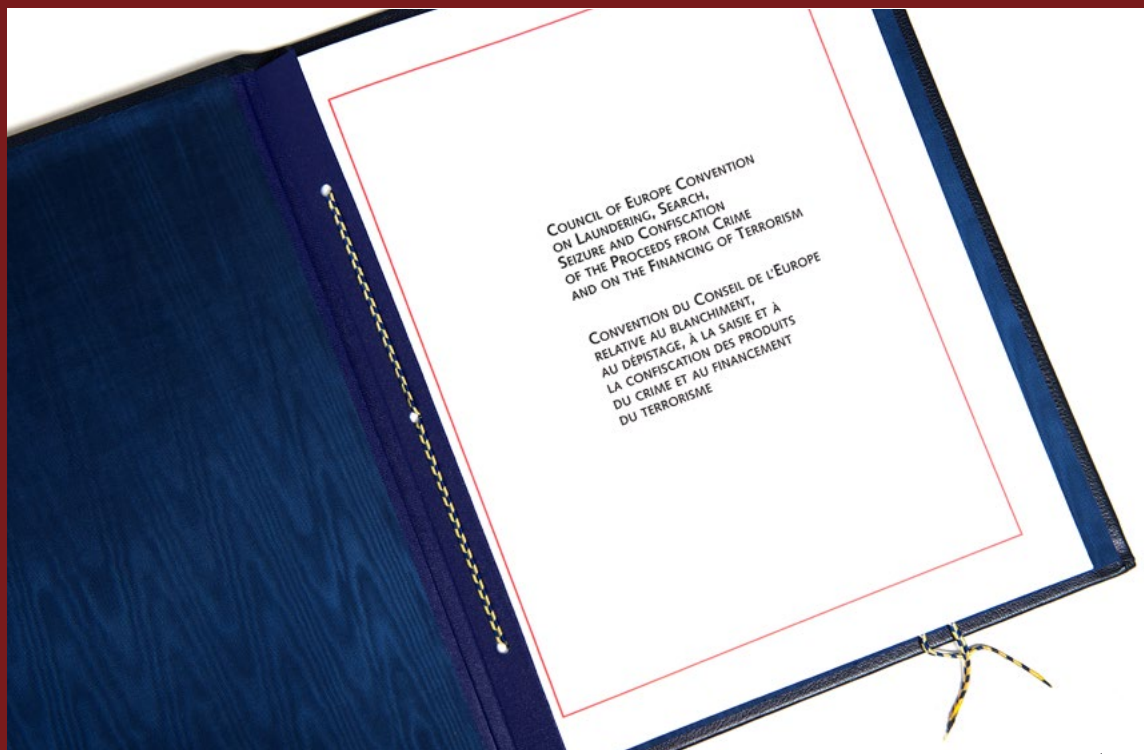
CONFERENCE OF THE PARTIES TO CETS No. 198



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

Second activity report

covering the period 2015-2017

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

CONFERENCE OF THE PARTIES TO CETS No. 198

Second activity report (2015-2017)

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

Council of Europe

French edition:
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Contents

List of acronyms and initialisms

AML	Anti-money laundering
CDPC	European Committee on Crime Problems
ETS No. 141	1990 Council of Europe Convention on Laundering, Search Seizure and Confiscation of the Proceeds from Crime – the Strasbourg Convention
CETS No. 198	2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism – the Warsaw Convention
CFT	Countering the financing of terrorism
COP	Conference of the Parties to the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism – the Warsaw Convention (CETS No. 198)
EU	European Union
FATF	Financial Action Task Force
FIU	Financial intelligence unit
FT	Financing of terrorism
GRECO	Group of States against Corruption
IMF	International Monetary Fund
ML	Money laundering
MLA	Mutual legal assistance
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
OSCE	Organisation for Security and Co-operation in Europe
PC-OC	Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters
PC-RM	Committee of Experts on the revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
TF	Terrorist financing
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

Introduction from the president

I am pleased to introduce the second activity report of the Conference of the Parties (COP) to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the "Warsaw Convention", CETS No. 198). Covering the period from 2015 to 2017, this report gives an overview of our work as the Council of Europe monitoring mechanism that was set up specifically to monitor the implementation of the Warsaw Convention.

During the reporting period, we witnessed both large-scale money-laundering scandals as well as horrible terrorist attacks in Europe and beyond. Developments in technology have provided criminals and terrorists with new possibilities to hide their illicit funds and transfers. Shell companies are being used for the purposes of "grand corruption", organised crime and evasion of targeted financial sanctions against terrorists. The need for effective and state-of-the-art international co-operation between states has become even more important as criminal networks and terrorists use the globalised world to shift assets around jurisdictions within seconds. This has sadly underlined the importance of combating both aspects covered by the Warsaw Convention: money laundering and terrorist financing.

This convention is the only international treaty specifically devoted to fighting both phenomena. A number of measures provided in the Warsaw Convention go beyond the globally applied standards set by the Financial Action Task Force (FATF) and their evaluation in Europe by both the FATF and MONEYVAL, our sister anti-money laundering and countering the financing of terrorism (AML/CFT) monitoring body within the Council of Europe. This is an asset which this convention brings to the global anti-money laundering and counter-terrorist financing community, and which makes the Council of Europe a strategic partner in the fight against both international terrorism and organised crime.

The Warsaw Convention provides states with enhanced possibilities to prosecute money laundering and terrorist financing more effectively, and it equips states parties with further confiscation tools to deprive offenders of criminal proceeds. It provides for important investigative powers, including measures to access banking information. The convention also brings important assets to the area of international co-operation, including the unique co-operation between financial intelligence units.

During the reporting period, the COP continued its monitoring of the implementation of the convention by states parties, both through the adoption of assessment reports and their follow-up reports. At its last plenary, the COP decided to test a new monitoring mechanism which seeks to evaluate all states parties on their implementation of strategically important provisions of the Warsaw Convention. However, monitoring is not the sole task of the COP. We have compiled a survey of practical examples of how domestic courts and authorities are using the convention in their everyday work. To facilitate the application of the convention at domestic level, the COP has adopted a number of interpretative notes of selected provisions of the convention with a strategic importance in the fight against money laundering and terrorist financing. To further foster international co-operation in line with the convention, the COP has developed a template on mutual legal assistance and co-operation among financial intelligence units.

The COP has also been involved in the Council of Europe Action Plan on Combating Transnational Organised Crime (2016-2020) since its elaboration. The main role of the COP is to promote inclusion of its standards into national legislation and practice, and the work undertaken by the COP – its assessment reports, horizontal reviews and interpretative notes – are the key sources for the COP's input to the action plan.

The COP underlines the necessity to seek synergies between the activities of various other Council of Europe bodies, such as MONEYVAL or the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC). The COP also understands the impact of virtual currencies on the behaviour of criminals and the need for clear rules and best practices in this area, including the nature, seizure and confiscation of virtual currencies. In this respect, the COP started an analysis of this issue and invited experts from the UN Office of Drugs and Crime and the Cybercrime Programme Office of the Council of Europe (C-PROC) for an exchange of views. These are the means to bring the Warsaw Convention closer to practitioners, in particular police officers, FIUs, prosecutors and judges in the states parties.

The Warsaw Convention, which came into force in 2008, is a cornerstone of international standards in this area. During the reporting period, a growing number of countries ratified the convention, which is to be welcomed. In total, the Warsaw Convention now has 34 states parties and eight signatories (including the European Union). In light of the importance of combating international terrorism and organised crime, all Council of Europe member states are urged to ratify this convention. For those states parties which made reservations and declarations upon acceding to the convention in the past, the COP regularly invites them to review their necessity to ensure a comprehensive and consistent application of the convention throughout Europe. At each plenary meeting, this issue is discussed and reviewed in order to reconsider the declarations and reservations. As the convention is also open to states which are not members of the Council of Europe, the COP reiterates its invitation for these states to accede to the Warsaw Convention, particularly those in neighbouring regions (such as the southern Mediterranean, the Middle East and Central Asia).

The importance of the convention is underlined by the above-mentioned growing number of ratifications. In light of this and the fact that the secretariat personnel supporting the COP, as part of the MONEYVAL secretariat, can only dedicate part of its time to the Warsaw Convention, further staff reinforcement is needed to drive forward this critical work in the years to come in order to be able to fully explore the effectiveness and potential of the Warsaw Convention.

The COP will continue to require states parties to use consistently the provisions of the Warsaw Convention in the manner in which they were intended: to deliver better results in the investigation, prosecution and conviction of serious money laundering and terrorist financing cases, and related confiscation.

Mr Branislav Bohacik,
President of the Conference of the Parties

Executive summary

1. This is the second activity report of the Conference of the Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198, the "Warsaw Convention") since its inception and covers the work carried out from 2015 to 2017.

