

135th Session of the Committee of Ministers (Chişinău, 15 May 2026)

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 – Explanatory Report

1. The 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 (hereinafter referred to as “the Protocol”) was adopted by the Committee of Ministers of the Council of Europe at its xxx meeting (date, 2026) of the Ministers’ Deputies and this Protocol was opened for signature in [city] on [date]. The Committee of Ministers also took note of the Explanatory Report.

2. The text of the Explanatory Report does not constitute an instrument providing an authoritative interpretation of the Protocol. It reflects the understanding of the drafters at the time of its adoption and may facilitate the understanding of the Protocol’s provisions and its application by the Parties.

I. Introduction

Background

3. The Council of Europe has long been at the forefront of international efforts to combat economic crime and to recover illicit assets. As early as 1980, the Organisation adopted Recommendation No. R(80)10, the first international instrument in this field. A decade later, in 1990, the Committee of Ministers adopted the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141 – hereinafter referred to as “the 1990 Convention”), which was opened for signature in November of that year.

4. A major subsequent development was the opening for signature, in 2005, of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), commonly referred to as the Criminal Asset Recovery Convention (hereinafter “the Convention”). Since its entry into force, the Convention has become one of the most influential international legal instruments in this area.

5. The Convention was the first Council of Europe treaty to address both the preventive and criminalisation aspects of money laundering and the financing of terrorism. It significantly strengthened global anti-money laundering (AML) and counter-terrorist financing (CFT) standards, complementing and advancing those developed by the Financial Action Task Force (FATF). It has continued to do so even following the adoption of the revised FATF standards in 2012 and their most recent update in 2025. The Convention also establishes a unified and effective framework for cross-border co-operation among its Parties.

6. However, typologies and methods used in financial crime, including money laundering and terrorism financing, have evolved significantly since the Convention was adopted. Equally, global standards aimed at addressing these crimes have developed in parallel. New threats have emerged and States’ practical experience in applying AML/CFT measures, together with the evolution of international (updated FATF Recommendations) and European standards (the new AML Framework of the European Union (EU), the Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the

mutual recognition of freezing orders and confiscation orders and Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation), have underscored the need to update and modernise the Convention.

7. Through its mutual evaluation processes, the Conference of the Parties to the Convention (hereinafter referred to as “COP”) has identified a number of challenges that limit the effectiveness of the Convention’s asset recovery framework. For example, national authorities often lack the capacity to promptly identify, trace, and freeze assets. Moreover, frozen or seized assets are frequently mismanaged, leading to their depreciation before final confiscation or return to the legitimate owner. Furthermore, the existing confiscation mechanisms have proven to be inadequate in addressing new forms of organised criminal activity, which is often transnational and opaque in nature, including the use of shell companies, virtual assets, and intricate financial structures designed to conceal illicit proceeds. These findings have conclusively demonstrated the need to strengthen the asset recovery framework.

8. In 2019, the Council of Europe’s Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) conducted a comprehensive study assessing the potential added value and feasibility of drafting a new binding instrument focused on international co-operation in the management, recovery, and sharing of assets derived from crime. On 17 November 2022, the COP held a joint session with the PC-OC to consider the development of a new Council of Europe instrument, taking into account both the PC-OC study and the COP’s monitoring findings.

9. At the proposal of the European Committee on Crime Problems (CDPC), the Committee of Ministers decided on 23 November 2023 to establish, as of January 2024, a Committee of Experts on Criminal Asset Recovery (PC-RAC), under their joint authority.

10. Pursuant to its Terms of Reference, the PC-RAC was tasked with drafting an additional protocol to supplement the Convention, along with its explanatory report. In fulfilling this mandate, the Committee was specifically entrusted to examine, *inter alia*, the following issues:

- provisions to ensure efficient and effective management of seized, confiscated, and repatriated assets, including the execution of confiscation decisions;
- provisions to facilitate the introduction of non-conviction-based confiscation procedures and extended confiscation in criminal matters, including co-operation regarding and execution of requests in transnational cases;
- provisions to enhance certainty and consistency in the sharing of confiscated assets between States Parties in transnational cases;
- any other issue which it deems to be of consequence to strengthen co-operation among Parties with respect to asset recovery.

11. The Committee’s mandate was thus to strengthen the asset recovery legal framework, including measures to enhance international co-operation. Between May 2024 and December 2025, the Committee convened a total of seven meetings. These meetings brought together representatives from 42 member States of the Council of Europe, one observer State (Morocco), and various Council of Europe bodies, including the European Court of Human Rights (ECtHR), the European Committee on Criminal Problems (CDPC), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the COP, and the PC-OC. Other relevant Council of Europe committees, bodies, and experts also contributed to the discussions. The European Commission participated in the negotiations on behalf of the EU, alongside EU member States. The FATF and the United Nations office on Drugs and Crime (UNODC) also took part in the work of the Committee.

12. As part of its work, the Committee examined human rights considerations and safeguards, drawing, *inter alia*, on the case-law of the ECtHR and the principles established by the European Commission for Democracy through Law (Venice Commission). It also took into account the experience and good practices of relevant international organisations such as the FATF, the Camden Asset Recovery Inter-Agency Network (CARIN), the European Public Prosecutor’s Office (EPPO), the European Union Agency for Law Enforcement Co-operation (Europol), the International Criminal Police Organisation (INTERPOL), and the UNODC. In the course of the negotiation and subsequent adoption of this Protocol, due consideration was

given to the following international legal and policy instruments governing asset recovery and related (human rights) standards under the auspices of the Council of Europe:

- the Convention for the Protection of Human Rights and Fundamental Freedoms, (4 November 1950) and its protocols;
- existing Council of Europe treaties on co-operation in criminal matters, as well as other agreements and arrangements on co-operation in criminal matters between Parties to the Convention;
- existing Council of Europe Convention in this field: the Convention on the Prevention of Terrorism (CETS No. 196), the Convention on Cybercrime (ETS No. 185), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), the Criminal Law Convention on Corruption (ETS No. 173), and their Additional Protocols; and
- resolutions by the Parliamentary Assembly of the Council of Europe (PACE): Resolution 2218 (2018) and 2365 (2021).

13. The Committee further drew upon the findings of the COP and MONEYVAL, the revised Methodology of the FATF, the current EU AML and asset recovery *acquis* and the best practices of member States in combating and preventing money laundering and the financing of terrorism.

14. The draft Additional Protocol and its Explanatory Report were examined and approved by the CDPC at its 88th meeting and subsequently submitted to the Committee of Ministers. At the [XX]th meeting of their Deputies on [date], the Committee of Ministers adopted the text of the Additional Protocol and decided to open it for signature in xxxxx on [date].

Relationship between the Protocol and the Convention (substance, form and relationship)

15. The Protocol is designed to supplement and update the Convention in light of international regulatory developments. It extends the scope of asset recovery tools and mechanisms provided for in the Convention, aligning them with standards developed in other fora, such as the FATF and the EU, and strengthening the powers of competent authorities in the field of asset recovery and international co-operation. It thereby promotes a comprehensive approach to asset recovery at all stages of the procedure, including cross-border co-operation. For the purposes of this Protocol, the term “asset recovery” encompasses the entire process of identifying, tracing, evaluating, freezing, seizing, confiscating, managing, and disposing of property liable to confiscation.

16. It is important to note that all measures set forth in this Protocol must be implemented with full respect and due regard for the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and its Protocols, in particular the right to a fair trial, the right to an effective remedy, the presumption of innocence, the right of the defence and the right to property that are enshrined therein.

17. The measures, as foreseen in this Protocol, shall be implemented in a manner consistent with the jurisdictional immunities of States and their property as a principle of customary international law, as well as to the privileges and immunities accorded under international law to State officials.

18. Where appropriate, the Protocol follows the structure of the Convention. After a chapter on common provisions, Chapter II covers measures to be adopted at the national level, and Chapter III focuses on international co-operation. A special chapter is devoted to safeguards, training and resources (chapter IV). The last two chapters concern the monitoring mechanism and the final provisions (chapters V and VI). Newly introduced mechanisms and tools are presented in autonomous sections to ensure legal clarity and coherence.

19. Particular attention has been paid to ensuring linguistic and conceptual consistency between the Protocol and the Convention. Wherever possible, the Protocol aligns with the terminology and drafting style of the Convention.

20. As in the Convention, the Protocol contains both mandatory and non-mandatory provisions. A non-mandatory provision denotes that the particular action is optional, meaning that it may be permitted, but is not legally required and does not have to be facilitated. These so-called "may" provisions cannot be interpreted as imposing an obligation on Parties to enable their competent authorities to apply them. Adoption measures allowing for the use of such optional provisions remain at the discretion of each Party. Moreover, in monitoring the implementation of this Protocol pursuant to Article 35, the COP – acting in the composition restricted to the Parties to the Protocol – should, where appropriate, refrain from calling on Parties to make use of optional provisions, bearing in mind that, for some Parties, doing so may be incompatible with their fundamental principles of domestic law.

21. The provisions of the Convention apply *mutatis mutandis* to the Protocol, and the provisions of the Protocol shall be interpreted in accordance with the Convention. To the extent that this Protocol modifies obligations or definitions set out in the Convention, the provisions introduced should be interpreted in accordance with the other obligations arising under the Convention.

II. Commentaries on the provisions of the Protocol

Preamble

22. The preambular paragraphs do not form part of the operative provisions of the Protocol and do not confer rights or impose obligations on the Parties. Nonetheless, the Preamble serves to provide context and sets out the aims and objectives of the Protocol.

23. The Preamble reaffirms the commitment of the Parties to the fundamental values of the Council of Europe – human rights, democracy, and the rule of law – and underscores the necessity of a coordinated and robust response to financial crime. It recalls the relevant international instruments and treaties of the Council of Europe in this context.

24. The Preamble also highlights the evolving threats posed by financial crime and the challenges faced by Parties in addressing them. It outlines the key developments that have led to the elaboration of this Protocol and clarifies its scope. The Preamble underscores the need for multidimensional co-operation among Parties, institutions, and the private sector to combat financial crime effectively.

25. The Preamble further emphasises the importance of establishing a comprehensive confiscation framework at the national level. The intention is to promote the systematic use of confiscation as a guiding standard for Parties to the Protocol, thereby conveying a clear message: confiscation should be the rule, not the exception, and "crime shall not pay".

Chapter I – Common provisions

Article 1 – Purpose

26. The phrase "between the Parties" confirms that the Protocol is only binding upon Parties to the Convention that ratify the Protocol. It does not affect the rights or obligations of Parties to the Convention that are not Parties to the Protocol.

Article 2 – Use of terms

27. This article introduces three new definitions and supplements those already set out in Article 1 of the Convention, which also apply to the Protocol. In addition, the definition of "financing of terrorism", as contained in Article 1, sub-paragraph (h) of the Convention, has been expanded to also reflect the provisions of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and its protocols.

28. Article 2, paragraph 1, provides a definition of "financial investigation", a concept encompassing investigative measures that the FATF highlights as central to effective asset recovery (FATF Recommendation 30). Such investigations can be carried out in different formats, including as part of the criminal investigation.

