moscow on 19 December 2011; effective for Armenia from 1 January 2015). Within 3 business days following the notification, the FMC shall either advise the customs authorities on lifting the suspension or shall submit a notification to LEAs accompanied by information substantiating the potential link between the suspended currency and/or the bearer securities and ML/TF, and shall advice the customs authorities on submitting a notification to LEAs.

Effective implementation

135. The Armenian authorities provided statistics on suspended funds. It appears that statistics confirm the effective implementation of the requirements under Article 14 of CETS No. 198.

Statistics on Suspended Funds

	2010		2011		2012		2013		2014		Total	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
Funds suspended by CBA Board, incl.	2	113,137,702 (228,100 €)	0	0	2	23,003,274 (44,545 €)	2	54,893,971 (100,889 €)	0	0	6	191,034,947 (373,535 €)
Originated by financial institutions (STRs)	1	73,859,840 (148,911 €)	0	0	1	12,895,274 (24,971 €)	2	54,893,971 (100,889 €)	0	0	4	141,649,085 (274,772 €)
Originated by LEAs (requests)	1	39,277,862 (79,189 €)	0	0	1	10,108,000 (19,574 €)	0	0	0	0	2	49,385,862 (98,763 €)
Funds suspended by financial institutions	1	73,859,840 (148,911 €)	3	69,565,929 (134,116 €)	4	46,991,082 (90,997 €)	5	94,878,627 (174,377 €)	3	38,187,900 (69,168 €)	16	323,483,378 (617,570 €)

* Euro equivalent of the relevant funds has been calculated on the basis of average annual EUR/ AMD exchange rate at 496 in 2010, 519 in 2011, 516 in 2012, 544 in 2013, and 552 in 2014.

Recommendations and comments

136. Armenia has implemented the requirements under Article 14 of the Convention.

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

137. Article 26(2) of the AML/CFT Law provides that the CBA Board can decide on the proposal of the FMC to suspend a suspicious transaction or business relationship based on the analysis of a request from a foreign FIU.[24] The timeframe, procedure of analysis, and conditions of postponement are the same as those that apply in respect of transactions which were subject to a domestic STR, as described in the paragraphs 126-134 of this report which concern the implementation of Article 14 of the Convention.

[24] The requesting FIU applying for the postponement is informed of the procedure, its prior consent is required for the FMC to proceed by informing the CBA Board and carry out the procedure. Strict confidentiality and safeguards are always applied to protect the information.

138. The requesting FIU may also indicate a specific timeframe or signify the urgency of the request. In such cases, the analysis will be carried out within the specified timeframe or as early as possible.

Effective implementation

139. The authorities informed the COP assessment team that the FMC had received one request from a foreign FIU to seize the funds of a legal entity (EUR 739.406) on 24 February 2014. Further to this request, the FMC took measures to identify bank accounts held by the legal entity with the aim to seize the property. The FMC ascertained that funds had been transferred prior to receipt of the request form the foreign FIU to bank accounts in eight countries over a period of three days (from February 11, 2014 to February 13, 2014) and that no funds remained in the Armenian bank account. Response with detailed data was provided to the foreign FIU which requested the freezing of funds of the legal entity on February 26, 2014 (within two working days). Another case, with equal promptness in executing the request from the foreign FIU, was reported by the authorities in 2016.

Recommendations and comments

140. It appears that the FMC and the CBA Board have the necessary legal basis to fulfil the requirements under Article 47 of the Convention.

141. So far, Armenia has effectively applied postponement requests received by foreign FIUs.

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

The Convention is considered to add value here as, according to the 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

142. Under the Article 477 of the CPC, MLA requests based on international treaties ratified by the Republic of Armenia "*may be refused on the grounds provided in such treaties.*

> *At that, if the request is made by the competent authority of a foreign state with which the Republic of Armenia is connected by more than one relevant international treaty, execution of the request may be refused only if the circumstance (the condition) providing grounds for refusal is stipulated by all international treaties […]; or if execution of the request may harm the constitutional order, sovereignty, and national security of the Republic of Armenia, and if the option of refusing execution of the request based on these*

grounds is provided in at least one of the international treaties acceded to by the foreign state and the Republic of Armenia."

