



Strasbourg, 8 December 2017

C198-COP(2017)REP9

CONFERENCE OF THE PARTIES

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

9th MEETING

Strasbourg, 21 – 22 November 2017

MEETING REPORT

Information Society and Action against Crime Directorate
Directorate General Human Rights and Rule of Law

SUMMARY ACCOUNT OF THE PROCEEDINGS

1. The Conference of the Parties to the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198) held its ninth meeting in Strasbourg, from 21 to 22 November 2017, under the Chairmanship of its Chair Mr Branislav BOHACIK (Slovak Republic). The agenda of the meeting, the decisions taken and the list of participants are annexed to the present report.

Item 1. Opening of the Meeting

2. The Chair opened the meeting and welcomed the participants.

Item 2. Adoption of the Agenda

3. The Conference of the Parties adopted the agenda as it appears in Appendix I.

Items 3 and 4. Information from the Chair, the Director of the Information Society and Action against Crime and the Executive Secretary

4. Mr Jan KLEIJSEN, Director of the Information Society and Action against Crime, informed the Plenary of a number of important developments concerning the Council of Europe's work on the fight against terrorism and money laundering. 33 States Parties have ratified the Warsaw Convention, which is important as this Convention enhances efficiency and further international co-operation in certain fields, such as asset recovery, far-reaching investigative means and mutual legal assistance. He also emphasised that certain overlaps with what is done by the FATF and MONEYVAL continue to appear. Still, there is close scrutiny in the national and international AML/CFT frameworks between the work of the CoP and MONEYVAL.
5. Mr KLEIJSEN further welcomed the recent signing of the Convention by Monaco as well as the ratifications by Greece, the Russian Federation, Azerbaijan, Germany and Italy. Whilst he encouraged further streamlining of the Convention monitoring, he also took the opportunity to inform the Plenary of the financial situation in the Council of Europe emphasising the need to adapt the monitoring system to the challenges it faces. He suggested the Plenary to give due consideration to the proposal which includes the change from individual country assessments to a horizontal review. Such monitoring would enable more equal treatment of the State Parties and it would provide for the possibility to select key issues of the Convention – those that present an added value of this legal instrument vis-à-vis the FATF Recommendations. Mr KLEIJSEN also indicated a so-called 'monitoring fatigue' which countries encountered due to numerous monitoring visits and reports by various international bodies.
6. The Executive Secretary of COP, Mr Matthias KLOTH, informed the Plenary about a presentation the Secretariat held at Council of Europe's Committee of Experts on the Operation of European Conventions on Co-operation in Criminal matters (PC-OC) plenary session, covering common interests such as the MLA model form and issues related to asset sharing mechanisms. In addition, he informed the Plenary that the Secretariat will start working on the COP biannual activity report which will, once finalised, be presented to the Council of Europe Committee of Ministers. The Executive Secretary also touched upon challenges concerning the seizure and confiscation of virtual currencies, which is why this topic was included in the agenda for this plenary meeting. Finally, he asked the delegations to present their candidacies for Bureau positions in light of the upcoming Bureau elections.
7. The Conference of the Parties adopted the 2016 COP meeting report of its 8th Plenary.

Item 5. The state of signatures and/or ratifications of the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism

8. The Conference of the Parties welcomed that, since its last meeting, Greece, the Russian Federation, Azerbaijan, Germany and Italy had ratified the Warsaw Convention. It also welcomed Monaco's signing of the Convention.
9. The Secretariat informed the Conference of the Parties on the possible accession to the Convention by non-Council of Europe member states. Morocco has approved a package of Council of Europe conventions, which included the Warsaw convention, and awaits the signatory by its King. With regard to Israel, Belarus and Kazakhstan, new steps are made towards their possible accession to the Convention.

