Z A K O N

O POTVRĐIVANJU KONVENCIJE SAVETA EVROPE O PRANJU, TRAŽENJU, ZAPLENI I ODUZIMANJU PRIHODA STEČENIH KRIMINALOM I O FINANSIRANJU TERORIZMA

Član 1.

Potvrđuje se Konvencija Saveta Evrope o pranju, traženju, zapleni i oduzimanju prihoda stečenih kriminalom i o finansiranju terorizma, sačinjena 16. maja 2005. godine u Varšavi, u originalu na engleskom i francuskom jeziku.

Član 2.

Tekst Konvencije u originalu na engleskom jeziku i u prevodu na srpski jezik glasi:

"Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

Warsaw, 16.V.2005.

Preamble

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for the use of modern and effective methods on an international scale;

Believing that one of these methods consists in depriving criminals of the proceeds from crime and instrumentalities;

Considering that for the attainment of this aim a well-functioning system of international co-operation also must be established;

Bearing in mind the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141 – hereinafter referred to as “the 1990 Convention”);

Recalling also Resolution 1373(2001) on threats to international peace and security caused by terrorist acts adopted by the Security Council of the United Nations on 28 September 2001, and particularly its paragraph 3.d;

Recalling the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 and particularly its Articles 2 and 4, which oblige States Parties to establish the financing of terrorism as a criminal offence;

Convinced of the necessity to take immediate steps to ratify and to implement fully the International Convention for the Suppression of the Financing of Terrorism, cited above,

Have agreed as follows:

Chapter I – Use of terms

Article 1 – Use of terms

For the purposes of this Convention:

a) “proceeds” means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property as defined in sub-paragraph b of this article;

b) “property” includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;

c) “instrumentalities” means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

d) “confiscation” means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;

e) “predicate offence” means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 9 of this Convention.

f) “financial intelligence unit” (hereinafter referred to as “FIU”) means a central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information

i. concerning suspected proceeds and potential financing of terrorism, or

ii. required by national legislation or regulation,

in order to combat money laundering and financing of terrorism;

g) “freezing” or “seizure” means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

h) “financing of terrorism” means the acts set out in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, cited above.

Chapter II – Financing of terrorism

Article 2 – Application of the Convention to the financing of terrorism

1. Each Party shall adopt such legislative and other measures as may be necessary to enable it to apply the provisions contained in Chapters III, IV and V of this Convention to the financing of terrorism.

2. In particular, each Party shall ensure that it is able to search, trace, identify, freeze, seize and confiscate property, of a licit or illicit origin, used or allocated to be used by any means, in whole or in part, for the financing of terrorism, or the proceeds of this offence, and to provide co-operation to this end to the widest possible extent.

Chapter III – Measures to be taken at national level

Section 1 – General provisions

Article 3 – Confiscation measures

1. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property.

2. Provided that paragraph 1 of this article applies to money laundering and to the categories of offences in the appendix to the Convention, each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies

a) only in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year. However, each Party may make a declaration on this provision in respect of the confiscation of the proceeds from tax offences for the sole purpose of being able to confiscate such proceeds, both nationally and through international cooperation, under national and international tax-debt recovery legislation; and/or

b) only to a list of specified offences.

3. Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.

4. Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

Article 4 – Investigative and provisional measures

Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify, trace, freeze or seize rapidly property which is liable to confiscation pursuant to Article 3, in order in particular to facilitate the enforcement of a later confiscation.

Article 5 – Freezing, seizure and confiscation

Each Party shall adopt such legislative and other measures as may be necessary to ensure that the measures to freeze, seize and confiscate also encompass:

a) the property into which the proceeds have been transformed or converted;

b) property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds;

c) income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.

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 7 – Investigative powers and techniques

1. Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy.

2. Without prejudice to paragraph 1, each Party shall adopt such legislative and other measures as may be necessary to enable it to:

a) determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts;

b) obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account;

c) monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts; and,

d) ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out.

Parties shall consider extending this provision to accounts held in non-bank financial institutions.

3. Each Party shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto, such as observation, interception of telecommunications, access to computer systems and order to produce specific documents.

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 9 – Laundering offences

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

a) the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;

and, subject to its constitutional principles and the basic concepts of its legal system;

c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

d) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For the purposes of implementing or applying paragraph 1 of this article:

a) it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party;

b) it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

c) knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

3. Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this Article, in either or both of the following cases where the offender

a) suspected that the property was proceeds,

b) ought to have assumed that the property was proceeds.

4. Provided that paragraph 1 of this article applies to the categories of predicate offences in the appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:

a) only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or

b) only to a list of specified predicate offences; and/or

c) to a category of serious offences in the national law of the Party.

5. Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.

6. Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.

7. Each Party shall ensure that predicate offences for money laundering extend to conduct that occurred in another State, which constitutes an offence in that State, and which would have constituted a predicate offence had it occurred domestically. Each Party may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically.

Article 10 – Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

a) a power of representation of the legal person; or

b) an authority to take decisions on behalf of the legal person; or

c) an authority to exercise control within the legal person,

as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

3. Liability of a legal person under this Article shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.

4. Each Party shall ensure that legal persons held liable in accordance with this Article, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11 – Previous decisions

Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention.

Section 2 - Financial intelligence unit (FIU) and prevention

Article 12 – Financial intelligence unit (FIU)

1. Each Party shall adopt such legislative and other measures as may be necessary to establish an FIU as defined in this Convention.

2. Each Party shall adopt such legislative and other measures as may be necessary to ensure that its FIU has access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of suspicious transaction reports.

Article 13 – Measures to prevent money laundering

1. Each Party shall adopt such legislative and other measures as may be necessary to institute a comprehensive domestic regulatory and supervisory or monitoring regime to prevent money laundering and shall take due account of applicable international standards, including in particular the recommendations adopted by the Financial Action Task Force on Money Laundering (FATF).

2. In that respect, each Party shall adopt, in particular, such legislative and other measures as may be necessary to:

a) require legal and natural persons which engage in activities which are particularly likely to be used for money laundering purposes, and as far as these activities are concerned, to:

i. identify and verify the identity of their customers and, where applicable, their ultimate beneficial owners, and to conduct ongoing due diligence on the business relationship, while taking into account a risk based approach;

ii. report suspicions on money laundering subject to safeguard;

iii. take supporting measures, such as record keeping on customer identification and transactions, training of personnel and the establishment of internal policies and procedures, and if appropriate, adapted to their size and nature of business;

b) prohibit, as appropriate, the persons referred to in sub-paragraph a from disclosing the fact that a suspicious transaction report or related information has been transmitted or that a money laundering investigation is being or may be carried out;

c) ensure that the persons referred to in sub-paragraph a are subject to effective systems for monitoring, and where applicable supervision, with a view to ensure their compliance with the requirements to combat money laundering, where appropriate on a risk sensitive basis.

3. In that respect, each Party shall adopt such legislative or other measures as may be necessary to detect the significant physical cross border transportation of cash and appropriate bearer negotiable instruments.

Article 14 – Postponement of domestic suspicious transactions

Each Party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by the FIU or, as appropriate, by any other competent authorities or body, when there is a suspicion that a transaction is related to money laundering, to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion. Each party may restrict such a measure to cases where a suspicious transaction report has been submitted. The maximum duration of any suspension or withholding of consent to a transaction shall be subject to any relevant provisions in national law.

Chapter IV – International co-operation

Section 1 – Principles of international co-operation

Article 15 – General principles and measures for international co-operation

1. The Parties shall mutually co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.

2. Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:

a) for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;

b) for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.

3. Investigative assistance and provisional measures sought in paragraph 2.b shall be carried out as permitted by and in accordance with the internal law of the requested Party. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its law.

4. Each Party shall adopt such legislative or other measures as may be necessary to ensure that the requests coming from other Parties in order to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of internal procedures.