2. The Warsaw Convention, which came into force on 1 May 2008, is the first comprehensive anti-money laundering treaty covering prevention and repression of money laundering and the financing of terrorism, as well as international co-operation. It is a key Council of Europe convention as it is specifically designed to assist in the investigation, prosecution and conviction of serious money laundering cases, and to enhance national capacities to fight terrorist financing. The convention reinforces current international standards by setting, *inter alia*, high requirements with respect to freezing, seizure and confiscation measures, the management of frozen and seized property, the possibility to take into account international recidivism when determining penalties, as well as in a number of other areas. It also provides a legal possibility to share the confiscated assets between the co-operating states parties. The COP's action against money laundering is central to the fight against organised crime and complements the Council of Europe's action against organised crime, corruption, human trafficking, cybercrime and economic crime in general.

3. The monitoring procedure under the Warsaw Convention was designed so as not to duplicate the work of MONEYVAL or the Financial Action Task Force. It therefore focuses on those parts of the convention that strengthen global standards. These include, but are not limited to, the provisions on the prosecution of third-party (or stand-alone) money laundering; confiscation (including the provision of a reverse burden of proof after conviction); investigative powers, including measures to access banking information for the purposes of both domestic investigations and international co-operation; preventive measures; as well as the roles and responsibilities of financial intelligence units (FIUs) and the principles for international co-operation between FIUs.[1]

4. Since it was first convened in 2009, the Conference of the Parties has adopted 10 country reports and, after instituting a follow-up mechanism in 2012, seven follow-up reports. The findings of the follow-up reports are encouraging and highlight states parties' willingness to meet the standards of the convention. These reports provide a clear overview of the parties' systems, and assist the parties in improving their legal systems and in taking practical measures.

5. Overall, most states parties have or consider that they have legal systems which can accommodate most of the Warsaw Convention's provisions, subject to the permitted reservations and declarations. That said, not all states are using the new tools provided by the convention sufficiently to achieve the results the drafters envisaged in the investigation, prosecution and conviction of serious money laundering cases and the implementation of effective deterrent confiscation orders.

6. Mindful of an ever-growing evaluation cycle for an increasing number of states parties, the Conference of the Parties has considered ways to ensure that its monitoring puts a stronger focus on the added value the Warsaw Convention brings to international AML/CFT standards. At the same time, the Conference of Parties discussed ways to better involve all states parties on a regular basis. To that effect, it decided at its 9th plenary meeting, in November 2017, to suspend the country-by-country monitoring mechanism and to introduce transversal thematic monitoring for an initial period of two years. Based on key issues covered by the Warsaw Convention, the thematic monitoring intends to tackle the most pressing challenges in the implementation of the convention by all states parties. The first thematic monitoring, to be discussed at the Conference of the Parties' 10th plenary meeting in October 2018, focuses on Article 11 (previous decisions) as well as Article 25.2 and 25.3 (asset sharing).

1. All of these provisions also apply to the financing of terrorism.

7. The Conference of the Parties has invited states parties at various instances to participate in or deliver information on certain aspects of the Warsaw Convention. In particular, states parties have provided insights into details of judgments implementing the convention's provision; examples of co-operation between parties on the basis of the convention; national procedures for MLA requests; as well as contributions to the Action Plan on Combating Transnational Organised Crime. As a result, the Conference of the Parties has prepared a compendium, interpretative notes complementing the explanatory report to the convention, an overview of national MLA procedures, and a survey of examples of cases of use and implementation of the convention's provisions.

8. Further to the adoption of the FATF revised recommendations in February 2012, a revision of the convention was undertaken by means of a simplified amendment procedure in respect of the required categories of predicate offences in the appendix to the Warsaw Convention. As a result, the appendix was amended in 2015.

9. The Warsaw Convention currently has 34 states parties. Since the publication of the first activity report, the convention was ratified by the following states (in chronological order, indicating the date of ratification): France (8 December 2015), Turkey (2 May 2016), Italy (21 February 2017), Germany (20 June 2017), Azerbaijan (9 August 2017), the Russian Federation (28 September 2017), Greece (7 November 2017) and Denmark (12 February 2018). Monaco signed the convention on 1 September 2017. Currently seven states (as well as the European Union) are signatories to the Warsaw Convention.

Activities of the Conference of the Parties (2015-2017)

INTRODUCTION AND BACKGROUND

1. Money laundering directly threatens the rule of law. It provides organised crime with its cash flow and investment capital, and the incentive to commit more proceeds-generating crime. The Council of Europe's action against money laundering is thus central to the fight against organised crime and complements the Organisation's work against organised crime, corruption, human trafficking, cybercrime and economic crime in general. Those who commit these offences all have one thing in common: they want to make a profit. Council of Europe action in this area aims to take the profit out of crime and to protect the international financial system. Another important objective is to protect our citizens against those who finance terrorism. This work, on the monitoring side, is conducted through two complementary mechanisms. The first is the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) which evaluates its members according to the international standards set by the FATF. The second is the Conference of the Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), which is the monitoring body of that convention.

2. The Council of Europe was the first international organisation to address the importance of taking measures to combat the threats posed by money laundering to democracy and the rule of law.[2] The Council of Europe's engagement with this issue led to the negotiation and adoption, in 1990, of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No. 141, the "Strasbourg Convention") and, in 2005, building on the Strasbourg Convention, the adoption of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the "Warsaw Convention").[3]

3. As a key convention of the Council of Europe, the Warsaw Convention needs to be ratified by all member states as it is specifically designed to enhance national capacities to fight money laundering and the financing of terrorism more effectively.

4. More specifically, this instrument:

- provides states parties with a clearer legal basis to prosecute third-party (or stand-alone) money laundering more successfully;
- equips states parties with stronger confiscation tools to deprive offenders of criminal proceeds, including measures for the management of seized or frozen assets, and provides a legal basis for the sharing of confiscated assets;
- provides important investigative powers, including comprehensive measures to access banking information for domestic investigations and for the purposes of international co-operation;
- covers preventive measures, and the roles and responsibilities of financial intelligence units and the principles for international co-operation between them;
- requires states parties to take measures to permit urgent action to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm suspicion;
- applies all its provisions, including investigative powers, to the financing of terrorism;
- requires that all domestic investigative powers to access banking information under the convention should also be available for international co-operation purposes.

2. Recommendation No. R (80) 10 on measures against the transfer and safekeeping of funds of criminal origin, adopted by the Committee of Ministers of the Council of Europe on 27 June 1980.

3. Note that the Warsaw Convention, unlike the Strasbourg Convention, provides for a monitoring mechanism through the Conference of the Parties to ensure that its provisions are properly implemented.

MISSION AND WORKING FRAMEWORK

The Warsaw Convention

Origins

5. The Recommendation No. R (80) 10 of the Committee of Ministers on measures against the transfer and safekeeping of funds of criminal origin paved the way for future international standards on money laundering.

6. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (the "Strasbourg Convention") sought to facilitate international co-operation and mutual legal assistance in investigating crime and tracking down, seizing and confiscating the proceeds thereof. The Strasbourg Convention provides a full set of rules covering all stages of the procedure, from the first investigation to the imposition and enforcement of confiscation measures. It also allows for flexible but effective mechanisms of international co-operation in order to deprive criminals of the instruments and fruits of their illegal activities. Moreover, the Strasbourg Convention provides a wide basis for the criminalisation of money laundering, through the introduction of an "all crimes" approach.

7. The Strasbourg Convention has been ratified by all the Council of Europe member states and by Australia. The convention's ratification is part of the European acquis for applicant members to the European Union. Notwithstanding the recognition which the Strasbourg Convention received, it did not address a number of issues, including measures related to the prevention of money laundering. However, by the end of the 1990s, it was recognised by experts in MONEYVAL and beyond that the Strasbourg Convention needed to be updated to reflect new developments, as well as the rapidly evolving international standards in this area (in the European Union, United Nations and the FATF) and the experience gained in the context of mutual evaluations by the FATF and MONEYVAL. The clear link between the financing of terrorism and money laundering was recognised by the Committee of Ministers in 2001, when it extended MONEYVAL's mandate to the financing of terrorism. The Strasbourg Convention therefore needed to be expanded to address the fight against terrorism financing. Furthermore, when the Strasbourg Convention was negotiated, financial intelligence units were not a part of the anti-money laundering structures in Council of Europe member states. FIUs developed rapidly in the 1990s and, by the end of that decade, there was pressure to anchor their critical role and responsibilities in an international treaty.

8. For these reasons, in 2003, the European Committee on Crime Problems (CDPC) entrusted the Committee of Experts on the revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (PC-RM) to draft a protocol to the Strasbourg Convention. The PC-RM developed a text which both added to and modified provisions of that convention. Owing to the extent of the modifications envisaged and the enlargement of the scope of the treaty to include issues concerning the financing of terrorism, it was decided that this text should be a separate convention, rather than a protocol to the Strasbourg Convention. The new "Warsaw Convention" was adopted by the Committee of Ministers on 3 May 2005 as CETS No. 198. It entered into force on 1 May 2008.