Item 6. Presentation of the proposal concerning a transversal thematic monitoring of the implementation of the Convention by the State Parties

10. The Secretariat introduced the paper on possible options how to continue with the monitoring. In view of that, a proposal to continue with the horizontal review (options 1 and 2 in the paper), were elaborated upon by the Secretariat. The thematic monitoring, based on one or two key issues covered by the Convention, would reduce the workload of the Secretariat and tackle the most pressing challenges in the implementation of the Convention by the State Parties. It would add value to our work as it would explicitly demonstrate added value of the Convention. In addition CODEXTER already set such a monitoring methodology while the FATF Terrorism Financing Facts Finding Initiative, which was also based on horizontal review of jurisdictions in implementing CFT measures, brought excellent results and showed how such type of peer pressure can timely produce valuable insights. The Executive Secretary also emphasised that the Convention does not impose any specific way of monitoring its implementation and that it's up to COP to decide on this. Nevertheless, any change in the monitoring methodology would need to be embedded in the Rules of Procedure, meaning that for such a change a two-third majority of votes is required.
11. The Executive Secretary explained that the Option 2 in the paper proposed to test the horizontal monitoring for an initial period of two years. Once the period is over a stocktaking of its success would be undertaken and the Plenary would then be invited to decide whether or not to keep the horizontal review or to go back to country-by-country monitoring.

Item 7. Discussion by the State Parties on the proposal concerning a transversal thematic monitoring

12. The President asked the State Parties to comment on the proposal concerning a possible renewal of the assessment procedure. The majority of countries¹ expressed their favour for options 1 or 2, for a number of reasons. The country-by-country procedure challenges both the COP Secretariat and the countries themselves as it puts burden on the governments to manage the COP and MONEYVAL evaluations. Therefore, the delegations clearly stated that they encountered a general lack of time and resources available to dedicate to numerous evaluations, including two evaluations by the Council of Europe (COP 198 and MONEYVAL/FATF) on similar, if not the same, topics. With a horizontal review, duplication of key issues can be avoided and the COP can then clearly demonstrate its added value by choosing the topics not covered by other monitoring mechanisms. In addition, it would also ensure equal treatment of all states in the assessment procedure.

¹ Armenia, Cyprus, Hungary, Italy, Malta, Montenegro, Netherlands, Poland, Romania, Slovak Republic, Slovenia, the former Yugoslav Republic of Macedonia and Ukraine.

13. Some other countries², however, expressed their preference for option 3 which foresees both - country-by-country and horizontal monitoring - to be carried out in parallel. Their arguments were that the country-by-country assessment brings added value to the national system and puts political pressure on the government to implement recommendations within short notice. Moreover, the recommendations in the assessment report generally provide for particular solutions as a response to the main deficiencies in the national framework. Nevertheless, these countries expressed their concerns with regard to the lengthy questionnaire.
14. The Scientific Expert, Mr. Paolo COSTANZO, argued that the horizontal review provides the best alternative to the status quo. Emphasis will be made on the different levels of compliance with the relevant Convention provisions by different member states. However, the Scientific Expert also raised questions related to a possible follow up mechanism, the length of questionnaires, the recommendations and the role of rapporteurs. Ultimately, he proposed a test-period of two years for the horizontal review, after which the COP can decide to either continue or return to the country-by-country mechanism.
15. The Secretariat provided answers to the Scientific Expert's questions. Firstly, the idea is to involve two rapporteurs in the horizontal review cycle. The rapporteurs would not assess their own countries – this would be a task of the other rapporteur. Each country which does not comply with the Convention requirements would be required to report back at the next Plenary on progress it made. It is in the opinion of the Secretariat that the emphasis on one or two key issues will put more pressure on all COP Member Parties to actively participate in the plenary discussion and decision making, whilst such peer pressure will warrant harmonisation in implementing the Convention. The Secretariat also elaborated the reasons behind why e.g. Article 25, Article 11 and Article 9(3) of the Convention, would, at the moment, present parts of the Convention covered by the horizontal review.
16. The COP also discussed the issue of the countries awaiting the follow-up procedure. Whilst several delegations argued that the follow-up mechanism should be suspended until the final decision which monitoring methodology should be applied, the delegations of Belgium and Malta announced their readiness to submit a follow-up report at the 10th Plenary. The three remaining countries will be consulted by the next Plenary whether or not they wish to undergo the follow-up process prior to having final decision by the 11th Plenary on which monitoring methodology will be applied thereafter.
17. The COP reached a consensus on the monitoring system and decided to suspend the country-by-country system under Rule 19 and to apply a transversal thematic monitoring system for an initial period of two years, with a further stocktaking discussion on the matter at its 11th Plenary in 2019. The COP hereafter discussed the proposal for replacement of Rule 19 by Rule 19*bis*. In the Rules of Procedure, the initial Rule 19 will be temporarily suspended whilst Rule 19*bis* will be in force for the initial period of two years.
18. The COP decided that Hungary's assessment under the country-by-country monitoring is also suspended for an initial period of two years. If the COP decides in two years' time to put in place country-by-country monitoring system back in place, the order of country evaluations will be reconsidered.
19. The Plenary also considered the Secretariat proposal which Articles should be selected for the horizontal review for 2018. The COP agreed with the Secretariat that Articles 3(4), 9(6), 11 and 25 would be most relevant for a transversal thematic monitoring report. Consequently, the COP decided that the first reports should deal with Article 11 and Articles 25(2) and 25(3) of the Convention.