29. Article 2, paragraph 1(a)(iii), uses the term “information” rather than “evidence” to clarify that it is up to the competent judicial authorities to determine whether information gathered in the context of a financial investigation can be admitted as evidence. Such information may further include financial intelligence, which is not intended to be submitted as evidence. Where deemed admissible, information gathered during financial investigations may be used as evidence in criminal proceedings and/or proceedings in relation to identification, tracing, freezing, seizure, and confiscation of property, including for the purpose of non-conviction-based confiscation (NCBC), proving a criminal offence or regarding decisions on management of property and the disposal of assets.

30. The drafters considered that financial investigations can be carried out with a view to any or all of the purposes listed in the definition provided in the Protocol. The three listed purposes of financial investigations are therefore alternative, not cumulative. The obligation to enable authorities to carry out financial investigations is fulfilled if the financial investigations are to be carried out for at least one of the listed purposes, for example, the identification of property liable to confiscation.

31. Parties are not required to introduce this definition in their legislation, as it serves only to clarify the scope of obligations arising from Article 8 of this Protocol on financial investigations.

32. The Protocol also defines “virtual assets” (VA) and “virtual asset service providers” (VASP). The definition of virtual assets is based on the Glossary in the FATF Recommendations and EU definitions of virtual currencies, focusing on their functional characteristics without prescribing a specific technological format. The definition of VASP is derived from the Glossary in the FATF Recommendations and outlines the types of services and activities subject to regulation, such as exchange and transfer. While the terms “virtual asset account” or “virtual asset wallet” are not defined in this Protocol, they are typically understood as covering tools or mechanism offered by virtual asset service providers that enable users to store, send, and receive virtual assets.

33. Article 2, paragraph 2, updates the definition of “financing of terrorism” to reflect the Council of Europe standards since the adoption of the Convention.

34. The term “financing of terrorism” is defined by reference to several international instruments. These instruments include definitions of concepts such as “terrorist offence” and criminalization requirements pertaining to both offences and ancillary forms thereof. In some instances, the definitions in the instruments mentioned consist of references to other instruments within the definition in paragraph 2 of Article 2. Nevertheless, Parties should bear in mind the purpose of the Convention, including its Additional Protocol. This purpose is to, inter alia, combat crimes generating illicit proceeds, including organised crime, money laundering and the financing of terrorism. To this end, Parties are obliged to establish a legal framework enabling the confiscation of illicit proceeds. However, the Protocol does not aim to create new obligations on criminalisation or a legal basis for this purpose. Thus, the Convention does not address hypothetical chains of events, such as “the financing of financing of terrorism”.

35. The drafters recalled that the term “financing of terrorism” covers the financing of terrorist organisations and individual terrorists, even in the absence of terrorist acts, in accordance with national law.

Chapter II – Measures to be taken at national level

36. This Chapter broadly follows the structure of the Convention.

Section 1 – Confiscation measures

37. The Convention requires Parties to adopt measures enabling the confiscation of instrumentalities and proceeds of crime, as well as the corresponding value of proceeds, following a conviction for a specific offence. While this conviction-based approach remains central, recent practice has exposed its limitations. Existing tools often fail to address the complex structures and methods used by criminal organisations. The Protocol therefore introduces additional measures designed to ensure that criminals can be effectively deprived of their illicit gains.

38. The Protocol allows for the confiscation of assets not directly linked to the specific offence resulting in a conviction (extended confiscation), as well as confiscation in the absence of a final conviction (NCBC). It also provides for confiscation of assets belonging to persons other than the offender (third-party confiscation). These provisions aim to establish common standards in legislation and, consequently, to enhance international co-operation.

39. The introduction of these new forms of confiscation must not unduly interfere with the fundamental rights and procedural rights and safeguards of affected persons as enshrined in the domestic law of the Parties or international legal instruments by which they are bound and may be limited by fundamental principles of domestic law. The Preamble expressly states that implementation of the Protocol must respect the fundamental rights guaranteed by the European Convention on Human Rights and its Protocols, as well as those enshrined in the United Nations International Covenant on Civil and Political Rights.

40. Pursuant to these principles, and to the principles of necessity and proportionality set out in Article 31, Parties may, when implementing this Protocol, provide that, in exceptional circumstances, confiscation should not be ordered or executed if, in accordance with domestic law, it would cause undue hardship for the affected person, based on the specific circumstances of the individual case.

41. The confiscation measures set out in this section apply to both natural and legal persons in accordance with domestic law.

Article 3 – Extended confiscation

42. This article introduces the possibility of extended confiscation, a measure explicitly mentioned in the Terms of Reference of the PC-RAC. There are situations where it is appropriate not only to confiscate property associated with a specific crime, but also other property, which the court determines as being derived from criminal conduct. In this regard, extended confiscation can be useful to achieve the objective of depriving criminals of the broader economic gains relating to crime.

43. Extended confiscation requires a conviction and a court order. It may be applied where the court is satisfied, based on the circumstances of the case, that the property in question is derived from or obtained, directly or indirectly, from criminal conduct. The Protocol leaves it to Parties to determine the applicable standard of proof, reflecting the diversity of legal traditions (paragraph 1). Although paragraph 1 allows Parties to apply extended confiscation to any of the categories of offence in the Appendix to the Convention, the drafters emphasised that its establishment and application must be approached with caution, given its severity, and with full respect for the rights of affected persons, as well as for the principles of necessity and proportionality set out in Article 31.

44. The concept of “a major economic advantage” is to be interpreted in accordance with domestic law and practices. The drafters also agreed that Parties may, but are not required to, regulate extended confiscation in the form of value-based confiscation to comply with this provision, even though this is not expressly mentioned in the text.

45. Paragraph 3 requires courts to take the specific circumstances of the case into account when determining the illicit origin of property. One relevant factor may be a disproportion between the person’s lawful income and their actual assets and economic resources. Disproportionality is not, however, the sole criterion. Other factors – such as the nature of the offence, the *modus operandi*, or, in some jurisdictions, a “criminal lifestyle” test – may also be considered when linking property to criminal conduct.

46. Some legal systems impose a time limit, restricting extended confiscation to property obtained within a defined period. Although the article does not explicitly provide for such a limit, the drafters agreed that Parties may introduce one under domestic law to meet requirements of necessity and proportionality.

47. Given the potentially significant impact of extended confiscation on the rights of affected persons, paragraph 2 – drawing on Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation (the ARC Directive) and the FATF Recommendations – permits Parties to limit its application to: offences liable to generate, directly or indirectly, a major economic advantage; and/or offences punishable by deprivation of liberty or a detention order for a maximum of at

least four years, and/or to a list of specified offences. Each Party may choose one or more reservations that best suit its legal system.

48. However, paragraph 1 restricts the scope of possible reservations: money laundering and the financing of terrorism cannot be exempted. Extended confiscation must therefore be available for these crimes.

49. International co-operation in matters of extended confiscation is facilitated by Articles 23 and 24 of the Convention, which apply *mutatis mutandis* for the purpose of co-operation under this Protocol. For this reason, the drafters considered it unnecessary to include additional provisions specifically regulating co-operation in cases of extended confiscation.

Article 4 – Non-conviction-based confiscation

50. NCBC is widely regarded as one of the most effective measures for the recovery of proceeds of crime from criminal organisations. Discussions within the PC-RAC underscored the need to develop a provision that accommodates the diversity of legal traditions among States. The drafters considered existing best practices in this area and acknowledged that no single, uniform model for NCBC exists.

51. The drafters also recalled that the ECtHR has held, in individual cases, that specific NCBC measures – including criminal, civil and administrative forms – may be compatible with Article 6 of the European Convention on Human Rights and Article 1 of its Protocol 1, provided that fair-trial rights and the principle of proportionality are respected.

52. Paragraph 1 establishes a flexible approach to NCBC, allowing each Party to determine whether NCBC should be pursued through criminal, civil, or administrative proceedings, where such proceedings are not purely administrative, to the extent that, in line with Article 1, subparagraph (d) of the Convention and paragraphs 39, 163 to 165 and 176 of its Explanatory Report, such confiscation constitutes 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. This provision sets out an open standard rather than a minimum standard, providing flexibility for different models of NCBC to be established by the Parties to this Protocol. It is broadly worded and subjects NCBC to fundamental principles of domestic law, in a similar manner as the FATF standards (FATF Recommendation 4). Parties may decide to allow for NCBC to be applied to property belonging to an unknown offender.

53. In accordance with paragraph 1, NCBC should be ordered by a court, in line with the definition of confiscation in Article 1 of the Convention, and does not require a prior conviction. The court must be satisfied that the property in question is derived from or obtained, directly or indirectly, from criminal conduct.

54. Paragraph 2 introduces the possibility for Parties to restrict the scope of NCBC measures through reservations. This mechanism accommodates Parties wishing to adopt NCBC with a limited scope, and enables EU member States to ensure coherence with the ARC Directive. This harmonised approach is intended to facilitate enhanced co-operation and mutual recognition of confiscation orders.

55. Paragraph 3 leaves it to Parties to introduce an additional NCBC model to enable the confiscation of proceeds, instrumentalities, or property of equivalent value, in situations where a conviction was pursued, but the proceedings had to be discontinued. It sets out two conditions. Subparagraph (a) lays down that this type of NCBC may be ordered when criminal investigations or proceedings have been initiated and the relevant criminal proceedings could have led to a criminal conviction but cannot be continued for one of the reasons specified, such as the death of the person against whom the proceedings were conducted, their abscondment or their incapacity to stand trial because of long-term illness, as well as where the statute of limitations for the underlying crime is below 15 years and has expired.

56. The phrase “could have led to a conviction” aims to ensure that confiscation is not ordered on insufficient grounds. The drafters were mindful of the current case law of the ECtHR on the presumption of innocence in the context of criminal asset recovery. This subsequent decision on confiscation must not impute criminal liability or in any way imply a finding or commentary regarding the guilt of the person affected.

57. Subparagraph b provides that paragraph 3 should apply at least where the proceeds, instrumentalities, or property of equivalent value derive from or are obtained from, or are directly linked to offences liable to generate a major economic advantage, giving Parties the possibility to limit this type of NCBC measure. As noted above, this expression should be interpreted in accordance with domestic law and practice.

58. In cases of illness and absconding, the existence of proceedings *in absentia* in the Parties can be considered sufficient to enable confiscation.

59. As with extended confiscation, international co-operation in NCBC matters is facilitated by Articles 23 and 24 of the Convention, which apply *mutatis mutandis* for the purpose of co-operation under this Protocol.

Article 5 – Confiscation from third parties

60. This article introduces a general provision on the possibility of applying provisional and confiscation measures to proceeds, or property the value of which corresponds to such proceeds, owned or held by a person other than the suspect or accused person. Its purpose is to clarify that the assets of third parties may also be subject to freezing, seizing, and confiscation measures, thereby preserving the effectiveness of the confiscation framework established in the Convention and this Protocol. This possibility was not explicitly provided for in the Convention.

61. The provision specifies, in paragraph 2, that instrumentalities may be the object of confiscation from third parties. However, the drafters recognised that this cannot be mandatorily required in all cases, leaving it to the discretion of the Parties to determine whether such measures may extend to instrumentalities and under what circumstances.

62. “Third party” refers to a specific natural or legal person other than the suspect, accused person, or other affected person, who is subject to the confiscation proceedings. The definition of what constitutes a *bona fide* third party is left to the Parties. A finding that a third party does not have *bona fide* status should, however, always be based on concrete facts and circumstances of the case. Situations that may serve as examples include:

- That the property remains under the effective control of the suspect, accused, or convicted person, although the property is held or owned by family members, associates, or legal persons and arrangements;
- That the property was gifted or transferred to the third party for an amount significantly above or below market value;
- That the property is held by a third party who has lent their identity to create only apparent ownership.

