

# The financial approach to combating trafficking in human beings

Review of the implementation of Article 23(3)  
of the Council of Europe Convention on  
Action against Trafficking in Human Beings



Nathalie Le Rousseau Martin



COUNCIL OF EUROPE



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Review of the implementation of Article 23(3) of the Council of Europe Convention on Action against Trafficking in Human Beings

Study prepared by Nathalie Le Rousseau-Martin,  
legal consultant, former member of GRETA

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**Council of Europe**



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## LIST OF ABBREVIATIONS

<b>Convention 141</b>	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)
<b>Convention 198</b>	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)
<b>COP 198</b>	Conference of the Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)
<b>EU</b>	European Union
<b>FATF</b>	Financial Action Task Force
<b>FIU</b>	Financial Intelligence Unit
<b>GRETA</b>	Group of Experts on Action against Trafficking in Human Beings
<b>THB</b>	Trafficking in human beings

## EXECUTIVE SUMMARY

Combating the financial flows associated with trafficking in human beings and confiscating criminal assets are the backbone of the fight against this serious crime. Although the States Parties to the Council of Europe Convention on Action against Trafficking in Human Beings are united in this aim, a number of shortcomings remain. Not only is the financial aspect of THB still inadequately addressed, but seizure and confiscation continue to be used too rarely to make a real impact on the criminals involved.

On the whole, the provisions of Article 23(3) of the Council of Europe Convention on Action against Trafficking in Human Beings have been transposed into domestic law in the vast majority of the States Parties. States Parties were often unable, however, to demonstrate effective implementation of Article 23(3).

Law enforcement agencies and courts often lack the operational capacity to keep up with the sheer volume of trafficking in human beings, despite the efforts of relevant authorities. As the scale of the phenomenon outstrips the human resources employed to deal with it, it is impossible to make use of all the information available or to cope with the corresponding investigative workload.

The confiscation of financial flows from trafficking in human beings is also hampered by the fact that the identification and seizure of criminal assets is not considered a priority in many States Parties, and available data point to the lack of effectiveness of confiscation and seizure regimes, which are far from being fully utilised in THB cases. As a result, the value of confiscated assets bears no relation to the turnover generated by THB.

Lastly, while traffickers themselves are sometimes highly adept at international co-operation with other criminal groups, difficulties remain with regard to co-operation between States, both in the exchange of information and in the implementation of co-operation arrangements for the seizure and confiscation of criminal assets.

To ensure a response commensurate with the sums involved, States Parties should make the financial and property aspects of combating trafficking in human beings an essential part of the criminal investigation process through the systematic use of parallel financial investigations and by further increasing the seizure and confiscation of criminal assets linked to THB.

Effective implementation of Article 23(3) of the Convention by States Parties is all the more important given that shortcomings and deficiencies in the effective use and application of legislation on the freezing and confiscation of traffickers' assets can have negative repercussions on victim compensation. Under Article 15(3) of the Convention, States Parties may take specific measures to ensure that the identified, seized and confiscated illegal profits of trafficking are used to compensate THB victims, either directly or through a victim compensation fund.



## INTRODUCTION

A low-risk, high-reward criminal activity, trafficking in human beings (THB) is considered to be one of the most lucrative crimes in the world and one of the most profitable business models of organised crime, enabling criminals to make enormous profits by exploiting victims.

While progress has been made in understanding the scale of the problem, most of the efforts to combat THB are still focused on prosecuting the crime of trafficking itself, rather than on the proceeds of crime. The percentage of criminal assets that are successfully confiscated remains low compared with the estimated volume of proceeds generated by THB.

Although there are no precise figures, the revenues generated by organised crime are considerable. A study by the European Commission in 2021 estimates that the annual revenues of the nine main criminal markets in the European Union, including trafficking in human beings, ranged from €92 to €188 billion in 2019.<sup>1</sup>

As regards the recovery of criminal assets, Europol concluded in 2016 that over the period analysed, 2.2% of criminal proceeds in the European Union<sup>2</sup> had been provisionally seized or frozen, but that only 1.1% had been finally confiscated. Of the €2.4 billion or so worth of assets provisionally seized or frozen in the European Union annually, around €1.2 billion are finally confiscated every year. In the view of the main anti-money laundering/countering the financing of terrorism supervisory bodies,<sup>3</sup> “less than 1% of criminal proceeds are routinely recovered”.<sup>4</sup>

Experience shows, however, that the fight against organised crime is only effective when criminals are deprived of the assets obtained through their activities. Depriving criminals of the profits derived from criminal activities can act as a deterrent by eliminating the primary motive, namely profit, and in particular prevent these proceeds from being re-invested in criminal enterprises.

Developing a policy to suppress the financing of trafficking in human beings is therefore an essential part of States’ legal response to the phenomenon. This financial approach to combating trafficking is based on two key elements: asset recovery strategies and anti-money laundering tools. Tackling trafficking means tackling the financing of trafficking, too.

Although it adopts a human rights-based approach, the Convention on Action against Trafficking in Human Beings (hereinafter, the Convention) also has a law enforcement function. Article 23, for example, requires States Parties to match their action to the seriousness of the offences and lay down criminal penalties which are “effective, proportionate and dissuasive”.

In addition, based on the premise that THB is essentially a financial matter from the point of view of the traffickers, the drafters of the Convention considered that measures leading to deprivation of proceeds linked to or resulting from the offence of trafficking should be provided for in this area as well.<sup>5</sup> The Convention accordingly places a general obligation on States Parties to take the necessary measures to enable them to confiscate or otherwise deprive traffickers of the instrumentalities and proceeds of THB offences.

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<sup>1</sup> European Commission, *Mapping the risk of serious and organised crime infiltrating legitimate businesses* – EU Publications Office, Final report, 2021

<sup>2</sup> European Police Office, 2016 – Criminal Asset Recovery in the EU, Survey of Statistical Information 2010-2014 (Does crime still pay?) - <https://www.europol.europa.eu/publicationsdocuments/does-crime-still-pay>

<sup>3</sup> The Financial Action Task Force (FATF), the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Conference of the Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (COP 198).

<sup>4</sup> COP 198, Added value and feasibility of preparing an additional protocol to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), June 2023.

<sup>5</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, paragraph 254.

Although the financial approach to the fight against trafficking clearly features in the Convention, and despite growing recognition of the prevalence and serious consequences of THB by the States Parties, its implementation in practice is not fully effective.

Under current criminal justice practices, criminals engaging in THB typically face a low risk of being arrested and convicted and of having the proceeds and instrumentalities of their crimes confiscated. The number of prosecutions and convictions for THB and the rate of confiscation of proceeds of trafficking remain low.

Several factors affect the ability of States to deprive traffickers of criminal assets linked to trafficking: a relative lack of knowledge of the financial approach by those involved in fighting trafficking, lack of dedicated resources and failure to prioritise THB cases, and specific difficulties in international co-operation when it is pursued for the purpose of seizure or confiscation.

Lastly, it must be noted that shortcomings and deficiencies in the effective implementation of financial penalties by States Parties can have negative repercussions on victim compensation, which may depend on the use of illegal profits of trafficking that have been identified, seized and confiscated.<sup>6</sup>

The confiscation and recovery of criminal assets therefore appears to be one of the major challenges in the fight against THB.

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<sup>6</sup> Article 15(3) of the Convention allows States Parties to take specific measures to ensure that identified, seized and confiscated illegal profits are used to compensate victims of trafficking, directly or through a victim compensation fund.

## METHODOLOGY

This review of the implementation of Article 23(3) of the Council of Europe Convention on Action against Trafficking in Human Beings aims to assess to what extent States Parties are mindful of the obligation to implement financial sanctions enabling them to confiscate the instrumentalities and proceeds of THB offences from traffickers.

The study begins by clarifying the scope of Article 23(3) of the Convention and goes on to determine the content of the general obligation to impose the associated financial penalties. It then takes stock of the implementation of Article 23(3) by the States Parties and makes a series of recommendations to ensure that the provisions of Article 23(3) are better understood and put into practice.

The study is based on an analysis of the 37 third-round evaluation reports published by GRETA between 20 November 2018 and 31 August 2024. It covers the following States Parties: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, Sweden, United Kingdom.

## 1. SCOPE OF ARTICLE 23(3) OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Paragraph 3 of Article 23 of the Council of Europe Convention on Action against Trafficking in Human beings places a general obligation on States Parties to implement financial sanctions enabling them to confiscate the instrumentalities and proceeds of THB offences.