Section 2 – Investigative assistance

Article 16 – Obligation to assist

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

Article 17 – Requests for information on bank accounts

1. Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts.

2. The obligation set out in this article shall apply only to the extent that the information is in the possession of the bank keeping the account.

3. In addition to the requirements of Article 37, the requesting party shall, in the request:

a) state why it considers that the requested information is likely to be of substantial value for the purpose of the criminal investigation into the offence;

b) state on what grounds it presumes that banks in the requested Party hold the account and specify, to the widest extent possible, which banks and/or accounts may be involved; and

c) include any additional information available which may facilitate the execution of the request.

4. The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.

5. Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that this article applies only to the categories of offences specified in the list contained in the appendix to this Convention.

6. Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 18 – Requests for information on banking transactions

1. On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.

3. In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.

4. The requested Party may make the execution of such a request dependant on the same conditions as it applies in respect of requests for search and seizure.

5. Parties may extend this provision to accounts held in non-bank financial institutions. Such extension may be made subject to the principle of reciprocity.

Article 19 – Requests for the monitoring of banking transactions

1. Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party.

2. In addition to the requirements of Article 37, the requesting Party shall in its request indicate why it considers the requested information relevant for the purpose of the criminal investigation into the offence.

3. The decision to monitor shall be taken in each individual case by the competent authorities of the requested Party, with due regard for the national law of that Party.

4. The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Parties.

5. Parties may extend this provision to accounts held in non-bank financial institutions.

Article 20 – Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

Section 3 – Provisional measures

Article 21 – Obligation to take provisional measures

1. At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.

2. A Party which has received a request for confiscation pursuant to Article 23 shall, if so requested, take the measures mentioned in paragraph 1 of this article

in respect of any property which is the subject of the request or which might be such as to satisfy the request.

Article 22 – Execution of provisional measures

1. After the execution of the provisional measures requested in conformity with paragraph 1 of Article 21, the requesting Party shall provide spontaneously and as soon as possible to the requested Party all information which may question or modify the extent of these measures. The requesting Party shall also provide without delays all complementary information requested by the requested Party and which is necessary for the implementation of and the follow up to the provisional measures.

2. Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

Section 4 – Confiscation

Article 23 – Obligation to confiscate

1. A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:

a) enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or

b) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.

2. For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.

3. The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.

4. If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

5. The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention.

Article 24 – Execution of confiscation

1. The procedures for obtaining and enforcing the confiscation under Article 23 shall be governed by the law of the requested Party.

2. The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.

3. Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.

4. If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.

5. In the case of Article 23, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

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.

Article 27 – Imprisonment in default

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 23, if the requesting Party has so specified in the request.

Section 5 – Refusal and postponement of co-operation

Article 28 – Grounds for refusal

1. Co-operation under this chapter may be refused if:

a) the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or

b) the execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of the requested Party; or

c) in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or

d) the offence to which the request relates is a fiscal offence, with the exception of the financing of terrorism;

e) the offence to which the request relates is a political offence, with the exception of the financing of terrorism; or

f) the requested Party considers that compliance with the action sought would be contrary to the principle of *ne bis in idem*; or

g) the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action. Where dual criminality is required for co-operation under this chapter, that requirement shall be deemed to be satisfied regardless of whether both Parties place the offence within the same category of offences or denominate the offence by the same terminology, provided that both Parties criminalise the conduct underlying the offence.

2. Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.

3. Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

4. Co-operation under Section 4 of this chapter may also be refused if:

a) under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or

b) without prejudice to the obligation pursuant to Article 23, paragraph 3, it would be contrary to the principles of the domestic law of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:

i. an economic advantage that might be qualified as its proceeds; or

ii. property that might be qualified as its instrumentalities; or

c) under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or

d) without prejudice to Article 23, paragraph 5, the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or

e) confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or

f) the request relates to a confiscation order resulting from a decision rendered in absentia of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings conducted by the requesting Party

leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.

5. For the purpose of paragraph 4.f of this article a decision is not considered to have been rendered *in absentia* if:

a) it has been confirmed or pronounced after opposition by the person concerned; or

b) it has been rendered on appeal, provided that the appeal was lodged by the person concerned.

6. When considering, for the purposes of paragraph 4.f of this article if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made *in absentia*, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.

7. A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

8. Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:

a) the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;

b) the fact that the natural person against whom an order of confiscation of proceeds has been issued has died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved shall not be invoked as an obstacle to render assistance in accordance with Article 23, paragraph 1.a.

c) the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering, in accordance with Article 9.2.b of this Convention, shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter.

Article 29 – Postponement

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

Article 30 – 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.

Section 6 – Notification and protection of third parties' rights

Article 31 – Notification of documents

1. The Parties shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.

2. Nothing in this article is intended to interfere with:

a) the possibility of sending judicial documents, by postal channels, directly to persons abroad;

b) the possibility for judicial officers, officials or other competent authorities of the Party of origin to effect service of judicial documents directly through the consular authorities of that Party or through judicial officers, officials or other competent authorities of the Party of destination,

unless the Party of destination makes a declaration to the contrary to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

3. When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Party, this Party shall indicate what legal remedies are available under its law to such persons.

Article 32 – Recognition of foreign decisions

1. When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.

2. Recognition may be refused if:

a) third parties did not have adequate opportunity to assert their rights; or

b) the decision is incompatible with a decision already taken in the requested Party on the same matter; or

c) it is incompatible with the ordre public of the requested Party; or

d) the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of the requested Party.

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 35 – Form of request and languages

1. All requests under this chapter shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting Party is prepared, upon request, to produce at any time a written record of such communication and the original. However each Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, indicate the conditions in which it is ready to accept and execute requests received electronically or by any other means of communication.

2. Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.

3. At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any State or the European Community may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 36 – Legalisation

Documents transmitted in application of this chapter shall be exempt from all legalisation formalities.

Article 37 – Content of request

1. Any request for co-operation under this chapter shall specify:

a) the authority making the request and the authority carrying out the investigations or proceedings;

b) the object of and the reason for the request;

c) the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;

d) in so far as the co-operation involves coercive action:

i. the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and

ii. an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;

e) where necessary and in so far as possible:

i. details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and

ii. the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and

f) any particular procedure the requesting Party wishes to be followed.

2. A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3. In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:

a) in the case of Article 23, paragraph 1.a:

i. a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;

ii. an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;

iii. information as to the extent to which the enforcement of the order is requested; and

iv. information as to the necessity of taking any provisional measures;

b) in the case of Article 23, paragraph 1.b, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

c) when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

Article 38 – Defective requests

1. If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.

2. The requested Party may set a time-limit for the receipt of such amendments or information.

3. Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

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 41 – 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 42 – Restriction of use

1. The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.

2. Each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

Article 43 – Confidentiality

1. The requesting Party may require that the requested Party keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

2. The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

3. Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 20 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.

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.

Chapter V – Co-operation between FIUs

Article 46 – Co-operation between FIUs

1. Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.

2. For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.

3. Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.

4. Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.

5. When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.

6. An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.

7. Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.

8. When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.

9. Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.

10. FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.

11. The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.

12. The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.

13. Parties shall indicate the unit which is an FIU within the meaning of this article.

Article 47 – International co-operation for postponement of suspicious transactions

1. Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.

2. The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:

a) the transaction is related to money laundering; and

b) the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report.

Chapter VI – Monitoring mechanism and settlement of disputes

Article 48 – Monitoring mechanism and settlement of disputes

1. The Conference of the Parties (COP) shall be responsible for following the implementation of the Convention. The COP:

a) shall monitor the proper implementation of the Convention by the Parties;

b) shall, at the request of a Party, express an opinion on any question concerning the interpretation and application of the Convention.