Content

9. The Warsaw Convention builds on the successes of the Strasbourg Convention, thereby reinforcing the international AML/CFT standards as they stood after the adoption of the 2003 FATF recommendations. Even after the adoption of the revised FATF standards of 2012, the convention remains ahead of current international AML/CFT standards in several respects.

Overview of areas in which the Warsaw Convention has strengthened current international standards

Criminalisation of money laundering

- The predicate offences to money laundering have to, as a minimum, include the categories of offence found in the appendix to the convention, which puts the FATF requirements on this issue into an international legal treaty.
- The Warsaw Convention clarifies (and puts into a legally binding instrument) that a prior or simultaneous conviction for the predicate offence is not required.
- It allows for lesser levels of mental element (mens rea) for suspected money laundering.
- It clarifies that prosecutors do not have to establish a particular underlying predicate offence on a specific time and date in a prosecution for autonomous money laundering. This is important when seeking to prosecute stand-alone money laundering offences by those who launder on behalf of organised criminals and on behalf of other third parties.

Corporate liability

- Some form of liability for money laundering (whether criminal, administrative or civil) is now a mandatory requirement if committed for the benefit of the legal person by any natural person, acting either individually or as part of an organ of that legal person, who has a leading position within the legal person. The leading position can be assumed to exist in three alternative situations, being a power of representation of the legal person; or an authority to take decisions on behalf of the legal person; or an authority to exercise control within the legal person.
- The convention expressly covers the legal person's liability for money laundering in cases where lack of supervision or control by the natural person (referred to above) has made it possible to commit the offence.

International recidivism

- The convention requires the state to ensure that there is the possibility, when determining the penalty, to take into account final decisions taken in another state party against a natural or legal person.

Confiscation

- A new concept of "laundered property" has been introduced, in order to ensure that confiscation of the property involved in an autonomous money laundering offence is possible.
- Confiscation must be available for money laundering and offences contained in the appendix to the convention.
- Mandatory confiscation for some major proceeds-generating offences is contemplated.
- Reverse burden of proof is made possible for confiscation purposes. After a conviction for a serious offence, offenders are required to demonstrate the origin of alleged proceeds or other property liable to confiscation (to the extent that such a requirement is consistent with domestic law principles).
- There is a requirement to properly manage frozen or seized property.
- There is a requirement that priority consideration be given to returning assets, where requested, and concluding agreements in this respect.

Investigative powers or techniques

- The provisions of the convention require that:
- courts or other competent authorities are empowered to order that bank, financial or commercial records are made available so that freezing, seizure and confiscation are possible;
- states parties ensure that their competent authorities have the power to determine whether a natural/legal person holds an account and to obtain the details;
- states parties ensure their competent authorities have the power to obtain "historical" banking information;
- competent authorities have the power to conduct prospective monitoring of accounts;
- states parties ensure that their competent authorities consider extending these powers to non-banking financial institutions.

International co-operation

States parties are required to:

- co-operate to the widest extent possible where assistance is requested in respect of non-conviction-based confiscation orders;
- 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;
- provide international assistance in respect of requests for historical information on banking transactions in the requested party (may be extended to non-bank financial institutions);
- provide international assistance in relation to requests for prospective monitoring of banking transactions in the requested party (may be extended to non-bank financial institutions);
- provide for the possibility of direct communication prior to a formal request being sent.

International co-operation between financial intelligence units

- The convention includes detailed provisions on FIU co-operation, which is not subject to the same formalities as judicial co-operation.

Postponement of suspicious domestic transactions

- The convention requires states 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.

Postponement of suspicious transactions on request from a foreign financial intelligence unit

- States parties are required to adopt measures to permit urgent action to be initiated by a financial intelligence unit, at the request of a foreign financial intelligence unit, to suspend or withhold consent to a transaction going ahead.

Refusal and postponement of co-operation

- Provision is made to prevent the refusal of international judicial co-operation on grounds that the request relates to a political offence or to a fiscal offence when the request relates to financing of terrorism.
- Provision is made to prevent refusal of international co-operation by states parties 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 money laundering offence.

Mandate of the Conference of the Parties

10. Article 48 of the Warsaw Convention provides that the Conference of the Parties shall:

a. monitor the proper implementation of the convention by the parties;

b. at the request of a party, express an opinion on any question concerning the interpretation and application of the convention.

11. In order to fulfil its mandate, the Conference of the Parties adopted its Rules of Procedure at its first meeting in 2009. Those have been supplemented by specific procedures regarding the operation of the Conference of the Parties in respect of its responsibilities for the settlement of disputes between parties regarding the interpretation and application of the convention, as well as with respect to the formation and operation of any evaluation teams that may be required by the Conference of the Parties under Rule 19 of the Rules of Procedure. Both of these procedures were adopted at its second meeting in 2010. The Conference of the Parties has met in Strasbourg at least once a year since its inception.

12. The Rules of Procedure were reviewed during the 2016 plenary with regard to a number of issues. The Conference of the Parties agreed to double the term of office of the bureau members from one to two years, which can be renewed once. The Conference of the Parties also agreed to introduce in the Rules of Procedure the possibility to apply a "silence procedure" for its decision-making process where decisions need to be taken in between its annual meetings, when specific conditions are met. However, this procedure cannot be applied for the adoption of Conference of the Parties assessment reports.

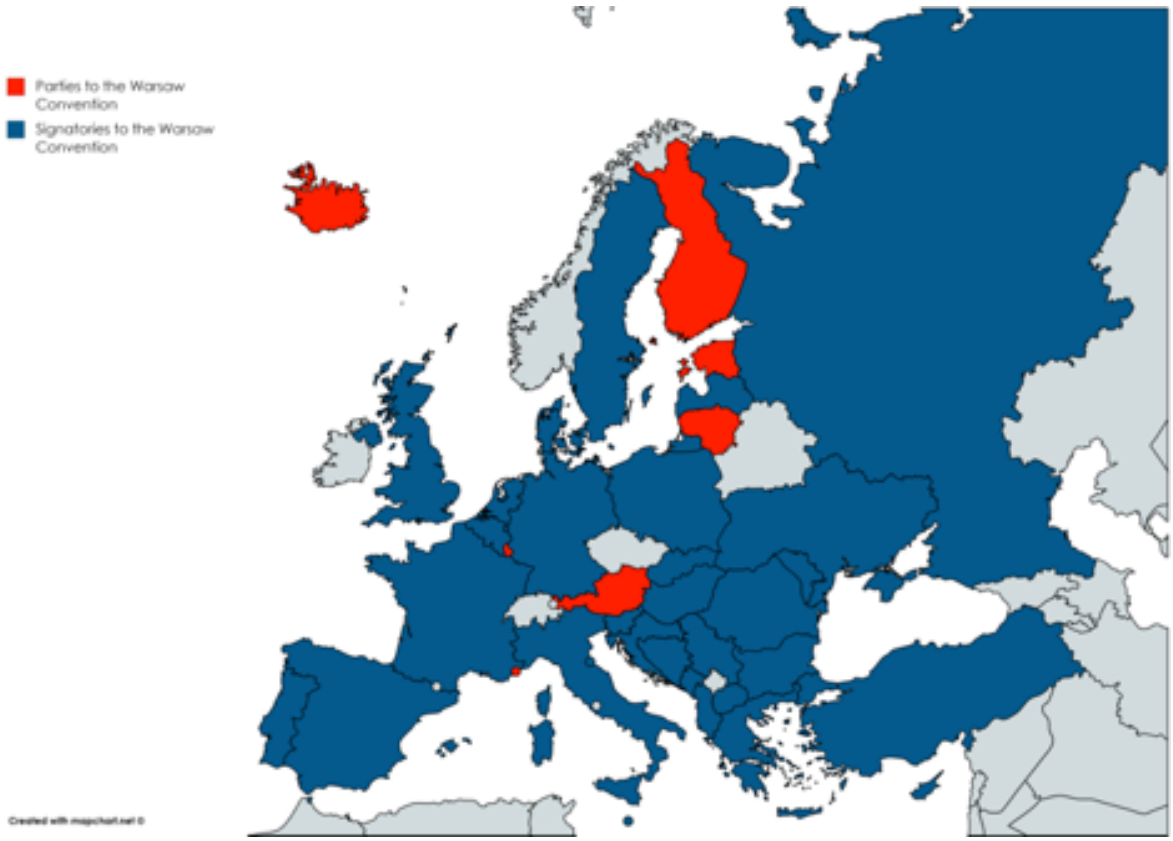
13. In November 2017, at its 9th meeting, the Conference of the Parties adopted amendments to the Rules of Procedure establishing a transversal thematic monitoring system. Mindful of an ever-growing evaluation cycle for an increasing number of states parties, the Conference of the Parties has considered ways to ensure that its monitoring puts a stronger focus on the added value the Warsaw Convention brings to international AML/CFT standards. At the same time, the Conference of the Parties discussed ways to better involve all states parties on a regular basis. To that effect, it decided to suspend the country-by-country monitoring mechanism and to introduce transversal thematic monitoring for an initial period of two years. Based on key issues covered by the Warsaw Convention, the thematic monitoring tackles the most pressing challenges in the implementation of the convention by the states parties. The first thematic monitoring, to be discussed at the Conference of the Parties' 10th plenary meeting in October 2018, focuses on Article 11 (previous decisions) as well as Article 25.2 and 25.3 (asset sharing).