² Albania, Belgium, Germany and Republic of Moldova

Item 8. Council of Europe Action Plan on Combating Transnational Organised Crime (2016-2020) and COP involvement

20. The COP heard a presentation by the Secretariat on the progress made towards achievement of the Transnational Organised Crime Action Plan objectives with regard to issues relevant to the work of the COP. The COP adds particularly to the topics of international cooperation; administrative synergies and cooperation with private sector; specialised investigative techniques and on asset recovery. The work already undertaken by COP – its assessment reports, analysis on the questionnaire on some horizontal issues from 2016, Interpretative Notes it developed on some of the Convention articles - are the key documents from where the COP will provide its input to the Action Plan. The Action Plan is subject to a first preliminary assessment after two years, more precisely in 2018.

Item 9. Implementation of the Convention: interpretative issues related to Article 3, paragraph 4; Article 11 and Article 25, paragraph 2

21. The COP heard a presentation by the Secretariat and the Scientific Expert on interpretative issues related to Article 3(4), Article 11 and Article 25(2). The findings provided for an overview of existing (national) case law, state parties' good practices and (inter)national guidelines. Under Article 3(4), four issues were discussed related to the reversed 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 elaborated upon, particularly in the light of assessing its effective implementation, cooperation between States Parties and compensation of victims.

22. The COP adopted the document on interpretative notes and approved it for publication on the COPs website.

Item 10. Election of the President and Vice-President of the C198-COP and appointment of the new Gender Equality Rapporteur

23. The Secretariat explained the voting procedure as established in the Rules of Procedure. The Secretariat had taken notice of two candidatures by the present incumbents. Through an open vote, both Mr. Branislav BOHACIK as President and Mr. Jean-Sébastien JAMART as Vice-President were re-elected for a two years term. Moreover, Mr. Jean-Sébastien JAMART presented his candidature for Gender Equality Rapporteur of the COP and was consequently appointed as such.

Item 11. Exchange of views on ML/TF risks posed by virtual currencies

CODEXTER and European Convention on Offences relating to Cultural Property presentation

24. Mr. Carlo CHIAROMONTE, Secretary to CODEXTER and Head of the Criminal Law Division, provided a presentation on recent developments in CODEXTER as well as the new European Convention on Offences relating to Cultural Property, including money laundering and terrorist financing aspects of the Convention. He discussed the outcomes of the last CODEXTER meeting, which included the adoption of a new terrorist recommendation on lone wolves and a discussion on a Council of Europe definition of terrorism. During the European Committee on Crime Problems Plenary meeting in December, the topics of artificial intelligence and criminal responsibilities will be discussed, as well as the links between terrorism and organised crime. Moreover, Mr. Carlomonte outlined the key issues of the Convention on Cultural Property, which is recently adopted.