63. A third party may be a company or a legal arrangement within the meaning ascribed to the latter term in the FATF glossary. As with other articles in this section, the confiscation of third-party property may be ordered against legal persons, in accordance with domestic law.

64. For Parties wishing to limit confiscation from third parties, paragraph 3 provides for a reservation allowing for a limitation to cases where the third party knew, or ought to have known, that the purpose of the transfer or acquisition was to avoid confiscation. In applying this paragraph, the court must determine, on the basis of the specific facts and circumstances of the case, whether the third party knew or ought to have known that the purpose of the transfer was to avoid confiscation.

65. The ECtHR has recognised that Parties may, in principle, apply confiscation measures to property held by third parties, provided that effective safeguards are in place. This article ensures that the extension of confiscation to third parties does not prejudice the rights of *bona fide* third parties. Article 31 on legal remedies requires Parties to guarantee that third parties who are affected by a provisional or confiscation measure can effectively exercise their fair trial rights to defend their interests.

Section 2 – Investigative and provisional measures

Article 6 – Provisional measures

66. Effective provisional measures are a fundamental component of any asset recovery regime, securing the property liable to confiscation and ensuring the effective enforcement of confiscation orders.

67. While Article 4 of the Convention already obliges Parties to adopt measures enabling the identification, tracing, freezing, or seizure of property for the purpose of eventual confiscation, Article 6, paragraph 1, of this Protocol explicitly extends the application of such measures to all property subject to confiscation under the Protocol, including property subject to extended confiscation and NCBC.

68. Paragraph 2 introduces additional operational and procedural rules. It provides that provisional measures to prevent the dissipation of assets liable to confiscation under the Convention and the Protocol, may be taken *ex parte* or without prior notice, as well as on an urgent basis, in a similar manner as FATF Recommendation 4. In this context, *ex parte* means that provisional measures may be taken without the participation of the affected person in the proceedings. The term "without prior notice" means that the affected person does not need to be notified before the provisional measure is taken. Such proceedings *ex parte* or without prior notice must be subject to the principle of proportionality and appropriate safeguards under domestic law, including the subsequent triggering of notice or *inter partes* review following the execution of the provisional measure.

69. Although not detailed in this article, access to legal remedies remains a fundamental requirement. Article 31 of the Protocol requires Parties to ensure that persons affected by provisional measures pursuant to the Convention or this Protocol, can uphold their rights. This encompasses the requirement to ensure that affected persons can exercise their right to an effective remedy, including by providing them with the opportunity to challenge provisional measures before a competent authority.

70. As regards paragraph 2, in order to ensure proportionality, and given the exceptional nature of provisional measures taken on an urgent basis, the validity of such measures must be limited in time when these urgent provisional measures do not take the form of an order. This is because orders are usually limited in time by default and can be challenged. However, the Protocol does not seek to harmonise procedural timeframes. It is left to the discretion of States to define the maximum duration of any provisional measures in their domestic legislation. Such national provisions must comply with principles of necessity and proportionality and applicable standards of due process.

Article 7 – Investigative powers and techniques

71. Article 7 of the Protocol extends the obligations of Parties in two key respects. First, Parties are required to enable their courts and other competent authorities, in accordance with the applicable provisions of domestic procedural law, to order that information held by any financial institution or VASP be made available, thereby broadening the scope of entities covered. Second, it expressly provides that the scope of information includes all records held by financial institutions or VASPs as part of their customer due diligence (CDD) obligations, as defined in Article 13, paragraphs 2a.(i and 2.a.iii, of the Convention.

72. To address the evolving nature of financial markets – where customers may open accounts not only with traditional banks, but also with a range of other financial institutions, such as payment institutions, and VASPs – this article extends the investigative powers outlined in paragraphs 1 and 2 of Article 7 of the Convention. These powers, which include issuing production orders and monitoring orders, may now be applied to all accounts held by all financial institutions and VASPs operating within a Party's jurisdiction, not solely traditional banks. Its objective is to ensure that Parties possess the necessary tools to effectively

trace and secure assets, regardless of the type of financial institution or VASP holding the accounts or conducting operations on behalf of a client.

73. During the drafting process, the Committee noted that the term "non-bank financial institutions", as used in the Convention, is no longer commonly employed. Consequently, the drafters adopted the broader and more contemporary term "financial institutions" to align with modern regulatory terminology.

74. Paragraph 1 ensures that competent authorities are empowered to order that records held by financial institutions and VASPs are made available or seized for the purposes of executing provisional and confiscation measures. It is important to clarify that this article does not impose new CDD obligations, nor does it expand the existing scope of investigative powers. Rather, it clarifies their application across a broader range of obliged entities.

75. The powers covered by this article have been expanded to align with evolving international standards. FATF Recommendation 11 on record-keeping requires financial institutions, designated non-financial businesses and professions (DNFBPs), and VASPs, to retain not only records of transactions but also all records obtained through CDD measures. These records include:

- Copies of official identification documents (e.g., passports, identity cards, and driver's licences);
- Account files and business correspondence; and
- Results of any analysis conducted (e.g., inquiries to establish the background and purpose of complex, unusual, or large transactions).

76. These record-keeping requirements are essential to prevent money laundering and terrorism financing, and to identify and trace proceeds of crime in the context of asset recovery cases. Such records must be made available to courts and other competent authorities as stipulated in FATF Recommendation 30. The article does not specify a retention period for records, leaving this to the discretion of the Parties in accordance with national and international requirements.

77. CDD and other obligations for entities subject to AML/CFT requirements are outlined in Article 13 of the Convention. Specifically, paragraph 2.a.i mandates the identification and verification of customers, while paragraph 2.a.iii sets out record-keeping obligations.

78. Paragraph 2 mirrors the investigative powers in Article 7, paragraph 2, of the Convention, but extends its scope to include any financial institution and VASP.

79. The powers set out in this article shall be subject to appropriate procedural safeguards and must respect the principle of proportionality.

Article 8 – Financial investigations

80. Article 8 aims to ensure that competent authorities are able to systematically conduct effective financial investigations, as defined in Article 2, subparagraph a, of this Protocol, at an early stage whenever a criminal investigation is initiated into an offence liable to generate major economic advantage.

81. Paragraph 1 provides that, at a minimum, competent authorities must be able to conduct financial investigations without delay in all cases involving the financing of terrorism, and in money laundering and categories of offences in the Appendix to the Convention, where such offences generate a major economic advantage. According to Article 2, subparagraph a of this Protocol, the purpose of these investigations can be any or all of the following:

- Identify the extent of criminal networks and/or the scale of criminality;

- Identify and locate property that may be subject to confiscation under the Convention and this Protocol (and apply temporary provisional measures where appropriate); and/or
- Gather information that may be used in criminal or confiscation proceedings.

82. As already mentioned, these listed purposes should be regarded as alternative and not cumulative. Which of the three purposes listed will be pursued by the investigation is naturally dependent on the particular features of the case at issue and is for the competent authorities to assess and decide on a case-by-case basis and, where relevant, without prejudice to the principle of prosecutorial discretion.

83. By referring to "competent authorities responsible for investigating and/or prosecuting", the Protocol deliberately maintains flexibility for Parties regarding the internal organisation of their justice systems.

84. Paragraph 2 clarifies that financial investigations may be conducted independently, alongside, or within the context of a criminal investigation, implying that they do not necessarily need to be procedurally separated from regular criminal investigations, and giving Parties the flexibility to conduct these investigations in accordance with their national procedural set-up.

85. Paragraph 3 allows financial investigations, as defined in Article 2, paragraph 1, sub-paragraph a, of this Protocol, to be conducted across all stages of criminal investigations and proceedings. The drafters emphasised that such investigations may be initiated or continue after a conviction, or following NCBC proceedings. Discussions within the Committee noted that, in practice, post-conviction financial investigations are typically limited to the purpose of asset tracing. The authorities responsible for conducting financial investigations after a conviction or following NCBC proceedings may differ from those competent during the pre-trial and trial phases, and may include asset recovery offices. Furthermore, while it is essential that the tools for identifying and tracing assets after a conviction are as effective as in the pre-trial phase, the investigative tools used in the post-conviction phase may differ from those available earlier in the pre-trial and trial phases.

86. Paragraph 4 provides for the possibility for Parties to enable the establishment of multi-disciplinary teams. Such teams could be composed of, for example, prosecutors, investigators, financial analysts, and tax or customs experts, and could be set up, for example, in complex cases, where they have proven to be highly effective. The notion of "complex cases" is left to the discretion of the Parties to interpret. Examples discussed during the drafting included cases involving the investigation of a large number of interlinked criminal offences or involving financial crimes involving numerous commercial entities or complex business structures.

87. While these teams are typically established on a temporary basis and for specific tasks, Parties may also consider establishing permanent teams where necessary.

Article 9 – Information on bank accounts, payment accounts, securities accounts, safe-deposit boxes, and virtual asset accounts

88. Access to information on bank accounts, payment accounts, securities accounts, safe deposit boxes, and virtual asset accounts is essential in combating money laundering, its predicate offences, the financing of terrorism, and serious criminal offences. The Committee's discussions highlighted the critical importance of rapid access to adequate, accurate, and up-to-date information, for effective asset recovery and for the purposes of carrying out analysis and exchanging information among Financial Intelligence Units (FIUs). While the technical features of the solution used to obtain such information are not of primary importance, the ability to acquire the information in an effective and timely manner is paramount. This is why the article does not prescribe a requirement for a specific technological solution, leaving it to the Parties to decide and implement the mechanisms they find appropriate. However, it does require swift access to information for both domestic and international co-operation purposes. The essential requirement is to obtain the information in a timely manner, to allow for efficient asset recovery proceedings. The requirement of effectiveness means that the information must not only be transmitted promptly, but also correspond to the request, and be sufficiently clear and precise. This can be achieved through a central automated mechanism or other similarly effective and timely mechanisms. The drafters emphasised that "similarly"

should not be interpreted as "equal" or "the same", as it was acknowledged that States lacking centralised automated mechanisms cannot, with certainty, guarantee the same level of timeliness.

89. Paragraph 2 explicitly requires that FIUs have access to the information contained in the mechanism referred to in paragraph 1. Asset Recovery Offices (AROs) and other competent authorities designated by the Party shall also have access to the information. The drafters agreed that ensuring access for these authorities is essential to maintain operational efficiency and enable timely action. However, Parties are not entirely free to determine which authorities may have access, as the provision limits these options by specifying the purposes for which such access and the information obtained may be used, to respect the principles of necessity and proportionality. In particular, those other authorities must have competencies for preventing, detecting, investigating, and prosecuting serious criminal offences and for identifying, tracing, seizing, and freezing property related to such offences.

90. Paragraph 3 ensures that Parties implement technical and organisational measures to guarantee the security of data, in accordance with high technological and legislative standards. In this regard, Parties must adopt measures to comply with the applicable data protection legislation and to establish safeguards regarding the processing of the information. Although not specified explicitly in the text of the provision, the drafters clarified in their discussions that this paragraph concerns personal data protection.

