

SUMMARY ACCOUNT OF THE PROCEEDINGS

Items 1 and 2 – Adoption of the Agenda and Election of members of the Bureau of the Conference of the Parties

1. The Chair, Mrs Eva ROSSIDOU-PAPAKYRIACOU (Cyprus), opened the meeting, welcomed all the participants and firstly introduced Mr Jan KLEIJSEN, Director of Information Society and Action against Crime, Directorate General I. Mr KLEIJSEN stressed the importance of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198). During his intervention the Conference of the Parties was invited to consider creative options which may allow the Conference of the Parties to deepen its reports and to adopt more in each year. One suggestion raised was that in the MONEYVAL and FATF onsite visits, the COP issues might be covered as an additional aspect, so there is broader information available to the Secretariat than simply the formal country replies to the questionnaire when the draft report of the rapporteurs is prepared. The Conference of the Parties agreed to consider the feasibility of this proposal during this meeting.
2. The Conference of the Parties adopted the Agenda as it appears in Annex I.
3. The Conference of the Parties, under Rule 4 of the Rules of Procedure, elected Mrs Katerina BUHAYETS (Ukraine) and renewed Mrs Hasmik MUSIKYAN (Armenia) and Mr Sorin TANASE (Romania) as members of the Bureau for one year terms of office.

Item 3 – Information from the Chair

4. The Chair informed the Conference of the Parties about the discussions which had commenced with representatives of the European Commission about the ratification by the European Union and the related issue in respect of which of the Convention's provisions the EU would assert Community competence. The Chair confirmed that it is her intention to arrange a meeting during the Cyprus Presidency of the EU with the Commission, Presidency and EU legal advisers to actively pursue these outstanding issues, and also the separate question of EU encouragement to its member States which have not ratified the Convention so far and to sign and/or ratify the Convention as a matter of priority.

Item 4 – Information from the Secretariat

5. The Executive Secretary, Mr John RINGGUTH, informed the Conference of the Parties of the publication of a compilation of the major documents in relation to the Conferences of the Parties. It sets out all the standards, the rules of procedure and issues in relation to the evaluation process.
6. He also informed the Conference of the Parties of the agreement by the CDPC (European Committee for Crime Problems) to create a new committee, which is to be called PC-TOC (Transnational Organised Crime). Asset recovery is one of the major issues in the fight against transnational organised crime and is also an important issue in the Conference of the Parties and MONEYVAL. For this reason it is proposed the two monitoring bodies should be represented in the PC-TOC meetings, the first of which will be held probably in February next year.

7. The Secretariat briefly informed about the new revised FATF recommendations, issued in February 2012, and especially about the content of new Recommendation 36, which encourages countries to ratify and implement this particular Convention. The Secretariat also noted that at the next MONEYVAL plenary there would be an exchange of views on conducting National Risk Assessments, in relation to new Recommendation 1 of the FATF.
8. The Secretariat informed that there has been an invitation to the Chair and to the Executive Secretary of the Conference of the Parties to contribute with their expertise to the process of the proposed 4th Directive of the EU.

Items 5 and 12 – Discussion on a follow up mechanism to CETS No. 198

9. There was a discussion on Information Document C198-COP4(2012)INF-5_ADD. There was wide support for the principle of a follow up mechanism and discussion of the options for its implementation. In the light of the discussion the Secretariat, after consulting the Bureau, would come back with a refined proposal for a Rule change to reflect the views expressed. Subsequently, a further information document was circulated setting out the proposed Rule change proposed by the Bureau in the light of earlier discussions. The Rule change was adopted and it is set out in full in Annex III to this meeting report.

