



# **Ten years of implementation of the Convention on Action against Trafficking in Human Beings: impact and challenges ahead**

**Conference on the occasion of the 10<sup>th</sup> anniversary of the entry into force of the  
Council of Europe Convention on Action against Trafficking in Human beings**

**Organised during the Croatian Chairmanship of the Committee of Ministers**

*Palais de l'Europe (Room 1), Council of Europe, Strasbourg*

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## **Background paper**

### **Introduction**

The Council of Europe Convention on Action against Trafficking in Human Beings entered into force on 1 February 2008. It currently has 47 States Parties (46 Council of Europe member States and Belarus). The majority of them have undergone the first round of evaluation of the implementation of the Convention, which is monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA), and 27 have been evaluated for a second time. Most States Parties will complete the second evaluation round by the end of 2018 and the third evaluation round of the Convention is expected to be launched by the end of 2018.

The purpose of the conference is to showcase the impact that the Convention has had on States Parties' law, policy and practice, and in particular on improving the situation and rights of victims of trafficking. An emphasis will be put on the human rights-based and victim-centred approach of the Convention and the positive obligations on States to prevent trafficking, protect victims, prosecute traffickers and engage in partnerships in order to achieve the purposes of the Convention. The important role of monitoring of the implementation of the Convention by GRETA (which helps to identify existing difficulties and emerging trends, and proposes measures to address them) and the more political role of the Committee of the Parties, both of which work to ensure the Convention's provisions do not remain a dead letter, will be highlighted. At the same time, this will be an occasion to analyse the remaining gaps in the implementation of the Convention, new challenges and innovative ways to address them.

Ultimately, the event will aim to enhance the understanding and implementation of the Convention's provisions, including through targeted co-operation projects, strengthen partnerships between different stakeholders and States Parties, promote the Convention beyond Europe, and focus political and public attention on the current challenges in the area of combating trafficking in human beings.

The event will start with a high-level opening session. Participants will subsequently split into four thematic panels, each focusing on a specific area. The sections below provide an overview of each of the thematic panels, highlighting issues and questions so as to stimulate discussion. At the final concluding session in plenary, all participants will hear the outcome of the panels' discussions and recommendations for future action.

## Panel 1: Making prevention work

The Convention promotes a holistic, multi-disciplinary approach to prevention and encourages co-ordination between the various bodies responsible for preventing and combating trafficking (Article 5.1). State Parties are to promote a human rights-based approach and use gender mainstreaming and a child-sensitive approach to the development and implementation of prevention policies and programmes (Article 5.3). Further, Parties are required to take specific prevention measures with regard to children, notably by creating a protective environment for them (Article 5.5).

The Convention's provisions (Articles 5 to 9) place obligations on States to take measures, in partnership with civil society and in co-operation with other States, to:

- raise awareness, through information campaigns, education and training;
- carry out research;
- tackle the underlying causes of trafficking through social and economic initiatives;
- enable legal migration;
- discourage demand;
- strengthen visa and border control to prevent and detect trafficking in human beings;
- ensure the integrity, security and validity of travel or identity documents.

**Raising awareness** about human trafficking as a form of prevention has played a key part in the action taken by State Parties, but GRETA has noted that the impact of awareness-raising measures is rarely measured. In this context, GRETA has stressed that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and be focused on the needs identified.

An additional requirement for human rights-based anti-trafficking policies is the conduct of **research** with special attention to the rights and interests of victims. Supporting research on trafficking-related issues is an important source of information for future policy measures.

While in many countries anti-trafficking issues are part of the school curriculum (typically in countries of origin), in other countries this is not the case. GRETA has noted that anti-trafficking messages should be **mainstreamed in education** on human rights and gender equality.

NGOs are often instrumental in raising awareness among the general public and relevant officials, and GRETA has recommended that **civil society** be involved in the designing and evaluation of campaigns.

An important element of prevention consists of **social, economic and other initiatives** for groups vulnerable to trafficking, such as women, children, ethnic minorities, migrant workers and asylum seekers or, in other words, addressing the root causes of human trafficking.