91. The drafters emphasise that this article constitutes a minimum standard and that Parties can go beyond, also setting out the procedure, conditions for authorities' access, etc. Specifically, if the technological solution found is a central register or a centralised automated mechanism, direct and immediate access for authorities to the register or mechanism could be the preferred solution to allow for the swiftest access to information.

Section 3 – Financial intelligence unit

Article 10 – Suspension or withholding of consent of suspicious transactions, accounts and business relationships

92. This article addresses the postponement of transactions, the suspension of accounts kept by financial institutions and VASPs, and the suspension of business relationships entered into by all financial and non-financial entities and individuals subject to AML and CFT obligations. The provision aligns with the approach established in the EU acquis, combining both the suspension and withholding of consent for accounts and business relationships.

93. The power to suspend a transaction may be either a direct power of the FIU, or indirectly available to the FIU through enabling suspension of transactions and thereby triggering AML regulations.

94. A business relationship could pertain to a relationship between, e.g., a notary, auditor, external accountant, tax adviser, real estate agent, provider of gambling services, and a client.

95. Paragraph 1 extends the scope of postponement or suspension beyond the current focus on transactions suspected of being related to money laundering and terrorist financing under the Convention. It includes cases where there is a suspicion that a transaction or account is linked to any of the categories of offences in the Appendix to the Convention.

96. Paragraph 2 specifies that the objectives of this power are to:

- Provide sufficient time for the FIU to conduct its analysis; and
- Allow prosecutorial and judicial authorities adequate time to implement provisional measures, such as freezing or seizing assets.

97. Paragraph 3 mirrors the approach of Article 14 of the Convention. It is for the Parties to decide the maximum period for the suspension or withholding of consent under domestic law. However, any period must be strictly necessary and proportionate to achieve the objectives set out in Article 14 of the Convention and Article 10 of this Protocol.

98. Paragraph 4 requires Parties to adopt the necessary legislative and other measures to ensure the protection of the fundamental rights of individuals affected by a suspension or withholding of consent. The nature of that measure depends on the perceived impact of the order to suspend or withhold consent on fundamental rights and its duration. If the measure is perceived to have a significant impact on fundamental rights due to, e.g., its long duration, Parties should put in place safeguards to protect the right of affected persons that match the severity of the potential impact. In compliance with the right to an effective remedy, such safeguards should address issues such as the notification of the affected person, the possibility to challenge such decisions administratively or judicially, and access to a lawyer. In order to maintain confidentiality during the suspension, the notice to the affected person could be effected once the suspension has expired or has been lifted.

99. Paragraph 5 explicitly requires Parties to authorise the FIU to cancel its postponement or suspension order once the objectives set out in paragraph 2 have been achieved. This may occur for several reasons, including:

- The risk of the funds, client, or suspect fleeing the jurisdiction no longer exists;
- The FIU can no longer effectively mitigate the risk of alerting the client or suspect about the postponement order;
- A formal restraining or freezing order has been issued by competent authorities;
- The legal origin of the funds in question has been established; or
- The investigation into the person, account, or transaction has been concluded.

100. Paragraph 6 allows Parties to reserve their right not to apply this article to suspension of accounts and business relationships.

Section 4 – Asset recovery office

Article 11 – Asset recovery office

101. Article 11 of the Protocol requires each Party to establish or designate an ARO. The primary mandate of an ARO, as provided in paragraphs 1 and 2, is to assist other competent authorities to identify and trace property that may be subject to confiscation, as well as to facilitate cross-border co-operation with AROs of other Parties.

102. The drafters noted that the introduction of AROs is one of the key innovations of this Protocol. It reflects recognised international best practices in asset recovery and aligns with the approach taken in the ARC Directive.

103. The Protocol affords Parties the flexibility to determine the number of AROs they wish to establish or designate.

104. Paragraph 3 requires Parties to empower AROs, in accordance with the provisions of Article 6 on provisional measures, to take urgent provisional measures in cross-border cases to preserve property at imminent risk of disappearance. For example, this may apply when competent authorities in another Party inform an ARO that property of suspected illicit origin is located within its jurisdiction. Such measures may be taken without prejudice to the powers of other competent authorities and may last no longer than seven working days.

105. It should be clarified that paragraph 3 does not constitute a legal basis for law enforcement co-operation. It does not provide for the making, the recognition, or execution of requests for provisional measures within the meaning of Article 6 of the Protocol. Rather, it ensures that an ARO may act *ex officio* by taking urgent measures to preserve property in cross-border cases, where it becomes aware of assets that are or may become the object of a freezing, seizure, or confiscation order issued in another Party and where no other authority can act to preserve the property.

106. Paragraph 4 reflects the principles of necessity and proportionality by explicitly stating that provisional measures should not remain in place longer than necessary to fulfil the objective set out in paragraph 3. When read together with the seven-day limit in paragraph 3, it follows that such measures may not exceed seven working days and shall be lifted if they are no longer necessary for the purpose identified in paragraph 3.

Article 12 – Access to information by asset recovery offices

107. This provision establishes the fundamental requirement for AROs to have timely access to the information necessary for the effective performance of their functions. Recognising the time-sensitive nature of asset tracing, the provision ensures that AROs may obtain the data required to identify, trace, and recover illicit assets without undue delay, and to be able to respond swiftly to cross-border requests.

108. To this end, each Party is required to adopt legislative and other measures to guarantee that AROs can access relevant information without delay. The Protocol identifies three distinct modalities of accessing such information:

- a) Immediate and direct access to data stored in centralised or interconnected public registers or databases represents the most direct and efficient means of obtaining information. The population database can include information on individuals, such as data on age, gender, address, etc.
- b) Immediate and direct access, or – where this is not feasible – access upon request, to a broader range of data sources that may support investigations. While this modality imposes a slightly less stringent requirement on Parties, it is recommended that immediate and direct access be ensured where possible.
- c) Immediate and direct access, or access upon request, to information held by authorities responsible for fiscal matters, social security, and criminal investigations. Given the sensitive nature of such information, this modality allows Parties to introduce more stringent conditions as additional safeguards. Access may be subject to specific conditions set out in national law. Such conditions may provide for the refusal of access where necessary to preserve the integrity of investigations, protect the confidentiality of information provided by another Party, or ensure the proportionality of requests in relation to the legitimate interests of natural or legal persons.

109. Granting access to information does not preclude the Parties from making such access subject to procedural safeguards established under national law, such as the need for a prior judicial authorisation, while duly taking into account the need for AROs to be able to respond swiftly to cross-border requests, particularly in urgent cases.

110. Access and searches should be regarded as immediate and direct, *inter alia*, when the national authorities operating a register transmit information without delay through an automated mechanism to competent authorities, provided that no intermediary institution can interfere with the requested or transmitted data.

111. Paragraph 3 ensures that Parties implement technical and organisational measures to guarantee the security of data in accordance with high technological and legislative standards. In this regard, Parties must adopt measures to comply with the applicable data protection legislation and to establish safeguards regarding the processing of the information. Although not specified explicitly in the text of the provision, the drafters clarified in their discussions that this paragraph concerns personal data protection.

112. The provision acknowledges that not all relevant data may be stored in centralised systems. In such cases, paragraph 4 requires Parties to ensure that AROs can obtain the necessary information swiftly through alternative mechanisms that are both streamlined and standardised, thereby reducing administrative burdens and facilitating efficient co-operation.

Section 5 – Asset management

113. The efficient and effective management of frozen, seized and confiscated assets was identified as one of the key elements for inclusion in the Protocol by the PC-RAC in accordance with its Terms of Reference. This section of the Protocol sets out the general principles in Article 13, followed by operational measures in Articles 14 to 17, to assist Parties in introducing or strengthening asset management measures. These mechanisms include the establishment or designation of Asset Management Offices (AMOs) and the possibility of pre-confiscation sales.

Article 13 – General principles of management

114. This article builds upon Article 6 of the Convention by expanding its scope. It requires the "proper management" of all property frozen, seized, or confiscated under the measures provided for in the Convention and this Protocol. The term "proper management" has been retained to maintain consistency with the Convention's terminology and should be understood as requiring the efficient and effective handling of property, with due care taken to preserve its value in a cost-efficient manner.

115. While Parties retain flexibility in determining the most suitable mechanisms for ensuring appropriate asset management, the Protocol requires the competent authorities for managing assets to assess the frozen or seized property, in order to reduce costs and preserve value (paragraph 2). Such assessments provide essential information on the property's value, its condition, and preservation needs. The assessment should be conducted before, during, or immediately after freezing or seizure. The drafters agreed that, while these assessments represent good practice, they should not be mandatory in every case. Instead, they should be undertaken when justified by the nature and type of property. In practice, there may be instances where an assessment is unnecessary; for example, if the property is to be returned promptly after freezing or seizure, and it would incur substantial costs without contributing to the retention value of the asset. It is therefore essential to afford such competent authorities the flexibility to evaluate whether conducting such an assessment would be reasonable and justified in a specific case.

116. The discussions highlighted additional management principles and practices that Parties may adopt. These include mechanisms for the destruction of property that is unsafe, illegal, or has no value, where such procedures are not already established under national law.

Article 14 – Asset management office (AMO)

117. Paragraph 1 establishes the obligation for each Party to ensure the existence of an AMO, either by creating a new body or authority, or by designating an existing one. This provision is intentionally broad to accommodate a variety of institutional and administrative arrangements that exist across legal systems. For example, a Party may opt to establish one or more authorities, including a single authority operating through multiple regional branches. What is essential, however, is that every Party has in place a dedicated body responsible for the management of frozen, seized, and confiscated assets, whether this is by managing property or by providing support and expertise to other competent authorities. The drafters agreed that effective asset management is a critical component of a functioning asset recovery system and therefore made the establishment or designation of an AMO a mandatory requirement.

118. Paragraph 2 outlines the minimum core functions that each AMO must be able to carry out. These include national-level tasks, namely the management of assets or the support to other competent authorities in managing assets, as well as the co-operation with competent authorities responsible for the identifying, tracing, freezing, seizing and confiscation of property (subparagraphs *a* and *b*) and international-level co-operation functions (subparagraph *c*). While Parties are free to assign additional competences to their AMOs, the minimum core functions listed must be guaranteed.

119. To facilitate international co-operation and promote timely communication, paragraph 3 requires each Party to designate one, or at most two, contact points. This measure was deemed necessary to eliminate any ambiguity regarding the appropriate authority, or authorities, to be contacted for co-operation requests in foreign jurisdictions.

120. As an exception to the previous paragraph, paragraph 4 allows for the designation of a third contact point, but only where justified by the organisation of powers under a Party's Constitution.

Article 15 – Pre-confiscation sale

121. This article provides for the adoption of rules governing the pre-confiscation sale of movable and immovable property (such as real estate, vehicles, etc.) in specific circumstances. As previously noted, the pre-confiscation sale is considered a good management practice in some situations, such as for reasons of cost-effectiveness, or where an item is perishable or rapidly depreciating. Parties are not limited to the three situations outlined in this article and may establish additional circumstances in which pre-confiscation sales may be applied, provided that necessary safeguards are respected.

122. Pursuant to paragraph 1, Parties should enable the sale of frozen and seized property before a final decision regarding the seized or frozen property is rendered. For the purposes of this provision, such a decision should be understood as a final decision on confiscation or disposal of property, including disposal in the form of the return of property to the rightful owner(s).