2. The COP shall carry out the functions under paragraph 1.a above by using any available Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval) public summaries (for Moneyval countries) and any available FATF public summaries (for FATF countries), supplemented by periodic self assessment questionnaires, as appropriate. The monitoring procedure will deal with areas covered by this Convention only in respect of those areas which are not covered by other relevant international standards on which mutual evaluations are carried out by the FATF and Moneyval.

3. If the COP concludes that it requires further information in the discharge of its functions, it shall liaise with the Party concerned, taking advantage, if so required by the COP, of the procedure and mechanism of Moneyval. The Party concerned shall then report back to the COP. The COP shall on this basis decide whether or not to carry out a more in-depth assessment of the position of the Party concerned. This may, but need not necessarily, involve, a country visit by an evaluation team.

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.

5. The COP shall adopt its own rules of procedure.

6. The Secretary General of the Council of Europe shall convene the COP not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the COP shall be held in accordance with the rules of procedure adopted by the COP.

Chapter VII – Final Provisions

Article 49 – Signature and entry into force

1. The Convention shall be open for signature by the member States of the Council of Europe, the European Community and non-member States which have participated in its elaboration. Such States or the European Community may express their consent to be bound by:

a) signature without reservation as to ratification, acceptance or approval; or

b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 6 signatories, of which at least four are member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

4. In respect of any Signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 1.

5. No Party to the 1990 Convention may ratify, accept or approve this Convention without considering itself bound by at least the provisions corresponding to the provisions of the 1990 Convention to which it is bound.

6. As from its entry into force, Parties to this Convention, which are at the same time Parties to the 1990 Convention:

a) shall apply the provisions of this Convention in their mutual relationships;

b) shall continue to apply the provisions of the 1990 Convention in their relations with other Parties to the said Convention, but not to the present Convention.

Article 50 – Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Parties to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Parties entitled to sit on the Committee.

2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 51 – Territorial application

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which the Convention shall apply.

2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of the Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 52 – Relationship to other conventions and agreements

1. This Convention does not affect the rights and undertakings of Parties derived from international multilateral instruments concerning special matters.

2. The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for the purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3. If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of the Convention, if it facilitates international co-operation.

4. Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.

Article 53 – Declarations and reservations

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more of the declaration provided for in Article 3, paragraph 2, Article 9, paragraph 4, Article 17, paragraph 5, Article 24, paragraph 3, Article 31, paragraph 2, Article 35, paragraphs 1 and 3 and Article 42, paragraph 2.

2. Any State or the European Community may also, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General, reserve its right not to apply, in part or in whole, the provisions of Article 7, paragraph 2, sub-paragraph c; Article 9, paragraph 6; Article 46, paragraph 5; and Article 47.

3. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare the manner in which it intends to apply Articles 17 and 19 of this Convention, particularly taking into account applicable international agreements in the field of international co-operation in criminal matters. It shall notify any changes in this information to the Secretary General of the Council of Europe.

4. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare:

a) that it will not apply Article 3, paragraph 4 of this Convention; or

b) that it will apply Article 3, paragraph 4 of this Convention only partly; or

c) the manner in which it intends to apply Article 3, paragraph 4 of this Convention.

It shall notify any changes in this information to the Secretary General of the Council of Europe.

5. No other reservation may be made.

6. Any Party which has made a reservation under this article may wholly or partly withdraw it by means of a notification addressed to the Secretary General of

the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

7. A Party which has made a reservation in respect of a provision of the Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 54 – Amendments

1. Amendments to the Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the European Community and to every non-member State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 50.

2. Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC) which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.

4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5. Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

6. In order to update the categories of offences contained in the appendix, as well as amend Article 13, amendments may be proposed by any Party or by the Committee of Ministers. They shall be communicated by the Secretary General of the Council of Europe to the Parties.

7. After having consulted the Parties which are not members of the Council of Europe and, if necessary the CDPC, the Committee of Ministers may adopt an amendment proposed in accordance with paragraph 6 by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Parties. During this period, any Party may notify the Secretary General of any objection to the entry into force of the amendment in its respect.

8. If one-third of the Parties notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.

9. If less than one-third of the Parties notifies an objection, the amendment shall enter into force for those Parties which have not notified an objection.

10. Once an amendment has entered into force in accordance with paragraphs 6 to 9 of this article and a Party has notified an objection to it, this amendment shall come into force in respect of the Party concerned on the first day of the month following the date on which it has notified the Secretary General of the Council of Europe of its acceptance. A Party which has made an objection may withdraw it at any time by notifying it to the Secretary General of the Council of Europe.

11. If an amendment has been adopted by the Committee of Ministers, a State or the European Community may not express their consent to be bound by the Convention, without accepting at the same time the amendment.

Article 55 – Denunciation

1. Any Party may, at any time, denounce the Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3. The present Convention shall, however, continue to apply to the enforcement under Article 23 of confiscation for which a request has been made in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

Article 56 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Community, the non-member States which have participated in the elaboration of the Convention, any State invited to accede to it and any other Party to the Convention of:

a) any signature;

b) the deposit of any instrument of ratification, acceptance, approval or accession;

c) any date of entry into force of the Convention in accordance with Articles 49 and 50;

d) any declaration or reservation made under Article 53;

e) any other act, notification or communication relating to the Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at [Warsaw], this [16th] day of [May 2005], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Community, to the non-member States which have participated in the elaboration of the Convention and to any State invited to accede to it.

Appendix

a) participation in an organised criminal group and racketeering;
b) terrorism, including financing of terrorism;
c) trafficking in human beings and migrant smuggling;
d) sexual exploitation, including sexual exploitation of children;
e) illicit trafficking in narcotic drugs and psychotropic substances;
f) illicit arms trafficking;
g) illicit trafficking in stolen and other goods;
h) corruption and bribery;
i) fraud;
j) counterfeiting currency;

k) counterfeiting and piracy of products;
l) environmental crime;
m) murder, grievous bodily injury;
n) kidnapping, illegal restraint and hostage-taking;
o) robbery or theft;
p) smuggling;
q) extortion;
r) forgery;
s) piracy; and
t) insider trading and market manipulation.

Konvencija Saveta Evrope o pranju, traženju, zapleni i oduzimanju prihoda stečenih kriminalom i o finansiranju terorizma

Varšava, 16. maja 2005. godine

Preambula

Države-članice Saveta Evrope i druge potpisnice ove Konvencije,

uzimajući u obzir da je cilj Saveta Evrope postizanje većeg jedinstva među njegovim članicama;

ubeđene da je potrebno sprovoditi zajedničku krivičnu politiku koja ima za cilj zaštitu društva;

uzimajući u obzir da borba protiv teškog kriminala, koji je u sve većoj meri postao međunarodni problem, zahteva primenu modernih i delotvornih metoda u međunarodnim razmerama;

verujući da se jedan od tih metoda sastoji u lišavanju kriminalaca prihoda stečenih kroz razne vrste kriminala;

uzimajući u obzir da se za ostvarivanje tog cilja takođe mora uspostaviti sistem međunarodne saradnje koji će dobro funkcionisati;

imajući na umu Konvenciju Saveta Evrope o pranju, traženju, zapleni i oduzimanju prihoda stečenih kriminalom (ETS br. 141 - u daljem tekstu "Konvencija iz 1990");

podsećajući, takođe, na Rezoluciju 1373 (2001) o pretnjama za međunarodni mir i bezbednost koje su prouzrokovane terorističkim aktima koju je Savet bezbednosti Ujedinjenih nacija usvojio 28. septembra 2001. godine, a posebno njen stav 3g;

podsećajući na Međunarodnu konvenciju o suzbijanju finansiranja terorizma, koju je Generalna skupština Ujedinjenih nacija usvojila 9. decembra 1999. godine i posebno njene članove 2. i 4, koji obavezuju visoke strane ugovornice da finansiranje terorizma odrede kao krivično delo;

ubeđene u neophodnost preduzimanja neposrednih koraka za potvrđivanje i celovitu primenu Međunarodne konvencije o suzbijanju finansiranja terorizma, gore navedenu,

saglasile su se o sledećem:

Glava I

Definicije pojmova

Član 1.