Item 6 – Progress made by States in signing/ratifying the CETS No. 198

10. The Conference of the Parties noted that, since its last meeting, no additional member state has ratified the Convention, so the number of ratifications remains at 22 and the number of signatures not followed by ratifications at 12, including the European Union.
11. The Chair invited countries to make interventions on their progress in signing and ratifying the Convention. The representatives of several countries updated the Conference of the Parties on their steps taken. Particularly:
 - a. France informed that it is currently implementing the ratification process, which should be concluded in 2013.
 - b. Ireland informed that its constitution requires that all necessary domestic implementing legislation is in place prior to the ratification of the Convention. The country has focused in recent years on strengthening domestic legislation on money laundering, terrorist financing and white collar crime and, now that considerable progress has been made, it is intended to commence the formal governmental and parliamentary processes for ratification in 2013.
 - c. Liechtenstein informed that it too needs to have all legislation in place in order to ratify the Convention and is currently evaluating legislative changes to be able to ratify the Convention next year.
 - d. Russian Federation confirmed its intention to ratify the Convention in the near future but noted that they consider that criminal liability of legal persons needs to be addressed first.
 - e. Turkey informed that the ratification issue is in the relevant Commission of the Turkish Parliament, and they anticipated progress in a short time.
12. The Conference of the Parties once again urged the Council of Europe member states which have not already done so, the non-member states which had participated in the

preparation of the Convention and the European Union, to sign and/or ratify the Convention. Other non-member states of the Council of Europe were also invited to accede to the Convention.

Item 7 – Review and discussion of Reservations and Declarations with respect to CETS No. 198

13. The Secretariat introduced the background document, noting positively that the number of countries overall making reservations (as opposed to declarations) is rather low. However it was also noted that one third of the States Parties do not partly or fully accept the principle of reversed burden of proof for confiscation purposes (A 3 paragraph 4). It was also noted that the situation on reservations and declarations at the moment of signature or ratification may have become outdated in some cases following legal and institutional changes in various countries in recent years. There was an exchange of views in which the Chair encouraged relevant States Parties to intervene on the state of their country's reservations and declarations. States Parties, including Albania, Bosnia and Herzegovina, Serbia, Romania, Moldova, Poland, San Marino, Slovak Republic and Slovenia indicated a willingness to review their reservations and declarations in the light of the secretariat paper and the discussions, as did Turkey. The Chair concluded by inviting countries to consider revising their reservations and declarations to the Convention where appropriate in order to remove those that are no longer necessary.

Item 8 – Information from the European Union and accession of the EU to CETS No. 198

14. The Conference of the Parties was informed by the European Commission that, apart from the voting rights that were discussed in previous meetings, the European Union is currently looking at other issues surrounding the ratification, specifically where it may assert Community competence, in order to be able to ratify the convention in the future.

Item 9 – Discussion of the Conference of the Parties Draft Evaluation Report on Romania

15. The Secretariat briefly outlined the assessment procedure and introduced the rapporteurs: Ms Anna ONDREJOVA (Slovakia) on legal issues; Dr. Henriett NAGY (Hungary) on international cooperation issues; and Dr Manfred GALDES (Malta) on financial intelligence unit issues. They outlined their findings.
16. The Romanian Delegation thanked the rapporteurs and the Secretariat for their efforts and work and gave an overview of the relevant legislative steps undertaken by Romania since the entry into force of CETS No. 198 on 1st of May 2008.
17. The rapporteurs presented an overview of their main findings. The Chair then proceeded with a discussion of the draft report.
18. With regard to self-laundering, there is a draft law under discussion in the Romanian Parliament for abolishing it in respect of acquisition, possession or use. The Romanian authorities indicated that the main reason is motivated by the need to avoid confusion with the offence of concealment, the elements of which in the Criminal Code are identical to this aspect of money laundering. As according to the Convention this is not a mandatory element, no recommendation in this respect would be made in the report. However, since a consideration should be given, the Conference of the Parties decided to maintain a reference to this draft law and would welcome a future follow up on this particular issue.

