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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

Discussion (conceptual) paper
on

possible issues to be addressed in a Council of Europe binding instrument (convention)
addressing international co-operation as regards
the management, the recovery and sharing of assets

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I. Introduction

The fight against serious crime, especially transnational organised crime (TOC), which has become an increasingly international problem, calls for the use of effective methods on an international scale. One of such methods consists in depriving criminals of the proceeds from crime and instrumentalities, including in the process of international (inter-state) co-operation.

Of course, there should be a proper legal basis for such co-operation, on bilateral and, preferably, multilateral level, because search, seizure and confiscation of proceeds of crime mean a very serious limitation of the fundamental human right to property.

Now there are many multilateral international treaties that deal with the issues of international co-operation in the field of search, seizure and confiscation of proceeds of crime.

It should be recalled, for instance, that in the 1929 International Convention for the Suppression of Counterfeiting Currency, there was a special provision on the confiscation and recovery (return) of the confiscated items:

«Article 11

Counterfeit currency, as well as instruments or other articles referred to in Article 3(5), should be seized and confiscated. Such currency, instruments or other articles should, after confiscation, be handed over on request either to the Government or bank of issue whose currency is in question, with the exception of exhibits whose preservation as a matter of record is required by the law of the country where the prosecution took place, and any specimens whose transmission to the Central Office mentioned in Article 12 may be deemed advisable. In any event, all such articles should be rendered incapable of use.»

Then one should mention the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988, Art. 5)¹, the 2000 United Nations Convention Against Transnational Organized Crime (Art.13-14)², and, of course, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (adopted in the framework of the Council of Europe in 1990).

Now the 2000 United Nations Convention Against Transnational Organized Crime (UNTOC), the 2003 United Nations Convention Against Corruption (UNCAC) and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism, are among the binding instruments that provide a unique opportunity to mount a global and regional response to this problem.

Of course, there are various problems arisen in the process of application of these and other similar international treaties. But it seems that the main problem is that the State which have send to another State the request to confiscate the proceeds of crime is, in most cases, not sure that the requested State would return the assets confiscated as a result of execution of the request, in order to ensure the due compensation to a victim (victims) of the crime.

This situation stems from the fact that the applicable multilateral treaties have no provisions on obligatory recovery (return) of the assets confiscated to the requesting State (with some exceptions). For instance, paragraph 1 of Article 14 (Disposal of confiscated proceeds of crime or property) of the UNTOC says that «Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures».³

¹ See Annex 1, doc. 2.

² See Annex 1, doc. 3.

³ See also: Vienna Convention 1988, Art. 5 (a).

In the Council of Europe treaty practice the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Art. 15 (Confiscated property) says that «Any property confiscated by the requested Party shall be disposed of by that Party in accordance with its domestic law, unless otherwise agreed by the Parties concerned.».

More elaborated but still not comprehensive provisions were included into the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005):

«Article 25 – Confiscated property

1 Property confiscated by a Party pursuant to Articles 23 and 24 of this Convention, shall be disposed of by that Party in accordance with its domestic law and administrative procedures.

2 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give 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.

3 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.».

Such provisions (of not obligatory recovery of confiscated assets) are an obvious obstacle to the effective international co-operation in confiscation matters, which has twofold aim – 1) to deprive criminals of crime proceeds and 2) to recover these proceeds in order to give compensation to the victims of the crime or return such property to their legitimate owners.

As to some treaty exceptions from the non-obligatory recovery (return) of the assets confiscated to the requesting State, they relate only to specific items of property and to particular offences.

It should be recalled, for instance, that in the 1929 International Convention for the Suppression of Counterfeiting Currency, there was a special provision on the confiscation and recovery (return) of the confiscated items:

«Article 11

Counterfeit currency, as well as instruments or other articles referred to in Article 3(5), should be seized and confiscated. Such currency, instruments or other articles should, after confiscation, be handed over on request either to the Government or bank of issue whose currency is in question, with the exception of exhibits whose preservation as a matter of record is required by the law of the country where the prosecution took place, and any specimens whose transmission to the Central Office mentioned in Article 12 may be deemed advisable. In any event, all such articles should be rendered incapable of use.».