Definicije pojmova

U svrhe ove konvencije:

a) "prihod" označava svaku ekonomsku korist, proisteklu ili stečenu, neposredno ili posredno, od krivičnih dela. Ona se može sastojati od bilo koje imovine, kako je to definisano u tački b) ovog člana;

b) "imovina" obuhvata imovinu svakog opisa, materijalnu ili nematerijalnu, pokretnu ili nepokretnu, i pravne dokumente ili instrumente kojima se dokazuje svojina ili interes u odnosu na takvu imovinu;

v) "sredstva" označava svaku imovinu koja se koristi ili se planira da se koristi na bilo koji način, u celini ili delimično, za izvršenje jednog ili više krivičnih dela;

g) "konfiskacija" označava kaznu ili meru koju izriče sud po sprovedenom postupku u vezi sa jednim ili više krivičnih dela, kojom se pravnosnažno oduzima imovina;

d) "predikatna krivična dela“ označava svako krivično delo putem koga je stečen prihod koji može postati predmet krivičnog dela definisanog u članu 9. ove konvencije;

đ) "finansijsko obaveštajna jedinica" (u daljem tekstu "FIU") označava centralnu, nacionalnu agenciju odgovornu za to da dobija (i, shodno ovlašćenjima, da zahteva), analizira i dostavlja nadležnim organima otkrića o finansijskim informacijama

i) u vezi sa sumnjivim prihodima i potencijalnim finansiranjem terorizma, ili

ii) koje su, shodno domaćem zakonodavstvu ili propisima, potrebne radi borbe protiv pranja novca i finansiranja terorizma;

e) "zamrzavanje" ili "zaplena" označava privremenu zabranu transfera, uništenja, konverzije, raspolaganja ili kretanja imovine ili privremeno preuzimanje staranja ili kontrole nad imovinom na osnovu naloga koji izda sud ili neki drugi nadležni organ;

ž) "finansiranje terorizma" označava krivična dela iz stava 2. gore navedene Međunarodne konvencije o suzbijanju finansiranja terorizma.

Glava II

Finansiranje terorizma

Član 2.

Primena Konvencije na finansiranje terorizma

1. Svaka strana ugovornica treba da usvoji zakonske i druge mere koje mogu biti potrebne da joj omoguće da primeni odredbe sadržane u glavama III, IV i V ove Konvencije na finansiranje terorizma.

2. Pre svega, svaka strana ugovornica treba da obezbedi da bude u mogućnosti da traži, uđe u trag, identifikuje, zamrzne, zapleni i konfiskuje imovinu, zakonitog ili nezakonitog porekla, koja je iskorišćena ili namenjena da bude korišćena, u celini ili delimično, za finansiranje terorizma, ili prihode stečene kroz to krivično delo, i da u tom cilju obezbedi najširu moguću saradnju.

Glava III

Mere koje treba preduzeti na nacionalnom nivou

Odeljak 1.

Opšte odredbe

Član 3.

Mere konfiskacije

1. Svaka strana ugovornica treba da usvoji takve zakonodavne i druge mere koje mogu biti neophodne da joj omoguće da konfiskuje sredstva i prihode ili imovinu čija vrednost odgovara tim prihodima ili opranoj imovini.

2. Pod uslovom da se stav 1. ovog člana odnosi na pranje novca i na kategorije krivičnih dela navedene u dodatku ove Konvencije, svaka strana ugovornica može, u vreme potpisivanja ili prilikom deponovanja instrumenata potvrđivanja, prihvatanja, odobrenja ili pristupanja, izjavom koju će uputiti generalnom sekretaru Saveta Evrope da saopšti da se stav 1. ovog člana primenjuje

a) samo u onoj meri u kojoj je to delo kažnjivo lišenjem slobode ili merom pritvora čija maksimalna dužina prelazi jednu godinu. Međutim, svaka strana ugovornica može povodom ove odredbe dati izjavu u vezi sa konfiskacijom prihoda ostvarenih poreskim deliktima isključivo u svrhu da sebi omogući da konfiskuje tu imovinu, na nacionalnom nivou i kroz međunarodnu saradnju, na osnovu nacionalnog i međunarodnog zakonodavstva kojim se uređuje povraćaj poreskih dugovanja; i/ili

b) samo na spisak izričito pobrojanih krivičnih dela.

3. Strane ugovornice mogu propisima da predvide obaveznu konfiskaciju kod krivičnih dela koja podležu režimu konfiskacije. Strane ugovornice mogu posebno da uvrste u ovu odredbu krivična dela pranja novca, krijumčarenja narkotika, krijumčarenja ljudi i bilo koje drugo teško krivično delo.

4. Svaka strana ugovornica treba da donese zakonske i druge mere koje mogu da budu potrebne da zahteva da, u slučaju teških krivičnih dela ili krivičnih dela definisanih unutrašnjim pravom, počinilac mora da dokaže poreklo navodnih prihoda ili druge imovine koja podleže konfiskaciji, u meri u kojoj je takav zahtev konzistentan sa načelima njenog unutrašnjeg prava.

Član 4.

Istražne i privremene mere

Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će joj omogućiti da brzo identifikuje, uđe u trag, zamrzne ili zapleni imovinu koja podleže konfiskaciji u skladu sa članom 3, pre svega kako bi olakšala izvršenje potonje konfiskacije.

Član 5.

Zamrzavanje, zaplena i konfiskacija

Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će joj omogućiti da obezbedi da mere zamrzavanja, zaplene i konfiskacije takođe obuhvataju:

a) imovinu u koju su prihodi transformisani ili konvertovani;

b) imovinu stečenu iz zakonitih izvora, ako su se prihodi pomešali, u celini ili delimično, sa takvom imovinom, do visine procenjene vrednosti tih "pomešanih" prihoda;

v) dobit ili druge koristi proistekle iz prihoda stečenih kriminalom, od imovine u koju su prihodi stečeni kriminalom transformisani ili konvertovani ili od imovine sa kojom su prihodi stečeni kriminalom pomešani, do visine procenjene vrednosti "pomešanih" prihoda, na isti način i u istom obimu kao i prihode stečene kriminalom.

Član 6.

Upravljanje zamrznutom ili zaplenjenom imovinom

Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će joj omogućiti da obezbedi valjano upravljanje zamrznutom ili zaplenjenom imovinom u skladu sa članovima 4. i 5. ove konvencije.

Član 7.

Istražna ovlašćenja i tehnike

1. Svaka strana ugovornica treba da usvoji potrebne zakonske ili druge mere koje će joj omogućiti da svojim sudovima ili drugim nadležnim organima obezbedi potrebna ovlašćenja kako bi mogli da nalože da bude podneta na uvid bankarska, finansijska ili trgovinska dokumentacija ili da bude zaplenjena kako bi se mogli sprovesti koraci iz članova 3, 4. i 5. Nijedna strana ugovornica neće odbiti da postupa shodno odredbama ovog člana pozivajući se na bankarsku tajnu kao na osnov.

2. Ne dovodeći u pitanje stav 1, svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će joj omogućiti da:

a) utvrdi da li je fizičko ili pravno lice imalac ili povlašćeni vlasnik jednog ili više računa, kakva god da je njihova priroda, u bilo kojoj banci koja se nalazi na njenoj teritoriji i da, ako je tako, dobije sve podrobnosti u vezi sa identifikovanim računima;

b) dobije precizne podatke o utvrđenim bankovnim računima i bankarskim operacijama koje su sprovedene u određenom vremenskom periodu preko jednog ili više određenih računa, uključujući tu i podatke o svakom računu na koji je novac upućivan ili na koji je novac priman;

v) nadzire, u utvrđenom periodu, bankarske operacije koje se sprovode preko jednog ili više identifikovanih računa; i

g) obezbedi da banke ne otkriju bankarskom klijentu o kome je reč niti trećim licima da su informacije tražene ili pribavljene u skladu sa tačkama a, b ili v, kao ni to da je istraga u toku.