143. The authorities advised that the Armenian Ministry of Justice had a wide interpretation of the norms of Article 477, and that it always tried to provide assistance to the maximum extent. In line with that, the authorities explained that when a MLA request from a foreign state is received, it would be executed under the CPC if at least one international treaty provides grounds for execution of the request. However, if the requesting party filed the request under the Convention which envisaged a ground for refusal, the request would still be executed if there were any other international treaty providing such possibility to which both states (requesting and requested) are parties to.

144. Under Article 477 of the CPC, Armenian legislation does not exclude or prohibit the submission of information in the case of fiscal matters. Fiscal offences are considered predicate crimes for ML. Armenia has made a reservation to the European Convention on Mutual Assistance in Criminal Matters and its additional protocol that a request for legal assistance in fiscal crime related to search and seizure would not be executed. According to Article 476 (1) of the CPC, when the obligation to execute requests for conducting procedural actions made by a competent authority of a foreign state *could stem from more than one international treaty, the court, prosecutor, investigator or inquest body in charge of executing the request shall be governed by the given international treaty in case the request refers to a specific international treaty providing the basis for drawing up and filing the request.* Hence, taking into consideration that there are no such reservations made by the Republic of Armenia with regard to Article 28 of the CETS No. 198, the authorities advised that in case of a MLA request under the CETS No. 198, the provisions of this Convention would be applied, and not of the European Convention on Mutual Assistance in Criminal Matters.

145. The authorities informed the COP assessment team that under the above-mentioned provisions, cooperation cannot be refused if the person under investigation/subject to a confiscation order by the authorities of the requesting Party is mentioned in the request both as the author of the underlying criminal offence and of the offence of ML (self-laundering is criminalized in Armenia); as well as if the offence to which the request relates is a political offence, including when it relates to FT.

146. The Ministry of Justice keeps (as of December 2015) statistics related to granted or refused MLA requests. In the last two years (period of 2015-2016), 1 request was refused and 1 request was returned for further submission in compliance with the Convention. The recent establishment of a statistic records within the Ministry of Justice presents an improvement in this regard.

Recommendation and comments

147. It appears that Armenian legislation is in line with requirements of Article 28.

II. OVERALL CONCLUSIONS ON IMPLEMENTATION OF THE CONVENTION

148. Armenia has taken important steps to ensure compliance of its national legislation with the provisions of the Convention and this assessment acknowledges that, in many respects, it meets the standards of CETS No. 198. Nonetheless, a number of technical deficiencies have been identified. There are also concerns as to how effectively the relevant legislation is implemented in practice and as to whether the Armenian authorities make sufficient use of the powers provided for under the Convention.

149. In relation to the ML offence, the Armenian authorities are recommended to consider providing for a lesser mental element of either *suspicion, negligence or both* that property is proceeds of crime in the context of the ML, as well as to ensure that practitioners properly understand and apply in practice the principle that all designated categories of offences in the Appendix to the CETS No. 198 are predicate offences to ML, regardless of whether they have a profit-making purpose. Furthermore, the authorities are invited to take appropriate initiatives – e.g. issue clear guidance for practitioners on the level and types of evidence in respect of the underlying predicate criminality which are likely to be sufficient to adduce in an autonomous ML prosecution.

150. Corporate liability has not yet been applied in Armenian courts. In addition to its effective implementation, the following actions are recommended to the authorities:

- to carry out a stock-taking initiative to identify any legal, evidentiary and institutional impediments to apply corporate liability under the AML/CFT Law;
- provide further instructions/guidance/training to the relevant authorities on how to use corporate liability mechanisms;
- ensure that the concept of representative under Article 31 is applied in line with the requirements of Article 10(1) of the Convention and that it encompasses persons acting as part of an organ of the legal person.

151. Although the confiscation regime is broadly in line with the requirements of the Convention and the introduction of the mandatory character of forfeiture is a welcome step forward, the authorities are invited to take appropriate legislative measures to implement Article 3 paragraph 4 of the Convention, and improve the quality and scope of statistics of confiscation/forfeiture with regard to predicate offences.

152. The report also finds that the Armenian legal framework does not include sufficient implementing measures for the proper management of seized or frozen property thus the recommendation suggests reviewing the national legal framework and taking legislative or institutional steps to introduce a clear and comprehensive procedure for managing frozen and seized assets in conformity with requirements of Article 6 of CETS No. 198.