The paragraph reads as follows: **“Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds”.**

The Explanatory Report to the Convention clarifies its interpretation by stating that Article 23, paragraph 3 “has to be read in the light of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141).” The drafters considered it preferable for the Convention not to incorporate an issue addressed in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (hereinafter, Convention 141) which is intended to apply to a large number of offences and not to a particular area of crime.<sup>7</sup>

When it comes to financial sanctions and measures (freezing, seizure, confiscation, sanctioning the laundering of proceeds from trafficking), the Convention therefore refers,<sup>8</sup> for its application, to Convention 141.<sup>9</sup> As the latter has been supplemented and updated by the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005, also known as the Criminal Asset Recovery Convention (hereinafter, Convention 198), **it follows from Article 23(3) of the Convention that its implementation must be assessed in the light of States Parties’ compliance with the provisions of these three international conventions.**<sup>10</sup>

### 1.1. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)

Signed on 8 November 1990, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime entered into force on 1 September 1993 and has been ratified by all Council of Europe member States. The Convention’s ratification has been part of the European acquis for EU candidate countries.<sup>11</sup>

Convention 141 is based on the idea that confiscating the proceeds of crime is an effective anti-crime weapon. One of the main purposes of the Convention is to provide an instrument obliging States Parties to adopt efficient measures in their national laws to combat serious crime and to deprive criminals of the fruits of their illicit activities.

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<sup>7</sup> Explanatory Report to the Convention on Action against Trafficking in Human Beings, paragraph 276.

<sup>8</sup> Cross-treaty references are a technique for formulating international conventions that consists of expressly referring to other international conventions without reproducing them. The purpose of cross-treaty references is to establish a legal link between treaty norms so that they are connected in their implementation. While the principle of cross-referencing from one text to another is common and is obviously not problematic in law, the use of this cross-treaty reference mechanism can hinder understanding of the measures concerned and make it more difficult for the parties involved to implement them.

<sup>9</sup> Explanatory Report to the Convention on Action against Trafficking in Human Beings, paragraph 254.

<sup>10</sup> As regards the relationship between Convention 198 and Convention 141, and in order to avoid legal lacunae for the Parties to Convention 141, Convention 198 contains a provision which enables Parties to Convention 141 to ratify Convention 198, while at the same time remaining bound by Convention 141. As a consequence, for those Parties which ratify Convention 198, the latter will apply in their mutual relationship (even if they are both Parties to the 1990 Convention). In the relationship between a Party to Convention 198 (which is also a Party to Convention 141) and a Party to Convention 141, the latter will apply (including any reservation which has been made). Explanatory Report to Convention 198, paragraph 303.

<sup>11</sup> Council of Europe Treaty Office, consulted on 29 August 2024

It includes a comprehensive set of rules applicable to all phases of the criminal asset recovery procedure, including investigative measures (Article 3) and special investigative powers and techniques (Article 4), provisional measures such as freezing or seizing (Article 3), measures to confiscate the proceeds of crime (Article 2) and measures to punish money laundering linked to trafficking (Article 6).

## 1.2. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

Signed on 16 May 2005, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism entered into force on 1 May 2008 and is currently in force in 37 of the 46 States Parties to the Convention on Action against Trafficking in Human Beings.<sup>12</sup>

Implementing a policy of targeting criminal profits is one of the main objectives of Convention 198. The latter is a response to the observation that quick access to financial information or information on assets held by criminal organisations is key to successful prevention and law enforcement measures and, ultimately, for disrupting their activities.

Convention 198 has the same general structure as Convention 141. It lays down obligations for States Parties concerning investigative measures and provisional measures to freeze and seize (Article 4) and special investigative powers and techniques (Article 7), measures to confiscate the proceeds of crime (Article 3) and measures to punish money laundering linked to trafficking, among other predicate offences (Article 9). In addition, it lays down specific requirements concerning the management of frozen or seized property (Article 6), and the prevention (Article 13) and criminalisation of laundering (Article 9) and establishes the role and responsibilities of financial intelligence units (Article 12). It also aims to facilitate international co-operation in this area in a manner which complements existing Council of Europe instruments.

Convention 198 also provides for a monitoring mechanism to ensure the implementation of its provisions by the States Parties, through a Conference of the Parties (COP 198), which carries out evaluation and monitoring of the States Parties and adopts interpretive notes on certain provisions of this instrument to facilitate its application.

An **additional protocol supplementing Convention 198** is currently being drawn up. On 23 November 2023, the Committee of Ministers of the Council of Europe adopted terms of reference establishing the Committee of Experts on Criminal Asset Recovery. The new committee's remit is to "ensure that the draft additional protocol includes, *inter alia*, the following: provisions to enhance certainty and consistency in the sharing of confiscated assets between States Parties in transnational cases; 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 of extended confiscation in criminal matters, including co-operation regarding and execution of requests in transnational cases; any other issue which it deems to be of consequence to strengthen co-operation among Parties with respect to asset recovery".<sup>13</sup> This work began on 29 May 2024.

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<sup>12</sup> Finland, Iceland, Luxembourg, Liechtenstein and the European Union have signed but not ratified the Convention. Andorra, Czechia, Ireland, Norway and Switzerland have neither signed nor ratified it. Council of Europe Treaty Office, consulted on 29 August 2024.

<sup>13</sup> CM (2023)131-addfinal – extract

### 1.3. European Union legislation

European Union (EU) Member States must also have regard to the relevant EU texts, in particular Directive 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation<sup>14</sup> which establishes minimum rules on tracing and identification, freezing, confiscation and management of property within the framework of criminal matters.

In particular, the new rules give increased powers to asset recovery offices, making it easier for Member States to increase the detection and confiscation of criminal assets. They will support national authorities and the European Public Prosecutor's Office in asset-tracing investigations. These offices will have access to relevant databases and registers in order to carry out these tasks. Asset management offices will be designated by Member States and will manage frozen or confiscated assets directly or provide support to other competent bodies.

The new legislation also provides for the sale of frozen assets, under certain conditions and even before final confiscation, for example when the assets are perishable.

It also lays down rules to speed up the compensation process for victims and introduces the non-conviction-based confiscation procedure throughout the EU, enabling criminal assets and illegally obtained property to be confiscated without a prior criminal conviction.

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<sup>14</sup> Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation (OJEU L of 2 May 2024).

## 2. CONTENT OF THE GENERAL OBLIGATION UNDER ARTICLE 23(3) OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

In order to comply with Article 23(3) of the Convention, States Parties must establish an effective regime and procedures to identify, freeze, seize and confiscate the proceeds of the offence of trafficking and to prosecute and punish trafficking-related money laundering offences, as defined by the international reference texts, namely Convention 141 and Convention 198.

Under the provisions of these conventions, States Parties must fulfil several obligations. They must promptly trace and identify instrumentalities and proceeds of crime, as well as property suspected of being of criminal origin, **by conducting financial investigations** and permitting the use of special powers and techniques with respect to financial investigations. They must also **freeze or seize** rapidly property liable to confiscation in order to prevent its disappearance, ensure proper management of frozen or seized assets and instrumentalities, and **confiscate those assets or otherwise deprive traffickers** thereof. States Parties are further required to criminalise and punish the **laundering** of the proceeds of trafficking. Lastly, the Convention requires the parties to **co-operate** to the fullest extent possible in investigations and proceedings aimed at confiscating the instrumentalities and proceeds of crime.

As Convention 198 is the most comprehensive reference text, the content of the various obligations included in the general obligation under Article 23(3) of the Convention on Action against Trafficking in Human Beings is considered with reference to that text.

### 2.1. Obligation to carry out financial investigations

As the first step in the confiscation process, financial investigations are crucial to obtaining effective confiscation orders and to the successful prosecution and conviction of persons accused of trafficking and laundering the proceeds of trafficking.

The obligation to carry out financial investigation measures is provided for in Article 4 of Convention 198, which stipulates that States Parties are to adopt such legislative and other measures as may be necessary to enable them to **identify and trace** property liable to confiscation.

**This provision requires States Parties to carry out financial investigations in order to rapidly identify and trace criminal assets derived from trafficking that may be subject to confiscation at a later stage.**

The definition of financial investigation that serves as the international standard is contained in the Interpretive Note to Financial Action Task Force (FATF) Recommendation 30. A “financial investigation” means an enquiry into the financial affairs related to a criminal activity, with a view to: identifying the extent of criminal networks and/or the scale of criminality; identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and developing evidence which can be used in criminal proceedings.<sup>15</sup>

A financial investigation thus serves several purposes. Firstly, it aims to identify criminal networks and increases the authorities’ ability to correctly assess the scale of the proceeds of trafficking and the extent to which they are potentially being laundered and integrated into the formal and criminal economies. The financial investigation also enables the proceeds of crime and any other assets that are, or may become, subject to confiscation to be traced. It can also help investigators to identify the members and victims of a criminal network and to gather evidence that could facilitate prosecutions,

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<sup>15</sup> Financial Action Task Force (FATF), FATF Recommendations – International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, updated November 2023.

as well as to identify beneficiaries who profit from crime while remaining at arm's length from it. Financial investigations are also vital for the effective prosecution of money laundering offences. They are useful in exposing predicate offences such as trafficking in human beings and in identifying third parties involved, whether natural or legal persons.