In Article 18 (2) of the International Convention for the Suppression of Acts of Nuclear Terrorism (2005) there are some provisions providing for the return of any radioactive material, device or nuclear facility to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained⁴.

⁴ See more: Annex 1, doc. 5

The most elaborated provisions in that respect can be found in the 2003 UNCAC⁵, including Chapter V devoted especially for asset recovery and Article 57 (Return and disposal of assets) therein.

The UNCAC was a real breakthrough in the area of asset recovery. It should be noted, inter alia, the general provision in Article 51:

«The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.».

But the UNCAC deals only to the confiscated assets from corruption and includes some provisions on imperative return of only assets related only to public funds and damage while providing for the possibility for the requesting State Party to deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to Article 57:

«Article 57. Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.».

⁵ See Annex 1, doc. 4.

Thus, there is no general regime, including procedural rules, on the obligatory return of proceeds of crime confiscated in the process of co-operation between the requesting and the requested States.

The problems existing in the field of asset recovery were recognized in the White Paper on Transnational Organised Crime adopted in the Council of Europe in 2014. And recovery of assets is included among 5 key areas of combating TOC.⁶

The Council of Europe Action Plan on Combating Transnational Organised Crime (2016-2020)⁷ contains in Chapter 2.5 (Recovery of assets) some actions proposed among which is Action 1: «Enhancing the implementation of the existing legal framework on the management and disposal of criminal assets». These actions includes, inter alia, the following provision:

«In order to assess if new legal instruments are needed at Council of Europe level, a study group should be established with the aim of deciding if new investigative techniques for freezing and seizing assets, new forms of confiscation (non-conviction based) and new technologies would require a new convention. It should also examine the feasibility of a Council of Europe agreement of asset sharing.».

As it is known the PC-OC at its 66th meeting (Strasbourg, 19-21 May 2014) decided to hold the special session on seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing. The Committee also noted that the CDPC would have to decide on a follow up to the White Paper on Transnational Organised Crime in which the issue of seizure and confiscation could play an important role. The PC-OC discussed various topics of interest for this special session, including in particular the non-conviction based confiscation and the burden of proof, the management of frozen or confiscated goods, the recovery and sharing of assets.⁸

At its 70th meeting (2-4 May 2016) the PC-OC adopted the template for country information on national procedures as regards the application of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS N° 141) and invited the experts to complete the template by 1 October 2016. Referring to the Action Plan on Transnational Organised Crime, the PC-OC suggested that the COP 198 could consider creating a similar template for the national procedures as regards the application of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

The PC-OC also considered 30 replies that had been received to the questionnaire on the use and efficiency of CoE instruments as regards international co-operation in the field of seizure and confiscation of proceeds of crime. Considering possible follow-up to improve international co-operation in this particular field, the Committee decided to discuss this issue further in a future meeting, in relation to the implementation of the Action Plan on Transnational Organised Crime, on the basis of the replies received to question 11 of the questionnaire, which contains proposals to amend and/or facilitate the application of Council of Europe instruments for international co-operation in the field of search, seizure and confiscation of proceeds of crime, including the management of seized and confiscated property and asset sharing.⁹

At 24th meeting of the PC-OC Mod (26-28 September 2017) considered the 11 contributions to the compilation of national legislation, model agreements and practice related to asset sharing

⁶ See Chapter 3.5 of the White Paper on Transnational Organised Crime, which contains the short analysis of the situation, including Gaps and problems, and Possible actions.

⁷ Doc. CDPC (2015) 17 Fin_en, 2 March 2016. This document was approved by the European Committee on Crime Problems (CDPC) at its last plenary meeting on 1-4 December 2015 and finally adopted by the Committee of Ministers of the Council of Europe at its meeting on 2 March 2016.