Members, participants and observers

Members

14. According to Rule 1 of the Rules of Procedure, the members of the Conference of the Parties are representatives of the states and entities that are parties to the convention[4] and of other states that

4. See Article 49.1, of the Warsaw Convention.



have acceded to the convention.[5] Participation in the Warsaw Convention and the COP is not exclusively limited to member states of the Council of Europe, the non-member states which have participated in its drafting and to the European Union. Since its entry into force in 2008, the convention has been also open for accession by other non-member states, provided that they have been formally invited to accede by the Committee of Ministers of the Council of Europe.

15. The convention is now in force in the following 34 countries (for the exact dates of signatures and ratifications, see Appendix I to this activity report):

Parties to the Warsaw Convention	
Albania	Armenia
Azerbaijan	Belgium
Bosnia and Herzegovina	Bulgaria
Croatia	Cyprus
Denmark	France
Georgia	Germany
Greece	Hungary
Italy	Latvia
Malta	Republic of Moldova
Montenegro	The Netherlands
Poland	Portugal
Romania	Russian Federation
San Marino	Serbia
Slovak Republic	Slovenia
Spain	Sweden
"The former Yugoslav Republic of Macedonia"	Turkey
Ukraine	United Kingdom

Signatories

16. The following eight countries/international organisations have signed but not ratified the convention:

Signatories to the convention	
Austria	Estonia
European Union	Finland
Iceland	Lithuania
Luxembourg	Monaco

17. The European Union became a signatory to the Warsaw Convention on 2 April 2009. A number of issues require clarification before ratification is possible, including voting rights and the areas in which the EU would have exclusive competence to act on behalf of its member states.

5. See Article 50.

Participants

18. Participants in the Conference of the Parties are representatives of:

- states and entities referred to in Article 49, paragraph 1, of the convention which have signed but not yet ratified the convention;
- states or entities which have ratified or acceded to the convention but in respect of which it has not yet come into force;
- other member states of the Council of Europe;
- states having observer status with the Council of Europe;
- the Committee of Ministers of the Council of Europe;
- the Parliamentary Assembly of the Council of Europe;
- the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL);
- the European Committee on Crime Problems (CDPC);
- the Group of States against Corruption (GRECO);
- the Financial Action Task Force; and
- the Eurasian Group (EAG).

19. Participants in the Conference of the Parties do not have the right to vote.

Observers

20. The Conference of the Parties or its bureau may, on a permanent or ad-hoc basis, authorise international governmental organisations, including the United Nations, the Organisation for Security and Co-operation in Europe (OSCE), the International Monetary Fund, the World Bank, the Egmont Group and Interpol, to send representatives to its meetings as observers without the right to vote, or defrayal of their expenses.

Accession of states which are not members of the Council of Europe

21. The convention is also open for accession by non-member states which have not participated in its drafting, provided that they have been formally invited to accede by the Committee of Ministers of the Council of Europe. In principle, the Committee of Ministers may take the initiative of inviting a non-member state to accede to a specific convention. It is nevertheless customary for the non-member state to request accession in a letter addressed to the Secretary General of the Council of Europe. Before taking a decision in respect of a request for accession to a Council of Europe convention the Committee of Ministers consults member states and states that are not members of the Council of Europe but which are parties to the convention in question. The decision on whether or not to issue an invitation has to be unanimously agreed by those Council of Europe member states which are parties to the convention. Then, an invitation to accede to the convention is notified to the state concerned by the Secretariat General.

22. During the period under consideration in this activity report, the Council of Europe has reached out to a number of non-member states to ratify certain Council of Europe conventions, including the Warsaw Convention. The secretariat regularly informs the Conference of the Parties at its plenary meetings about progress made in this regard.

Governance

23. According to Rules 3 and 4 of the Rules of Procedure, the Conference of the Parties elects from among its parties, for a two-year mandate, a President and Vice-President, as well as three other bureau members. The bureau assists the President and ensures the preparation of meetings and continuity between meetings. The current bureau is composed as follows:

Conference of the Parties bureau in 2017	
President	Mr Branislav Bohacik (Slovak Republic)
Vice-president	Mr Jean-Sébastien Jamart (Belgium)
Bureau members	Mr Besnik Muci (Albania) Ms Oxana Gasca (Republic of Moldova)[6] Mr Sorin Tanase (Romania)

24. According to Rule 5 of the Rules of Procedure, the Conference of the Parties is assisted by a secretariat provided by the Council of Europe. Matthias Kloth, Executive Secretary of MONEYVAL, has also undertaken the role of Executive Secretary of the Conference of the Parties since taking up his position in 2015.

Scientific experts

25. The function of the scientific experts is to provide neutral, experienced opinions where necessary and to assist the chair and secretariat in ensuring the consistency of the Conference of the Parties' work. This includes fulfilling a quality control function for draft assessment reports, attending Conference of the Parties' meetings and enriching debates with their experience and knowledge.

6. Note that Ms Ani Melkonyan (Armenia) was a member of the bureau from 2015 to 2016 and was succeeded in October 2016 by Ms Oxana Gasca (Republic of Moldova).

26. Mr Paolo Costanzo (Italy) was appointed as scientific expert to the Conference of the Parties in 2012.

Gender balance

27. The Conference of the Parties, conscious of the importance of ensuring a gender balance within its committee and in line with the Council of Europe's Gender Equality Strategy 2014-2017,[7] had 18 female delegates, out of a total of 49, during its plenary meeting of 2017. The Conference of the Parties appointed at its 9th meeting (21-22 November 2017) Mr Jean-Sébastien Jamart (Belgium) as gender rapporteur for the Conference of the Parties.

MONITORING OF THE IMPLEMENTATION OF THE WARSAW CONVENTION BY THE CONFERENCE OF THE PARTIES

Assessments and follow-up reports

28. At the beginning of its functioning, the Conference of the Parties decided that the order of assessments would primarily follow the order of the date of ratification. Since its inception, the Conference of the Parties has adopted 10 country reports and even follow-up reports.[8] Please note that in the following analysis, articles cited are those of the Warsaw Convention if not indicated otherwise.

	COP assessments	COP follow-up reports
2011	Albania	
2012	Romania	
2013	Croatia Poland	Albania
2014	Malta Republic of Moldova Montenegro	Romania
2015	Bosnia and Herzegovina	Poland
2016	Armenia Belgium	Croatia Poland
2017		Poland Republic of Moldova

Assessment reports adopted during the reporting period (in chronological order)

Bosnia and Herzegovina

29. The Conference of the Parties considered and adopted the assessment report on Bosnia and Herzegovina at its 7th session in 2015. The report concluded that Bosnia and Herzegovina had undertaken important steps to ensure compliance of the national legislation with the provisions of the convention. The jurisprudence in money laundering (ML) cases has developed significantly in recent years in Bosnia and Herzegovina. However, the legal framework, as well as the effective implementation of the provisions already in place, needs to be strengthened.

30. There have been a number of cases involving autonomous money laundering and foreign predicate offences. The mental and physical elements of the money laundering offence in the countries' four criminal codes are largely in line with the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988, the "Vienna Convention") and the UN Convention against Transnational Organized Crime

7. The Council of Europe Strategy on Gender Equality 2014-2017 was adopted in November 2013 by the Committee of Ministers. The overall goal of the strategy is to achieve the advancement and empowering of women and, hence, the effective realisation of gender equality in Council of Europe member states. To this end, the strategy promotes a holistic and integrated approach to gender equality and provides policy guidance and support to Council of Europe Member States, as well as internal institutional bodies and mechanisms to tackle old and new challenges in implementing standards in the area of gender equality. Co-operation and synergies were reinforced with the various steering committees and monitoring mechanisms to ensure an integrated approach and introduce a gender equality perspective in all policies and at all levels. Gender Equality Rapporteurs (GERs) have been appointed in all steering committees, other institutional bodies as well as in some of the monitoring mechanisms.
8. Note that, at its 7th meeting (5-6 November 2015), the Conference of the Parties invited Poland to present an updated follow-up report at the following meeting of the Conference of the Parties due to the lack of progress reported with respect to several important recommendations and the respective concern expressed by several delegations. The country has since then reported back on an annual basis to inform the Conference of Parties about developments.

(2000, the "Palermo Convention").[9] The various regional definitions of the ML offence extend to the cases where the perpetrator acted negligently with regard to the criminal origin of the relevant money or property, but no practical application of this provision was demonstrated. The report recommends that the Republic of Srpska authorities consider harmonising the regime of sanctions for "negligent" ML with the state level, the Federation of Bosnia and Herzegovina and the Brčko District. The implementation of Article 9.6 (laundering offences) of the convention should be explored by the judiciary from Bosnia and Herzegovina, considering that many ML cases are connected to predicate offences committed abroad.

