

**SENATO DELLA REPUBBLICA**

**XVII LEGISLATURA**

---

**Disegno di Legge**

D'iniziativa dei Senatori

**LUIS ALBERTO ORELLANA**

---

**«RATIFICA ED ESECUZIONE DELLA CONVENZIONE DEL CONSIGLIO  
D'EUROPA SUL RICICLAGGIO, LA RICERCA, IL SEQUESTRO E LA CONFISCA DEI  
PROVENTI DI REATO E SUL FINANZIAMENTO DEL TERRORISMO»**



Onorevoli Colleghi! - Il riciclaggio di denaro di provenienza illecita è ormai pacificamente qualificato come un'attività criminosa; conseguentemente, esso è stato formalizzato, malgrado talune iniziali resistenze, come reato nella maggior parte degli ordinamenti penali nazionali. Di non minore importanza è la qualificazione del riciclaggio anche come fenomeno squisitamente economico-finanziario, in considerazione soprattutto degli effetti distorsivi che esso è in grado di produrre, sulle principali variabili economiche, sui meccanismi di allocazione delle risorse, sull'efficiente impiego delle stesse e, in generale, sulle dinamiche della ricchezza di un paese. Per tali ragioni, ai consueti strumenti repressivi, comuni all'azione di contrasto di ogni altra attività criminosa, si è affiancato un sistema di strumenti a carattere preventivo, prevalentemente collocati a presidio del settore finanziario. La medesima tipologia di strumenti è stata recentemente estesa anche sul versante del contrasto del finanziamento del terrorismo, che, sebbene in modo speculare rispetto a quanto avviene per il riciclaggio, si caratterizza per un evidente intimo collegamento con il sistema finanziario. La sempre più marcata dimensione transnazionale del fenomeno ha accresciuto, negli anni, il coinvolgimento, soprattutto sul fronte della prevenzione, di organismi internazionali di varia natura e dimensione, titolari di funzioni differenziate, segnatamente di standard-setter, di coordinamento delle autorità nazionali competenti, di emanazione di strumenti regolamentari, di valutazione dell'adeguatezza degli ordinamenti antiriciclaggio nazionali. Tale reticolato di principi, di atti e di norme contraddistingue a livello sovranazionale l'attività di prevenzione e contrasto sia del riciclaggio di capitali illeciti sia, a partire dai tragici eventi del settembre 2001, del finanziamento del terrorismo. Siffatto reticolato si caratterizza per un ampio spettro di strumenti, che ricomprende atti normativi con forza di legge, atti aventi carattere internazionale, quali convenzioni e dichiarazioni di principi, muniti di potere prescrittivo differenziato, standard internazionali, che, configurandosi talora come *soft law*, traggono la propria forza cogente, in primis, dall'autorevolezza dell'organo che li emana. Il riciclaggio, benché taluni ne enfatizzino le connotazioni penalistiche, si atteggia, da un punto di vista ontologico, come fenomeno economico-finanziario e ciò non tanto perché esso ha ad oggetto beni o altre utilità economiche, attività queste presenti in altre fattispecie delittuose, quanto perché l'utilizzo di detti beni o utilità economiche, per il loro basso costo e, anche, per le caratteristiche dimensionali e transnazionali dei fenomeni delittuosi più significativi cui si ricollegano, è idoneo ad alterare l'ordinato assetto economico-finanziario e monetario di un Paese e, talvolta, di intere aree regionali. Si osserva, in particolare che la presenza di operatori e di strutture economiche collusi con la criminalità altera profondamente i meccanismi di mercato nelle regole e negli obiettivi, distorce la concorrenza. Inoltre, i fenomeni finanziari connessi al riciclaggio o di denaro di provenienza illecita, alla corruzione, all'occultamento di risorse finalizzato all'evasione fiscale possono, per un verso, provocare effetti di rallentamento sulla crescita economica e, specie sul piano finanziario, effetti distorsivi con riguardo a

singoli operatori nonché ad interi mercati o loro parti significative. Tutto questo, infine, determina il deterioramento della reputazione e della “performance” dei singoli intermediari o di interi sistemi economici.

Il Consiglio d'Europa ha, sin dagli anni Ottanta, posto una grande attenzione alla lotta contro il riciclaggio di denaro di provenienza illecita. A tal proposito rileva in particolare la raccomandazione No. R(80)10 concernente misure contro il trasferimento e la custodia di capitali di origine criminale. Uno degli strumenti cardine elaborati in merito è stata sicuramente la Convenzione sul riciclaggio, ricerca, sequestro e la confisca dei proventi di reato del 1990, il cui precipuo scopo era quello di facilitare la cooperazione internazionale in questo ambito, coordinando, ampliando e, pertanto, rendendo più efficaci gli strumenti già esistenti. La Convenzione che ci apprestiamo a ratificare si basa sulle disposizioni esistenti in quella del 1990, ampliandone però la portata, ed ha l'obiettivo di diventare uno strumento di riferimento internazionale per la prevenzione e il contrasto al riciclaggio di denaro e al finanziamento del terrorismo. Il testo evidenzia chiaramente come il veloce accesso alle informazioni relative ai finanziamenti o alle risorse delle organizzazioni criminali, compresi i gruppi terroristici, è fondamentale per il successo delle misure preventive e repressive e, in ultima analisi, rappresenta il modo migliore per destabilizzare le attività di tali organizzazioni. Il pieno accoglimento, da parte del nostro Paese, delle disposizioni contenute nella presente Convenzione, assume particolare rilievo alla luce dei lavori che, a partire 1° aprile 2014, concernono l'esame della proposta di legge A.C.2247 presso la Commissione VI Finanze della Camera sostanzialmente riproporre il contenuto dell'articolo 1 del decreto-legge n. 4 del 2014. Risulta evidente, pertanto, quanto indispensabile sia, per il nostro Paese, l'effettivo recepimento nel nostro ordinamento questo imprescindibile strumento di diritto internazionale.



# **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**

**The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community entered into force on 1 December 2009. As a consequence, as from that date, any reference to the European Community shall be read as the European Union.**

---

## 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.

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 insofar 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