**In order to ensure the effective detection, seizure and confiscation of criminal assets, financial investigations must be systematic, carried out simultaneously with the investigation into the offence of trafficking in human beings, and form part of a proactive approach that will make it easier to identify the proceeds of crime.**

Effectively conducting financial investigations also requires robust **institutional capacity**. Identifying the financial activities of traffickers and analysing the information gathered requires the existence of specialised units responsible for receiving, analysing and disseminating financial intelligence and the involvement of financial investigators in the investigation of trafficking offences or investigators trained in the basics of financial investigations in specialised trafficking units.

For example, financial intelligence units (FIUs) can provide valuable assistance to support trafficking investigations and prosecutions by providing financial intelligence reports and information that can establish links between individuals and entities suspected of involvement in criminal activities, financial information relating to suspicious transaction reports, or information from foreign counterparts, via FIU networks that can facilitate the exchange of information between jurisdictions (often more quickly than through mutual legal assistance).

In addition, early-stage co-ordination between law enforcement agencies and financial investigators is crucial to help gather the evidence that will be needed throughout the proceedings.

Last but not least, judges and prosecutors must have the necessary knowledge to deal with the financial aspects of trafficking and to apply legislation and procedures for freezing, seizing and confiscating criminal assets.

## 2.2. Obligation to allow the use of special powers and techniques with respect to financial investigations

In order to be able to carry out financial investigations successfully, the competent authorities must have the ability to obtain financial information easily and in a timely manner, enabling the rapid identification, tracing, freezing and seizure of assets that are or may be subject to confiscation. The granting and use of special powers and techniques specific to financial investigations fulfil this need and, in the long term, make for better quality investigations, which can help to increase the chances of conviction.

Article 7 of Convention 198 introduces the power to order the production or seizure of banking, financial or commercial records to assist in the implementation of freezing, seizure or confiscation measures. In particular, paragraph 1 provides that "Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy."

This means giving the competent authorities the power to **monitor banking operations**.<sup>16</sup> These measures include: (a) identifying the beneficial owner of one or more accounts; (b) obtaining the particulars of specific bank accounts and of banking operations which have been carried out through one or more specified accounts; and (c) the power to conduct "prospective" monitoring of accounts.

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<sup>16</sup> Convention 198, Article 7.



More specifically, this provision provides for the power “to monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts”.<sup>17</sup>

In the opinion of the drafters of Convention 198, tracing any accounts that may be held by specified beneficiaries indirectly requires States to have procedures in place that enable them to trace such accounts. States are free, however, to decide how to comply with this obligation and Convention 198 does not require them to create, for instance, a centralised bank accounts register.<sup>18</sup>

States Parties must also provide for the necessary measures to **prohibit banks from disclosing to the bank customer concerned or to other third persons that information has been sought or obtained** or that an investigation is being carried out. Lastly, in general, **bank secrecy** should not constitute an obstacle to investigations, in particular when the lifting of bank secrecy is ordered by a judge, a grand jury, an investigating judge or a prosecutor.

In addition, States Parties have an obligation, as a minimum, to consider adopting and permitting the use by competent authorities of **special investigative techniques**<sup>19</sup> such as interception of telecommunications,<sup>20</sup> access to computer systems<sup>21</sup> and orders requiring documents to be produced.<sup>22</sup>

Interception of telecommunications has the meaning given to it by the Council of Europe Convention on Cybercrime (CETS No. 185).

Access to computer systems is also addressed in the Cybercrime Convention. It defines two means of access to computer systems by law enforcement authorities: real-time collection of traffic data and real-time interception of content data associated with specified communications transmitted by a computer system.

Production orders are court orders issued by a judge that allow financial investigators to obtain information about the financial affairs of a natural or legal person. A production order requires the person in possession or control of the material to produce it so that it can be copied or taken away. Failure to comply with such an order may result in an order for search and seizure.

### 2.3. Obligation to freeze or seize rapidly property which is liable to confiscation

Where the law enforcement agencies and judicial authorities have gathered information through financial investigations, the proceeds, property and instrumentalities subject to confiscation must be secured so as to avoid dissipation, movement or destruction, or to prevent the perpetrators from disposing of them. Since property (aircraft, vessels, money, cryptocurrencies, etc.) might be moved or transferred in a matter of days, hours and sometimes minutes, it is necessary that rapid measures be able to be taken so that the authorities can take the necessary steps. In practice, any attempt to confiscate the assets later on will be largely ineffective if they have not first been subject to a “precautionary seizure” at the time of the investigation, to prevent the individuals concerned from dissipating them.

To achieve this objective, States Parties must take the necessary measures **to prevent any dealing in, transfer or disposal** of property which, at a later stage, may be subject to confiscation or must adopt other protective measures as provided for in Article 5.

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<sup>17</sup> Convention 198, Article 7(a), 7(b), 7(c).

<sup>18</sup> Explanatory Report to Convention 198, paragraph 82.

<sup>19</sup> Convention 198, Article 7(3).

<sup>20</sup> Explanatory Report to Convention 198, paragraph 87.

<sup>21</sup> Explanatory Report to Convention 198, paragraph 88.

<sup>22</sup> Explanatory Report to Convention 198, paragraph 89.

“Freezing” or “seizure” are defined as “temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.”<sup>23</sup>

These legal measures consist of making property legally unavailable as evidence or with a view to ensuring its subsequent confiscation by a court or other competent authority. These are essential tools aimed at creating circumstances under which the final confiscation would effectively be possible, and the risks of property dissipation are minimised or almost non-existent.

Freezing and seizure measures relate to the instrumentalities, property and proceeds of crime or property the value of which corresponds to such proceeds.

## 2.4. Obligation to confiscate assets linked to trafficking or to otherwise deprive traffickers of such assets

Where property can be identified, frozen and seized, **States Parties are required to adopt such measures as are necessary to enable them to confiscate the instrumentalities and proceeds of trafficking offences or property the value of which corresponds to such proceeds.**<sup>24</sup>

Establishing a general **confiscation** regime is a requirement for States Parties and the regime itself must apply to a minimum set of offences, as specifically listed in the Appendix to Convention 198.<sup>25</sup> **Trafficking in human beings is among the offences listed in the Appendix as offences which must be subject to the general confiscation regime.**

“Confiscation”, which may include “forfeiture”, refers to a **penalty or measure**, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in final deprivation of property.<sup>26</sup>

The Explanatory Report to Convention 198 states that the fact that confiscation in some States is not considered as a penal sanction but as a security 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.<sup>27</sup>

In addition, States Parties may provide for **mandatory confiscation** for certain offences.<sup>28</sup> The drafters of Convention 198 thus intended to send a signal that mandatory confiscation for offences which are subject to the ordinary confiscation regime may be advisable for particularly serious offences and for offences such as **trafficking in human beings**. It should be noted, however, that this provision is not mandatory for States Parties, which are free to decide whether to implement it or not. As a consequence, States Parties which have not yet transposed this provision into their domestic law are not failing to implement the Convention in this respect.

Lastly, paragraph 4 of Article 3 concerns the application of the **reversed burden of proof in confiscation proceedings**.<sup>29</sup> It requires anyone convicted of a serious offence to demonstrate the origin of alleged proceeds or other property liable to confiscation.

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<sup>23</sup> Convention 198, Article 1(g).

<sup>24</sup> Convention 197, Article 23.3; Convention 141, Article 2; Convention 198 Article 3.

<sup>25</sup> Convention 198, Article 3(2).

<sup>26</sup> Convention 141, Article 1.d; Convention 198, Article 1.d.

<sup>27</sup> Explanatory Report of Convention 198, paragraph 39.

<sup>28</sup> Convention 198, Article 3(3).

<sup>29</sup> Convention 198, Article 3(4): “Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law”.