⁸ See doc. PC- OC (2014) 02, 21 May 2014.

⁹ See doc. PC-OC (2016) 03, 4 May 2016.

as well as the model agreements by the UN and the G8¹⁰ and had an exchange of views with Mr Gary Balch, Deputy Chief Crown Prosecutor in the UK and representative of the CARIN Network. The PC-OC Mod agreed that while the issue of asset sharing needed further consideration, international co-operation for recovery itself was still lacking a common legal basis to address important issues such as non-conviction based confiscation, management of assets, return of property to victims and other questions that are not, or not sufficiently, addressed by existing Council of Europe instruments.

It concluded that, given the importance of asset recovery, in particular for the fight against transnational organised crime, it would be worthwhile considering the possible development of a new binding instrument regulating these issues, either as an additional protocol to an existing treaty or as a convention. The PC-OC decided to invite the plenary to consider, in consultation with the COP 198, the possibility of developing a binding instrument addressing international co-operation as regards the management, the recovery and sharing of assets; and to invite Mr Vladimir Zimin to produce a paper listing possible issues which such an instrument could address.¹¹

II. Possible issues to be addressed in a Council of Europe binding instrument (convention) addressing international co-operation as regards the management, the recovery and sharing of assets

1. General consideration

I think that it is necessary to elaborate a new binding instrument (convention) regulating the issues of international co-operation as regards the management, recovery and sharing of assets. It may be called a **Convention on the management and recovery of proceeds of crime**.

One should take into account provisions in many multilateral and bilateral treaties, related to concluding agreements on the recovery of assets as well as the G8 1999 Model Agreement on Asset Sharing and the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property, adopted by the *UN Economic and Social Council* resolution 2005/14 of 22 July 2005¹².

Of course I can not pretend to embrace in this paper all the issues to be addressed in a new Convention. I hope that I reflected most of them to be considered as important.

2. Scope of application

Although adopted in the framework of the Council of Europe it will supplement and amend existing multilateral and bilateral treaties in that respect in relations between the State Parties to such treaties (with the possibility to make exceptions by making reservations and declarations).

3. Definitions

For the purposes of this Convention there should be some definitions of main terms used in it (i.e. "proceeds of crime," "property," "instrumentalities," "confiscation," "cooperation," "freezing" or "seizure").

There should be a correlation between the definitions used in the United Nations and the Council of Europe conventions. But there may be some novelties – for instance, related to virtual currencies (bitcoin, etc.).

¹⁰ See doc. PC-OC Mod (2017)08Bil, 14 September 2017.

¹¹ Doc. PC-OC Mod (2017)09, 28 September 2017, para 4 ©.

¹² Both Model Agreements see in doc. PC-OC Mod (2017)08Bil, 14 September 2017, pp. 29-41.

4. Management

The UNCAC (Article 31, para 3) says that each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

And in accordance with Art. 6 (Management of frozen or seized property) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) 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.

It seems that a similar provision should be included into the new Convention but I think advisable to add the provision of providing information about planned and/or taken measures for the management to the requesting Party and holding consultations in that respect (because this Party is, in principle, interested in low costs of such measures).

5. Realization of confiscated property (e.g. car, boat, plane, shares or real property) in the requested State

6. Direct recovery of property (not through international cooperation in confiscation)

I guess that there should be a provision allowing foreign victims of the crime to initiate legal actions in the courts of the requested State in order to receive some compensation from the offender.

Let's recall Art. 7 of the International Convention for the Suppression of Counterfeiting Currency (1929):

«In so far as "civil parties" are admitted under the domestic law, foreign "civil parties", including, if necessary, the High Contracting Party whose money has been counterfeited, should be entitled to all rights allowed to inhabitants by the laws of the country in which the case is tried.»

More elaborated provisions can be seen in the UNCAC:

« Article 35. Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Article 53. Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

- (a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;
- (b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and
- (c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate

owner of property acquired through the commission of an offence established in accordance with this Convention.».