31. With regard to corporate liability in relation to money laundering (Article 10), several judgments have been issued. However, provisions dealing with situations where legal persons can be held liable as a result of lack of supervision are limited to the case when the managerial or supervisory bodies of the legal person failed to carry out due supervision over the legality of work of the employees. More generally, it seems necessary to take steps in order to enhance the extensive application of corporate liability mechanisms by law-enforcement agencies and judicial authorities in money laundering and other predicate offences, and terrorist financing cases.

32. Bosnia and Herzegovina has adopted measures to implement the provisions of Article 11 (previous decisions).

33. Bosnia and Herzegovina has improved its ability to freeze, seize and confiscate property (Articles 3 and 5), and the introduction of provisions on reversed burden confiscation and their application in practice have undoubtedly reinforced the confiscation regime. However, the report concludes that effective implementation needs to be enhanced and recommends that the authorities review the discretionary nature of confiscation of instrumentalities in the Criminal Code of the Republic of Srpska and the conditions for the confiscation of instrumentalities under the legislation of the Federation of Bosnia and Herzegovina, the Brčko District and the Republic of Srpska so that the confiscation of such objects owned by third parties can be mandatory.

34. As regards the management of frozen or seized property (Article 6), the report recommends that the authorities from Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Brčko District establish specialised agencies, similar to the one in the Republic of Srpska.

35. A number of concerns were raised about the existence of investigative powers and techniques (Article 7) available to monitor bank accounts, and the effectiveness of the techniques available to determine whether a natural or legal person is a holder or beneficial owner of bank accounts in order to monitor these accounts.

36. Concerning international co-operation, the legal framework of Bosnia and Herzegovina does not provide for measures, equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions. There are no agreements or arrangements in place that give special consideration to sharing confiscated property with other countries on a regular or case-by-case basis.

37. As concerns assistance in investigations (Article 16), it is considered that legislative provisions authorise the authorities to execute requests from foreign authorities through the Ministry of Justice or the Financial Intelligence Department (FID) (in case of ML/TF). Nevertheless, the report mentions that it would be beneficial if, in addition to the other types of legal assistance provided under the legislation regulating mutual legal assistance (MLA), the possibility was available for the authorities:

i. to determine 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 Bosnia and Herzegovina;

ii. to obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period;

iii. to monitor, during a specified period, the banking operations that are being carried out through one or more accounts.

38. Bosnia and Herzegovina has not made use of the option set out in Article 34 enabling direct communication, especially in the event of urgency.

39. The FID appears to co-operate well with foreign financial intelligence units and implements the requirements of Article 46 (co-operation between FIUs) to a large extent. Overall measures are in place to implement the requirements under Article 14 for the postponement of suspicious domestic transactions. The FID had not received any request from a foreign FIU for the temporary suspension of a transaction during the period from 2009 to 2014, and thus did not have the opportunity to apply its power provided in AML/CFT legislation.

40. As regards the refusal and postponement of co-operation as provided for under Article 28, the

9. The Vienna and Palermo conventions provide comprehensive measures against drug trafficking and forms of organised crime, including provisions against money laundering. The FATF Recommendation 36 establishes that countries should take steps to become party to and implement fully the respective conventions.

reports notes that self-laundering is criminalised at state level and in the Republic of Srpska, but not in the Federation of Bosnia and Herzegovina and the Brčko District.

41. Finally, as a common observation in the report, the statistical data provided were not sufficiently comprehensive to assess the effectiveness of the implementation of all the convention's provisions.

Armenia

42. The Conference of the Parties considered and adopted the assessment report on Armenia at its 8th session in 2016. It concluded that Armenia had taken important steps to ensure compliance of its national legislation with the provisions of the convention and the assessment report acknowledges that, in many respects, it meets the standards of the Warsaw Convention. 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.

43. In relation to the money laundering 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. They should also ensure that practitioners properly understand and apply in practice the principle that all designated categories of offences in the appendix to the Warsaw Convention are predicate offences to ML, regardless of whether or not they have a profit-making purpose. Furthermore, the authorities are invited to take appropriate initiatives – such as issuing clear guidance for practitioners on the level and types of evidence, in respect of the underlying predicate crime, which are likely to be sufficient in an autonomous ML prosecution.

44. Laws on corporate liability have not yet been applied in Armenian courts. In addition to the effective implementation of this principle, one of the recommendations made to the authorities is to carry out a stock-taking initiative to identify any legal, evidentiary and institutional impediments to applying corporate liability under AML/CFT legislation.

45. 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 3.4 of the convention, and improve the quality and scope of statistics of confiscation/forfeiture with regard to predicate offences.

46. The report also found that the Armenian legal framework does not include sufficient implementation measures for the proper management of seized or frozen property (Article 6). Therefore, a recommendation made in the report 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 the requirements of Article 6.

47. As concerns investigative powers and techniques (Article 7), it appears that the practical use of powers by law-enforcement authorities could be hindered by the two conditions[10] that need to be fulfilled before the powers are available. Concerns remain with the fact that they are not available for basic ML offences. The report notes that investigative powers to obtain information covered by banking secrecy, insurance secrecy and information on transactions with securities 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 and law-enforcement authorities thus need to rely to a large extent on the powers of the FIU under the AML/CFT legislation.

48. In relation to international co-operation for confiscation purposes (Article 25), civil forfeiture orders cannot be executed. There are no provisions giving priority consideration to returning confiscated property to the requesting states parties 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.

49. As for investigative assistance in the context of international co-operation (Article 16), 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 received or executed MLA requests in this area.

50. The report concluded that it appears that Armenia has implemented the requirements under

10. Under Article 31.4 of the Law on Operational and Intelligence Activities (LOIA), the financial investigative measures of Articles 14.15 and 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 Criminal Code, is excluded); and 2) provided there is substantial evidence that it would be impossible for the investigating body to perform duties assigned to it by law through any other means of operational work.

Article 14 of the convention (postponement of domestic suspicious transactions). The Financial Monitoring Centre of Armenia (FMC) and the Central Bank of Armenia (CBA) Board also have the necessary legal basis to fulfil the requirements under Article 47 of the convention (international co-operation for postponement of suspicious transactions).

51. With regard to co-operation with foreign FIUs (Article 46), 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 46.6 of the convention.

Belgium

52. The Conference of the Parties considered and adopted the assessment report on Belgium at its 8th session in 2016. Belgium has a certain number of effective tools to enable it to combat serious forms of crime and target the proceeds of those crimes, for use in both the prevention of money laundering and criminal investigations. As a result, the country's legal provisions are generally compatible with the Warsaw Convention.

53. First, the legal framework has been improved in recent years, as a result of both domestic legal provisions and the influence of Community law. Second, there is evidence of the Belgian authorities' commitment to ensuring that the AML/CFT system works effectively. Nevertheless, the convention could still be exploited more effectively by the Belgian authorities, particularly in its role as a legal basis for international judicial co-operation.

54. The assessment of the effective implementation of a major part of the convention's provisions has been made possible by the co-operation from the Belgian authorities and the information they have furnished. In a few rare cases, however, it has been complicated by a lack of statistics and practical examples.

55. In accordance with established case law and the spirit of the law, prosecution of the offence of money laundering does not depend on a conviction for the predicate offence. However, the authorities are recommended to clarify the relevant legislation to confirm the established case law.

56. Although the Belgian legal system appears to have relevant elements concerning the liability of legal persons (Article 10) and the courts appear to be applying the convention requirements, the rapporteurs recommend further clarification, including, where necessary, in the legal provisions, concerning the implementation of Article 10 of the convention, in particular related to the legal liability for lack of supervision.

57. Belgium has enacted measures to enable its courts and prosecution services, when determining the appropriate penalty, to take into consideration previous decisions against individuals or legal persons in connection with offences specified in the convention handed down in another party (Article 11), as long as that party is an EU member state. However, restricting this option solely to EU member states is not compliant with the convention.

58. The Belgian legal framework is compliant with the requirements of Article 3 (confiscation measures). Regarding effective implementation, the data supplied confirms the year-on-year increase in seizures and confiscations. An example case supplied by the Belgian authorities also points to the conclusion that, overall, there have been positive progress and trends in the practical application of the confiscation provisions.

59. The current legal system provides a good basis for effective asset management (Article 6). However, it could not be established from a desk-based review whether all the necessary tools are in place to enable the Central Office for Seizure and Confiscation in Belgium (OCSC) to fulfil its duties as laid down in Article 6 of the convention. Therefore, Belgium is recommended to ensure that clear procedures for managing seized property are set out, in line with the requirements of Article 6.

60. On international co-operation, Belgium's domestic law authorises the restitution of confiscated property to applicant parties. However, there is no provision of the law, nor any evidence produced, to demonstrate that the Belgian authorities see such restitution as a priority to enable the requesting state to compensate the victims of the offence or restore the property to its lawful owner.