The main aim of this article is to mitigate the burden of proof for the prosecution in order to improve the country's record in terms of confiscating criminal assets. The confiscation regime "with reversal of the burden of proof" may, however, be declared inapplicable by a State Party in its entirety or be applied only "to the extent that such a requirement is consistent with the principles of its domestic law". Consequently, States Parties are not bound under Article 3 (4) by the categories of offences listed in the Appendix to the Convention as a minimum that should be covered, but can apply the special confiscation regime to one or more serious offences, "as defined by national law".

#### **Confiscation relates to instrumentalities, proceeds or property.**

**"Instrumentalities"** means any property used or intended to be used, in any manner, wholly or in part, to commit the criminal offences<sup>30</sup> defined in Articles 18 and 20 paragraph (a) of the Convention on Action against Trafficking in Human Beings.

**"Proceeds"** means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. This advantage may consist of any property<sup>31</sup> (see the interpretation of that term below).

**"Property"** includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property.<sup>32</sup> It is worth pointing out here that **"property the value of which corresponds to such proceeds"** refers to the obligation to introduce measures which enable Parties to execute value confiscation orders by satisfying the claims on any property, including property which is legally acquired.<sup>33</sup>

The **system of value confiscation** consists of a requirement to pay a sum of money based on an assessment of the value of the proceeds directly derived from offences. As a result of a value confiscation, the State can exert a financial claim against the person against whom the order is made, which may be realised in any property (no matter whether legally or illegally acquired) belonging to that person. The order is thus executed in a similar way to fines or court orders in civil cases.

It should be seen as a positive obligation for States to enact measures which would enable them to confiscate instrumentalities and proceeds.<sup>34</sup>

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<sup>30</sup> Convention 198, Article 1(c).

<sup>31</sup> Convention 198, Article 1(a).

<sup>32</sup> Convention 198, Article 1(b).

<sup>33</sup> Explanatory Report of Convention 198, paragraph 63.

<sup>34</sup> Explanatory Report of Convention 198, paragraph 62.

## 2.5. Obligation to “otherwise deprive” perpetrators of the instrumentalities and proceeds of trafficking offences

**Article 23(3) of the Convention on Action against Trafficking in Human Beings also requires States Parties to adopt measures to enable them to deprive perpetrators of the instrumentalities and proceeds of trafficking offences in other ways, for example by authorising so-called “civil” confiscation.**<sup>35</sup>

There are in fact two primary ways in which proceeds of crime may be recovered: **conviction-based recovery**, which allows assets associated with a crime to be recovered after a conviction for that crime has been obtained, and **non-conviction-based** (or civil) **recovery**, which allows suspected criminal assets to be seized and recovered without the need to obtain a criminal conviction. These two regimes provide a robust legal framework and an adequate legal basis for effective seizures and confiscation.

Non-conviction-based recovery can improve the effectiveness of a regime for confiscating the proceeds of crime because it:

- allows for the freezing or seizure of assets at an earlier stage in the investigative process, thereby helping to prevent the disposal of assets while an investigation or prosecution is ongoing;
- allows for confiscation where it is difficult to prove the link between the assets and the offence if the assets concerned have been laundered, converted or transferred in such a way as to conceal their origin;
- ensures a positive outcome when an offender is deceased, cannot be located or cannot be identified;
- enables the proceeds of crime to be confiscated from those who benefit from the criminal act but remain at arm’s length from it, by not requiring a criminal conviction, and
- allows the confiscation of property held by a third party where that property is tainted (used or intended to be used by a person in the commission of, or in connection with, a criminal offence) or under the effective control of the offender.

## 2.6. Obligation to ensure proper management of frozen or seized property

To ensure that frozen and seized proceeds of crime, instrumentalities and property of equivalent value that are or may be subject to a confiscation order retain their economic value, **States Parties must adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property.**<sup>36</sup>

Asset management is a “systematic process of developing, maintaining, upgrading and disposing of assets in the most cost-effective manner until the final confiscation order is confirmed by judicial authorities.” Seized assets/frozen funds should therefore be preserved and administered in such manner that their value does not, at least, decrease. This applies to both tangible (physical objects such as cars, buildings, precious metals, etc.) and intangible assets (intellectual property, virtual assets, etc.).<sup>37</sup>

Inadequate management can derail the entire asset recovery process, so consistent asset management measures must be adopted in all States Parties to avoid depreciation of assets and unduly high maintenance costs.

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<sup>35</sup> Convention 197, Article 23.3; Convention 141, Article 2; Convention 198 Article 3.

<sup>36</sup> Convention 198, Article 6.

<sup>37</sup> Thematic Monitoring Review on Article 6 “Management of Frozen or Seized Property” adopted by the Conference of the Parties to Convention 198 at its 14<sup>th</sup> meeting, Strasbourg, 15-16 November 2022, paragraph 9.

In order to ensure adequate management of assets, **States Parties are at liberty to determine the most appropriate mechanism**. For instance, the setting up of a national body in charge of asset management may be an appropriate way to implement this provision.<sup>38</sup>

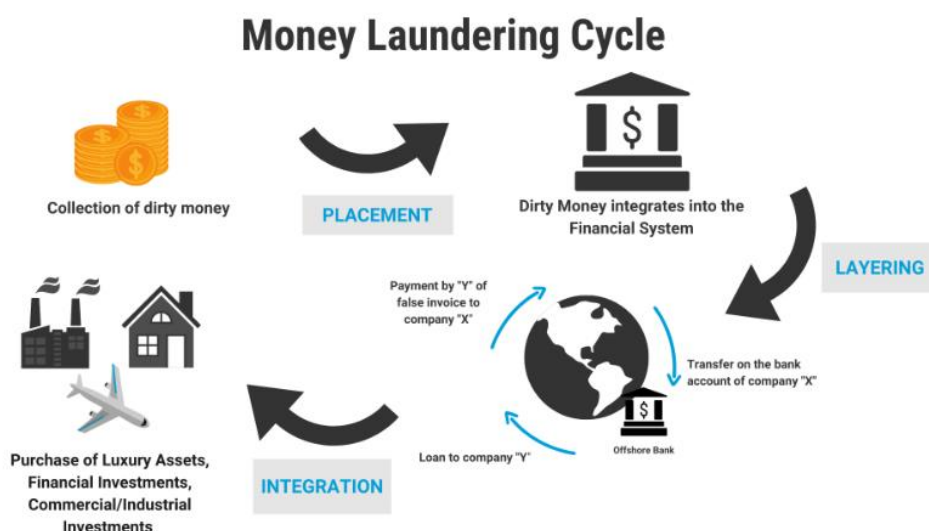
The asset management system also needs to provide possibilities and solutions for managing **complex assets**. Various criteria are used to determine whether an asset is complex: if its value may deteriorate in the course of time (such assets range from real estate, cars, art pieces to exotic animals or other natural goods) or if they are businesses and may generate income or loss (such as companies, investments vehicles, securities but also crypto assets). These assets require specific management which needs to be carried out by different professionals with a specific set of skills.<sup>39</sup>

## 2.7. Obligation to prosecute and punish money laundering activities linked to trafficking in human beings

While trafficking is in many ways a unique crime, the methods by which its perpetrators attempt to launder its proceeds are identical to those used for other types of crime. Thus, the anti-money laundering tools available to States have the potential to be as effective in tackling THB as they are for other crimes. Like other forms of organised crime, traffickers and trafficking networks use a range of techniques to conceal the illicit source of their profits and allow their criminal activities to continue.

Money laundering involves concealing or disguising the identity of illegally obtained income so that it appears to come from legitimate sources. It involves a series of complicated financial operations (deposits, withdrawals, bank transfers, etc.) which ultimately results in criminal money becoming “clean” and acceptable for legitimate business purposes.

Although the money laundering process may involve several stages, it is generally divided into three stages: placement, layering and integration.<sup>40</sup>



Source: United Nations Office on Drugs and Crime (UNODC)

<sup>38</sup> Explanatory Report of Convention 198, paragraph 78.

<sup>39</sup> Thematic Monitoring Review on Article 6 “Management of Frozen or Seized Property” adopted by the Conference of the Parties to Convention 198 at its 14<sup>th</sup> meeting, Strasbourg, 15-16 November 2022, paragraph 17.

<sup>40</sup> **Placing** involves introducing illegally obtained funds or assets into the financial system. For instance, this can be done by depositing cash in bank accounts or using cash to buy assets. **Layering** involves hiding the illegal origin of funds by moving them between different accounts. The aim is to erase the link between the funds and THB, making it more difficult to uncover money laundering. **Integration**: the money launderer can now use the funds without the risk of their criminal activities being exposed. The apparently “clean” money is available for activities such as investing in other criminal activities or in legal businesses (such as shares in companies) or purchasing high-value assets (such as property) and luxury goods (such as expensive cars).