123. The Protocol does not specify which authority should be competent to carry out these sales, allowing Parties to apply this article in accordance with their respective institutional frameworks and division of competences. For instance, in some jurisdictions, the competent authority may be able to conduct pre-confiscation sales without prior authorisation, while in others, a court order may be required.

124. Any interference with the right to property as enshrined in Article 1 of the Additional Protocol No. 1 to the European Convention on Human Rights must be necessary and proportionate. Therefore, the Parties must ensure that the interests of affected persons are duly taken into account. The scope of the term "affected persons" is intentionally broad, extending beyond the direct owner of the property to include any person whose rights may be affected by the sale, for example, individuals who hold or have a right to use the property.

125. Specific procedural guarantees under domestic law must apply both before and, where appropriate, after the sale. Paragraph 2 of this article sets out the guarantees applicable before the sale. The right to be heard before the sale ensures that affected persons have the opportunity to establish their interests and comment on relevant aspects of the sale, such as the valuation of the property, market conditions, and timing. The competent authority must take the affected person's interests into account when deciding whether and how to proceed with the sale. While the sale does not require the consent of the affected person, individuals may request a sale themselves. The Parties are under no obligation to grant such request.

126. Further safeguards set out in Article 31 of this Protocol apply, which include the possibility for affected persons to challenge a sale order and for courts to suspend the execution of a pre-confiscation sale order if otherwise there would be irreparable harm to the affected person. Parties can also provide for the possibility of giving the appeal suspensory effect by law.

127. Paragraph 3 provides that the amount obtained from the sale shall be secured and properly managed in line with Article 13 of this Protocol until a final judicial decision has been rendered in the underlying case.

128. During the PC-RAC's discussions concerning the pre-confiscation sale, the drafters encouraged the Parties to consider adopting appropriate measures to prevent the property from being acquired, directly or indirectly, by persons convicted in the criminal proceedings to which the property that has been frozen or seized relates.

Article 16 – Use of frozen, seized and confiscated property

129. The use of confiscated assets for social and public purposes sends a clear and visible message that crime does not pay, and that society is committed to using property derived from criminal activity to combat crime and repair the harm it causes. While this provision is not mandatory, the drafters encourage Parties to develop and promote this practice, as well as to establish specific procedures to ensure transparency and accountability in decision-making.

130. Various forms of social re-use of confiscated assets are already implemented in several Council of Europe member States. For examples and practices in this area, reference may be made to Report Doc. 15500 of the Council of Europe Parliamentary Assembly dated 11 April 2022 and the Guidelines for the management of seized assets issued by the Council of Europe in 2023.

131. The drafters decided to address the social re-use of frozen and seized assets in a separate paragraph for two main reasons. First, the discussions within the PC-RAC revealed that the re-use of assets prior to final confiscation is already practised in some States, subject to national rules on compensation of the owner in case no confiscation of the property in question is ultimately ordered. In other legal systems, however, it is considered to be contrary to fundamental legal principles. This is because the freezing or seizure of property is, in principle, a temporary measure and not based on a final decision to deprive the person whose assets are frozen or seized of that property. Second, revenues generated from confiscated assets may be used by Parties in accordance with paragraph 1, whereas this is not envisaged for frozen or seized property. Paragraph 2 therefore does not mention such possibility.

132. Although paragraph 2 does not impose new obligations on Parties, the drafters decided to retain it as it has proven its effectiveness in those states where it has been introduced.

Article 17 – Information on frozen, seized and confiscated property

133. The establishment of tools or mechanisms for the rapid identification of frozen, seized, or confiscated property is a key measure to enhance efficiency in asset management. This article requires Parties to create tools to enable the identification of assets, their value and their owner (including, where available, the beneficial owner). “Identification” within this article means retrieving available data on the property which has already been frozen, seized or confiscated. States may also provide additional features, such as supplementing these records with photographs or video recordings that document the condition of the property at the time of seizure or retention.

134. A further objective of this article is to facilitate co-operation between Parties by enabling their authorities to swiftly obtain and, when required, share relevant information in the context of mutual legal assistance (MLA) or co-operation between AROs, as provided for in Article 29 of this Protocol.

135. Paragraph 3 ensures that Parties implement technical and organisational measures to guarantee the security of data in accordance with high technological and legislative standards. In this regard, Parties must adopt measures to comply with the applicable data protection legislation and to establish safeguards regarding the processing of the information. Although not specified explicitly in the text of the provision, the drafters clarified in their discussions that this paragraph concerns personal data protection.

Chapter III – International co-operation

136. Article 15, paragraph 1, of the Convention applies *mutatis mutandis* to co-operation under this Protocol. This means that 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.

137. Article 23 of the Convention applies *mutatis mutandis* to co-operation under this Protocol. This means that Parties are, in principle, required to co-operate when receiving a request for confiscation, within the meaning of Article 1, subparagraph *d*, of the Convention, from another Party that falls within the scope of the Convention or this Protocol. Article 1, subparagraph *d*, of the Convention defines confiscation as 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. In this context, the drafters recall paragraph 39 of the Explanatory Report to the Convention¹.

138. In accordance with Article 23, paragraph 5, of the Convention, Parties are also required to co-operate to the widest extent possible under their domestic law with 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 the Convention. Such measures include civil “in rem” confiscation.

¹ “The definition of “confiscation” was drafted in order to make it clear that, on the one hand, the 1990 Convention only deals with criminal activities or acts connected therewith, such as acts related to civil in rem actions and, on the other hand, that differences in the organisation of the judicial systems and the rules of procedure do not exclude the application of the 1990 Convention and this Convention. For instance, the fact that confiscation in some states is not considered as a penal sanction but as a security or other measure is irrelevant to the extent that the confiscation is related to criminal activity. It is also irrelevant that confiscation might sometimes be ordered by a judge who is, strictly speaking, not a criminal judge, as long as the decision was taken by a judge. The term “court” has the same meaning as in Article 6 of the European Convention on Human Rights. The experts agreed that purely administrative confiscation was not included in the scope of application of the Convention.”

139. The drafters recall, however, that the optional grounds for refusal set out in the Convention are applicable also to co-operation under this Protocol. In accordance with Article 28, paragraph 1, of the Convention, in particular paragraph 1, subparagraph *a* and *b* thereof, co-operation under this framework may, however, be refused, *inter alia*, where fundamental principles of domestic law or the risk of prejudice to the sovereignty, security, *ordre public* or other essential interests of the requested Party, require this. The recognition of a request may, for instance, be refused where the measure or measures that could not have been ordered or taken by the competent national authorities in the requested Party, in general or in a similar case, because it/they would be contrary to the fundamental principles of domestic law of that Party. This does not mean that a request may be refused simply because the exact same measure does not exist as such in the legal system of the requested party, but that it may be refused where the measure would be contrary to the fundamental principles of domestic law of that Party.

140. Fundamental principles of domestic law may include, for instance, fair trial standards, the presumption of innocence, as well as the principles of necessity and proportionality. The limitation these principles set can be expressed by Parties, *inter alia*, by virtue of making use of the reservation options provided for in Articles 3, 4 and 5 of this Protocol.

141. The drafters wish to clarify that the requirement, defined in Article 1, subparagraph *d* of the Convention, for confiscation to be ordered following “proceedings in relation to a criminal offence or criminal offences” should not be understood as requiring that the confiscation be ordered following, or in relation to a conviction for a particular offence. This requirement therefore does not imply that, in particular, NCBC orders may be refused as a matter of principle merely because confiscation is not based on, or linked to, a conviction for a criminal offence. In recognition of the fact that the concept of “proceedings in relation to a criminal offence” is not further defined in the Convention, the drafters wish to indicate their agreement that this concept may cover proceedings in which property was, for instance – but not necessarily limited to – identified during an investigation into a criminal offence, even if the property is not confiscated in the main criminal proceedings, but instead through a separate dedicated procedure, such as “*in rem*” proceedings, in line with paragraphs 39, 163 to 165, and 176 of the Explanatory Report to the Convention.

142. This is without prejudice to the possibility for Parties to refuse recognition of such orders where the rules governing that separate procedure are incompatible with the fundamental principles of domestic law of the requested Party, as also affirmed by the drafters in the commentary on Article 31 of the Protocol.

Section 1 – Principles of international co-operation

Article 18 – Principles and measures for co-operation

143. Article 18, paragraph 1, ensures that the enforcement of foreign freezing, seizing, or confiscation orders is not made conditional on the initiation or conduct of a domestic investigation. This means that foreign freezing, seizure or confiscation orders shall not be refused simply because there is no domestic investigation related to the assets in question. This principle is fully consistent with the objective of facilitating international co-operation without imposing undue procedural burdens.

144. This article does not preclude the competent authorities of the requested Party from conducting, in general, an investigation into matters related to the request, provided that the conduct of such an investigation is not made a precondition for enforcing foreign orders. The principle of *ne bis in idem* must, in any case, be respected.

145. To ensure effective co-operation, paragraph 2 establishes that a request to take provisional measures cannot be refused on the sole ground that it was made by a non-judicial authority, where the authority in question is designated as a competent authority by the requesting Party and where the domestic order in question was validated by a judicial authority prior to the transmission of the request. The principle promotes flexibility and respects the diversity of the national systems of the Parties.

Article 19 – Transfer of data

146. Article 19 applies to all transfers of personal data between Parties in accordance with the Convention and this Protocol, irrespective of the authorities involved (FIUs, AROs or other). It replicates, to a large extent, the wording of Article 7 of the Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (CETS No. 227). Where the wording of paragraph 3.a, of Article 19 of the present Protocol deviates from that of paragraph 3.a of Article 7 of the Third Additional Protocol to the

European Convention on Mutual Assistance in Criminal Matters, this is only to provide further clarity on the meaning of that provision and is not intended to signify a difference in the interpretation of the meaning of paragraph 3.a of Article 19 of the present Protocol and paragraph 3.a of Article 7 of the Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

147. The text reflects the fact that the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereinafter "the Convention 108") was modernised with the Protocol amending it (CETS No. 223), which was opened for signature in 2018. It is not a precondition for Parties to the Protocol to have ratified, accepted or acceded to this Protocol in order to raise data protection concerns on the basis of the modernised Convention 108, or for the Amending Protocol to have entered into force. The ability of requested States to invoke their domestic legislation in connection with data protection issues is reinforced.

148. This article applies to personal data transferred from one Party to another as a result of the execution of a request made under the Convention or this Protocol. It applies regardless of whether data are transferred because they are communicated by a "sending State", or because they are otherwise obtained by a "receiving State".

149. This article does not apply to personal data that is obtained by a Party as a result of the execution of a request made under the Convention or this Protocol, by that Party or any other Party, where that data is not transferred from one Party to another.

150. The expression "personal data" is used within the meaning of Article 2, subparagraph a of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. That definition applies irrespective of the way in which the personal data concerned are filed or processed.

151. The definition is to be understood as implying that an identifiable person is one who can be identified, directly or indirectly, by reference to an identification number or to one or more factors specific to his or her physical, mental, economic, cultural or social identity. This article does not affect the obligations of States under the Convention 108.

Section 2 – Investigative assistance

152. This section aims to strengthen and extend the scope of investigative assistance between the Parties.

153. This aligns with FATF Recommendations 37 and 40, which require countries to provide timely and constructive mutual legal assistance and information exchange, particularly in complex financial crime investigations.