The Convention places a positive obligation on Parties to adopt legislative, administrative, educational, social, cultural or other measures to **discourage demand** for the services of victims of trafficking, especially women and children. Article 6 of the Convention provides a list of minimum measures, including research on best practices, methods and strategies, use of the media to raise awareness, targeted information campaigns, and educational programmes for children which promote gender equality and human dignity.

A growing number of countries organise campaigns to raise awareness of the harms caused by demand for sexual services amongst potential buyers of sex; the impact of these campaigns has been assessed in some countries, with positive results. Nevertheless, GRETA has noted the need for increased efforts to discourage demand for the services of victims of trafficking for the purpose of sexual exploitation, bearing in mind that such measures should be balanced and not lead to the criminalisation of victims of trafficking.

As part of their demand-reduction efforts, some Parties to the Convention have **criminalised the use of services** of a victim of trafficking, with the knowledge that the person is a victim, as provided for in Article 19 of the Convention. Other countries have criminalised the purchase of sexual services as a way of combating human trafficking by reducing the prostitution market. GRETA has stressed the importance of continuously assessing the effects of criminalising the purchase of sexual services on the reduction of demand for services provided by victims of trafficking, the identification of trafficking victims, the protection and assistance provided to them, and the prosecution of traffickers.

In addition to discouraging demand for sexual services, GRETA has noted the need to address demand for trafficking for the purpose of labour exploitation, which has been on rise. This should include reinforcing labour inspections, in particular in at-risk sectors, expanding the mandate of labour inspectors to cover private households, providing them with resources, training and guidance so that they can be actively engaged in the prevention of human trafficking, strengthening the monitoring of recruitment and temporary work agencies, as well as effective penalties for those who exploit victims of trafficking, including legal entities. Trafficking for labour exploitation also concerns businesses whose contractors and subcontractors exploit trafficked workers, which is why measures to enhance the transparency of corporate supply chains have been taken in some countries.

Finally, Articles 7, 8 and 9 of the Convention deal with prevention through **border measures** and the security and control of **travel and identity documents**.

#### **List of discussion questions and topics (non-exhaustive):**

- What is your experience with the organisation of campaigns to raise awareness of human trafficking? Have you carried out research in order to determine effective methods and target particular groups? Have you carried out an assessment of the impact of the campaign? What methods and messages work better?
- What methods of prevention of human trafficking work best in the case of children?
- What prevention strategies could be put in place to prevent recruitment through the Internet/social networks?
- How do you carry out targeted prevention actions among vulnerable groups, such as ethnic communities, migrants, asylum seekers? What works and what does not?
- What could be considered as effective methods to discourage demand for the services of victims of trafficking, for different forms of exploitation?
- How is the private sector involved in the prevention of human trafficking, in particular in discouraging demand?
- What is your experience with the monitoring of supply chains as a way to prevent human trafficking? How effective are monitoring mechanisms in practice?
- What additional measures should be taken to address the root causes of human trafficking and to strengthen effective prevention particularly in minority communities?
- What could be done to improve the identification and referral to assistance of possible victims of human trafficking at borders?
- How do your country's migration legislation and policies seek to prevent human trafficking by enabling lawful migration?

## Panel 2: Ensuring the rights of victims of trafficking

The Convention provides for a series of measures to protect and promote the rights of victims, placing positive obligations of State Parties to identify victims and to assist and support them in their recovery and reintegration.

Victims of trafficking must be **identified** and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Article 10 of the Convention requires State Parties to adopt measures to identify victims. The issue of identification is of fundamental importance. Many trafficked people do not always identify themselves as “victims” and are not aware of the legal meaning behind the term. Therefore, the onus of identification lies with the authorities. In order to perform identification, parties must provide their competent authorities with persons who are trained and qualified in preventing and combating human trafficking and in identifying and helping victims, including children, irrespective of their nationality and immigration status. At the same time, specialised NGOs can substantially contribute to the victim identification process and should be involved in a multi-agency effort to ensure that no victim of trafficking remains unidentified. This is envisaged by Article 10 of the Convention, according to which identification is a collaborative process between the authorities and relevant victim support organisations. Identifying a trafficking victim is a process which takes time; therefore the Convention provides that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed and must receive the assistance required by the Convention.