UNODC presentation

25. COP heard a presentation by UNODC's representative, Mr. Oleksiy FESCHENKO, on

cryptocurrencies and the training programme set up by UNODC. Cryptocurrencies present a serious money laundering risk. Therefore, the UNODC has initiated a new programme on the risks and challenges coming with the developments of, *inter alia*, bitcoin. Bitcoin is the largest virtual currency, and one of very few currencies which is possible to investigate. The training programme is intended for FIUs, law enforcement authorities, prosecutors and other practitioners. Results, so far, have been an increased understanding of the functions of cryptocurrencies, challenges for investigation and confiscation thereof, legal enforcement on the topic, the operation of bitcoins and the risks they pose. It now comes up to Member States to close legal and non-legal gaps and to address and mitigate the money laundering risks of cryptocurrencies. The training is available at <http://www.imolin.org>, or can be requested through the UNODC office.

26. The COP discussed the necessity to increase attention on the topic of cryptocurrencies and their risks to money laundering schemes. One delegation posed a question on best practices by other Member States in regulating and/or monitoring the virtual currencies market. Therefore, the COP requested the Bureau to compile a paper with regard to a more structured discussion on the topic of virtual currencies for future Plenaries.

TC-Y presentation

27. The COP heard the presentation by Ms Mariana CHICU on capacity building on search, seizure and confiscation of online crime proceeds. Ms Chicu discussed the Council of Europe approach towards cybercrime and the protection of human rights in this field, through the Budapest Convention, capacity building and monitoring. In this framework, the Council of Europe Cybercrime Programme Office (C-PROC) initiated the iPROCEEDS project on targeting crime proceeds on the internet in South-Eastern Europe and Turkey. Results thereof include the establishment or improvement of reporting systems online fraud in the project's beneficiary countries; strengthened legislation on search, seizure and confiscation of cybercrime proceeds and prevention of ML on internet; domestic and international cooperation between financial and anti-cybercrime authorities in search, seizure and confiscation of online crime proceeds; and drafting of guidelines on prevention and control of online fraud and criminal money flows for financial sector entities. Indicators for the prevention of online ML were also presented.

Item 12. Follow-up by the Conference of the Parties of progress made by assessed Parties

Republic of Moldova (follow-up report)

28. The Conference of the Parties examined the first follow-up report of Moldova and the analysis prepared by the Secretariat, with Montenegro acting as a Rapporteur. The Secretariat presented the developments in Moldova since the time of the adoption of the evaluation report, in particular the legislative changes undertaken in order to address the recommendation made in the report, as well as the draft law which was, at the time of the Plenary, discussed by the Parliament. Furthermore, the COP took note of the statements of the scientific expert on the draft analysis.
29. With regard to the legal framework of confiscation measures, Article 3 and 6, the analysis stated that Moldova had amended its Criminal Code, further clarifying its definitions of AML/CFT, such as the notion of "goods" in light of Article 3, application of the confiscation regime and the obligation to confiscate the corresponding value of any goods liable to confiscation if the latter do not exist anymore, cannot be found, or cannot be recovered. Montenegro, as rapporteur country, posed a question concerning the difference between the high number of offences and the low number of confiscations, on which the Moldovan delegation answered that in some offences, like theft, confiscation was not an appropriate measure, because the assets were not further laundered. In most of such cases, the assets or value thereof are recovered from the perpetrator, in order to compensate the victims.
30. A draft law 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 Moldovan

delegation pointed out that the expected time of discussion is the end of December 2017. The analysis mentioned the newly established Agency for Criminal Assets Recovery within the National Anticorruption Center, which manages seized, frozen and confiscated assets, which is expected, together with the amendments to the Criminal Code, to result in the further facilitation of criminal investigation and recovery of criminal assets.