Article 20 – Requests for information on accounts held in financial institutions or virtual asset service providers

154. Article 20 builds on Article 17 of the Convention by expanding both the scope of entities covered and the scope of obligations imposed. First, Parties are required to provide not only information held by banks, but also information held by other financial institutions or VASPs, thereby broadening the scope of entities covered. Second, it extends the scope of information to be provided beyond that required under the Convention. In addition to confirming whether a natural or legal person holds or controls one or more accounts, this article also requires the provision of particulars of the identified accounts. This includes all records held by financial institutions or VASPs as part of their CDD obligations, as defined in Article 13, paragraphs 2.a.i) and 2.a.iii), of the Convention. It thereby ensures that, in the context of international co-operation, the competent requested authorities may request the same information they are able to request in domestic cases under paragraph 2.a of Article 7 of this Protocol.

155. While Article 20 obliges Parties to provide information on accounts held or controlled by a natural or legal person in any financial institution or VASP located within its territory, it does not prescribe the specific means by which this obligation is to be fulfilled. This article must be read in conjunction with Article 9 of the Protocol, which requires Parties to implement mechanisms for accessing such information.

156. In all other respects, the explanations provided in the Explanatory Report to the Convention regarding Article 17 apply *mutatis mutandis* to this article.

Article 21 – Requests for information on transactions carried out by financial institutions and virtual asset service providers

157. Article 21 builds on Article 18 of the Convention by expanding the scope of entities covered in the same manner as Article 20. Parties are required to provide not only information held by banks, but also information held by other financial institutions or VASPs, thereby broadening the scope of entities covered.

158. It thereby ensures that, in the context of international co-operation, the competent requested authorities may request the same information they are able to request in domestic cases under Article 7, paragraph 2.b, of this Protocol.

159. In all other respects, the explanations provided in the Explanatory Report to the Convention regarding Article 18 apply *mutatis mutandis* to this article.

160. The drafters confirmed that the word transactions used in the title of this article has the same meaning as operations used in the text of the provision. Both terms are kept to preserve the consistency with the language used in the title and text of Article 18 of the Convention.

161. It should also be noted that Article 20, paragraph 1, and Article 21, paragraph 1, both refer to the particulars of identified accounts. While Article 20 mainly serves to ascertain whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts in a financial institution or virtual asset service provider located in the territory of the requested Party and requires the provision of particulars of such accounts only as an addition if this is determined to be the case, Article 21 is designed for more targeted requests in cases where the requesting authorities already know that a person holds a specific account the particulars of which they wish to request.

Article 22 – Requests for the monitoring of transactions carried out by financial institutions and virtual asset service providers

162. Article 22 builds on Article 19 of the Convention by expanding the scope of entities covered in the same manner as Articles 20 and 21. Parties are required to provide not only information held by banks, but also information held by other financial institutions or VASPs, thereby broadening the scope of entities covered.

163. It thereby ensures that, within the framework of international co-operation, the competent requested authorities may request the same information they are able to request in domestic cases under Article 7, paragraph 2.c of this Protocol.

164. In all other respects, the explanations provided in the Explanatory Report to the Convention concerning Article 19 apply *mutatis mutandis* to this article.

Article 23 – Joint investigation teams for the recovery of property liable to confiscation

165. Money laundering, terrorist financing or any other financial or economic crime are frequently transnational in nature and require dedicated investigations in relation to the recovery of property liable to confiscation that allow for rapid information exchange and feature a high level of expertise. In this context, the drafters considered the introduction of a legal basis for joint investigation teams (JITs) specifically for asset recovery to be a particularly effective tool for operational co-operation and coordination between two or more Parties.

166. The establishment of JITs is already provided for under other Council of Europe treaties, such as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182) and the Second Additional Protocol to the Council of Europe Convention on Cybercrime (ETS No. 224). JITs are also provided for under other bilateral and multilateral agreements, in particular at the EU level.

167. However, JITs are not universally available to all Parties to this Protocol, as not all Parties have signed the abovementioned international instruments, nor do these instruments provide a legal basis for JITs to be set up beyond the pre-trial and trial phases of criminal proceedings, such as to the post-conviction phase. Article 23 aims to fill this gap by providing an optional legal basis for JITs for the specific purpose of recovering property liable to confiscation, including investigations relating to the identification, tracing, freezing, or seizure of property liable to confiscation at any stage of the proceedings and irrespective of the nature of the proceedings and confiscation measures at issue in the participating States, whether criminal or civil, conviction-based or not.

168. This article and its explanatory notes draw inspiration from Article 20 of the Council of Europe's Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and its Explanatory Report (ETS No. 182). The drafters emphasise, however, that this article is not, in principle, intended to replace other existing legal bases for the establishment of JITs available to the Parties under international or regional instruments (including Article 20 of ETS No. 182).

169. Rather, this article provides a more specialised legal basis for JITs in proceedings where asset recovery is of particular importance. It is designed to be sufficiently broad to cover elements of investigations, within the meaning of domestic law, aimed at recovering property liable to confiscation that may fall outside the scope of other JITs provisions, especially those limited to (the pre-trial/trial phase of) criminal proceedings. Where the States wishing to co-operate are Parties to the European Convention on Mutual Assistance in Criminal Matters and its Second Protocol, or any other international mutual legal assistance treaty that provides for the possibility to set up a JIT, the provisions of that treaty shall prevail – provided that the conditions set forth therein are fulfilled and that the co-operation sought by means of the JIT can be provided on the basis of those agreements.

170. Paragraph 1 imposes no restriction on the number of Parties that may participate in a JIT. JITs operate for a defined period, which may be extended by mutual agreement. The composition of the JIT is to be specified in the agreement establishing it and may, depending on the States involved and the nature of the investigation, include, inter alia, prosecutors, officers of the authorities competent for asset tracing, and financial experts.

171. Where an agreement on the establishment of a JIT is reached, the team is generally constituted in the State where the principal investigative activities are expected to take place. The States concerned are required to address the question of costs, including daily allowances for team members.

172. In accordance with paragraph 3, a JIT operates on the basis that its leader shall be a representative of the authority in charge of the investigation for the purpose of recovering property liable to confiscation, in the main Party in which the team operates. Consequently, leadership of the JIT may transfer, for the purposes of specific investigations, if the team conducts operations in more than one State. The JIT leader must act in accordance with his or her national law, and the JIT itself must fully comply with the law of the State in which it operates.

173. Paragraph 5 permits seconded members – those operating outside their own State – to be present during investigative measures undertaken in the State of operation. The JIT leader may, however, for particular reasons and in accordance with the law of the State of operation, decide otherwise. The term “particular reasons” has not been defined but may include, for example, operational considerations justifying such a decision.

174. Paragraph 6 authorises seconded members to carry out investigative measures in the State of operation, provided that such measures are conducted in accordance with the national law of that State and on the instructions of the JIT leader. Seconded members may only undertake such measures with the prior approval of the competent authorities of both the State of operation and the seconding State. This approval may be included in the agreement establishing the JIT or granted at a later stage and may apply either generally, or be limited to specific cases or circumstances.

175. Paragraph 7 enables a seconded member to request his or her national authorities to take measures required by the JIT. In such cases, it is not necessary for the State of operation to submit a formal request for assistance, and the measures in question shall be treated in the seconding State as if they had been sought in the context of a national investigation.

176. Paragraph 8 addresses situations where assistance is required from a State not involved in the establishment of the JIT or from a third State. In such instances, the State of operation shall seek assistance in accordance with the applicable rules.

177. Paragraph 9 facilitates the work of JITs by allowing seconded members to share with the team information available in their State that is relevant to the investigation, provided that such disclosure is permissible under their national law and within the limits of their competence.

178. Paragraph 10 governs the conditions under which information lawfully obtained by a member or seconded member of a JIT may be used, particularly in cases where such information would not otherwise be accessible to the competent authorities of the States concerned.

179. Finally, paragraph 12 enables the States establishing a JIT to agree that persons who are not representatives of their competent authorities – such as experts from other States or international organisations – may participate in the JIT's activities. Such persons shall act primarily in a supportive or advisory capacity and shall not exercise the functions conferred on members or seconded members of the JIT, nor shall they use the information referred to in paragraph 10, unless expressly permitted under the relevant agreement between the States concerned.

Section 3 – Standard forms

Article 24 – Standard form for freezing or seizing property and Article 25 – Standard form for the confiscation of property

180. As Articles 24 and 25 are framed in identical terms, they are addressed together in this part of the Explanatory Report.

181. The introduction of a standard freezing or seizing form and a standard confiscation form for co-operation under the Convention and this Protocol are designed to enhance international co-operation and facilitate a more rapid and proactive approach to the execution of requests in cross-border cases. Their goal is to streamline the information which is required for the purpose of international co-operation under the Protocol and Convention in relation to freezing, seizing and confiscations requests, including, where relevant, information in relation to the return of property or compensation of victims of crime. These articles shall apply from the date on which the COP, in a composition restricted to the Parties to this Protocol, adopts the standard form(s).

182. In applying these articles, Parties are reminded of their obligations under the Convention, particularly those set out in Articles 33, 34, and 35 of the Convention, which address the roles of central authorities, direct communication, and the form and language of requests. To the extent that these provisions are not replaced by or modified by the Protocol, they must be duly considered when completing and transmitting the standard request forms.

183. Paragraph 1 of Articles 24 and 25 of the Protocol respectively addresses the formal requirements of the request. It provides that Parties shall use the standard forms adopted by the COP. The competence to adopt such certificates is explicitly conferred on that body, in a composition restricted to the Parties to this Protocol, by Article 35 of this Protocol.

184. Paragraph 2 of both Articles governs translation requirements. Both Articles provide that a translation of the underlying decision on which the form is based need only be provided upon request by the competent authorities of the requested Party, where the requested authorities consider it necessary to consult that decision. In order to facilitate consistency between the Convention and the Protocol, the declarations made by Parties in accordance with Article 35, paragraph 3 of the Convention apply *mutatis mutandis*.

185. Paragraph 3 introduces a new ground for refusal of a freezing, seizure or confiscation request that is linked specifically to the use of the standards form. It allows a Party to refuse recognition of a request if the standard form is incomplete or manifestly incorrect, and the requesting Party has not submitted a revised form following consultation. This ground for refusal applies in addition to those set out in Article 28 of the Convention, which apply *mutatis mutandis* to co-operation under this Protocol.

Section 4 – Return and sharing of property

Article 26 – Return of property

186. Article 26 of this Protocol modifies paragraph 2 of Article 25 of the Convention by removing the requirement for national law to permit the return of assets which was reflected in the original wording of Article 25, paragraph 2, of the Convention. It thereby further strengthens international co-operation and enhances legal certainty and consistency with regard to the satisfaction of victims' claims.

187. Article 26 also extends the material scope of Article 25, paragraphs 1 and 2 of the Convention to include property confiscated in accordance with Articles 3, 4 and 5 of this Protocol.

188. It is important to note, however, that this article does not impose an obligation to return property in every case. It only requires Parties to give priority consideration to effecting such returns. The assessment of each request for the return of confiscated property – whether for the purpose of restitution to legitimate owners or compensation of victims – remains at the discretion of the authorities of the requested Party. This assessment shall be based on the specific circumstances of the case and the validity of the foreign decisions underpinning the claim. While Parties must give priority consideration to returning the confiscated property to the requesting Party in accordance with this article, and are strongly encouraged to do so wherever possible, they retain the right to refuse co-operation, for instance, where there are competing claims to the property by third parties filed in their own legal system, or for other weighty reasons.