19. With regard to confiscation, the Conference discussed if the instrumentalities and proceeds were covered by the Romanian legislation. It was accepted that under article 2 of AML Law the concept of property was established and it could be considered as equivalent to the definition of proceeds in the Convention. In the same way, the concept of instrumentalities or instruments for laundering money was covered by the Romanian Criminal Code. The Conference of the Parties acknowledged that confiscation of instrumentalities is only applicable to the value confiscation instrument in cases of *bona fide* third parties.
20. With regard to international co-operation confiscation, the Conference of the Parties was informed that a large number of European countries do not have a non conviction based confiscation system but can cooperate and execute such orders on behalf of states that do have such systems in place. It was agreed that Romania should clarify the extent to which the country can cooperate with states parties in the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions.
21. The Conference of the Parties discussed the horizontal issue of the management of frozen and seized property, in relation to article 6 of the Convention, agreeing that there is not a clear definition and that a broad interpretation should be given, allowing states certain flexibility for managing their assets.
22. The Conference of the Parties discussed the whole report in depth and, as a result of clarifications made by the Romanian authorities and the rapporteurs, introduced amendments to the report where necessary.
23. The Conference then adopted the report on Romania as amended and, subject to further editorial changes, and noted that pursuant to its Rules of Procedure, this report shall automatically be published within 4 weeks of adoption.

Item 10 – Information from the observers

24. The European Commission briefly informed about the proposal adopted on 12 March 2012 for a Directive on freezing, confiscation and recovery of criminal assets in the EU which would make it easier for member states to confiscate the profits the criminals make from organized crime and which will hopefully be approved some time in the latter half of next year.
25. The Conference of the Parties was informed by Mr SCMOLL (FATF secretariat) about the changes that the revised FATF Recommendations of 2012 have introduced in relation to the 2003 FATF Forty Recommendations and Nine Special Recommendations.

Item 11 – The revised FATF Recommendations, consequences for the CETS No. 198 and possible amendments

26. The Conference of the Parties took note of the information provided by the scientific expert in his comprehensive analysis in C198-COP4(2012)INF-11 regarding the possible consequences of the revised FATF Recommendations for the Convention. The Executive Secretary reminded delegations that the drafters of the Convention did not intend to replicate the FATF standards.
27. The Conference of the Parties accepted to explore the process for initiating the “fast track” amendment procedure under Article 54(6) of the Convention in respect of designated categories of predicate offences by including “tax crimes”. Additionally,

between this meeting and the next Conference of the Parties the Secretariat would undertake a light touch review of whether a fast track procedure needs to be implemented in respect of Article 13 of the Convention, in relation to preventive measures, and whether any other issue raised in the presentation may create problems in practice as a result of differences between the Convention and the revised FATF Recommendations which should be considered under the general amendment procedure.

Item 13 – Further work programme of the Conference of the Parties

28. The Secretariat will negotiate with the countries concerned in order to select the next assessed parties. For the forthcoming year at least two questionnaires will be sent to two countries.
29. The Conference of the Parties decided to produce a report of their activities in order to report to the Committee of Ministers in relation to the work of this group and the Convention.
30. The Secretariat proposed a two day training seminar to be held before the next meeting of the Conference of the Parties.
31. The date for the next Conference of the Parties will be fixed in the near future.

Item 14 – Any other business

32. Bearing in mind Mr KLEIJSEN's intervention and the decision to examine the feasibility of the Conference of the Parties making greater use of MONEYVAL and FATF procedures to clarify issues in the replies to Conference of the Parties questionnaires during onsite visits, the Executive Secretary outlined a possible way forward, which had been considered by the Bureau of the Conference of the Parties.
33. Mr RINGGUTH noted that the drafters of the Convention had considered that separate evaluations by the Conference of the Parties should be the exception rather than the rule. None-the-less, as the explanatory report underlines, the Conference of the Parties should take advantage of existing monitoring mechanisms. In MONEYVAL evaluations, where MONEYVAL and Conference of the Parties scheduling permits, it could be feasible for the same member of the MONEYVAL secretariat to be responsible for both reports. In these circumstances, and with the formal agreement of the MONEYVAL plenary, the MONEYVAL secretariat could seek clarifications on the replies to the Conference of the Parties questionnaire in the MONEYVAL onsite evaluation for sharing with the appointed Conference of the Parties rapporteurs. Such an approach could not be achieved for all Conference of the Parties reports of MONEYVAL States, as several States Parties have recently concluded their 4th round assessments by MONEYVAL. If the Conference of the Parties (and MONEYVAL) are prepared to accept that different Conference of the Parties assessments may take advantage of MONEYVAL procedures in this way, such an approach could be piloted. However, it was noted that this would not necessarily speed up the process, given current resources.
34. Mr RINGGUTH explained that this partial solution does not address the problem in respect of States Parties that are FATF members. If a similar arrangement could be brokered with the FATF for certain of their European evaluations, then there would at least be an equality of approach by the Conference of the Parties as to the use of the two major European AML/CFT monitoring mechanisms as a Conference of the Parties resource (as broadly envisaged by the Explanatory Report). It was noted that the FATF

will not re-commence evaluations before the last quarter of 2013. While Mr SCHMOLL (FATF secretariat) could not commit the FATF, he encouraged the Conference of the Parties to pursue this with the FATF.