31. However, the analysis uncovered several fields in which further progress should be made, such as the permissibility to monitor the accounts in respect of all the relevant criminal offences; measures to increase the understanding of practitioners and guidance for judges; and efforts for international cooperation, mutual legal assistance and asset sharing. With regard to the latter, some deficiencies are still in place – e.g. Article 17(1) - identification of the Moldovan authority to address by other Parties for the execution of a request for banking information and documentation; Article 23 - cooperation with other Parties in the execution of measures equivalent to confiscation and deprivation of property which are not criminal sanctions; Article 25 - asset sharing with other Parties; and Article 28 - mutual legal assistance.
32. The delegation of Moldova replied to the analysis, pointing out that judges and prosecutors are becoming familiarised with AML/CFT law since some high profile cases raised awareness on importance of these issues (e.g. ‘Magnitsky case’ and the ‘Laundromat’ case). The country is currently developing case law for future application and compliance by the courts. The rapporteur country was also interested in procedure when mutual legal assistance request is sent following the non-conviction based confiscation in another state party, on which Moldova answered that possibility to respond to such request was ensured in the draft law on preventing and combating money laundering and financing of terrorism, and lay within the competences of the newly established Agency.
33. The scientific expert requested further clarification on the findings of the analysis on Article 3, 6 and 7. The Moldovan delegation explained that the amendments to the Criminal Code foresaw confiscation of instrumentalities, as well as legal and illegal assets, as liable to confiscation. The expert commented on Article 6 with regard to the exact wording of the recommendation, stating that the Agency was set following the stock taking exercises and that, with the establishment of the Agency, the recommendation should be considered fully implemented. Both delegations of Moldova and of the rapporteur country agreed with this proposal. Moreover, the scientific expert wished further clarification on the analysis of the recommendation on Article 7 (investigative powers and techniques at the national level), which the Moldovan delegation provided to a satisfactory extent.
34. The Conference of the Parties adopted the replies to the questionnaire prepared by Moldova and the draft analysis of the Secretariat including the amendment concerning the recommendation on setting the Agency for Criminal Assets Recovery. Pursuant to the Rules of Procedure, these documents will be published within four weeks of adoption.

Poland (update on follow up)

35. The Conference of the Parties examined the update to the follow-up report on Poland and the analysis prepared by the Secretariat. 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 (April 2017) of the Law which introduced the amendments to the Criminal Code and to Certain Other Acts of Law, with a view to address the recommendations made by the Conference of the Parties. While commending Poland for the progress made, the COP noted that several deficiencies were addressed in on-going legislative processes, while other deficiencies were not yet addressed.
36. Regarding Article 3, the reform of the Criminal Code appears to have, to a great extent, adequately addressed the deficiencies identified in the evaluation report. It has strengthened the

confiscation regime through the provision of i) new confiscation measures, ii) new elements of the TF offences, and iii) new obligations for banks. However, the confiscation in rem has not yet been set. The statistics provided with regard to the recommendation made on Article 3 proved the proper application of the confiscation and provisional measures.

37. However, the Secretariat outlined also several remaining deficiencies, particularly those in the field of Articles 23 and 25 (international cooperation), Article 7 (investigative powers and techniques) and Article 10 (corporate liability). With regard to Articles 23 and 25, Poland has not introduced any new mechanism for the execution of measures equivalent to confiscation of property as part of international cooperation, nor has it developed any specific asset sharing mechanism.
38. The delegation of Poland responded on the presentation by the Secretariat, emphasizing that the new AML/CFT Law awaits the procedure before the Parliament, expecting its adoption by the end of 2017. 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 cooperation with regard to requests from/to other Parties.
39. The Executive Secretary informed the plenary about possible next step with regard to Poland. In case plenary decides that the progress is insufficient, one shall bear in mind that the country is already under the MONEYVAL compliance procedure, meaning that the letter from the Secretary General has already been sent underlining the importance of AML/CFT issues. Similar action by COP would therefore not be recommendable. The COP decided to adopt the report and the analysis and not to impose any measures foreseen by Rule 19(39)(h) of the Rules of Procedure. The Poland was asked to provide an oral update on the outstanding deficiencies noted in the Secretariat analysis. The COP reserved the right to revert to the measures indicated in Rule 19(39)(h) at its next meeting.