189. During the negotiations on this article, Parties expressed a shared commitment to incorporate provisions to safeguard the rights of legitimate owners and victims even prior to the execution of asset confiscation. This commitment led to the inclusion of the mechanisms outlined in paragraphs 2 and 3. These provisions introduce the possibility of returning frozen and seized assets to legitimate owners (paragraph 2) and to compensate victims of crime (paragraph 3) prior to a decision on the confiscation of such property in the main proceedings, subject to the conditions specified in the respective paragraphs. Recognising the sensitivity of property rights and the distinction between property which is subjected to provisional measures and property which is confiscated, any interference must be proportionate and have due regard to the right to property under Article 1 of Additional Protocol 1 to the European Convention on Human Rights.

190. Paragraph 2 requires Parties to give priority consideration to the return of frozen and seized property for the purpose of restitution to legitimate owners. This provision was inspired by Article 29 of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.

191. Paragraph 3 clarifies that Parties may also give priority consideration to returning property to the requesting Party for the purpose of compensating victims prior to a final decision on confiscation, provided that a decision on compensation has been issued by the competent authorities in the requesting Party and provided that the conditions set out in paragraph 3.a, b and c, such as that the decision be final, are met. Some jurisdictions have introduced this measure to facilitate the satisfaction of victims' claims, including claims to compensation, as quickly as possible. It is left to the Parties to decide whether to establish, in their domestic law, a possibility to sell the property in question (if it is not money) for the purpose of satisfying a decision on compensation.

192. The drafters also wish to highlight, in general, that the requirements established in this article are minimum requirements. Parties to this Protocol may establish or agree to be bound by more far-reaching requirements in the context of other international agreements. As clearly set out in paragraph 3 of Article 42, this Protocol does not alter or affect the obligations imposed by other international multilateral instruments, such as the United Nations Convention against Corruption (UNCAC), and Parties may apply such instruments in lieu of this Protocol, if it facilitates international co-operation. For EU member States, the so-called "disconnection clause" set out in paragraph 4 of Article 42 applies.

193. At EU level, Article 30 of Regulation (EU) 2018/1805 establishes an obligation to prioritise the satisfaction of victims claims to restitution of their lawful property and/or to compensation when deciding on the disposal of confiscated property and, as already noted above, Article 29 of the same Regulation also makes it mandatory to return frozen property to its lawful owners where certain conditions are met, rather than just making it mandatory to consider doing so.

194. Other relevant international legal instruments ratified by most Parties to this Protocol include UNCAC. It establishes minimum standards on the return and recovery of proceeds of corruption in its Chapter V. Of particular relevance is Article 57 of the UNCAC, which regulates the return of assets confiscated in accordance with that Convention to the requesting State Party, prior legitimate owners, or victims. In certain respects, that provision establishes more stringent requirements concerning the return of property than those provided for under this Protocol. These obligations naturally continue to apply between Parties to the UNCAC, including the obligations set forth in Article 57 concerning the return of confiscated assets representing proceeds of corruption, whenever the relevant conditions provided therein are fulfilled.

Article 27 – Sharing property

195. Paragraph 1 of Article 27 introduces the principle that the requesting and requested Parties will share confiscated assets equally. The equal sharing of confiscated assets between states (the "50-50 model") is already established as a legal standard within the EU and in the Trade and Co-operation Agreement concluded between EU and United Kingdom and is frequently applied in practice in (ad hoc) asset-sharing agreements. However, this default equitable division of assets does not preclude Parties from negotiating different property-sharing agreements on a case-by-case basis.

196. It is also important to note that the "50-50 model" applies only where money is obtained as a result of the execution of a confiscation order and where the amount obtained exceeds the 10,000 euros threshold. In line with the common practice of many states, if the amount is lower, the requested state may, unless otherwise agreed, retain the full amount obtained after execution.

197. For all other types of property obtained as a result of the execution of the confiscation order, Parties shall consult on the disposal. Parties may find it helpful to refer to the detailed framework set out in Article 30 of the EU Regulation (EU) 2018/1805, which sets out specific arrangements for the disposal and sharing of property other than money. These include, in the first instance, selling the property and disposing of the revenue in accordance with the rules on sharing of confiscated money and, in the second instance, transferring the property to the requesting Party. Where neither of those options are feasible or agreeable, the property could alternatively be disposed of in another way in accordance with the law of the requested Party or be used for public interest or social purposes in that Party.

198. The Committee decided that no mandatory form for, or elements of, property-sharing agreements should be prescribed by this Protocol. Such arrangements should be entirely up to the Parties to the agreement to decide on. Based on current practices, Parties may, however, wish to ensure that the agreement specifies, at least: the nature, value, and identifying information of the property shared, as well as the percentage of the property or amount of money to be distributed to each Party. The Committee agreed that the COP, in a composition restricted to the Parties to this Protocol, may consider recommending templates for asset-sharing arrangements.

199. In paragraph 2, the drafters aimed to strengthen the motivation for Parties to co-operate in asset recovery proceedings, even if they are not themselves the Party that is being requested to confiscate property, by underlining the possibility for them to be included in sharing agreements if they have provided assistance that contributed to the successful recovery of the property. However, the decision of whether and how to share confiscated assets with third parties is left entirely to the discretion of the requesting and requested Parties. Parties may furthermore decide to share property confiscated in accordance with a domestic confiscation order with Parties that provided investigative or other assistance, where such assistance contributed to the successful confiscation.

200. Paragraph 3 of this article makes provision for a requested Party to deduct any costs incurred in complying with a request under this Protocol or Convention from confiscated property prior to sharing such property, where the costs incurred are substantial or of an extraordinary nature. It was recognised by the Parties that some States traditionally receive a large volume of co-operation requests, or requests which are particularly costly to execute and are therefore disproportionately burdened. Substantial costs can, in particular, arise in the management of frozen, seized or confiscated property. Paragraph 3 allows for the deduction of such costs from the overall value of the confiscated assets. Allowing the deduction of costs before sharing helps to mitigate this disproportionate allocation of financial burdens and States may, therefore, be more positively disposed towards sharing remaining assets in good faith and in accordance with the default rules set out in paragraph 1. Parties must, however, naturally still strive to execute requests under the Convention and the Protocol as efficiently as possible.

201. The requested Party should also, where required by the requesting state, provide an explanation of their calculation of costs that they have deducted. Parties should consult with each other where they disagree on the extraordinary or substantial nature of the costs deducted.

202. Paragraph 3 refers to “costs” rather than “expenses” in order to retain the wording of Article 44 of the Convention and that of its predecessor, the 1990 Convention.

Section 5 – Financial intelligence unit

Article 28 – International co-operation on suspension or withholding of consent for suspicious transactions, accounts and business relationships

203. This article ensures that, in the context of international co-operation between FIUs, the same measures can be requested as are available at the national level pursuant to Article 10 of this Protocol.

Section 6 – Asset recovery offices

Article 29 – International co-operation between asset recovery offices

204. This Protocol establishes a legal basis for the exchange of information between the AROs of the Parties.

205. Paragraph 1 obliges Parties to adopt legislative or other measures to enable their AROs to exchange information with AROs of other Parties, either spontaneously or upon request. The term “spontaneously” refers to situations where an ARO, without having received a prior request, transmits relevant information to a counterpart ARO, when it considers that such information could assist in tracing illicit assets.

206. Paragraph 2 sets out the grounds upon which a requested ARO may refuse co-operation, including if the offence to which the request relates to a political offence. However, one important exception applies: the financing of terrorism shall not be considered a political offence and, therefore, cannot be invoked as a ground for refusal of co-operation. This exception aligns with the approach taken in Article 28 of the Convention, which similarly excludes the financing of terrorism from the scope of political offences.

207. Co-operation may be refused if it is clearly disproportionate or irrelevant (sub-paragraph c). The Explanatory Report to Article 28 of the Convention (paragraph 208) provides examples of what may be considered disproportionate in judicial co-operation.

208. Co-operation may also be refused when the requested Party considers that the action would be contrary to the principle of *ne bis in idem* (subparagraph e). The principle of *ne bis in idem* is a fundamental legal principle enshrined, inter alia, in Article 4 of Protocol No. 7 to the European Convention on Human Rights, and plays an important role, in particular in cross-border cases. Subparagraph e refers to the principle of *ne bis in idem* without defining its content, leaving its interpretation to the domestic law of the requested Party and its application to the facts of a specific case.

209. Paragraph 4 sets out strict and binding timeframes for responses to requests. Parties are obliged to adhere to these time limits. If the requested ARO determines that it will not be able to comply with the applicable time limits, it must promptly inform the requesting ARO of the delay. While the provision does not prescribe a fixed timeframe for such notification, the term “promptly” must be interpreted in light of the urgency and operational context of asset recovery co-operation, ensuring that undue delays in cross-border action are avoided.

210. To facilitate international co-operation and promote timely communication, paragraph 5 requires each Party to designate one, or at most two, contact points. This measure was deemed necessary to eliminate any ambiguity regarding the appropriate authority or authorities to be contacted for co-operation requests in foreign jurisdictions. Although not explicitly stated in the article, if a Party establishes two or more AROs with separate tasks, it should clearly indicate the competencies of each ARO for the purpose of international co-operation.

211. As an exception to the previous paragraph, paragraph 6 allows for the designation of a third contact point, but only where justified by the organisation of powers under a Party's Constitution.

Section 7 – Asset management

Article 30 – Management of property frozen, seized or confiscated at the request of another Party

212. Article 30 requires Parties to ensure that asset management standards established by Article 6 of the Convention and Chapter II, Section 5 of this Protocol also apply to assets frozen, seized, or confiscated by competent authorities pursuant to a request from another Party.

213. The provision reaffirms the principle that the management of such assets must be conducted in accordance with the procedures provided for in the domestic law of the requested Party.

Chapter IV – Safeguards, training and resources

Article 31 – Safeguards and remedies

214. Article 31, paragraph 1, provides that, unless otherwise specified, the establishment, implementation, and application of the powers and procedures provided for in this Protocol are subject to the conditions and safeguards that ensure adequate protection of human rights and freedoms, and incorporate the principles of necessity and proportionality. This general safeguard clause anchors the Protocol in the principles of necessity and proportionality, which are fundamental to the protection of human rights. For Council of Europe member States, these principles are derived from the European Convention on Human Rights, its applicable case-law, and national legislation and jurisprudence. This clause also aims to highlight that, in particular with regards to the new confiscation measures introduced by this Protocol, the importance of robust safeguards and guarantees cannot be overstated.

215. Given the diverse legal systems of the Parties to the Convention and this Protocol, the drafters wish to affirm the procedural autonomy of the Parties in transposing the general obligations and principles concerning legal safeguards and remedies for the rights of persons affected by measures provided for in the Convention or this Protocol while reminding them of their obligation to comply with the standards specified in the Protocol and established in the applicable international and regional human rights instruments to which they are Parties, in particular, the European Convention on Human Rights and its Protocols, the case law from the ECtHR and the 1966 United Nations International Covenant on Civil and Political Rights.