7. Correlation between the proceedings related to direct recovery of property and recovery of property through international cooperation in confiscation

There should be a provision on correlation between the proceedings related to direct recovery of property (see, i.e. UNCAC, Article 53) and recovery of property through international cooperation in confiscation (see, i.e. UNCAC, Article 54) in the requested State.

8. The general approach

The general approach to the recovery of proceeds of crime should be the return of all proceeds of crime found in the requested State but within the limits of the confiscation order¹³ and taken into account the outcome of the proceedings related to direct recovery of property as well as the outcome of confiscation proceedings in other countries.

But there should be the possibility for the requested State to deduct from the assets to be returned the **extraordinary costs** incurred in investigations, prosecutions or other proceedings leading to the management, realization, return or disposition of confiscated property.¹⁴

If the requested State leaves for itself more than such extraordinary costs that will be a kind of injustice in relation to the rights of victims and may be considered as illicit or, to be more correct, unjustifiable enrichment.

A provision on consultations between the requesting and the requested State on all stages of determining such costs is also needed.

9. Plurality of requests

It would be wise to provide that in the case of plurality of requests for recovery of assets in respect of the same person or property the requested Party shall consider consulting the requesting Parties and shall decide which request (requests) should be executed wholly or in part, taking into consideration, *inter alia*, circumstances of each request received.

10. Partial granting of a request

11. Conditional granting of a request

The Requested Party may not place any conditions in respect of the use of the amounts paid unless otherwise agreed to by the Requesting Party and if conditions are placed they shall be appropriate and acceptable to the Requesting Party.¹⁵

12. Obligation to give reasons

¹³ See, for example, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Article 26 (Right of enforcement and maximum amount of confiscation).

¹⁴ See Article 34 (Costs) of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990): «The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.».

¹⁵ See para 6 of the G8 1999 Model Agreement on Asset Sharing.

I think it would be a proper thing to establish the obligation of the requested Party to give reasons for any decision to refuse, postpone or make conditional any co-operation in recovery of assets as well as to execute in part the request.¹⁶

13. Procedural rules of return

Payment, bank transfer (indication of bank account, currency of transfer, exchange rate, etc), virtual currencies (bitcoin, etc.), confirmation of receipt.

14. Damages

In that respect it would be useful to recall Article 35 (Damages) of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990):

«1. When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2. A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.».

15. Central authority

16. Consultations

17. Direct communication

18. Information

19. Final provisions

- *signature and entry into force*
- *accession to the Convention*

This multilateral treaty should be open for signature and accession of any State. But the problem of entities not recognized by some states should be resolved.

- *relationship to other international treaties*
- *reservations and declarations*

It seems to be advisable to provide that only those reservations and declarations that are indicated in the Convention may be made.

- *amendments*
- *settlement of disputes*
- *denunciation*
- *notifications*

¹⁶ See, i.e., the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), Art. 40.

Annex 1**The universal (League of Nations and United Nations) international treaties****1. The International Convention for the Suppression of Counterfeiting Currency (1929)**
(Extracts)**Article 7**

In so far as "civil parties" are admitted under the domestic law, foreign "civil parties", including, if necessary, the High Contracting Party whose money has been counterfeited, should be entitled to all rights allowed to inhabitants by the laws of the country in which the case is tried.

Article 11

Counterfeit currency, as well as instruments or other articles referred to in Article 3(5), should be seized and confiscated. Such currency, instruments or other articles should, after confiscation, be handed over on request either to the Government or bank of issue whose currency is in question, with the exception of exhibits whose preservation as a matter of record is required by the law of the country where the prosecution took place, and any specimens whose transmission to the Central Office mentioned in Article 12 may be deemed advisable. In any event, all such articles should be rendered incapable of use.

2. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
(Extracts)**Article 5**
CONFISCATION

5. a) Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures.

b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:

i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;

ii) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

3. The United Nations Convention Against Transnational Organized Crime (2000)
(Extracts)**Article 14****Disposal of confiscated proceeds of crime or property**

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

4. The 2003 United Nations Convention Against Corruption (2003)

(Extracts)

Article 31. Freezing, seizure and confiscation

.....

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

.....

Article 35. Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

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Chapter V

Asset recovery

Article 51. General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Article 53. Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 57. Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in

accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 59. Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

5. International Convention for the Suppression of Acts of Nuclear Terrorism (2005)

(Extracts)

Article 18

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of such items shall:

(a) Take steps to render harmless the radioactive material, device or nuclear facility;

(b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and (c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.

2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.

3. (a) Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3 (b) of the present article, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the

steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes;

(b) Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are placed as soon as possible in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such items pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3 (b) of the present article, be taken after consultations between the States concerned and any relevant international organizations.

5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law.

Annex 2

The Council of Europe conventions

1. the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)

(Extracts)

Article 15

Confiscated property

Any property confiscated by the requested Party shall be disposed of by that Party in accordance with its domestic law, unless otherwise agreed by the Parties concerned.

Article 16

Right of enforcement and maximum amount of confiscation

1. A request for confiscation made under Article 13 does not affect the right of the requesting Party to enforce itself the confiscation order.

2. Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

Article 19

Postponement

The requested Party may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

Article 20

Partial or conditional granting of a request

Before refusing or postponing co-operation under this chapter, the requested Party shall, where appropriate after having consulted the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

Article 29

Plurality of requests

1. Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.

2. In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

Article 30

Obligation to give reasons

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

Article 31

Information

1. The requested Party shall promptly inform the requesting Party of:
 - a. the action initiated on a request under this chapter;
 - b. the final result of the action carried out on the basis of the request;
 - c. a decision to refuse, postpone or make conditional, in whole or in part, any co-operation under this chapter;
 - d. any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and
 - e. in the event of provisional measures taken pursuant to a request under Sections 2 or 3 of this chapter, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.
2. The requesting Party shall promptly inform the requested Party of:
 - a. any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and
 - b. any development, factual or legal, by reason of which any action under this chapter is no longer justified.
3. Where a Party, on the basis of the same confiscation order, requests confiscation in more than one Party, it shall inform all Parties which are affected by an enforcement of the order about the request.

Article 34 Costs

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

Article 35 Damages

1. When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2. A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

2. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) *(Extracts)*

Article 6 – Management of frozen or seized property

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.

Article 8 – Legal remedies

Each Party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under Articles 3, 4 and 5 and such other provisions in this Section as are relevant, shall have effective legal remedies in order to preserve their rights.

Article 25 – Confiscated property

- 1 Property confiscated by a Party pursuant to Articles 23 and 24 of this Convention, shall be disposed of by that Party in accordance with its domestic law and administrative procedures.
- 2 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, Parties shall, to the extent permitted by domestic law and if so requested, give 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.
- 3 When acting on the request made by another Party in accordance with Articles 23 and 24 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.

Article 26 – Right of enforcement and maximum amount of confiscation

- 1 A request for confiscation made under Articles 23 and 24 does not affect the right of the requesting Party to enforce itself the confiscation order.
- 2 Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

Section 7 – Procedural and other general rules

Article 33 – Central authority

- 1 The Parties shall designate a central authority or, if necessary, authorities, 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.
- 2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

Article 34 – Direct communication

- 1 The central authorities shall communicate directly with one another.
- 2 In the event of urgency, requests or communications under this chapter may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
- 3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).
- 4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

5 Requests or communications under Section 2 of this chapter, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

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.

Article 39 – Plurality of requests

1 Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.

2 In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

Article 40 – Obligation to give reasons

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

Article 44 – Costs

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

Article 45 – Damages

1 When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2 A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

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Article 48 – Monitoring mechanism and settlement of disputes

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4 In case of a dispute between Parties as to the interpretation or application of the Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the COP, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.