61. As concerns investigative assistance (Article 16), Belgium uses the domestic arrangements available to meet the requirements of the convention regarding requests for MLA. The establishment of a register at the central bank, which expedites the identification of accounts, has improved the already reliable machinery for ensuring co-operation in the execution of requests for MLA, and in particular requests for information on the tracing and identification of the bank accounts of any legal person or individual.

62. Belgian law does permit direct communication between judicial authorities, in accordance with Article 34.2 of the convention. In practice, however, in the case of contacts with judicial authorities from parties that are not EU member states, prior authorisation for execution is still required from the Ministry of Justice.

63. As a valuable supplement to the postponement system (Article 29), the domestic FIU was recommended to base its power of postponement on reports from all the reporting entities and to give these entities the necessary means for applying blocking measures.

64. Belgium has stated that the legal provisions on international co-operation can be used to execute the postponement of transactions on behalf of foreign FIUs (Article 47). However, the lack of an express provision on this issue casts certain doubts on the effective implementation of the obligations arising from Article 47 of the convention.

65. As regards refusal and postponement of co-operation, it appears that Belgium's legal system satisfies the requirements of Article 28, even though the report recommended that the authorities provide meaningful statistics on the practice of international co-operation.

Follow-up reports

Croatia

66. The first assessment report on Croatia's implementation of the convention was adopted in 2013. Three years after its adoption, at its 8th meeting in 2016, Croatia submitted a follow-up report, for which Spain acted as rapporteur country. The Conference of the Parties noted that Croatia had taken some measures to address the deficiencies identified in the assessment report and implemented the recommendations made to its authorities. Croatia provided comprehensive statistical data and examples of cases which led to a positive conclusion in regards to several recommendations.

67. However, based on the information received, there were still a number of issues to be considered and gaps that needed to be addressed. No update was provided on measures for implementing the international recidivism standard in the Act on Responsibility of Legal Persons for Criminal Offences and for ensuring that prosecutors are familiar with the procedure to take into consideration foreign convictions against both natural and legal persons from another state party (Article 11).

68. Concerning confiscation measures (Article 3), Croatia reported the adoption of new legislation that addresses a number of issues identified in the assessment report. For example, the definition of "instrumentalities" to be confiscated was amended. However, the Conference of the Parties considered as incompatible with Article 3 of the convention that the definition restricts the possibility to confiscate instrumentalities which were used to commit a criminal offence to cases where they present the danger of being used in the future for other criminal offences.

69. As regards international co-operation (Article 15), Croatia indicated that the recognition of confiscation orders issued by states parties is in the competence of its county courts, which should not prevent the authorities from taking all relevant measures to enhance international co-operation on that matter. The Conference of the Parties thus recommended that Croatia clarify the extent to which the country can co-operate with states parties in the execution of foreign non-conviction based confiscation orders. The Croatian authorities were also encouraged to ensure, in respect of co-operation with non-EU countries, the ability to co-operate for the purposes of sharing criminal assets.

Republic of Moldova

70. The first assessment report on the Republic of Moldova's implementation of the convention was adopted in 2014. Three years later, at the COP's 9th plenary meeting in 2017, the Republic of Moldova submitted a follow-up report. Montenegro acted as a rapporteur country. The secretariat presented the developments in the Republic of Moldova since the time of the adoption of the evaluation report, in particular the legislative changes undertaken in order to address the recommendations made in the report, as well as Law No. 308 (of 22 December 2017) on prevention of and combating money laundering and terrorism financing which was, at the time of the plenary, being discussed in parliament. Furthermore, the Conference of the Parties took note of the statements made by the scientific expert on the follow-up report and its analysis.

71. With regard to the legal framework of confiscation measures (Articles 3 and 6), the analysis stated that the Republic of Moldova had amended its Criminal Code, further clarifying relevant definitions, such as the notion of "goods" in light of Article 3, the application of the confiscation regime and the obligation to confiscate the corresponding value of any goods liable to confiscation (if these goods no longer exist, cannot be found or cannot be recovered). Montenegro, as rapporteur country, posed a question concerning the difference between the high number of predicate offences and the low number of confiscations, to which the Moldovan delegation replied that for some offences (such as theft), confiscation was not an appropriate measure because the assets were not further laundered or used in money laundering. In similar cases, the assets or value of such goods are

recovered from the perpetrator in order to compensate the victims.

72. Law No. 308 (of 22 December 2017) on preventing and combating money laundering and financing of terrorism was, at the time of evaluation, being prepared for approval by the Moldovan Parliament. The analysis also mentioned the newly established Agency for Criminal Assets Recovery within the National Anti-Corruption Centre, which manages seized, frozen and confiscated assets. The establishment of the agency is expected – together with the amendments to the Criminal Code – to result in the further facilitation of criminal investigations and recovery of criminal assets.

73. However, the analysis also uncovered several areas in which further progress should be made, such as: the permissibility to monitor bank accounts in respect of all relevant criminal offences; measures to increase the understanding of practitioners and guidance for judges on the mandatory aspects of laundering offences under Article 9; and efforts for international co-operation, mutual legal assistance and asset sharing.

74. Notwithstanding the progress, some deficiencies remained in place, particularly those related to laundering offences (Article 9), corporate liability (Article 10), requests for information on banking accounts (Article 17), the obligation to confiscate (Article 23), confiscated property (Article 25) and grounds for refusal (Article 28).

75. The delegation of the Republic of Moldova replied to the analysis, pointing out that judges and prosecutors are becoming familiarised with the AML/CFT legislation since some high-profile cases raised awareness of the importance of these issues (for example the "Magnitsky case" and the "Laundromat case"). The new AML/CFT legislation also foresees a procedure when a MLA request is sent following non-conviction based confiscation in another state party. The competence for execution of such a procedure was given to the newly established Agency for Criminal Assets Recovery. The amendments to the Criminal Code foresee the confiscation of instrumentalities and legal and illegal assets.

Poland

76. Since the Conference of the Parties' assessment of Poland in 2013, the party has submitted two follow-up reports and one update to the follow-up to the Conference of the Parties. At the 9th plenary meeting in 2017, the Conference of the Parties examined the update to the follow-up report on Poland and the analysis prepared by the secretariat. Albania acted as rapporteur country.

77. The secretariat presented the progress made by Poland since the time of the adoption of the second follow-up report, in particular the legislative changes made through the adoption, on 28 March 2017, of the law which introduced the amendments to the Criminal Code and to certain other laws, with a view to addressing the recommendations made by the Conference of the Parties. While commending Poland for the progress made, the Conference of the Parties noted that several deficiencies were addressed in ongoing legislative processes, while other deficiencies were not yet addressed by concrete measures.

78. Regarding Article 3 (confiscation), the reform of the Criminal Code appears to have, to a great extent, adequately addressed the deficiencies identified in the assessment report. It has strengthened the confiscation regime through the provision of:

i. new confiscation measures;

ii. new elements of the terrorist financing offences;

iii. new obligations for banks.

However, confiscation *in rem* has not yet been established. The statistics provided demonstrated the proper application of the confiscation and provisional measures. Improvements on several provisions, which had already been noted in previous follow-up reports, notably Articles 11 (international recidivism), 14 (postponement of domestic suspicious transactions), 17 (requests for information on bank accounts), 18 (requests for information on banking transactions) and 25.2 (sharing of assets) were also recalled.

79. However, the secretariat outlined several remaining deficiencies, particularly those concerning Article 7 (investigative powers and techniques), 10 (corporate liability) and 23 and 25 (obligation to confiscate and confiscated property). With regard to Articles 23 and 25, Poland has not yet introduced a new mechanism for the execution of measures equivalent to confiscation of property as part of international co-operation, nor has it developed a specific asset-sharing mechanism.

80. The delegation of Poland responded to the presentation by the secretariat, emphasising that the AML/CFT legislation was awaiting parliament's approval and that adoption was expected by the end of 2017.[11] The exact wording of some provisions in the draft law will be changed following the secretariat's analysis. Moreover, the Polish delegation confirmed that little progress had been made on the topics of corporate liability, confiscation *in rem* and FIU-to-FIU co-operation with regard to requests from/to other parties.

11. The law was signed and adopted on 28 March 2018.

81. The Conference of the Parties decided to adopt the report and the analysis, but not to impose any measures foreseen by Rule 19.39.*h* of the Rules of Procedure for the time being, in light of the parallel follow-up process by Poland of MONEYVAL's 4th round of mutual evaluations. Poland was asked to provide an oral update on the outstanding deficiencies noted in the secretariat's analysis at the 10th meeting in October 2018. The Conference of the Parties reserved the right to revert to the measures indicated in Rule 19.39.*h* at that time, if lack of progress so requires.