Article 9 of Convention 198 requires States Parties to criminalise money laundering,<sup>41</sup> and to treat THB as a main predicate offence to laundering.<sup>42</sup>

As a result, **States Parties have an obligation to prosecute and punish the laundering of the proceeds of THB.**

Lastly, the Convention makes it clear that a **prior or simultaneous conviction for the main offence of THB is not a prerequisite for a conviction for money laundering.**<sup>43</sup>

## 2.8. Obligation to engage in international co-operation for the purpose of investigations and confiscation

As THB is often a transnational crime, the recovery of assets derived from trafficking is typically dependent, to a large extent, on international co-operation, which includes the investigation and seizure of criminal assets, as well as the return of confiscated proceeds for the purpose of compensation.

Article 15 of Convention 198 lays down a general principle of international co-operation for the purpose of investigations and proceedings for the confiscation of instrumentalities and proceeds. The primary purpose of these provisions is that Parties should co-operate with one another to the widest extent possible for the purpose of investigations and criminal proceedings aimed at the confiscation of instrumentalities and proceeds.

Co-operation and mutual assistance may thus relate to requests for information on bank accounts (Article 17), banking transactions (Article 18) and the monitoring of banking transactions (Article 19), provisional measures (Article 21) and their execution (Article 22) and confiscation measures (Articles 23 to 26).

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<sup>41</sup> Convention 198, Article 9(1).

<sup>42</sup> Referred to in the appendix to Convention 198, trafficking in human beings cannot be excluded from the scope of the money laundering offence through a declaration.

<sup>43</sup> Explanatory Report of Convention 198, paragraph 100 and Convention 198, Article 9.5.

### 3. REVIEW OF THE IMPLEMENTATION OF ARTICLE 23(3) BY STATES PARTIES TO THE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

The implementation of the Council of Europe Convention on Action against Trafficking in Human Beings is monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA). The first evaluation round of the Convention, launched by GRETA in 2010, provided an overview of the implementation of the Convention in the State Parties. In the second evaluation round, GRETA examined the impact of legislative, policy and practical measures on the prevention of trafficking in human beings, the protection of the rights of victims of trafficking and the prosecution of traffickers. States Parties were asked to describe the measures that they had taken to comply with the obligation to conduct effective investigations into THB offences, in particular financial investigations to disrupt criminal money flows and ensure asset recovery.<sup>44</sup>

In the third evaluation round, GRETA decided to examine the impact of legislative, policy and practical measures on trafficking victims' access to justice. The third-round questionnaire sought in particular to gather information to assess the implementation of Article 23(3) of the Convention. States Parties were asked to:

- Describe the legislative and other measures which make it possible to: i) **confiscate** or otherwise deprive perpetrators of the proceeds of criminal offences, or property of an equivalent value to those proceeds; and ii) **identify, trace, freeze or seize** rapidly property which is liable to confiscation, in order to facilitate the enforcement of a later confiscation, and property into which the proceeds of illicit activities have been **converted**.<sup>45</sup>
- Provide information on seizures and confiscations of assets in THB cases and how they were used.<sup>46</sup>
- If the country has **specialised units for financial investigations**, financial intelligence units and asset and recovery units, describe whether and how they are used in investigating and prosecuting THB cases; which **special investigation techniques** these units use and which public and/or private bodies these specialised financial investigation units **co-operate** with in relation to THB cases.<sup>47</sup>

In addition, the States Parties were asked to provide **examples of cases** and any other relevant information, including **statistics**.

For the purpose of this review, the Parties' implementation of Article 23(3) will be assessed through the lens of the various obligations underlying the general obligation to comply with this article, including **carrying out financial investigations** and enabling the use of special powers and techniques with respect to financial investigations; quickly **freezing or seizing** property which may be subject to confiscation at a later stage; ensuring **proper management** of frozen or seized assets and instrumentalities; **confiscating those assets or otherwise depriving traffickers thereof**; criminalising and punishing the **laundering** of the proceeds of trafficking; and **co-operating** to the fullest extent possible in investigations and proceedings aimed at confiscating such proceeds.

References to the country reports in the text and the footnotes refer to GRETA's third-round evaluation reports.

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<sup>44</sup> Questionnaire for the second evaluation round, question 51.e

<sup>45</sup> Questionnaire for the third evaluation round, question 5.5

<sup>46</sup> Questionnaire for the third evaluation round, question 5.5

<sup>47</sup> Questionnaire for the third evaluation round, question 9.2

### 3.1. Obligation to carry out financial investigations

Most States Parties indicated that they carried out financial investigations into THB cases. However, GRETA found that the **use of financial investigations** to support criminal investigations into trafficking **remains** largely fragmented, under deployed or limited in most States Parties.

In **North Macedonia**, GRETA was informed that the police checked for property and bank accounts in all THB cases, but that the prosecution was hesitant to order more in-depth financial investigations at the outset of proceedings due to the risk of suspects finding out that they were under police investigation.<sup>48</sup>

In **Malta**, the authorities pointed out that financial investigations were not systematically carried out in THB cases and that their use depended on the nature of the trafficking offence being investigated: they were particularly used in cases of labour exploitation involving several victims and/or a large organised criminal group.<sup>49</sup>

**The lack of financial investigators or investigators with financial expertise to assist in cases of THB was also a frequently reported issue.** Most professionals have expertise in either trafficking and criminal investigations or financial investigations and money laundering, but rarely in both. As a result, law enforcement agencies are often unaware that there are financial activities linked to trafficking or are ill-equipped to deal with them. GRETA therefore recommended that States Parties **consider the possibility of assigning specialised financial investigators to each THB case.**<sup>50</sup>

**Accessing and using financial information** may be another obstacle.

In **Poland** and **Croatia**, FIUs were said to be key sources of financial intelligence. But the results of their analysis were not sufficiently exploited by the investigating authorities.<sup>51</sup>

In addition, while most States Parties indicated that they had **specialised financial units such as FIUs**, the fact that such units often suffer from a **lack of capacity and resources** is a further cause for concern.

In this connection, GRETA recommended that States Parties **improve the ability of law enforcement officers to locate the assets or income of traffickers that can be seized in THB cases.**<sup>52</sup>

In view of the shortcomings observed, GRETA's recommendations to States Parties included **systematically carrying out financial investigations** into THB cases with a view to tracing, seizing and confiscating criminal assets,<sup>53</sup> **strengthening the conduct of financial investigations** in THB cases<sup>54</sup> and **prioritising the use of financial investigations** in THB investigations.<sup>55</sup> GRETA has recommended that States Parties **strengthen the conduct of financial investigations in THB cases.**<sup>56</sup>

In the **stock-taking of the second evaluation round**, published in 2020, GRETA pointed out that "in most countries, financial investigations [were] not conducted for human trafficking cases, or if they [were], they [did] not lead to the confiscation of assets". It also noted that asset recovery was especially challenging in countries outside the European Union "because they are not part of the

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<sup>48</sup> North Macedonia, paragraph 81.

<sup>49</sup> Malta, paragraph 93.

<sup>50</sup> See, in particular, Bulgaria, paragraph 135; Malta, paragraph 93; Montenegro, paragraph 96; Romania, paragraph 108.

<sup>51</sup> In Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Annual Report 2021 (April 2022).

<sup>52</sup> Sweden, paragraph 74.

<sup>53</sup> Azerbaijan, paragraph 93; Finland, paragraph 81; Ireland, paragraph 114.

<sup>54</sup> Armenia, paragraph 89; Cyprus, paragraph 89; Portugal, paragraph 104; United Kingdom, paragraph 158.

<sup>55</sup> Denmark, paragraph 100.

<sup>56</sup> Bosnia and Herzegovina, paragraph 100; Georgia, paragraph 80; North Macedonia, paragraph 105; Portugal, paragraph 104; Serbia, paragraph 112; United Kingdom, paragraph 158.