Presumed victims, as well as formally identified victims of trafficking, must be provided with **assistance** in their physical, psychological and social recovery, regardless of their nationality, social status, gender or other grounds. Assistance should encompass access to various support services, as provided in Article 12 of the Convention, which is not made conditional on the victim’s willingness to act as a witness. Article 14 of the Convention allows State Parties to make the issuing of a temporary residence permit conditional on co-operation and it seems that in some cases this blocks unconditional access to assistance for foreign victims.

According to Article 13 of the Convention, a **recovery and reflection period** of at least 30 days must be granted when there are reasonable grounds to believe that a person is a victim of trafficking. This period is meant to leave sufficient time for the person to recover and escape the influence of the traffickers and/or to take an informed decision on whether to co-operate with the competent authorities. During the recovery and reflection period, the persons concerned must be entitled to the assistance measures contained in Article 12, paragraphs 1 and 2, of the Convention. GRETA has noted that in the majority of State Parties, the number of recovery and reflection periods issued is low or there is an absence of data on the number of such periods issued. Another concern raised by GRETA is the applicability of the recovery and reflection period to EU citizens. Considering that after three months EU citizens can only stay legally in other EU countries provided they meet a number of requirements (e.g. economic activity, sufficient resources, being enrolled as a student), the possibility that they would be considered as being irregular cannot be excluded and they should logically be entitled to enjoy a recovery and reflection period. GRETA has recommended that police and immigration officers are issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim’s co-operation and offering it to victims before formal statements are made to investigators. All possible foreign victims of trafficking should be systematically informed of the possibility of benefiting from a recovery and reflection period and its implications.

A renewable **residence permit** should be granted to victims of trafficking if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. Further, in order to help victims regain or develop their autonomy and avoid re-trafficking, it is important that they be allowed access to the labour market without discrimination on grounds of national origin if they are legally resident, in line with Article 12(4) of the Convention. In some countries, GRETA found

that victims who were granted a residence permit experienced difficulties in accessing the labour market and vocational training.

Pursuant to Article 15 of the Convention, State Parties are required to provide for the right of victims of trafficking to **legal assistance** and **free legal aid**, as well as the right to receive **compensation** from the perpetrators. State Parties are also required to guarantee compensation for victims, through a State compensation scheme, in cases where the perpetrators do not pay compensation to victims. Despite welcome examples of compensation effectively given to victims of trafficking in some countries, in general, very few victims of trafficking receive compensation from the perpetrators and often the compensation orders are not enforced because the perpetrators do not have identifiable assets. While the majority of evaluated countries have legislation which made it possible for victims of trafficking to claim compensation from the State under certain conditions, in several State Parties there is still no provision for State compensation.

Article 16 of the Convention requires Parties to establish **repatriation** programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims. The **return** of victims of trafficking must be carried out with due regard for their rights, safety and dignity and for the status of any legal proceedings related to the fact that the person is a victim of trafficking, and in accordance with the states' obligation of international protection. Child victims must not be returned if there is indication, following a risk and security assessment, that a return would not be in the best interests of the child.

Further, pursuant to Article 17 of the Convention, State Parties are required to promote **gender equality** and use gender mainstreaming in the development, implementation and assessment of measures to protect and promote the rights of victims. GRETA's reports highlight the need for further efforts to promote gender equality, combat gender-based violence and stereotypes, and support specific policies for the empowerment of women as a means of combating the root causes of trafficking in human beings. In many countries, anti-trafficking policy and practice has traditionally focused on women and, as a result, there is a lack of assistance and protection measures, including safe accommodation, for male victims of trafficking.