Item 13. MLA Model form

40. The COP took note of the recent exchange of views between the President of the COP and the PC-OC. Moreover, it heard a presentation by, and had an exchange of views with Ms. Joana FERREIRA, Vice-Chair of the PC-OC MLA model form.
41. PC-OC has developed guidelines on MLA, as well as a MLA model request form, with the aim to identify common obstacles and further facilitate international cooperation among Council of Europe Member States. The form is published on PC-OC website. The model request form is useful to avoid repetition of commonly used tools in MLA among CoE Member States as well as CoE committees and divisions.
42. To enhance and increase the use of the form, PC-OC and the COP Bureau will maintain in close contact regarding accessibility of COP States Parties to the PC-OC website. The COP decided that the model form should be made available in the future to States Parties when rendering or requesting international cooperation in line with the CETS no. 198. Moreover, it requested the Bureau to, together with the Secretariat, propose an amended version to the MLA model form to be adopted in the COPs silence procedure.

Item 14. Review and discussion of reservations and declarations with respect to CETS No. 198

43. The COP took note of the information paper prepared by the Secretariat outlining reservations and declarations of State Parties as of November 2017. Whilst all state parties declared central authority for MLA under Article 33, some countries have not indicated the unit which is a FIU within the meaning of Article 46(13). In this respect, Bosnia and Herzegovina, Croatia and France were asked to make the mandatory declaration under Article 46(13).
44. Croatia stated that it would inform the Secretariat officially on this matter. The Ukrainian

delegation stated it will inform the Secretariat on their reservation regarding Article 37. The Slovenian delegation announced a possible future withdrawal of their reservation on Article 3(4). After finalising the amendments to the Criminal Code, Slovenia might be able to remove the reservation on Article 3(4); however it will inform the Secretariat once applicable. The Turkish delegation announced the withdrawal of its reservation on Article 47, since the provision of the Article is included in the amendments to the Turkish AML law made last year, and will inform the Secretariat thereof.

45. The States Parties are invited to review the necessity of their reservations and to inform the Secretariat of any changes with a view of their withdrawal.

Item 15. Cases of practical implementation of the Convention by State Parties

46. The Secretariat informed the COP it had received cases of practical implementation of the Convention by the Republic of Moldova, Latvia and Albania. Moreover, Romania, San Marino and Ukraine also prepared oral presentations of the practical cases of implementation of CETS no. 198 in their jurisdictions. These delegations committed to provide the Secretariat with written presentations. These cases will be published on the COP restricted website. Other countries were also invited to submit cases.

Item 16. Further work programme of the Conferences of the Parties

47. The COP decided to add Belgium and Malta to the planning for the follow-up reports of 2018.
48. The COP invited the Secretariat to reach out to States Parties on the issues of voluntary contributions and sufficiently qualified seconded experts.
49. The COP agreed that the agenda item related to cases and practical implementation of the Convention should be a priority item in the agenda of the 10th meeting.
50. The COP also approved the provisional dates of 30-31 October 2018 for the 10th meeting to take place.

Item 17. Miscellaneous

51. No further matters were discussed under this agenda item.

Item 18. Adoption of decisions

52. The Conference of the Parties adopted the list of decisions of the meeting.

Item 19. Close of the meeting

53. The Chair thanked all participants and the interpreters and closed the meeting at 17:15h.