European Investigation Order and 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”.<sup>57</sup>

## PROMISING PRACTICES

In **Spain**, increasing the number of financial investigations was one of the priorities of the National Police Strategic Plan 2017-2021 and also of the National Strategy for Combating Organised Crimes 2019-2021. A manual on financial investigation and asset tracing and seizure was published in 2021 and disseminated among law enforcement officials, providing guidance to police forces on how to conduct financial investigations.<sup>58</sup>

In **France**, to identify offenders’ assets in France and abroad, investigators rely on specialised financial departments, namely the Central Office for the Prevention of Serious Financial Crime, regional intervention groups within inter-regional police departments, inter-ministerial investigation groups (GIRs), and criminal asset identification units. The financial sections of selected non-specialised investigation departments (e.g. research brigades, research sections and criminal investigation police) may also conduct investigations into assets.<sup>59</sup>

In the **Republic of Moldova**, in 2019, the Prosecutor General introduced a set of guidelines on conducting parallel financial investigations, with a view to ensuring co-operation between all those responsible for financial and criminal investigations.<sup>60</sup> The Crime Assets Recovery Agency may also carry out parallel financial investigations. Representatives of the Centre for Combating Trafficking in Human Beings reported that the establishment of the agency had made the tracing of perpetrators’ assets more efficient.<sup>61</sup>

In the **United Kingdom**, policing and law enforcement agencies are increasingly using the Joint Money Laundering Intelligence Taskforce (JMLIT) for assistance with human trafficking investigations. The JMLIT is a public/private sector collaborative group in which **financial institutions and law enforcement can share** tactical information on THB investigations. It covers over 95% of the UK’s high-street banking institutions and intelligence provided by the JMLIT has directly assisted THB investigations.<sup>62</sup>

In **the Netherlands**, the Financial Intelligence Unit has two operational analysts who focus on THB.<sup>63</sup>

In **Austria**, if the law enforcement authorities intend to obtain financial information to determine whether assets may be seized, the public prosecutor can instruct the financial institution to **keep the court order and all related facts and transactions secret from customers and third parties** (Section 116, paragraph 5, Code of Criminal Procedure).<sup>64</sup>

<sup>57</sup> GRETA, 9<sup>th</sup> report on GRETA’s activities, covering the period from 1 January to 31 December 2019, paragraph 184.

<sup>58</sup> Spain, paragraph 112.

<sup>59</sup> France, paragraph 122.

<sup>60</sup> Republic of Moldova, paragraph 102.

<sup>61</sup> Republic of Moldova, paragraph 101.

<sup>62</sup> United Kingdom, paragraph 147.

<sup>63</sup> Netherlands, paragraph 90.

<sup>64</sup> Austria, paragraph 104.

GRETA's reports refer to training on financial investigations and asset recovery which was provided in some countries.

In **Georgia**, in close co-operation with the International Organisation for Migration (IOM), training on financial investigations in THB cases was provided in Tbilisi by a UK expert to 25 officials (investigators, prosecutors, staff of the Ministry of Finance's Financial Investigation Unit and the Georgian Financial Monitoring Service).<sup>65</sup>

The **Croatian authorities** reported that several training activities on THB had been organised for public prosecutors, including a seminar on "Financial investigations and confiscation of pecuniary gain from criminal offences in the context of investigations in the cases of human trafficking", which was held in the Netherlands by the European Judicial Training Network (EJTN) and the European Union Agency for Law Enforcement Training (CEPOL), and a workshop in Bucharest on strengthening co-operation in proceedings against perpetrators of human trafficking, particularly in the field of financial investigations and confiscations.<sup>66</sup>

In **France**, in 2022, the Agency for the Management and Recovery of Seized and Confiscated Assets (AGRASC) and the National School for the Judiciary (ENM), with the support of specialists in the field, teamed up to develop an e-learning course on the seizure and confiscation of criminal assets. This comprehensive toolkit provides judges and prosecutors with answers to any questions they may have about the seizure and confiscation of criminal assets, covering everything from the most general to the most technical issues. Following the chronology of criminal proceedings, from the investigation to the execution of the confiscation order, the e-learning course serves both as a complete training module and as a handy reference tool with multiple resources (e.g. fact sheets, video clips and written summaries, etc.) that judges and prosecutors can consult at any time.<sup>67</sup>

### 3.2. Obligation to freeze, seize and confiscate assets linked to trafficking in human beings

Most States Parties reported using legislation to freeze, seize and confiscate assets linked to THB. However, almost all the reports highlighted the **lack of effectiveness of seizure and confiscation regimes**, which are far from being fully utilised (implemented) in trafficking cases.<sup>68</sup>

With regard to **Armenia**, for example, GRETA noted that although a new law on the confiscation of assets of illegal origin was adopted on 16 April 2020, the Armenian authorities stated that neither the existing provisions of the Criminal Code on the confiscation of assets nor the provisions of the new law had been applied in cases involving THB during the reporting period.<sup>69</sup>

In **Croatia**, GRETA noted that since the second evaluation round, there had been no judgments in THB cases resulting in the confiscation of assets and no cases where assets had been confiscated as part of criminal proceedings for trafficking in human beings.<sup>70</sup>

In **Montenegro**, Article 90 of the Code of Criminal Procedure provides for the provisional seizure of pecuniary gain and for financial investigations for the purpose of extended seizure of property in cases involving criminal offences specified in the Criminal Code, on a proposal from the public prosecutor. The latter initiates a financial investigation by means of an order against the suspects or accused persons, their legal successors or persons to whom the suspects or accused persons have transferred

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<sup>65</sup> Georgia, paragraph 76.

<sup>66</sup> Croatia, paragraph 95.

<sup>67</sup> Report submitted by the French authorities on measures taken to comply with Committee of the Parties Recommendation CP(2022)03 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, 18 June 2024, page 9.

<sup>68</sup> Bosnia and Herzegovina, paragraph 73; Croatia, paragraph 72; Cyprus, paragraph 88; Finland, paragraph 90; Norway, paragraph 78; Serbia, paragraphs 80 and 96; Switzerland, paragraph 86.

<sup>69</sup> Armenia, paragraph 75.

<sup>70</sup> Croatia, paragraph 72.

certain property. During the financial investigation, evidence is collected on the property and revenues of suspects or accused persons, their legal successors or persons to whom the accused persons have transferred property that was acquired in the period prescribed by the Criminal Code. Pursuant to Article 92 of the Code of Criminal Procedure, in the judgment on the provisional seizure of objects, pecuniary gain and property, the court must specify the nature and value of the objects, property and the amount of pecuniary gain, as well as the period for which they are to be seized. However, according to the Montenegrin authorities, there have been no cases of trafficking in human beings in which the property of the accused has been seized or confiscated.<sup>71</sup>

In **Italy**, although the public prosecutor or the victim acting as a civil party may request the court to order a “precautionary seizure” of the defendant’s assets under Articles 316 et seq. of the Code of Criminal Procedure, this measure is reportedly hardly ever applied in THB cases, precluding the possibility of victims being compensated as the defendants hide or dispose of their assets.<sup>72</sup>

The situation is similar in **Romania** where GRETA was informed that freezing orders against perpetrators of THB were rarely used and when they were, they were not issued in a timely manner.<sup>73</sup>

In the **Slovak Republic**, the authorities admit that such seizure is not used to the extent necessary, partly because it is difficult for the Prosecutor’s Office to prove that the suspect has acquired the property or funds by unlawful means.<sup>74</sup>

In **Finland**, the proceeds of crime are only occasionally frozen or seized in THB cases. The authorities state that this is because criminal investigations are often complex and they are reluctant to complicate them further.<sup>75</sup>

In **France**, in a case involving the sexual exploitation of Nigerian victims by a trafficking network, the traffickers were ordered to pay €80 000 to each of the three victims. However, the failure of the authorities to seize assets from the perpetrators meant that the victims had to apply to the Commission for the Compensation of Victims of Crime, which had not yet made its decision at the time of the report.<sup>76</sup>

In **Poland**, confiscation of proceeds and instrumentalities is not a law enforcement policy objective.<sup>77</sup>

GRETA has stressed that **property used to commit THB, or which may reasonably be considered to constitute proceeds of this crime, should be seized to the greatest extent possible.**<sup>78</sup> GRETA also stressed that greater use by the police and prosecutors of the seizure of the proceeds of crime or property used to commit the crime, including as evidence, would increase the efficiency of investigations and contribute to the successful prosecution of THB offences.

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<sup>71</sup> Montenegro, paragraph 70.

<sup>72</sup> Italy, paragraph 82.

<sup>73</sup> See, for example, Romania, paragraph 76.

<sup>74</sup> Slovak Republic, paragraph 96.

<sup>75</sup> Finland, paragraph 90.

<sup>76</sup> France, paragraph 84.

<sup>77</sup> Poland, paragraph 107.

<sup>78</sup> See, for example, Croatia, paragraph 98; Finland, paragraph 103; Germany, paragraph 102; Hungary, paragraph 102; Lithuania, paragraph 98; Norway, paragraph 98; Slovak Republic, paragraph 113; Sweden, paragraph 92.