### **List of discussion questions and topics (non-exhaustive):**

- What additional measures could be taken to improve the identification of victims of trafficking for different forms of exploitation?
- What training, guidance and tools have been provided to the different stakeholders involved in the National Referral Mechanism (NRM) to ensure that it is implemented throughout the country?
- Has a clear role/mandate been defined for non-governmental organisations in the NRM of your country? What is this role?
- What measures are taken to ensure that trafficked persons who are irregular migrants or migrant workers are identified as victims of trafficking and have access to the rights provided for in the Convention?
- Is your country's NRM backed up by dedicated funding? When services are provided by NGOs to victims of trafficking (including accommodation, medical and psychological care, legal aid), are they funded by the state budget?
- What experience do you have with the provision of assistance (including access to safe accommodation, when needed) to male victims of trafficking?

- What follow-up is provided after the termination of assistance programmes? Can victims continue to receive assistance, where necessary and taking into account their specific needs resulting from the type of exploitation, and if so what type of assistance?
- Are there any impediments to victims of trafficking being granted a recovery and reflection period? Who takes the initiative for proposing and applying this period? Do you have experience with NGOs assisting victims who apply for the recovery and reflection period on behalf of victims?
- If there is a provision in your country's law that provides for the possibility of issuing a residence permit owing to the victim's personal situation, how is this interpreted and applied in practice? Please provide examples.
- What guidance is given to relevant professionals on the application of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol to victims of trafficking? Please provide examples of decisions to grant victims of trafficking refugee status on the basis of this provision and/or any obstacles.
- How is access to compensation for victims of trafficking promoted and guaranteed in your country? What are the main challenges to victim compensation and what steps can be taken to overcome them?
- What steps could be taken to improve access of victims of trafficking to legal assistance and free legal aid?
- How is risk assessment carried out when deciding upon the return and repatriation of victims of trafficking, including children? What is the procedure and what are the modalities of co-operation with the authorities and NGOs in the receiving state? How effective are such co-operation measures?
- What measures are taken in your country to address the gender dimension of human trafficking and incorporate gender equality into the policies to prevent and combat trafficking in human beings and to protect and promote the rights of victims?

### **Panel 3: Effective human rights-based criminal justice responses to human trafficking for all forms of exploitation**

One of the purposes of the Convention is to ensure the **effective investigation and prosecution** of trafficking offences. However, GRETA's monitoring of the implementation of the Convention reveals that there is an important gap between the number of identified victims of trafficking and the number of convictions for human trafficking. There is a variety of reasons for this gap: over-reliance on victims' statements, issues around the credibility of witnesses who may change their statements over time, or difficulties in relation to the sufficiency of evidence. Victims are sometimes afraid or reluctant to make depositions because of threats of revenge from the perpetrators or lack of trust in the effectiveness of the criminal justice system. Furthermore, in some countries, the fact that legal proceedings against traffickers take a long time can have a dissuasive effect on victims. Investigators, prosecutors and judges who are not specialised and trained to deal with trafficking cases may be prejudiced vis-à-vis victims of trafficking and insensitive to the problems experienced by them. Perpetrators are sometimes prosecuted successfully for offences other than human trafficking when the available evidence is not sufficient to support a human trafficking offence. This may result in victims of trafficking being deprived of certain rights, such as the right to compensation. In some countries, investigations appear to focus on the immediate recruiters of victims of trafficking (some of whom might be victims themselves) and insufficient efforts are made to target the masterminds behind human trafficking offences.

Moreover, restrictive interpretations by courts of what constitutes human trafficking may result in acquittals or the cases being considered as, for example, labour law violations or exploitation which does not involve human trafficking. In some countries, the **sentences** for human trafficking appear to be unduly lenient or the perpetrators are given suspended sentences. GRETA has noted that in countries where there are investigators, prosecutors and judges who, through training and practical experience, have developed specialism in human trafficking cases, the rate of convictions is relatively high.