35. The Conference of the Parties agreed to explore these possibilities further, and if MONEYVAL approves, trial these arrangements using the MONEYVAL secretariat. It was also agreed that two countries should be selected for reports in 2013 to be prepared in the usual way but allowing for the possibility of the procedures outlined above to be piloted. The Secretariat proposed, and the Conference of the Parties agreed, that Croatia and Poland should be the subject of Conference of the Parties reports in 2013, allowing for the possibility of taking advantage of these procedures.

Annex I

Strasbourg, 18 May / mai 2012

C198-COP(2012)OJ1

**4th meeting of Conference of the Parties
to the Convention on Laundering, Search, Seizure and Confiscation
of the Proceeds from Crime and on the Financing of Terrorism
(CETS 198)**

*4^{ème} réunion de la Conférence des Parties à la Convention
relative au blanchiment, au dépistage, à la saisie et à la confiscation
des produits du crime et au financement du terrorisme
(STCE 198)*

Strasbourg, 12-14 June / juin 2012

AGENDA / ORDRE DU JOUR

1. **Adoption of the Agenda / Adoption de l'ordre du jour**
2. **Election of members of the Bureau of the Conference of the Parties / Election de membres du Bureau de la Conférence des Parties**
3. **Information from the Secretariat / Informations par le Secrétariat**
4. **Further discussion on the follow up mechanism to CETS No. 198 / Mécanisme de suivi de la STCE No. 198 – poursuite de la discussion**
5. **Information from the Observers / Informations par les Observateurs**
 - 5.1 **Committee of Ministers of the Council of Europe / Comité des Ministres du Conseil de l'Europe**
 - 5.2 **Parliamentary Assembly of the Council of Europe / Assemblée parlementaire du Conseil de l'Europe**
 - 5.3 **Committee of Experts on the evaluation of anti-money laundering measures and the financing of terrorism (MONEYVAL) / Comité d'Experts sur l'évaluation des mesures de lutte contre le blanchiment des capitaux et le financement du terrorisme (MONEYVAL)**
 - 5.4 **European Committee on Crime Problems (CDPC) / Comité Européen pour les Problèmes Criminels (CDPC)**
 - 5.5 **Group of States against Corruption (GRECO) / Groupe d'Etats contre la corruption (GRECO)**
 - 5.6 **Financial Action Task Force (FATF) / Groupe d'Action financière (GAFI)**
 - 5.7 **Eurasian Group (EAG) / Groupe Eurasie (EAG)**
6. **Discussion of the Conference of the Parties Draft Evaluation Report on Romania / Discussion du projet de rapport d'évaluation de la Conférence des Parties sur La Roumanie**
7. **The revised FATF Recommendations / Recommandations révisées du GAFI**
 - **consequences for the CETS No.198 ; possible amendments / conséquences pour la STCE No.198 ; amendements éventuels**

8. **Progress made by States in signing/ratifying the CETS No. 198 /**
Développements relatifs à la signature/ratification par les Etats de la STCE No. 198
9. **Review of Reservations and Declarations with respect to CETS No. 198 /**
Examen des réserves et les déclarations au titre de la STCE No. 198
10. **Accession of the EU to CETS No. 198 /***adhésion de l'UE à la STCE No. 198*
11. **Further work programme of the Conference of the Parties /***Futurs travaux de la Conférence des Parties*
 - **2012-2013 meetings of the Conference of the Parties /***Les réunions de la Conférence des Parties en 2012-2013*
12. **Any other business /***Divers.*