In the light of the shortcomings identified, **GRETA has recommended that States Parties strengthen the use and effective enforcement of laws on freezing and confiscating traffickers' assets.**<sup>79</sup>

Lastly, it is important to note that **most States Parties did not provide data** on the number of cases in which assets were confiscated from perpetrators of THB during the reference period, nor on the amount and type of property confiscated, and in many States Parties such data are not available due to a lack of statistics on the subject.<sup>80</sup> **GRETA reiterated the importance of compiling statistics in order to demonstrate more clearly the effectiveness of such regimes and to properly assess the scale of THB proceeds.**

Despite the lack of data in many States Parties, examples of confiscations in THB cases were provided by some countries.

In the case of **Germany**, reference was made to the Laufen District Court's judgment of 17 January 2022 (case No. 2 Ls 600 Js 12867/20), ordering the confiscation of €40 800 euros from the owner of a nail studio found guilty of forced labour and the Hannover Regional Court's judgment of 30 September 2020 (case No. 96 Kls 6433 js 12616/19 (6/20) ordering the confiscation of €42 155 in a case of THB for sexual exploitation. In the first case, approximately €7 000 were used to pay outstanding social security contributions, while the remainder of the confiscated assets went to the state treasury because the victims were either of unknown residence or could not be identified. In the second case, the victim received the confiscated amount in full as compensation.<sup>81</sup>

As regards **Spain**, GRETA was informed that the specialised group in money laundering of the Central Brigade for Combatting Human Trafficking managed to identify and link to criminal activities assets to the value of €31 771 517 in 2021 and €12 675 982 in 2022. One example is "Operation Berilo", a financial investigation involving 40 individuals, and 25 legal entities suspected of THB for the purpose of sexual exploitation, money laundering and other crimes. A total of €6 309 189.15 was seized. Other preventive measures included prohibiting the disposal of 34 real estate properties valued at €1 984 751 and 76 movable assets (vehicles) worth €977 450 and prohibiting to access to 217 bank accounts. The case is still under investigation (in the pre-trial phase).<sup>82</sup>

In **Belgium**, in a case concerning "Brazilian" networks, several Belgian construction and/or industrial cleaning companies managed by Brazilian and Portuguese nationals received transfers from various Belgian client companies. Some of the money was withdrawn in cash and some was transferred to companies based in Asia (mainly in China and Hong Kong). Information obtained from a counterpart financial intelligence unit established links with a criminal organisation which was trafficking drugs. The Belgian companies were suspected of involvement in an offset scheme whereby cash originating from the drug trafficking would be given to the Belgian companies so that it could be used to pay their undeclared workers. In parallel, under cover of fake invoices, the transfers to Asia could offset the money initially handed over in cash which originated from the drug trafficking. Belgium's Financial Intelligence Unit (CTIF) mapped financial links between several parties involved in different cases and links with welfare fraud, serious tax fraud, people smuggling, trafficking in human beings, exploitation of prostitution and drug trafficking. Thanks to the CTIF's work, one of these Brazilian networks went on trial on 2 September 2021 at the Brussels Criminal Court, where 12 individuals and three companies were prosecuted for laundering €12 million in the space of 11 months.

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<sup>79</sup> Albania, paragraph 74; Armenia, paragraph 82; Bosnia and Herzegovina, paragraphs 77 and 100; Bulgaria, paragraph 111; Croatia, paragraph 82; Cyprus, paragraph 65; Denmark, paragraph 76; France, paragraph 96; Georgia, paragraph 64; Germany, paragraph 80; Hungary, paragraph 79; Iceland, paragraph 79; Italy, paragraph 92; Latvia, paragraph 73; Lithuania, paragraph 82; Republic of Moldova, paragraph 93; Montenegro, paragraph 76; North Macedonia, paragraph 85; Norway, paragraph 76; Portugal, paragraph 89; Romania, paragraph 87; Serbia, paragraph 112; Slovak Republic, paragraph 87; Slovenia, paragraph 76; United Kingdom, paragraph 132.

<sup>80</sup> See, for example, Belgium, paragraph 82; Germany, paragraph 97; Hungary, paragraph 93; Moldova, paragraph 169; Netherlands, paragraph 89; Norway, paragraph 68; Sweden, paragraph 84; Switzerland, paragraph 101.

<sup>81</sup> Germany, paragraph 97.

<sup>82</sup> Spain, paragraph 112.

In **France**, in 2019, the Central Office for Combating Illegal Employment (OCLTI) and the Rhône Interministerial Investigation Group (GIR) launched investigations for trafficking for the purpose of labour exploitation after Bulgarians working in vineyards in the Auvergne-Rhône-Alpes region complained about their working conditions. Investigations revealed the existence of a criminal organisation run by Bulgarian nationals who exploited agricultural workers by supplying them to French wine growers. The impoverished and illiterate victims signed contracts in French which they did not understand and were promised wages of €60 per day. The organisers of the network kept most of their wages. The money they were left with was barely enough for their return journey to Bulgaria. On 17 September 2019, operations were conducted in France and Bulgaria simultaneously. Three Bulgarians and one French national were questioned and 167 victims were identified. The four persons who were arrested were prosecuted in France for offences including trafficking for the purpose of labour exploitation, illegal employment and involvement in a criminal conspiracy. In addition to the four main perpetrators, four employers were taken into custody in 2021. €120 000 euros were seized as criminal assets.<sup>83</sup>

In **Latvia**, GRETA was informed that a Joint Investigation Team (JIT “Doubrava”) had been set up by the Latvian State Police and Derbyshire Constabulary (United Kingdom). Six members of an organised criminal group were arrested, and 14 victims of labour exploitation were rescued in the UK and in Latvia, in February 2018. Five locations were searched, evidence was secured, and vehicles were seized. A 63-year-old victim was rescued (he was kept in a squalid shack without heating) and referred to the specialised social service provider in Latvia. The Latvian State Police froze movable and immovable assets belonging to the perpetrators and their relatives to the value of €301 500. A financial investigation and an analysis of the bank accounts and money transfers of members of the organised criminal group and the victims helped identify the criminal assets.<sup>84</sup>

In **Sweden**, in a case from 2019 involving some 30 Bulgarian nationals who were forced to beg in the south of Sweden, the authorities confiscated SEK 225 000 (€20 000) from the perpetrators. Other assets including houses were confiscated by the authorities in Bulgaria, who co-operated with the Swedish authorities in the investigation. A case involving THB for sexual exploitation adjudicated in Malmö in 2021 resulted in the confiscation of SEK 800 000 (approximately €71 870) from the perpetrators.<sup>85</sup>

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<sup>83</sup> France, paragraph 112.

<sup>84</sup> Latvia, paragraph 123.

<sup>85</sup> Sweden, paragraph 84.

### 3.3. Obligation to ensure proper management of assets linked to human trafficking

The majority of States Parties have a legal framework with measures to ensure the proper management of seized property. However, the information provided does not always include details of the procedures put in place to enable effective management of seized assets, and the lack of examples of the management of assets recovered and confiscated in trafficking cases means that no assessment can be made of the country's actual implementation of the asset management mechanism provided for by law.

It is important to note that, in its thematic review on the implementation and application of Article 6 of Convention 198, the Conference of the Parties pointed out that “the degree to which different States Parties’ systems of asset management are developed varies considerably” but that a number of States Parties have put in place well-functioning systems of asset management upon the seizure of those assets (Belgium, Croatia, France, Hungary, Italy, Malta, Netherlands, Romania, Spain and United Kingdom).<sup>86</sup>

### 3.4. Obligation to engage in international co-operation for the purpose of investigating and confiscating criminal assets

Difficulties in tracing financial flows across borders via international co-operation may hamper the effective implementation of this obligation.<sup>87</sup>

In **Switzerland**, for example, the authorities noted that most traffickers either spent the proceeds of crime or transferred them abroad, thus making confiscation difficult. Prosecutors pointed to difficulties in tracing financial flows across borders.<sup>88</sup>

The **Luxembourg** authorities also reported that following a trail of money through international co-operation channels was often very complex and difficult.<sup>89</sup>

In this context, GRETA **recommended that States Parties make full use of existing legal provisions and international co-operation mechanisms to identify and seize perpetrators’ assets.**<sup>90</sup>

#### PROMISING PRACTICES

Since 2018, **Lithuania** has participated in two JITs on trafficking in human beings, both of which concerned THB for forced criminality. The first was carried out in co-operation with Ireland and the United Kingdom and resulted in the seizure of assets worth €700 000, and the second was conducted with Norway.