GRETA has stressed the positive obligation of States to investigate human trafficking, established by the European Court of Human Rights in its judgement in the case of *Rantsev v. Cyprus and Russia* and confirmed in *Chowdury and Others v. Greece*. GRETA's recommendations to States Parties stress the need to strengthen efforts to investigate and prosecute cases of trafficking for different forms of exploitation, including by improving the knowledge of investigators, prosecutors and judges about the seriousness of human trafficking, the severe impact of exploitation on the victims and the need to respect their human rights.

Pursuant to Article 22 of the Convention, State Parties are required to ensure that legal persons can be held liable for human trafficking offences. Only a few countries have reported cases in which **corporate liability** was invoked in human trafficking cases.

Article 23(3) of the Convention requires parties to adopt such legislative and other measures as may be necessary to enable them to **confiscate or otherwise deprive** the instrumentalities and proceeds of criminal offences related to THB or property the value of which corresponds to such proceeds. The confiscation of criminal assets is crucial for reinforcing the effect of the penalty, as well as ensuring the payment of compensation to the victim. It requires as a prerequisite to detect, identify and seize the illegal assets at the time of the criminal investigations and to have adequate procedures to do so. GRETA has stressed the importance of conducting financial investigations as part of investigations into human trafficking offences.

Article 32 of the Convention requires Parties to engage in **international co-operation** to investigate and prosecute cases of human trafficking. The Explanatory Report to the Convention makes it clear that as regards international co-operation in criminal matters, the relevant Council of Europe instruments<sup>1</sup> in this area, which are cross-sectoral and apply to different offences and not just to human trafficking, other international instruments,<sup>2</sup> as well as reciprocal arrangements between Parties and the relevant provisions of domestic law, will apply. International co-operation also takes place through Interpol, Europol and Eurojust. Despite the availability of international instruments whose direct use in human trafficking cases is possible, GRETA's monitoring of the Convention has brought to light certain difficulties in the area of international co-operation in the investigation of transnational cases of human trafficking. While a number of countries have participated in Joint Investigation Teams (JITs) which have been successful in bringing to justice organised trafficking groups operating internationally, this tool is still not sufficiently used in human trafficking cases. Some countries have referred to difficulties in co-operating with countries which are not parties to the Convention when it comes to the exchange of information and obtaining evidence to help the detection and investigation of cases of trafficking.

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<sup>1</sup> The European Convention on Extradition (ETS No. 24) and its Additional Protocols, the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its Additional Protocols, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime the European Convention on Extradition (ETS No. 141) and its Additional Protocols, the European Convention on the Transfer of Proceedings in Criminal Matters, the European Convention on the International Validity of Criminal Judgments

<sup>2</sup> In the case of European Union member States, the European arrest warrant introduced by the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States is relevant.

Pursuant to Article 26 of the Convention, entitled “**non-punishment provision**”, State Parties must provide for the possibility of not imposing penalties upon victims of human trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so. As already stressed by GRETA in its 2nd General Report, the criminalisation of victims of trafficking not only contravenes the state’s obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the state’s obligation to investigate and prosecute those responsible for trafficking in human beings. GRETA considers that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of treating them differently depending on the prosecutor in charge of the case. Consequently, GRETA has recommended the adoption of specific legislation on non-punishment of victims of trafficking and/or the issuing of guidelines to prosecutors.

By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate **protection** from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical protection, relocation, identity change) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of their families. Further, Article 30 of the Convention includes a provision requiring parties to take measures to protect victims’ private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of trafficking. The protection of victims and witnesses of trafficking is important to reassure them to take the step of accepting to testify against traffickers. Victims need to be prepared psychologically to give statements, and NGOs providing assistance to victims have an important role to play in this respect. While State Parties’ legislation envisages measures designed to protect victims and witnesses, it transpires from GRETA’s reports that it is rare for measures such as hiding the identity of a witness or preventing her/him from meeting the perpetrator to be applied during the investigation of human trafficking cases. Solutions should be found to make full use of the possibility of testifying anonymously and not in the presence of the accused party. In general, the protection of victims of THB needs to be better guaranteed before, during and after the trial, but also in the absence of any criminal proceedings (e.g. when the traffickers have not been identified).