216. This provision builds on and expands the obligations established in Article 8 of the Convention concerning legal remedies, both for persons affected by measures pursuant to the Convention and this Protocol. The more detailed and extensive wording of Article 31 of this Protocol aims to reflect the development of European standards concerning procedural rights and safeguards, including with a view to the right to an effective remedy, in the context of criminal asset recovery since the adoption of the Convention. The scope of Article 31 is extended to persons affected by measures pursuant to the Convention to ensure that persons affected by such measures also enjoy the same rights and level of protection as persons affected by measures under this Protocol.

217. Paragraph 2 of this article guarantees effective legal remedies and fair trial rights for any person affected by asset recovery measures. It also requires Parties to guarantee the rights of the defence. The term “affected person” is not defined in the Convention or this Protocol. It can be considered to include suspects, accused persons, as well as other persons whose rights are directly prejudiced by such measures provided for in the Convention or this Protocol, including third parties, who should be entitled to claim ownership or other property rights. Ultimately, however, the courts and competent authorities of the Parties must always determine on a case-by-case basis whether a person is affected by a measure provided for in the Convention or this Protocol and whether the safeguards provided for in this article apply to them. The Parties should, *ex officio*, take reasonable measures to identify persons whose rights and interests are affected by a confiscation measure, particularly in cases of non-conviction-based confiscation. Such persons must be informed of their rights in a language that they understand.

218. The ECtHR has underscored that national legislation and practice failing to provide a procedure by which an owner can defend their property rights would not meet the standards of the European Convention on Human Rights. This does not mean that effective remedies in relation to measures provided for under the Convention or this Protocol must always have a suspensive effect. Parties may provide that remedies are available only *ex post*, meaning after a measure, such as when an urgent provisional measure taken in accordance with Article 6, paragraph 2, of this Protocol is no longer in effect, to avoid jeopardy, in particular, to the effectiveness of a measure or an investigation.

219. In cases of NCBC, as in all other cases of asset recovery measures provided for in this Protocol, a person affected by decisions concerning their property must be granted the right to a fair trial and to an effective legal remedy in order to challenge such measures and protect their rights. This includes, but is not limited to, the right to be heard on issues of law and fact. The Parties should furthermore ensure that all confiscation orders are imposed by a competent court and that suspects and accused persons who are subject to an asset recovery measures, as well as persons who are subject to NCBC related measures provided for in this Protocol, are guaranteed the rights of the defence, including, *inter alia*, the right of access to a lawyer throughout the proceedings, the right of access to the file, and the right to interpretation and translation, in accordance with their national law.

220. Paragraph 3 requires an affected person to be summoned to confiscation proceedings to afford them an effective opportunity to challenge the confiscation orders. Where the affected person has absconded or their identity or whereabouts are unknown, and a summons cannot be served, or where it is impossible to serve a summons for reasons outside the control of the competent Party, Parties must still take all reasonable steps to make the person aware of such proceedings and their right to attend, for instance, by way of public announcement.

221. When implementing this Protocol, Parties may provide that, in exceptional circumstances, confiscation should not be ordered or executed if it would, in accordance with domestic law, impose undue hardship on the affected person based on the specific circumstances of the case.

222. Paragraph 4 establishes an obligation for Parties to ensure that a court can suspend the execution of a pre-confiscation sale order, for example, where this is necessary to safeguard the legitimate interests of the affected person, in particular where there is a risk of irreparable harm. Parties may choose to implement this requirement by providing for the suspensory effect of any challenge brought against an order for the pre-confiscation sale of property.

223. As already set out generally in paragraphs 137 to 143 of this report, Parties may refuse co-operation in relation to requests falling under the scope of Article 23, paragraph 5, of the Convention where co-operation is not possible under their domestic law. In relation to other co-operation requests, co-operation may be refused in accordance with Article 28 of the Convention where the request does not meet the standards set by fundamental principles of domestic law, which may include fair trial standards and the presumption of innocence. The drafters wish to furthermore specifically highlight that request for confiscation pursuant to the Convention or this Protocol by Parties that provide for confiscation measures, in particular NCBC, extended confiscation and confiscation from third parties, as a civil law measure and/or apply standards of civil procedural law in confiscation proceedings that, *inter alia*, exclude persons affected from the enjoyment of the rights of defence or other crucial elements of criminal procedural safeguards, may be refused by the requested Party in accordance with Article 28 of the Convention, in particular paragraph 1, subparagraph *a* and *b* thereof.

Article 32 – Notification of decisions

224. This article requires that affected persons must be notified as soon as possible of any decision regarding provisional measures, pre-confiscation sale orders, or confiscation orders, including the reasons for such decisions. It is essential that Parties make reasonable efforts to locate and contact affected persons before any pre-confiscation sale to allow a sufficient period of time between the notice and the sale for an affected person to effectively challenge the decision. Where the identity or whereabouts of an affected person are unknown or where notifying each affected person would impose a disproportionate burden on the competent authority, notification may instead be carried out by means of a public announcement.

225. Paragraph 1 also requires Parties to ensure that decisions on provisional measures set out the reasons for the provisional measure along with the rights and remedies available to the affected person. Parties may limit the information communicated to the affected person to what is strictly necessary to allow them to effectively exercise their right to challenge the decision or to otherwise claim an effective remedy. This may occur only where providing the information is likely to lead to serious consequences for another or to safeguard the national interest.

226. Paragraph 2 of this article establishes the possibility for member States to allow their authorities to postpone the communication for a limited period of time. This is also consistent with the provisions of Article 6, paragraph 2, of this Protocol.

Article 33 – Security measures

227. This provision underscores the critical importance of protecting sensitive data accessible to AROs under Article 9, 12 and 17 as well as information exchanged between AROs pursuant to Article 29 of this Protocol.

228. Paragraph 1 obliges each Party to ensure that AROs implement measures to prevent access to this information by unauthorised persons. The term unauthorised person should be understood as an individual who does not have the legal right, permission, or authority to access such information.

229. Paragraph 2 further reinforces this obligation by requiring Parties to guarantee that communication between AROs is conducted through secure channels. The use of secure communication methods is essential to prevent the interception, alteration, or misuse of shared information, thereby ensuring the integrity and confidentiality of the co-operation framework. An example of such a secure information exchange channel is the Secure Information Exchange Network Application (SIENA), which has become the default tool for the exchange of information between competent authorities in a number of States.

Article 34 – Resources and training

230. The tracing and management of recovered illicit assets are complex tasks that demand specialised expertise and adequate staff training. The complexity of asset recovery processes, coupled with a lack of technical knowledge, is frequently identified as a major obstacle to the successful recovery and management of assets. States must ensure that sufficient resources and training are available for AROs and AMOs.

231. The drafters highlighted the significant need for specialised and trained units. However, the modalities of training and their organisation are left to the discretion of the Parties.

Chapter V – Monitoring mechanism and settlement of disputes

Article 35 – Monitoring mechanism and settlement of disputes

232. This Protocol includes a provision for the monitoring of its proper implementation by the COP, which makes Article 48 of the Convention applicable, *mutatis mutandis*, to the Protocol. The monitoring of the Protocol will therefore be conducted under the same conditions as those applicable to the provisions of the Convention, except that the COP will meet and act in a composition restricted to the Parties to this Protocol, where appropriate, meaning where matters concerned exclusively or primarily relate to provisions of this Protocol. This division of responsibilities between the COP meeting in its full composition and the COP meeting in a composition limited to the Parties to the Protocol will be further elaborated in the Rules of procedure of the COP.

233. Paragraph 2 explicitly provides that the COP, in a composition restricted to Parties to this Protocol, shall have the competence to adopt standard freezing and seizing forms, as well as standard confiscation forms. Once adopted, these certificates will be mandatory for co-operation as provided for in Articles 24 and 25 of this Protocol.

234. To ensure the effective implementation of the Protocol, paragraph 3 introduces a new provision that tasks the COP with facilitating the exchange of information between Parties on legal, policy or practical developments pertaining to the areas covered by the Convention and the Protocol.

235. In this context, the COP serves as a forum for Parties to exchange information, share experiences and discuss emerging trends in asset recovery. The COP, in a composition restricted to the Parties to this Protocol, may promote the development of practical tools – such as common templates, standardised formats or guidance documents – to support the consistent and effective application of the Protocol, where the Parties to the Protocol agree that there is a need for such tools. The COP's work may also foster closer co-operation and coordination among Parties and facilitate dialogue among national experts, thereby encouraging more coherent and aligned practices among the authorities concerned.

Chapter VI – Final provisions

236. These final provisions are based on the "Model Final Clauses for Conventions, Additional Protocols and Amending Protocols concluded within the Council of Europe", as adopted by the Committee of Ministers at the 1291st meeting of their Deputies on 5 July 2017. While most of these articles do not require specific commentary, the following points warrant further explanation.

237. Although general principles of international law, such as those set out in the 1969 Vienna Convention on the Law of Treaties, may imply that the provisions of the Convention apply *mutatis mutandis* to its Protocols, including an explicit clause on this relationship in Article 36 serves to clarify the interpretative link between the two instruments.

238. In this context, the drafters specifically noted that Article 28 of the Convention applies to requests for international co-operation under Chapter III of this Protocol, with the exception of Section 5 (Financial Intelligence Unit), for which grounds for refusal are regulated by Article 46 of the Convention. As regards to Section 6 (Asset Recovery Office), certain grounds for refusal are specifically highlighted in Article 29 of this Protocol. The drafters agree, however, that where relevant, paragraph 1.a of Article 28 of the Convention may also find application to co-operation between AROs under this Protocol. Any such refusal based on paragraph 1.a of Article 28 of the Convention shall be appropriately explained to the ARO requesting the information.

239. Article 38 sets out the rules on entry into force of this Protocol. It specifies that Articles 24 and 25 (the use of standard forms) thereof will not enter into force on the same date as the Protocol but will apply only from the date on which the COP adopts the standard form(s).

240. Article 51 of the Convention permits Parties to specify the territory or territories to which the Convention would apply. The Protocol contains the same provision in Article 40. This article does not permit Parties to apply this Protocol to territories not covered by the Convention.

241. Article 42 clarifies that the Protocol does not affect the application of multilateral instruments concerning special matters or that of other agreements, including bilateral agreements, or of established relations, in lieu of this Protocol if they facilitate international co-operation. For Parties that are member states of the EU, a so-called "disconnection clause" applies, which provides for the application of Union law in their mutual relations.

242. Among the relevant international legal instruments ratified by most Parties is the UNCAC. The drafters noted in particular the relevance of Article 57 of the UNCAC and its uncontested applicability between Parties to the Convention, as explained in paragraph 195, which ensures coherence between the Convention, the Protocol and established international standards in the field of asset recovery.

243. The Protocol provides for a number of reservation possibilities (see Article 43). Given the global reach of the Convention and the aim of achieving the same level of membership in this Protocol, such reservations enable Parties to the Convention to become Parties to this Protocol, while permitting such Parties to maintain certain approaches and concepts consistent with their domestic law, fundamental legal principles or policy considerations, as applicable.

244. The possibilities for reservations are, however, limited in order to secure, to the greatest possible extent, the uniform application of this Protocol by the Parties. Thus, no other reservations may be made than those specifically provided for in this Protocol. Reservations may only be made by a Party to the Convention at the time of signature of this Protocol or upon deposit of its instrument of ratification, acceptance or approval. They may, however, be withdrawn at any time thereafter.