Annex II

Strasbourg, 14 June 2012

C198–COP4(2012) LP1

**4th meeting of Conference of the Parties
to the Convention on Laundering, Search, Seizure and Confiscation
of the Proceeds from Crime and on the Financing of Terrorism
(CETS 198)**

*4^{ème} réunion de la Conférence des Parties à la Convention
relative au blanchiment, au dépistage, à la saisie et à la confiscation
des produits du crime et au financement du terrorisme
(STCE 198)*

Strasbourg, 12-14 June / juin 2012

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Room / Salle 5**

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Annex III

Strasbourg, 14 June 2012

C198-COP4(2012)INF-5_ADD

4th meeting of the Conference of the Parties to the CETS No. 198

Strasbourg, 12 – 14 June 2012 Information Document Item 5 ADDENDUM

Follow up mechanism to CETS No. 198

Memorandum prepared by the Secretariat

Follow up –Bureau proposal

1. Further to the discussion in the Conference of the Parties of Information Document C198-COP4(2012)INF-5 on 12 June 2012, the Bureau recommend a rule change.
2. It is proposed that the Rules of Procedure be amended thus:
 - Insert into Rule 19 a new Rule 19(30):

Follow up

30. There shall be a follow up procedure, as provided for beneath.
31. Eighteen months after the adoption of the Conference of the Parties report, the assessed Party should provide an update of its progress in meeting the recommendations and/or other issues identified in the adopted report and being sufficient for follow up, based on a questionnaire prepared by the Secretariat.
32. The assessed Party will have at least 8 weeks from receipt of the questionnaire for respond. The Secretariat will despatch the replies and the adopted report to a rapporteur country appointed by the Conference of the Parties for reviewing.
34. The Secretariat will prepare a written analysis of the progress made to meet the identified deficiencies to assist the Conference of the Parties in its analysis. The Secretariat will provide a copy of its draft analysis to the assessed Party, which may provide comments.
35. The draft analysis, amended as necessary, will be circulated to the Conference of the Parties, including the rapporteur country, no later than 2 weeks before the Conference of the Parties meeting at which it is to be discussed.
36. At the discussion of the follow up report:
 - a) the State Party will present an overview of the measures taken to meet the recommendations in the Conference of the Parties report, and provide information which demonstrates effective implementation;

- b) the Secretariat will present its draft analysis;
- c) the rapporteur country will raise questions on the replies to the follow up questionnaire;
- d) all representatives of the Parties, participants and observers will be entitled to ask questions of the Party whose follow up report is being assessed;
- e) after discussion the rapporteur country will indicate to the Conference of the Parties whether, in their view, the Conference of the Parties has sufficient information to adopt the replies to the questionnaire;
- f) if the Conference of the Parties decides the information is sufficient and the progress on meeting the Conference of the Parties recommendations is satisfactory, the conference of the Parties will adopt the replies to the questionnaire prepared by the State Party and the draft analysis of the Secretariat, together with any amendments agreed by the Conference of the Parties;
- g) if there are significant concerns raised about the sufficiency of the information provided in the draft follow up report or about the progress made in meeting the Conference of the Parties recommendations by the Party concerned and it concludes that it requires further information in the discharge of its functions, it shall liaise with the Party concerned, taking advantage, if so required, of the procedure and mechanism of MONEYVAL;
- h) if the replies to the follow up questionnaire are not adopted, the Party concerned shall re-submit an updated follow up questionnaire to the next Conference of the Parties within the same timescales as set out above. The follow up questionnaire will be considered at the next meeting of the Conference of the Parties. If the amended replies and Secretariat analysis are satisfactory; they will be adopted as set out in A.36(f) above.

Publication of follow up

- i) where Rule 36(h) applies to the Conference of the Parties may authorise the publication of the interim draft analysis pending reconsideration of the issue at the next Conference of the Parties;
- j) after adoption of the replies to the follow up questionnaire and draft analysis by the Secretariat, as amended under A.36(f), they will be sent to the Party being assessed to check accuracy with decisions taken by the Conference of the Parties;
- k) all adopted follow up questionnaires and draft Secretariat analyses of the replies to the follow up questionnaires will be published within 4 weeks of adoption.

CONFERENCE OF THE PARTIES SECRETARIAT