#### **List of discussion questions and topics (non-exhaustive):**

- When it comes to the criminalisation of trafficking in human beings, are there any definitional problems that impede the prosecution and the imposition of effective, proportionate and dissuasive sanctions?
- Are there cases of direct application of the Council of Europe Convention on Action against Trafficking in Human Beings in cases of human trafficking adjudicated in your country?
- The differences in the criminalisation of trafficking in human beings in the criminal codes of different countries may pose problems when it comes to using instruments of international co-operation. Have such difficulties been experienced by your country? If yes, what solutions were found?
- Have you encountered problems in international co-operation in transnational cases of trafficking in human beings? What were the main obstacles? Can you provide examples of solutions found to the problems (“good practices”) and/or examples of unsuccessful attempts to overcome these problems?
- What new processes, structures or agreements for supporting transnational co-operation in human trafficking cases would you welcome the development of?

- What is your experience with the setting up of (JITs) in human trafficking cases with other countries?
- Are there any legal challenges related to the use of Internet for the recruitment and exploitation of victims of trafficking?
- Have there been cases of freezing and confiscation of assets of traffickers in your country which were used to compensate victims in another country? Please provide examples of any obstacles or good practices.
- What are the main challenges in the implementation of the non-punishment provision? What guidance is given to prosecutors and other relevant professionals to ensure its implementation?
- What measures are taken to promote the participation of victims and witnesses in criminal proceedings and to give testimonies which accurately reflect their experiences and assist courts in establishing the truth?
- What steps are taken in your country to enforce corporate liability in case of human trafficking?

#### **Panel 4: Building strategic partnerships**

Pursuant to Article 35 of the Convention, Parties “shall encourage state authorities and public officials to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing **strategic partnerships** with the aim of achieving the purpose of the Convention”. According to the Explanatory Report on the Convention, “strategic partnership” means the setting up of co-operation frameworks through which state actors fulfil their obligations under the Convention, by co-ordinating their efforts with civil society. Such strategic partnerships are needed in order to improve knowledge of human trafficking and new trends, and be more effective in preventing and combating it.

Initiatives to prevent and combat human trafficking involving, civil society, trade unions and the business community are increasingly reported by State Parties. Such **public-private partnerships** are fully in line with the Convention, which stresses the role of co-operation with other state parties but also - and this is very important as far as reducing demand is concerned – with all elements of civil society.

While the Convention refers to co-operation between States and their national actors, it is logical that the request to national actors, contained in the Convention, to establish partnerships and take co-ordinated action against trafficking in human beings, should also be extended to **co-operation between international organisations**. It is essential to reinforce partnerships at the international level, between international organisations, both at global and at regional level. Back in 2010, the Council of Europe organised a thematic debate on “Partnerships among international organisations active in the field of trafficking in human beings: need for co-ordinated action”, in the framework of the 4<sup>th</sup> meeting of the Committee of the Parties to the Convention. By making full use of the particular area of competence and expertise of each international organisation, their comparative advantages are maximised, resulting in a better use of increasingly limited resources.

#### **List of discussion questions and topics (non-exhaustive):**

- What steps are taken by your country to encourage state authorities to co-operate with NGOs, trade unions and other civil society actors, so as to involve them in the elaboration and implementation of anti-trafficking policies, programmes and other initiatives to prevent human trafficking?
- What role can businesses play in combating trafficking in human beings?

- What steps are taken in your country to increase private sector awareness about human trafficking, including about the potential weak links in global supply chains and within businesses, the risks associated with being involved in human trafficking, knowingly or not, and opportunities for the private sector to make a successful and sustainable impact? What binding measures are put in place to?
- What experience do you have with building public-private partnerships to combat human trafficking? Are there any incentives in your country for private companies which participate in anti-trafficking efforts?
- How could businesses be encouraged to self-regulate and enhance supply chain management and security?
- How can international organisations make the most of international partnerships?