153. As concerns investigative powers and techniques, it is recommended to:

- ensure that access to information covered by banking secrecy, insurance secrecy and information on transactions with securities, which may be required for evidentiary reasons is available to LEA in line with the fundamental principles of national law (e.g. upon judicial approval for application of special investigative techniques) not only on "suspect" or the "accused" but also on other natural or legal persons - holders or beneficial owners of bank accounts;[25]

- ensure that the monitoring of banking operations by LEAs is available in respect of cases of suspicion of basic ML offences and all predicate offences to ML; and,

- maintain statistics on the application of investigative powers and techniques regarding the lifting of banking secrecy (including powers to make available or seize bank, financial or commercial records for assistance in actions for freezing, seizure or confiscation; power to determine who are account holders; power to obtain historic banking information, and the power to conduct prospective monitoring of accounts).

154. In relation to international cooperation for confiscation purposes, civil forfeiture orders cannot be executed. There are no provisions giving priority consideration to returning confiscated property to the requesting party so that it can give compensation to the victims of the crime or return such property to their legitimate owners. Likewise, there are no agreements in place giving consideration to sharing confiscated property with other countries.

155. As for investigative assistance in the context of international cooperation, in principle, all of the investigative techniques that are available under domestic law are also available for the purpose of MLA (except for the exemptions provided under the relevant MLA treaties). Thus the limitations identified in relation to investigative assistance apply also in the context of MLA in this field. No practical examples have been provided of instances in which Armenia had received or executed MLA requests in this area.

156. It appears that Armenia has implemented the requirements under Article 14 of the Convention (Postponement of domestic suspicious transactions). The FMC and the CBA Board also have the necessary legal basis to fulfil the requirements under Article 47 of the Convention (postponement of transactions on behalf of foreign FIUs).

157. With regard to cooperation with foreign FIUs, the authorities are encouraged to consider providing - clearly under the law - cases in which refusal to divulge information to foreign counterparts is justified and provide that such refusals should be appropriately explained to the requesting FIU, in line with Article 46 paragraph 6 of the Convention.

158. The Conference of the Parties invites Armenia to implement the conclusions in this report and report back on action taken by 31 May 2018.

[25] This recommendation needs to be read in conjunction with the statements of the paragraph 58 of this report concerning the Court of Cassation verdict no. EKD/0223/07/14.

ANNEX

Declaration contained in the instrument of ratification deposited on 2 June 2008 – Or. Engl.

In accordance with Article 3, paragraph 2, of the Convention, the Republic of Armenia will apply Article 3, paragraph 1, only to offences specified in the appendix to the Convention.
Period covered: 1/10/2008 -
The preceding statement concerns Article(s) : 3

Declaration contained in the instrument of ratification deposited on 2 June 2008 – Or. Engl.

In accordance with Article 17, paragraph 5, of the Convention, the Republic of Armenia will apply Article 17 of the Convention only to the categories of offences specified in the list contained in the appendix to the Convention.
Period covered: 1/10/2008 -
The preceding statement concerns Article(s) : 17

Declaration contained in the instrument of ratification deposited on 2 June 2008 – Or. Engl.

In accordance with the Article 24, paragraph 3, of the Convention, the Republic of Armenia will apply Article 24, paragraph 2 only subject to its constitutional principles and the basic concepts of its legal system.
Period covered: 1/10/2008 -
The preceding statement concerns Article(s) : 24

Declaration contained in the instrument of ratification deposited on 2 June 2008 – Or. Engl.

In accordance with Article 35, paragraph 3, of the Convention, the requests made to the Republic of Armenia and the documents supporting such requests shall be accompanied by a translation into English.
Period covered: 1/10/2008 -
The preceding statement concerns Article(s) : 35

Declaration contained in the instrument of ratification deposited on 2 June 2008 – Or. Engl.

In accordance with Article 42, paragraph 2, of the Convention, information or evidence provided by the Republic of Armenia, under Chapter 7, may not, without its prior consent, be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.
Period covered: 1/10/2008 -
The preceding statement concerns Article(s) : 42

Declaration contained in the instrument of ratification deposited on 2 June 2008 – Or. Engl.

In accordance with the Article 33, paragraph 1, of the Convention, the Financial Monitoring Center of the Central Bank of the Republic of Armenia is the central authority which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.
Period covered: 1/10/2008 -
The preceding statement concerns Article(s) : 33