Survey: gathering examples of practical application of the Warsaw Convention

82. At its 5th meeting in June 2013, the Conference of the Parties decided to invite all parties to provide to the secretariat details of judgments implementing the convention's provisions as well as cases of co-operation between parties on the basis of CETS No. 198, with a view to preparing a compendium. A draft questionnaire was prepared and discussed at the 6th meeting of the Conference of the Parties. The main findings of this survey were discussed during the 8th Conference of the Parties meeting in October 2016.[12] Overall it appears that there is still room for improvement by states parties to fully make use of the instruments and tools which the convention offers.

CONFERENCE OF THE PARTIES RAPPORTEURS

Role of rapporteurs

83. The Conference of the Parties assessment mechanism foresees a role for rapporteurs in the drafting and adoption of reports. Between 2010 and 2015, selected experts of states parties participated in training workshops to act as rapporteurs for the Conference of the Parties' assessments. For the analysis of follow-up reports, the Conference of the Parties is assisted by rapporteur countries. The following rapporteurs and rapporteur countries have contributed to the assessment process since 2015, and the Conference of the Parties would like to warmly thank all of them for their involvement.

	Party assessed	Rapporteur (Country)
2015	Bosnia and Herzegovina (COP Assessment)	Ms Iskra Mitrevska-Damcesvska ("The former Yugoslav Republic of Macedonia") Mr Sorin Tanase (Romania)
	Poland (Follow-up report)	Albania
2016	Armenia (COP Assessment)	Mr Artan Shiqerukaj (Albania) Mr Jacek Łazarowicz (Poland) Ms Anna Ondrejova (Slovak Republic)
	Belgium (COP Assessment)	Mr Miha Movrin (Slovenia) Ms Asya Khojoyan (Armenia) Ms Simona Popa (Romania)
	Croatia (Follow-up report)	Spain
	Poland (2nd Follow-up report)	Albania
2017	Poland (Updated follow-up report)	
	Republic of Moldova (Follow-up report)	Montenegro
2018	Thematic monitoring review	Ms Ana Boskovic (Montenegro) Mr Azer Abbasov (Azerbaijan)
	Belgium (Follow-up report)	Armenia
	Malta (Follow-up report)	Portugal

12. The document is accessible through the restricted website of the Conference of the Parties, for which permission to access can be obtained through the secretariat of the Conference of the Parties.

OTHER ACTIVITIES

84. The Conference of the Parties secretariat has undertaken several efforts to increase the visibility of the convention, as well as to gain better insight into the level of implementation of some of the convention's provisions.

Council of Europe Action Plan on Combating Transnational Organised Crime (2016-2020)

85. Following the endorsement of a White Paper on Transnational Organised Crime[13] by the European Committee on Crime Problems (CDPC) in June 2014, the CDPC decided to prepare a detailed action plan as a follow-up to the recommendations included in the white paper. The action plan is intended to provide concrete proposals for Council of Europe member states to effectively address some of the issues detailed in the five key areas identified in the white paper, which are as follows:

a. enhancing international co-operation through networks;

b. special investigative techniques;

c. witness protection and incentives for co-operation;

d. administrative synergies and co-operation with the private sector;

e. recovery of assets.

86. The Conference of the Parties has been involved in the Council of Europe Action Plan on Combating Transnational Organised Crime[14] (2016-2020) since its drafting, through the participation of the chair and the secretariat. The main role of the Conference of the Parties is to promote inclusion of its standards into national legislation and practice. This includes actions that do not only aim to improve different legal systems' quality, but also to foster a certain degree of standardisation among provisions of states parties' national legislation relevant for enhancing the effective fight against transnational organised crime. Additionally, the Conference of the Parties carries out activities directed at ensuring or promoting the adequate implementation of legal provisions.

87. The Conference of the Parties' contribution to the action plan mostly concerned relevant findings and recommended actions from its reports and other relevant materials such as a survey on the implementation of the provisions of the convention or mutual legal assistance tools. The action plan was subject to a first preliminary assessment after two years, in 2018.

88. The Conference of the Parties adds particularly to the topics of international co-operation; administrative synergies and co-operation with the private sector; specialised investigative techniques and asset recovery. The work already undertaken by the Conference of the Parties – its assessment reports, analysis on the questionnaire on some horizontal issues from 2016 and its interpretative notes – are the key documents from where the Conference of the Parties provides its input to the action plan.

Mutual legal assistance template

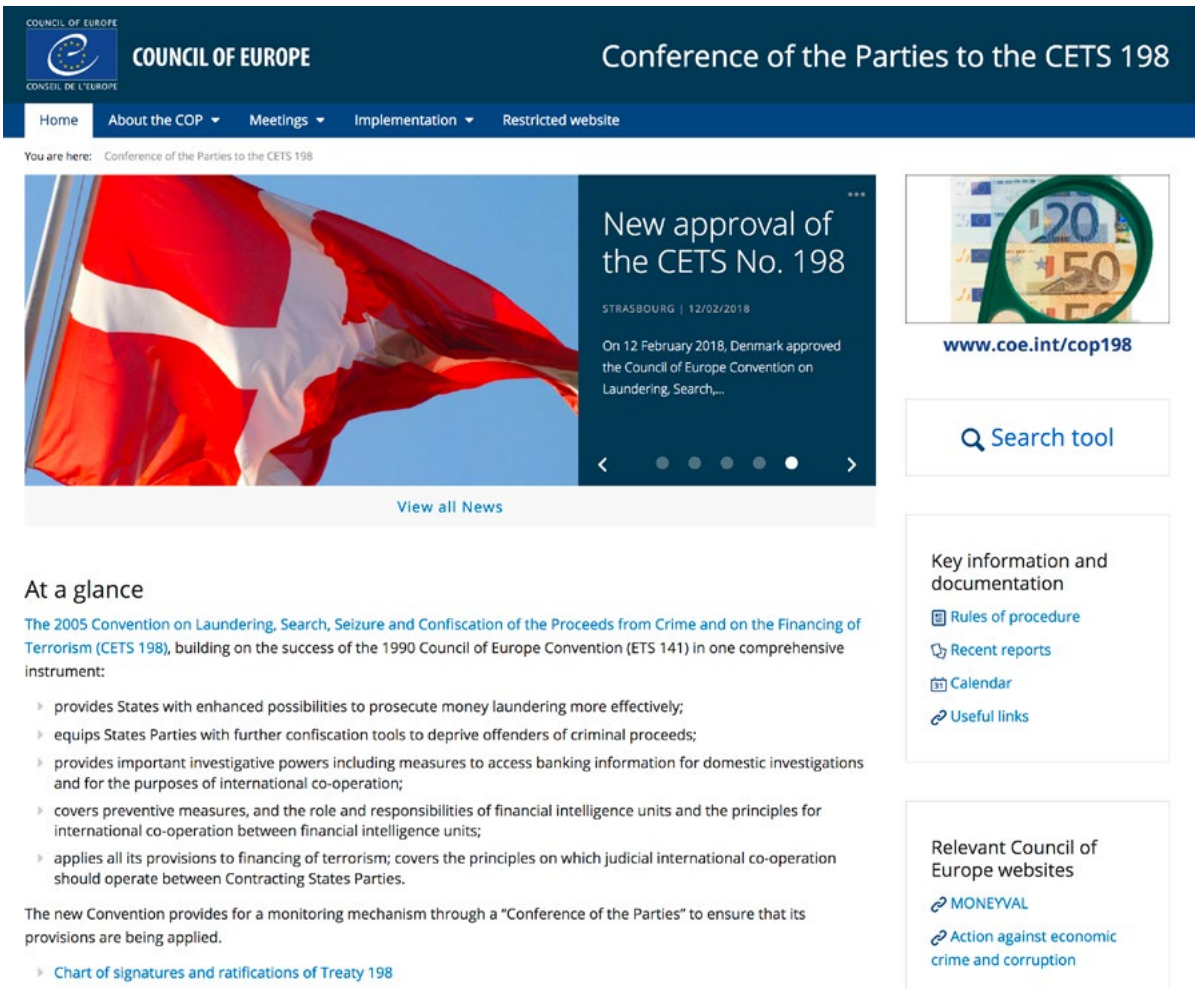
89. To further facilitate international co-operation in line with the convention, in 2017 the Conference of the Parties secretariat circulated a template on mutual legal assistance and FIU co-operation among the states parties. The template concerned parties' national procedures as regards the possibilities and modalities of practical application of the Warsaw Convention. It was drafted based on the initiative of the Council of Europe Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) to prepare a similar tool for improved application of the Strasbourg Convention. Both templates were developed within the framework of the Council of Europe Action Plan on Combating Transnational Organised Crime, which called for the strengthening of the mechanisms for application of the Conventions Nos. 141 and 198.

90. Some 23 of the (then) 32 states parties submitted a completed template. The responses were published on the Conference of the Parties' restricted website and accessible to all COP delegations. The country-specific information dossiers foster co-operation among states parties as they serve as a source of information on channels and means of communication, relevant legal provisions and limitations, procedural requirements and available modalities and tools for sharing the assets and the costs of asset management, as well as any other relevant information. The Conference of the Parties delegations are encouraged to consider the relevant country template when seeking mutual legal assistance.