Strane ugovornice treba da razmotre mogućnost da ova odredba bude proširena tako da obuhvati i račune u nebankarskim finansijskim institucijama.

3. Svaka strana ugovornica treba da razmotri mogućnost usvajanja takvih zakonskih i drugih mera koje će joj omogućiti da koristi specijalne istražne tehnike koje olakšavaju identifikaciju i ulaženje u trag prihodima kao i prikupljanje dokaza u vezi sa njima, kao što je observacija, presretanje telekomunikacija, pristup kompjuterskim sistemima i nalog za predočavanje određenih dokumenata.

Član 8.

Pravni lekovi

Svaka strana ugovornica treba da usvoji takve zakonske i druge mere koje će joj omogućiti da zainteresovane strane na koje se odnose mere iz članova 3, 4. i 5. i ostale relevantne odredbe u ovom odeljku, imaju na raspolaganju delotvorne pravne lekove kako bi zaštitile svoja prava.

Član 9.

Krivična dela pranja novca

1. Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će joj omogućiti da sledeća dela, kada su počinjena sa namerom, u svom unutrašnjem pravu okvalifikuje kao krivično delo:

a) konverzija ili transfer imovine, uz znanje da ta imovina predstavlja prihod od krivičnog dela, u svrhu sakrivanja ili prikrivanja nezakonitog porekla imovine ili pomaganje bilo kom licu koje je umešano u izvršenje krivičnog dela u sticaju da izbegne zakonske posledice svojih radnji;

b) sakrivanje ili prikrivanje prave prirode, izvora, lokacije, raspolaganja, kretanja, imovinskih prava ili prava vlasništva nad imovinom, uz znanje da ta imovina predstavlja prihod stečen od krivičnog dela;

i, u zavisnosti od ustavnih načela i osnovnih postavki njenog pravnog sistema;

v) sticanje, posedovanje ili korišćenje imovine, uz znanje, u trenutku primanja te imovine, da ona predstavlja prihod stečen krivičnim delom;

g) učestvovanje, udruživanje ili zavera u cilju izvršenja, pokušaji izvršenja i pomaganje, podsticanje, olakšavanje i pomaganje savetima izvršenja bilo kog dela utvrđenog u skladu sa ovim članom.

2. U svrhu sprovođenja ili primene stava 1. ovog člana:

a) nije važno da li delo u sticaju podleže krivičnoj jurisdikciji strane ugovornice;

b) može biti propisano da se krivična dela koja su navedena u ovom stavu ne odnose na lica koja su počinila delo u sticaju;

v) znanje, namera ili cilj potreban kao element krivičnog dela navedenog u tom stavu mogu se izvesti iz objektivnog, činjeničnog stanja.

3. Svaka strana ugovornica može da usvoji takve zakonske ili druge mere koje će joj omogućiti da u svom unutrašanjem pravu kvalifikuje kao krivično delo sva ili neka od dela iz stava 1. ovog člana, u jednom ili oba dole navedena slučaja u kojima je počinilac

a) sumnjao da imovina predstavlja prihod od kriminala;

b) trebalo da pretpostavi da imovina predstavlja prihod stečen od kriminala.

4. Pod uslovom da se stav 1. ovog člana primenjuje na kategorije krivičnih dela u sticaju koja su navedena u dodatku Konvencije, svaka država ili Evropska zajednica može, u trenutku potpisivanja ili prilikom deponovanja instrumenata potvrđivanja, prihvatanja, odobrenja ili pristupanja, izjavom upućenom generalnom sekretaru Saveta Evrope, da saopšti da se stav 1. ovog člana primenjuje:

a) samo u meri u kojoj je krivično delo u sticaju kažnjivo lišenjem slobode ili nalogom za pritvor čija maksimalna dužina prelazi jednu godinu ili, ako je reč o stranama ugovornicama u čijim pravnim sistemima postoji određen minimalni prag, u meri u kojoj je to krivično delo kažnjivo lišenjem slobode ili nalogom za pritvor od najmanje šest ili više meseci; i/ili

b) samo na spisak precizno navedenih krivičnih dela u sticaju; i/ili

v) na kategoriju teških krivičnih dela prema unutrašnjem pravu strane ugovornice.

5. Svaka strana ugovornica treba da obezbedi da prethodno ili istovremeno izricanje okrivljujuće presude nekom licu za krivično delo u sticaju nije preduslov za izricanje presude kojom se oglašava krivim za pranje novca.

6. Svaka strana ugovornica treba da obezbedi da izricanje presude kojom se neko oglašava krivim za pranje novca shodno ovom članu bude moguće gde god je dokazano da imovina, koja je predmet stava 1.a ili b ovog člana, vodi poreklo od krivičnog dela u sticaju, s tim što ne mora nužno da bude precizno ustanovljeno o kom je krivičnom delu reč.

7. Svaka strana ugovornica treba da obezbedi da se krivična dela u sticaju za pranje novca prošire na ponašanje koje se dogodilo u drugoj državi, a koje predstavlja krivično delo u toj državi, i koje bi predstavljalo krivično delo u sticaju da se dogodilo na domaćoj teritoriji. Svaka strana ugovornica može da propiše da u takvoj situaciji jedini preduslov jeste to da bi ponašanje, da se dogodilo na domaćoj teritoriji, predstavljalo krivično delo u sticaju.

Član 10.

Korporativna odgovornost

1. Svaka strana ugovornica treba da usvoji takve zakonodavne i druge mere koje će da omoguće da se obezbedi da pravna lica mogu da budu smatrana odgovornima za krivična dela pranja novca ustanovljena u skladu sa ovom konvencijom, koja počini bilo koje fizičko lice radi njihove koristi, a to fizičko lice deluje ili pojedinačno ili kao deo nekog organa pravnog lica, koji ima rukovodeću poziciju u pravnom licu, na osnovu:

a) prava da zastupa pravno lice; ili

b) ovlašćenja da donosi odluke u ime pravnog lica; ili

v) ovlašćenja da vrši kontrolu unutar pravnog lica,

kao i za učešće takvih fizičkih lica u svojstvu saučesnika ili onoga ko je podstakao na izvršenje gore navedenih krivičnih dela.

2. Pored slučajeva koji su već navedeni u stavu 1, svaka strana ugovornica treba da preduzme neophodne mere da obezbedi da pravno lice može da bude smatrano odgovornim kada odsustvo nadzora ili kontrole od fizičkog lica iz stava 1. omogući izvršenje krivičnog dela iz stava 1, koje delo u korist tog pravnog lica izvrši njemu podređeno fizičko lice.

3. Odgovornost pravnog lica shodno ovom članu ne isključuje krivične postupke protiv fizičkih lica koja su počinioci, koja podstiču na izvršenje ili su saučesnici u izvršenju krivičnih dela navedenih u stavu 1.

4. Svaka strana ugovornica treba da obezbedi da pravna lica koja se smatraju odgovornima shodno ovom članu budu podvrgnuta delotvornim, srazmernim krivičnim i nekrivičnim sankcijama uključujući tu i novčane sankcije, koje sve imaju ulogu odvraćanja.

Član 11.

Prethodne odluke

Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će joj omogućiti da, prilikom određivanja kazne, uzme u obzir konačne odluke protiv fizičkih ili pravnih lica donete u drugoj strani ugovornici u odnosu na krivična dela ustanovljena u skladu sa ovom konvencijom.

Odeljak 2.

Finansijsko obaveštajna jedinica (FIU) i sprečavanje

Član 12.

Finansijsko obaveštajna jedinica (FIU)

1. Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će joj omogućiti da ustanovi FIU onako kako je ona definisana u ovoj konvenciji.

2. Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će joj omogućiti da obezbedi da FIU ima pristup, neposredno ili posredno, na pravovremenoj osnovi, finansijskim, upravnim informacijama i informacijama u oblasti održavanja reda koje su joj potrebne da bi valjano obavljala svoje funkcije, uključujući tu i analizu izveštaja o sumnjivim transakcijama.

Član 13.

Mere za sprečavanje pranja novca

1. Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje treba da joj omoguće da uspostavi sveobuhvatni unutrašnji regulatorni i nadzorni režim, odnosno režim monitoringa, kako bi sprečila pranje novca i obratiće dužnu pažnju na primenjive međunarodne standarde uključujući tu, pre svega, preporuke koje je usvojila Radna grupa za finansijsku akciju u pogledu pranja novca (FATF).

2. U tom smislu, svaka strana ugovornica treba, pre svega, da donese potrebne zakonske i druge mere koje mogu da budu neophodne da bi:

a) zahtevala od pravnih i fizičkih lica koja se bave aktivnostima za koja postoji posebna verovatnoća da će biti iskorišćene u svrhe pranja novca, i u meri u kojoj je reč o tim aktivnostima, da

i) identifikuju i verifikuju identitet svojih klijenata i, gde je to primenjivo, vlasnika koji su krajnji korisnici, kao i da s dužnom pažnjom ispitaju poslovne odnose, uzimajući u obzir pristup koji se temelji na riziku;

ii) prijave sumnje u pogledu pranja novca radi preduzimanja zaštite;

iii) preduzmu mere podrške, kao što je čuvanje i arhiviranje podataka o identifikaciji klijenta i njegovim transakcijama, obuka osoblja i uspostavljanje interne

politike i postupaka i, ako je to primereno, prilagode to svojoj veličini i prirodi poslovanja;

b) zabrane, gde je to primereno, licima pomenutim u tački a) da obelodane činjenicu da je dostavljena informacija o sumnjivoj transakciji ili neka informacija s tim u vezi ili informaciju o tome da je istraga povodom pranja novca u toku ili da može biti u toku;

v) obezbede da lica iz tačke a) budu podvrgnuta delotvornim sistemima monitoringa, i gde je to primenjivo, nadzora, kako bi se osiguralo njihovo poštovanje zahteva za borbu protiv pranja novca, tamo gde je to moguće obaviti na osnovu procene rizika.

3. U tom smislu, svaka strana ugovornice treba da usvoji takve zakonodavne i druge mere koje će da joj omoguće da uoči značajan fizički prekogranični prenos gotovinskih sredstava i odgovarajućih instrumenata koji glase na donosioca.

Član 14.

Odlaganje domaćih sumnjivih transakcija

Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će da joj omoguće da FIU bude dozvoljeno da preduzme hitnu akciju ili da to, prema potrebi, učini bilo koji drugi nadležni organ ili telo, onda kada postoji sumnja da je neka transakcija povezana sa pranjem novca, da tu transakciju suspenduju ili da ne daju pristanak na njenu realizaciju kako bi analizirali tu transakciju i potvrdili svoje sumnje. Svaka strana ugovornica može da ograniči takvu meru na slučajeve u kojima je podnet izveštaj o sumnjivoj transakciji. Maksimalna dužina svake takve suspenzije ili nedavanja saglasnosti na transakciju podleže odgovarajućim odredbama domaćeg zakonodavstva.

Glava IV

Međunarodna saradnja

Odeljak 1.

Načela međunarodne saradnje

Član 15.

Opšta načela i mere međunarodne saradnje

1. Strane ugovornice među sobom treba da sarađuju u najširoj mogućoj meri u svrhu istraga i postupaka koji imaju za cilj konfiskaciju sredstava i prihoda stečenih kriminalom.

2. Svaka strana ugovornica treba da usvoji potrebne zakonske i druge mere koje će da joj omoguće da, u skladu sa uslovima propisanim u ovoj glavi, ispuni zahteve:

a) za konfiskaciju konkretnih stvari koje predstavljaju dobit ili sredstava stečena kriminalom, kao i za konfiskaciju takve dobiti, koja sadrži zahtev za uplatu novčanog iznosa koji odgovara vrednosti stečenoj kriminalom;

b) za pomoć u istrazi i donošenju privremenih mera u cilju bilo kog vida konfiskacije iz tačke a) u gore navedenom tekstu.

3. Pomoć u istrazi i privremene mere iz stava 2.b biće pružene, odnosno sprovedene onako kako to propisuje i dopušta unutrašnje pravo zamoljene strane

ugovornice. Kada se zahtevom koji se tiče jedne od tih mera preciziraju formalnosti ili postupci koji su neophodni u skladu sa unutrašnjim pravom strane molilje, čak i ako nisu poznati zamoljenoj strani ugovornici, potonja će ispuniti te zahteve u meri u kojoj tražena radnja nije u suprotnosti sa njenim osnovnim pravnim načelima.

4. Svaka strana ugovornica treba da usvoji odgovarajuće zakonske ili druge mere koje će da joj omoguće da osigura da zahtevi koje upućuju druge strane ugovornice radi identifikacije, ulaženja u trag, zamrzavanja ili zaplene prihoda i sredstava stečenih kriminalom dobiju isti onaj prioritetni značaj koji dobijaju odgovarajući zahtevi kada su upućeni u okviru unutrašnjih pravnih postupaka.

Odeljak 2.

Pomoć u istrazi

Član 16.

Obaveza pružanja pomoći

Strane ugovornice treba, na zahtev, jedna drugoj da pruže najveću moguću pomoć u identifikaciji sredstava, prihoda i druge imovine stečene kriminalom koja podleže konfiskaciji, kao i ulaženju u trag tim sredstvima, prihodima i imovini. Takva pomoć obuhvata svaku meru kojom se obezbeđuju dokazi u pogledu postojanja, lokacije ili kretanja, prirode, pravnog statusa ili vrednosti navedene imovine.

Član 17.

Zahtevi za informacije o bankovnim računima

1. Svaka strana ugovornica, pod uslovima navedenim u ovom članu, treba da preduzme mere koje su neophodne da bi utvrdila, u odgovoru na zahtev koji dobije od druge strane ugovornice, da li fizičko ili pravno lice koje je predmet krivične istrage poseduje ili kontroliše jedan ili više računa, kakve bilo prirode, u bilo kojoj banci koja se nalazi na njenoj teritoriji i da, ako je tako, pribavi detaljne podatke o identifikovanim računima.

2. Obaveza propisana u ovom članu primenjuje se samo u meri u kojoj su te informacije u posedu banke kod koje se nalazi račun.

3. Pored zahteva iz člana 37, strana molilja, u tom zahtevu, treba da:

a) navede zbog čega smatra da će tražene informacije verovatno biti od suštinskog značaja u svrhu krivične istrage o krivičnom delu;

b) navede na kom osnovu pretpostavlja da se račun nalazi u bankama u zamoljenoj državi i precizira, u najvećoj mogućoj meri, o kojim se bankama i/ili računima radi; i

v) navede sve raspoložive dodatne informacije koje bi mogle da olakšaju izvršenje ovog zahteva.

4. Zamoljena strana ugovornica može da uslovi izvršenje takvog zahteva istim uslovima koje primenjuje u odnosu na zahteve za traženje i zaplenu.

5. Svaka država ili Evropska zajednica može, u trenutku potpisivanja ili prilikom deponovanja instrumenata potvrđivanja, prihvatanja, odobrenja ili pristupanja, izjavom upućenom generalnom sekretaru Saveta Evrope, da saopštiti da se ovaj član primenjuje samo na kategorije krivičnih dela koje su naznačene na spisku sadržanom u dodatku ove konvencije.

