



Brussels, 17.4.2024
COM(2024) 177 final

ANNEX

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to the

Recommendation for a COUNCIL DECISION

**authorising the European Commission to participate, on behalf of the European Union,
in negotiations on an additional protocol to the Council of Europe Convention on
Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the
Financing of Terrorism (CETS No. 198)**

ANNEX

Regarding the process of the negotiations, the Union should aim to achieve that:

- (1) The negotiation process is open, inclusive and transparent, and based on cooperation in good faith.
- (2) Inputs received from all the States Parties to the Convention are considered on an equal basis to ensure an inclusive process.
- (3) The negotiation process is based on an effective and realistic work programme.

Regarding the general objectives for the negotiations, the Union should aim to achieve that:

- (4) The Protocol is compatible with existing Union law and Member States' obligations under Union law on asset recovery. The Union *acquis* on asset recovery includes, in particular, Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders, and Framework Decisions 2003/577/JHA and 2006/783/JHA, which are still applicable in cross-border cases involving Ireland and Denmark. The relevant Union *acquis* for the purpose of the Protocol also includes Regulation (EU) 2017/1939 on the establishment of the European Public Prosecutor's Office (EPPO).
- (5) The Protocol is compatible with the new Directive on asset recovery and confiscation.
- (6) The Protocol respects the Union *acquis* on procedural rights in criminal proceedings, in particular Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings¹, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings², Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty³, and Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings⁴.
- (7) The Protocol ensures respect for the fundamental rights and freedoms as enshrined in the European Union Treaties and the Charter of Fundamental Rights of the European Union, and that it creates rules to facilitate cooperation among parties to the Convention in a manner which is compliant with EU standards on fundamental rights and procedural safeguards, including the Charter of Fundamental Rights of the European Union, in particular Articles 7, 8, 17, 19, 47, 48, 50 and 52 thereof, as well as the EU procedural rights *acquis* and Union rules on data protection.
- (8) The rules in the Protocol are proportionate to the level of trust existing between Council of Europe Member States as well as the strength of accompanying procedural rights and safeguards established in the protocol.

Regarding the substance of the negotiations, the Union should aim to achieve that:

¹ OJ L 280, 26.10.2010, p. 1–7.

² OJ L 142, 1.6.2012, p. 1–10.

³ OJ L 294, 6.11.2013, p. 1–12.

⁴ OJ L 65, 11.3.2016, p. 1–11.

- (9) The specific objectives set out in detail below are reached, while ensuring that the outcome of the negotiations is compatible with the Union's internal rules on asset recovery. These internal rules serve as the reference point for the Union's negotiating position.
- (10) The Protocol and Union *acquis* on asset recovery, as well as the new Directive on asset recovery and confiscation, mutually reinforce each other in their objectives to increase the effectiveness of asset recovery by creating clear rules that inter alia facilitate cooperation among all the States Parties to the Convention.
- (11) The provisions in the Protocol on sharing of confiscated assets between States Parties in transnational cases are clear and compatible with those of the Regulation (EU) 2018/1805, in particular with the rules on the bearing and sharing of costs related to the execution of cross-border freezing and confiscation orders, victim compensation and restitution of property to victims.
- (12) The provisions in the Protocol on asset management ensure an efficient and effective management of frozen and confiscated assets and are compatible with the asset management rules laid down in the new Directive on asset recovery and confiscation, including the possibility to sell frozen property before the confiscation.
- (13) The provisions in the Protocol on asset management in a cross-border context, in particular the rules on interlocutory sales and transfers of property prior to confiscation, facilitate cross-border cooperation and are compatible with those laid down in Regulation (EU) 2018/1805.
- (14) The provisions in the Protocol facilitate victim compensation and restitution of property to victims in cross border cases and are compatible with the rules laid down in Regulation (EU) 2018/1805. Rules on interlocutory sales and the disposal of confiscated assets in cross-border cases should not prejudice the rights of victims in any way.
- (15) The provisions in the Protocol facilitate the introduction of non-conviction-based confiscation procedures and of extended confiscation to an appropriate extent and are compatible with the rules laid down in the new Directive on asset recovery and confiscation, including the safeguards established therein and the Charter taking into account the declaration of the Commission with regards to the interpretation of the Directive. The rules of the protocol should not limit the circumstances in which extended and non-conviction-based confiscation measures shall be applicable in the EU. Furthermore, the rules should not limit the scope of crimes to which extended confiscation and the non-conviction-based confiscation measures are applicable in the EU.
- (16) The provisions in the Protocol on the recognition and execution of decisions for the freezing or confiscation of property in cross-border cases facilitate international cooperation and are compatible with Union law, in particular Regulation 2018/1805.
- (17) As regards any other additional topic that might be discussed because it is of consequence for strengthening co-operation between the parties, including cooperation with the European Public Prosecutor's Office, the suggested rules are compatible with the Union *acquis* on asset recovery and other relevant *acquis*.
- (18) The Protocol contains provisions that ensure the effective tracing and identification of assets, including through a more systematic launch of asset tracing investigations and the establishment of specialised asset recovery offices that can facilitate cross-border cooperation. For that purpose, these offices should, to an appropriate extent,

be provided with effective powers and access to relevant information, taking into account the differences in data protection standards of the parties to the Convention.

Regarding the functioning of the Convention, the Union should aim to achieve that:

- (19) The Additional Protocol preserves existing global and regional instruments to which the Union is a party.
- (20) The Additional Protocol includes a disconnection clause that allows the Member States in their mutual relations, to continue to apply Union law in matters covered by the scope of the additional Protocol.
- (21) The Additional Protocol contains general and institutional clauses, in particular on the implementation mechanisms, the settlement of disputes, ratification, acceptance, approval and accession, entry into force, amendments, suspension and denunciation, which allow the Union to exercise fully its external competence.