Interpretive notes

91. The Conference of the Parties at its 9th meeting in 2017 considered certain interpretive issues related to the convention.[15] The document on interpretive issues discussed Articles 3.4 (confiscation measures/ reversal of the burden of proof), 25.2 (confiscated

13. A full PDF version can be consulted via https://rm.coe.int/168070afba.
14. This action plan was adopted by the Committee of Ministers of the Council of Europe on 3 March 2016.
15. The document can be accessed here: http://rm.coe.int/interpretative-notes-cop198-9th-meeting/168076ce79.



property/asset sharing) and 11 (previous decisions). The findings presented in the document include an explanation of the respective provision, examples of good practices by states parties, international (legal) guidelines (for example, European Court of Human Rights case law and European Union decisions), assessment criteria and advice for effective implementation.

92. Concerning Article 3.4, four issues were discussed related to reverse burden of proof, the definition of the notion of serious offence, the assessment of provisions and the effective implementation of Article 3.4. In relation to Article 11, international recidivism, mutual assistance in criminal matters and the possibility to assess the effective implementation of the article were discussed. Moreover, Article 25.2 on asset sharing was examined, particularly in the light of assessing its effective implementation, cooperation between states parties and compensation of victims.

Website maintenance

93. In line with the revised Council of Europe online strategy to harmonise the online appearance of the Organisation, the website of the Conference of the Parties was updated in 2017. The new website is more user friendly and allows the Conference of the Parties to better communicate on its activities. The website includes the basic documents underlying the convention, including the Warsaw Declaration, the action plan and the explanatory report, as well as the Conference of the Parties assessment and follow-up reports; and it provides regularly news concerning the convention. Visitors to the website easily have an overview of the mandate and activities of the Conference of the Parties, available at: www.coe.int/en/web/cop198/home.

Other issues discussed at plenary meetings of the Conference of the Parties

94. At each plenary meeting, the Conference of the Parties discusses a number of topical issues in the AML/CFT field and hears presentations by, or has exchanges of views with, AML/CFT experts. Apart from the issues already covered elsewhere in this report, the following is a selection of these additional activities. In particular, the Conference of the Parties has previously discussed:

- the use and efficiency of Council of Europe instruments as regards international co-operation

in the field of seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing, with experts from the European Committee on Crime Problems (CDPC) and the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC);

- ML/TF risks posed by virtual currencies, with experts from the UNODC and the Cybercrime Programme Office of the Council of Europe (C-PROC);
- the MLA Model form of the PC-OC;
- the new Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221) and the ML/TF aspects of this convention;
- the training for rapporteurs of the Conference of the Parties, held in Strasbourg on 15 and 16 July 2015.

RECENT DEVELOPMENTS

Review of declarations and reservations

95. The convention allows states parties to make declarations and reservations in respect of a series of substantive provisions. Six countries have not made any declaration or reservation in respect of its substantive provisions: Albania, Belgium, Bosnia and Herzegovina, France, Montenegro and Serbia.

96. It is worth recalling that some states parties removed or changed a number of their reservations and declarations, which is very welcome. As noted in the previous activity report, San Marino removed some of its reservations in 2013. In 2015, the Netherlands added several reservations especially in regards to its overseas territories. Many parties declared their competent authorities under Articles 33 and 46 of the convention, which cover the central authority and the financial intelligence unit respectively.

97. At its 8th and 9th meetings in 2016 and 2017, the Conference of the Parties invited all parties to review their reservations in order to remove those that are no longer necessary. The replies to the survey entitled "Gathering examples of cases of the use or implementation of CETS No. 198's provisions" made it possible to identify the purpose of some reservations and the main obstacles to the implementation of several provisions, such as those addressing reverse burden of proof for confiscation (Article 3.4); monitoring of bank accounts (Article 7.2); conviction for money laundering without establishing precisely the predicate offence (Article 9.6); postponement of transactions at the request of a party (Article 47); and provision of information by the requested FIU without a formal request (Article 46.5). These mainly concern constitutional principles and the basic concepts of a jurisdiction's legal systems. In addition, several parties made declarations/reservations in relation to the territorial application of the convention.

WAY FORWARD AND CONCLUSIONS

98. The Warsaw Convention, which came into force in 2008, is a cornerstone of international standards in the area of combating money laundering and terrorist financing. The convention is the only international treaty worldwide specifically devoted to combating both phenomena. A number of measures provided in the convention go beyond the globally agreed AML/CFT standards by the FATF, and provide a better basis in order to facilitate the investigations and prosecution of money laundering and terrorist financing, as well as the fostering of international co-operation in this field. While a growing number of states parties has incorporated the strategically important provisions of the Warsaw Convention in their legal frameworks, their effective implementation still needs to produce better results. Such results mainly relate to detecting and disrupting money laundering and terrorist financing, to prosecuting the persons involved therein and to confiscating the illicit assets from these activities. In light of the growing number of recent ratifications of the Warsaw Convention, further staff reinforcement is needed to continue the important mandate of the COP in order to be able to fully explore the potential of the Warsaw Convention. Attracting new states parties is one of the challenges for the COP, as well as following new trends and technologies and looking for appropriate adaptations of states parties' criminal justice systems as a result.

APPENDIX

Signatures and ratifications of the Warsaw Convention

Opening for signature

Place: Warsaw
Date: 16/5/2005

Entry into force

Conditions: 6 ratifications including 4 member states.
Date: 1/5/2008

Status as of: 01/06/2018

Member states of the Council of Europe

	Signature	Ratification	Entry into force
Albania	22/12/2005	06/02/2007	01/05/2008
Andorra			
Armenia	17/11/2005	02/06/2008	01/10/2008
Austria	16/05/2005		
Azerbaijan	07/11/2016	09/08/2017	01/12/2017
Belgium	16/05/2005	17/09/2009	01/01/2010
Bosnia and Herzegovina	19/01/2006	11/01/2008	01/05/2008
Bulgaria	22/11/2006	25/02/2013	01/06/2013
Croatia	29/04/2008	10/10/2008	01/02/2009
Cyprus	16/05/2005	27/03/2009	01/07/2009
Czech Republic			
Denmark	28/09/2012	12/02/2018	01/06/2018
Estonia	07/03/2013		
Finland	16/12/2005		
France	23/03/2011	08/12/2015	01/04/2016
Georgia	25/03/2013	10/01/2014	01/05/2014
Germany	28/01/2016	20/06/2017	01/10/2017
Greece	12/10/2006	07/11/2017	01/03/2018
Hungary	14/04/2009	14/04/2009	01/08/2009
Iceland	16/05/2005		
Ireland			
Italy	08/06/2005	21/02/2017	01/06/2017
Latvia	19/05/2006	25/02/2010	01/06/2010
Liechtenstein			
Lithuania	28/10/2015		
Luxembourg	16/05/2005		
Malta	16/05/2005	30/01/2008	01/05/2008
Republic of Moldova	16/05/2005	18/09/2007	01/05/2008

	Signature	Ratification	Entry into force
Monaco	01/09/2017		
Montenegro	16/05/2005	20/10/2008	01/02/2009
Netherlands	17/11/2005	13/08/2008	01/12/2008
Norway			
Poland	16/05/2005	08/08/2007	01/05/2008
Portugal	16/05/2005	22/04/2010	01/08/2010
Romania	16/05/2005	21/02/2007	01/05/2008
Russian Federation	26/01/2009	28/09/2017	01/01/2018
San Marino	14/11/2006	27/07/2010	01/11/2010
Serbia	16/05/2005	14/04/2009	01/08/2009
Slovakia	12/11/2007	16/09/2008	01/01/2009
Slovenia	28/03/2007	26/04/2010	01/08/2010
Spain	20/02/2009	26/03/2010	01/07/2010
Sweden	16/05/2005	23/06/2014	01/10/2014
Switzerland			
"The former Yugoslav Republic of Macedonia"	17/11/2005	27/05/2009	01/09/2009
Turkey	28/03/2007	02/05/2016	01/09/2016
Ukraine	29/11/2005	02/02/2011	01/06/2011
United Kingdom	29/9/2014	27/04/2015	01/08/2015

Non-members of the Council of Europe

	Signature	Ratification	Entry into force
Canada			
Holy See			
Japan			
Mexico			
Morocco			
United States of America			

International Organisations

	Signature	Ratification	Entry into force
European Union	02/04/2009		

Total number of signatures not followed by ratifications:	8
Total number of ratifications/accessions:	34

Source: Treaty Office at http://conventions.coe.int

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) is the first international treaty covering both aspects of prevention and control of money laundering and the financing of terrorism. Its provisions are a sound basis for international co-operation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds thereof. The Conference of the Parties to CETS No. 198 is the convention-based mechanism responsible for monitoring the proper implementation of the convention by its parties, and for expressing any opinion concerning the interpretation and application of the convention.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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