6. Strane ugovornice mogu da prošire ovu odredbu na račune koji su otvoreni u nebankarskim finansijskim institucijama. Takav zahtev može da podleže načelu reciprociteta.

Član 18.

Zahtevi za informacije o bankarskim transakcijama

1. Na zahtev druge strane ugovornice, zamoljena strana ugovornica treba da dostavi pojedinosti o konkretnim bankovnim računima i o bankarskim operacijama obavljenim u određenom periodu, preko jednog ili više računa koji su precizirani u zahtevu, uključujući tu i detalje o svakom računu sa koga je novac upućivan ili na koji je upućivan.

2. Obaveza navedena u ovom članu treba da se primenjuju samo u meri u kojoj se te informacije nalaze u posedu banke u kojoj se račun nalazi.

3. Pored zahteva iz člana 37, strana molilja treba da navede u svom zahtevu zbog čega smatra da su tražene informacije relevantne za krivičnu istragu povodom tog dela.

4. Zamoljena strana ugovornica može da uslovi izvršenje tog zahteva istim uslovima koje postavlja u odnosu na zahteve za traženje i zaplenu.

5. Strane ugovornice mogu da prošire ovu odredbu na račune koji se nalaze u nebankarskim finansijskim institucijama. To proširenje može da podleže načelu reciprociteta.

Član 19.

Zahtevi za nadzor nad bankarskim transakcijama

1. Svaka strana ugovornica treba da obezbedi da, na zahtev druge strane ugovornice, bude u stanju da nadzire, tokom određenog perioda, bankarske operacije koje se sprovode preko jednog ili više računa navedenih u zahtevu i da rezultate tog nadzora dostavi strani molilji.

2. Pored zahteva iz člana 37, strana molilja treba, u tom zahtevu, da navede zbog čega smatra da su tražene informacije relevantne za krivičnu istragu povodom tog dela.

3. Odluku o sprovođenju nadzora treba da donesu u svakom pojedinačnom slučaju nadležni organi zamoljene strane, posvećujući dužnu pažnju unutrašnjem pravu te strane.

4. Praktične detalje u vezi sa nadzorom među sobom treba da usaglase nadležni organi strane molilje i zamoljene strane.

5. Strane ugovornice mogu da prošire ovu odredbu na račune koji se nalaze u nebankarskim finansijskim institucijama.

Član 20.

Spontano informisanje

Ne dovodeći u pitanje sopstvene istrage i postupke, strana ugovornica može bez prethodnog zahteva da prosledi drugoj strani ugovornici informacije o sredstvima i prihodima stečenim kriminalom, onda kada smatra da obelodanjivanje takve informacije može da pomogne strani koja informacije prima da pokrene ili da sprovede istrage ili postupke ili da bi to obelodanjivanje moglo da dovede do zahteva koji bi ta strana ugovornica uputila u skladu sa ovom glavom.

Odeljak 3.

Privremene mere

Član 21.

Obaveza preduzimanja privremenih mera

1. Na zahtev druge strane ugovornice koja je pokrenula krivični postupak ili postupke radi konfiskacije, strana ugovornica treba da preduzme neophodne privremene mere, kao što su zamrzavanje ili zaplena, da bi sprečila svaki promet, prenos ili raspolaganje imovinom koja, u nekoj kasnijoj fazi, može da bude predmet zahteva za konfiskaciju ili koja bi, kao takva, mogla da odgovara zahtevu.

2. Strana ugovornica koja je dobila zahtev za konfiskaciju shodno članu 23. treba da preduzme, ako se to od nje traži, mere iz stava 1. ovog člana u odnosu na svaku imovinu koja je predmet zahteva ili koja bi mogla da zadovolji taj zahtev.

Član 22.

Izvršenje privremenih mera

1. Posle izvršenja privremenih mera zahtevanih u skladu sa stavom 1. člana 21, strana molilja spontano i u najkraćem mogućem roku treba da dostavi zamoljenoj strani sve informacije koje mogu dovesti u pitanje ili modifikovati obim tih mera. Strana molilja takođe, bez odlaganja, treba da dostavi sve dopunske informacije koje traži zamoljena strana i koje su neophodne za sprovođenje i dalje praćenje privremenih mera.

2. Pre ukidanja bilo koje privremene mere preduzete u skladu sa ovim članom, zamoljena strana treba, gde god je to moguće, da pruži strani molilji mogućnost da predoči svoje razloge u korist daljeg trajanja te mere.

Odeljak 4.

Konfiskacija

Član 23.

Obaveza konfiskacije

1. Strana ugovornica koja je dobila zahtev druge strane ugovornice za konfiskaciju sredstava ili prihoda stečenog kriminalom, a koje se nalaze na njenoj teritoriji, treba da:

a) sprovede nalog za konfiskaciju koji je doneo sud strane molilje u odnosu na ta sredstva ili prihode stečene kriminalom; ili

b) podnese zahtev svojim nadležnim organima za dobijanje naloga za konfiskaciju i, ako je takav nalog odobren, sprovede taj nalog.

2. U cilju primene stava 1 b) ovog člana, svaka strana ugovornica treba da, kada god je to potrebno, bude nadležna da pokrene konfiskacioni postupak u skladu sa sopstvenim pravom.

3. Odredbe stava 1. ovog člana primenjuju se, takođe, na konfiskaciju određenu u zahtevu da se uplati odgovarajuća svota novca koja po vrednosti odgovara prihodu stečenom kriminalom, ako se imovina na kojoj konfiskacija može da bude sprovedena nalazi kod zamoljene strane ugovornice. U takvim slučajevima, prilikom sprovođenja konfiskacije shodno stavu 1, zamoljena strana će, ako plaćanje

nije postignuto, realizovati zahtev na svakoj imovini koja je u tu svrhu na raspolaganju.

4. Ako se zahtev za konfiskaciju odnosi na konkretnu imovinu, strane ugovornice mogu da se dogovore da zamoljena strana sprovede konfiskaciju u vidu zahteva za plaćanje određene svote novca koja odgovara vrednosti imovine.

5. Strane ugovornice treba da sarađuju u najvećoj mogućoj meri shodno svom domaćem zakonodavstvu sa onim stranama ugovornicama koje zahtevaju izvršenje mera koje odgovaraju konfiskaciji sve do oduzimanja imovine, a to nisu krivične sankcije, u obimu u kome takve mere izrekne sudski organ strane molilje u odnosu na krivično delo, pod uslovom da je ustanovljeno da ta imovina predstavlja prihod stečen od kriminala ili drugu imovinu u smislu člana 5. ove konvencije.

Član 24.

Izvršenje konfiskacije

1. Postupci za postizanje i sprovođenje konfiskacije shodno članu 23. uređuju se pravom zamoljene strane ugovornice.

2. Zamoljena strana ugovornica obavezna je da poštuje nalaze o činjenicama ukoliko su oni navedeni u presudi ili sudskoj odluci strane molilje za konfiskaciju ili u meri u kojoj se presuda ili sudska odluka implicitno zasniva na njima.

3. Svaka država ili Evropska zajednica može u trenutku potpisivanja ili prilikom deponovanja instrumenata potvrđivanja, prihvatanja, odobravanja ili pristupanja, izjavom upućenom generalnom sekretaru Saveta Evrope, da saopšti kako se stav 2. ovog člana primenjuje samo u zavisnosti od njenih ustavnih načela i osnovnih postavki njenog pravnog sistema.

4. Ako se konfiskacija sastoji u zahtevu za uplatu novčanog iznosa, nadležni organ zamoljene strane ugovornice treba da pretvori taj iznos u valutu koja važi u toj strani ugovornici po deviznom kursu koji važi u trenutku donošenja odluke o sprovođenju konfiskacije.

5. U slučaju člana 23, stav 1.a, samo strana molilja ima pravo da odluči o svakom zahtevu za reviziju naloga za konfiskaciju.

Član 25.

Konfiskovana imovina

1. Imovina koju neka strana ugovornica konfiskuje u skladu sa članovima 23. i 24. ove konvencije treba da bude na raspolaganju toj strani u skladu sa njenim unutrašnjim pravnim i upravnim postupcima.

2. Kada postupaju po zahtevu druge strane ugovornice u skladu sa članovima 23. i 24. ove konvencije, strane ugovornice treba da, u meri u kojoj im to dopušta domaće zakonodavstvo i ako je tako zatraženo, daju prvenstvo razmatranju mogućnosti za povraćaj konfiskovane imovine strani molilji, kako bi ona mogla da obezbedi nadoknadu oštećenim stranama kriminala ili da vrati tu imovinu njenim legitimnim vlasnicima.

3. Kada postupa po zahtevu druge strane ugovornice shodno članovima 23. i 24. ove konvencije, strana ugovornica može posebno da razmotri mogućnost zaključivanja sporazuma ili dogovora o zajedničkoj podeli sa drugim stranama ugovornicama, redovno ili od slučaja do slučaja, takve imovine, shodno svom domaćem zakonodavstvu ili upravnim postupcima.

Član 26.

Pravo sprovođenja i maksimalni iznos konfiskacije

1. Zahtev za izvršenje konfiskacije podnet shodno članovima 23. i 24. ne utiče na pravo strane ugovornice koja je taj zahtev uputila da sama izvrši nalog za konfiskaciju.

2. Ništa u ovoj konvenciji neće biti protumačeno na način koji bi omogućio da ukupna vrednost konfiskacije premaši novčani iznos naveden u nalogu za konfiskaciju. Ako strana ugovornica zaključi da bi to moglo da se dogodi, onda treba da se strane ugovornice o kojima je reč konsultuju da bi izbegle takav učinak.

Član 27.

Lišenje slobode zbog neizvršenja obaveze

Zamoljena strana ugovornica neće da izvrši hapšenje zbog neispunjavanja obaveze, niti će da preduzme ma koju drugu meru kojom bi se ograničila sloboda lica na osnovu zahteva podnetog prema članu 23, ako je strana ugovornica koja je zahtev podnela to navela u zahtevu.

Odeljak 5.

Odbijanje i odlaganje saradnje

Član 28.

Osnovi za odbijanje

1. Saradnja shodno ovoj glavi može da bude odbijena ako bi:

a) tražena mera bila u suprotnosti sa osnovnim načelima pravnog sistema zamoljene strane ugovornice; ili

b) izvršenje zahteva verovatno naštetilo suverenitetu, bezbednosti, javnom redu ili drugim suštinskim interesima zamoljene strane ugovornice; ili

v) po mišljenju zamoljene strane ugovornice, važnost slučaja na koji se zahtev odnosi ne opravdava preduzimanje tražene mere; ili

g) delo na koje se zahtev odnosi predstavlja fiskalni delikt, sa izuzetkom finansiranja terorizma;

d) delo na koje se zahtev odnosi predstavlja politički delikt, sa izuzetkom finansiranja terorizma; ili

đ) zamoljena strana ugovornica smatra da bi saglasnost sa traženom merom bila u suprotnosti sa načelom ne bis in idem; ili

e) delo na koje se zahtev odnosi ne bi predstavljalo krivično delo po pravu zamoljene strane da je počinjeno na teritoriji pod njenom jurisdikcijom. Međutim, ovaj osnov za odbijanje odnosi se na saradnju iz odeljka 2. samo onoliko koliko tražena pomoć podrazumeva i prinudnu radnju. Ako se za saradnju u skladu sa ovom glavom traži dvostruka kažnjivost, smatraće se da je taj zahtev ispunjen bez obzira na to da li obe strane ugovornice svrstavaju to krivično delo u istu kategoriju krivičnih dela ili u opisu tog krivičnog dela koriste istu terminologiju, pod uslovom da obe strane ugovornice svrstavaju ponašanje koje leži u osnovi tog dela u kriminalne radnje.

2. Saradnja shodno odeljku 2, u meri u kojoj tražena pomoć podrazumeva prinudnu radnju, kao i shodno odeljku 3. ove glave, može takođe biti odbijena ako

tražene mere nije mogućno preduzeti u skladu sa unutrašnjim pravom zamoljene strane ugovornice u svrhu istraga ili postupaka, kad bi se radilo o sličnom domaćem slučaju.

3. Kada to zahteva zakonodavstvo zamoljene strane ugovornice, saradnja u skladu sa odeljkom 2, ukoliko tražena pomoć obuhvata prinudnu radnju, i u skladu sa odeljkom 3. ove glave takođe može biti odbijena, ako tražene mere ili bilo koje druge mere sa sličnim efektima ne bi bile dozvoljene prema pravu strane ugovornice koja je uputila zahtev ili, kada je reč o nadležnim organima strane koja je uputila zahtev, ako taj zahtev nije odobrio sudija ili neki drugi sudski organ, uključujući tu javne tužioce, ili bilo koji organ koji postupa u krivičnim stvarima.

4. Saradnja prema odeljku 4. ove glave može takođe biti odbijena:

a) ako domaće zakonodavstvo zamoljene strane ugovornice ne predviđa konfiskaciju u vezi sa tipom krivičnog dela na koje se zahtev odnosi; ili

b) ako bi, bez dovođenja u pitanje obaveze shodno članu 23, stav 3, bilo suprotno načelima domaćeg zakonodavstva zamoljene strane ugovornice u vezi sa granicama konfiskacije u pogledu odnosa između delikta i:

i) ekonomske koristi koja bi mogla da se okvalifikuje kao prihod od tog krivičnog dela; ili

ii) imovine koja bi mogla da bude okvalifikovana kao sredstva stečena tim krivičnim delom; ili

v) prema domaćem zakonodavstvu zamoljene strane ugovornice konfiskacija više ne može biti izrečena kao mera niti sprovedena zbog isteka vremena; ili

g) ne dovodeći u pitanje član 23, stav 5, zahtev se ne odnosi na prethodnu presudu, ili odluku sudske prirode, ili izreku sadržanu u takvoj odluci da je krivično delo ili nekoliko krivičnih dela bilo počinjeno, na osnovu čega je naložena ili tražena konfiskacija; ili

d) konfiskacija ili nije sprovodljiva u strani ugovornici koja je zahtev uputila, ili je ona još uvek predmet redovne žalbe; ili

đ) zahtev se odnosi na nalog za konfiskaciju koji proističe iz odluke donete u odsustvu lica protiv koga je taj nalog izdat i, po mišljenju zamoljene strane ugovornice, postupci koje je vodila strana molilja, a doveli su do takve odluke, nisu zadovoljili minimalno pravo na odbranu koje je priznato svakome ko se tereti za krivično delo.

5. U smislu stava 4. tačka đ) ovog člana odluka se ne smatra donetom u odsustvu ako je:

a) bila potvrđena ili objavljena posle protivljenja lica na koje se ta odluka odnosi; ili

b) doneta po žalbi, pod uslovom da je žalbu podnelo lice o kome je reč.

6. Ako smatra, u smislu stava 4. đ) ovog člana, da su minimalna prava na odbranu bila zadovoljena, zamoljena strana ugovornica uzeće u obzir činjenicu da je lice protiv koga se postupak vodi smišljeno nastojalo da pobegne od pravde ili činjenicu da je to lice, pošto je imalo mogućnost da uloži pravni lek protiv odluke donete u odsutnosti, odlučilo da to ne učini. Ovo isto se primenjuje kada je lice o kome je reč, pošto mu je na vreme bio uručen poziv, odlučilo da se pozivu ne odazove, niti da zatraži odlaganje.

7. Strana ugovornica neće da se poziva na tajnost bankarskih podataka kao osnovu za odbijanje svake saradnje shodno ovoj glavi. Kada to nalaže njeno domaće