In **Hungary**, the FIU co-operates independently with the FIUs of other countries and with Europol, in accordance with Law No. LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing and the standards of the Egmont Group. The Hungarian FIU has also concluded nine MoUs with the authorities of third countries and one with an EU Member State. During the reporting period, the Hungarian FIU received 10 requests from international authorities in THB cases: four in 2018, one in 2019, two in 2021 and three in 2022. It also spontaneously shared information twice in 2021 and twice in 2022.

<sup>86</sup> Thematic Monitoring Review of the Conference of the Parties to CETS No. 198 on Article 6 (“Management of Frozen or Seized Property”), 10 November 2023, paragraph 22.

<sup>87</sup> Switzerland, paragraph 101.

<sup>88</sup> Switzerland, paragraphs 76 and 101.

<sup>89</sup> Luxembourg, paragraph 87.

<sup>90</sup> Ireland, paragraph 152; Italy, paragraph 92.

## 4. RECOMMENDATIONS

### Measures to improve financial investigations in cases of trafficking in human beings

To effectively trace, seize and confiscate criminal assets, States Parties should ensure that **financial investigations** form part of all criminal investigations into THB offences. Financial investigations should be **systematic**, carried out **simultaneously** with the investigation into (the offence of) trafficking in human beings and form part of a **proactive approach** that makes it easier to identify the proceeds of crime. Such an approach also encourages the involvement of the authorities responsible for combating money laundering in connection with THB at an early stage.

### Measures to improve the use of special powers and techniques with respect to financial investigations

States Parties should ensure that their legal framework for the confiscation of criminal assets includes the **existence and use of special powers and techniques with respect to financial investigations** to identify and trace criminal assets. States Parties which still do not have specific measures enabling them to carry out surveillance and monitoring of banking transactions are encouraged to adopt legislative or other measures to ensure that the competent authorities are able to monitor transactions in one or more specified bank accounts over a specified period.

### Measures to make better use of financial investigators and financial investigation units

To ensure that full financial investigations of THB offences are conducted, States Parties should develop **operational strategies** that bring together the expertise of all relevant stakeholders (including law enforcement agencies, prosecutors, judges and financial intelligence units). Where various different authorities are responsible for financial investigations, States Parties should ensure that the legal framework provides for **co-operation** between them.

For the proper conduct of financial investigations, States Parties should ensure that all authorities responsible for tracing, freezing, seizing, managing and confiscating criminal assets have **qualified staff and adequate financial, technical and technological resources**.

States Parties should ensure that all professionals involved in financial investigations receive **training** on the financial aspects of combating trafficking in human beings and how the process works. This training should be included in regular training curricula and kept up to date in view of the rapid changes in technology and behaviour.

## Measures to improve the freezing, seizure and confiscation of criminal assets linked to trafficking in human beings

States Parties should make full use of legislation on the freezing, seizure and confiscation of criminal assets linked to trafficking in human beings.

States Parties should take all appropriate measures to develop a **proactive approach** to the freezing, seizure and confiscation of proceeds, property and instrumentalities of trafficking in human beings, including in proceedings involving legal persons.

Where the law enforcement agencies and judicial authorities have gathered information through financial investigations, the proceeds, property and instrumentalities subject to confiscation must be secured so as to avoid dissipation, movement or destruction, or to prevent the perpetrators from disposing of them. To achieve this objective, States Parties must take the necessary measures to **freeze and seize** property which may be subject to confiscation at a later stage.

Article 23(3) of the Convention on Action against Trafficking in Human Beings requires States Parties to also adopt other measures to deprive perpetrators of the instrumentalities and proceeds of THB offences. In this context, **non-conviction-based (NCB) recovery** should be possible where criminal prosecution is impossible or unsuccessful. To this end, the authorities could draw up specific guidelines for law enforcement and judicial authorities to reinforce the application of the principle of NCB recovery.

The authorities should ensure that training is provided to law enforcement and judicial authorities on the application of the provisions relating to asset recovery.

## Measures to improve the proper management of frozen or seized assets

To ensure that frozen and seized proceeds of crime, instrumentalities and property that may be subject to a confiscation order retain their economic value, **States Parties must adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property, including by setting up a specialised body to carry out this task.**

## Measures to improve the prosecution and punishment of money laundering offences linked to trafficking in human beings

States Parties should ensure that money laundering and predicate offences such as trafficking in human beings can be prosecuted separately. In cases where a conviction cannot be obtained for a THB offence, but there is evidence of money laundering, this will allow law enforcement to target the money laundering offence separately from the predicate offence.

The authorities should work **to improve the use of anti-money laundering techniques to combat trafficking** through close co-operation between countries to enable the rapid exchange of information on financial records. Investigations into trafficking in human beings could benefit from the use of international co-operation networks on money laundering issues, such as the exchange of information between Financial Intelligence Units.

## Measures to improve co-operation on investigations, freezing and confiscation

States Parties should make systematic use of existing legal provisions and international co-operation mechanisms to identify and seize perpetrators' assets.



## Measures to improve data collection

States Parties should consider keeping statistics or **improving the compilation of statistics on cases in which confiscation provisions are applied** in order to better demonstrate the effectiveness of regimes for confiscating assets and to properly assess the scale of THB proceeds. Statistics on seizures and confiscations should be collected from all those involved in the process.

## APPENDICES

### Appendix I - List of sources

#### **Council of Europe**

Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)

Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)

Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

Explanatory Report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

Council of Europe Parliamentary Assembly Resolution 2218 (2018) of 26 April 2018, *“Fighting organised crime by facilitating the confiscation of illegal assets”*

Council of Europe (October 2020) *The Use of Non-Conviction-Based Seizure and Confiscation*

Conference of the Parties to CETS No. 198 *Thematic Monitoring Review of the Conference of the Parties to CETS No. 198 on Article 6 (“Management of Frozen or Seized Property”)*, 10 November 2023

#### **Group of Experts on Action against Trafficking in Human Beings (GRETA)**

Questionnaire for the third round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the States Parties, adopted by GRETA on 28 September 2018

GRETA (2024), Stock-taking of GRETA’s third evaluation round of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings

Third round evaluation reports on the following States Parties: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, Sweden and United Kingdom

#### **Financial Action Task Force (FATF)**

FATF – APG (2018) *Financial Flows from Human Trafficking*, FATF, Paris

FATF / GAFI (2012) *Operational Issues - Financial Investigations Guidance*

FATF / GAFI (2011) *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants*

**EGMONT Group of Financial Intelligence Units** (2023) *Principles for information exchange between financial intelligence units*

**Organization for Security and Co-operation in Europe (OSCE)**

OSCE (2014) *Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings*

OSCE (2010) *Analysing the business model of trafficking in human beings to better prevent the crime*

OSCE (October 2019) *Following the Money. Compendium of Resources and Step-by-Step Guide to Financial Investigations Related to Trafficking in Human Beings*

**United Nations (UN)**

UN (2023) *Study on illicit financial flows associated with smuggling of migrants and trafficking in persons from Glo.Act partner countries to Europe*

**Bali Process**, *Policy Guide on Following the Money in Trafficking in Persons Cases*, 2018

## Appendix II - List of States Parties to the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)

Albania	Latvia
Andorra	Liechtenstein
Armenia	Lithuania
Austria	Luxembourg
Azerbaijan	Malta
Belarus*	Republic of Moldova
Belgium	Monaco
Bosnia and Herzegovina	Montenegro
Bulgaria	Netherlands
Croatia	North Macedonia
Cyprus	Norway
Czechia	Poland
Denmark	Portugal
Estonia	Romania
Finland	San Marino
France	Serbia
Georgia	Slovak Republic
Germany	Slovenia
Greece	Spain
Hungary	Sweden
Iceland	Switzerland
Ireland	Türkiye
Israel*	Ukraine
Italy	United Kingdom

*\*Non-Members of the Council of Europe*

## Appendix III - List of States Parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)

Albania	Latvia
Andorra	Liechtenstein
Armenia	Lithuania
Austria	Luxembourg
Australia*	Malta
Azerbaijan	Republic of Moldova
Belgium	Monaco
Bosnia and Herzegovina	Montenegro
Bulgaria	Netherlands
Croatia	North Macedonia
Cyprus	Norway
Czechia	Poland
Denmark	Portugal
Estonia	Romania
Finland	Russian Federation*
France	San Marino
Georgia	Serbia
Germany	Slovak Republic
Greece	Slovenia
Hungary	Spain
Iceland	Sweden
Ireland	Switzerland
Italy	Türkiye
Kazakhstan*	Ukraine
	United Kingdom

*\*Non-Members of the Council of Europe*

## Appendix IV - List of States Parties to Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

Albania	Malta
Armenia	Republic of Moldova
Austria	Monaco
Azerbaijan	Montenegro
Belgium	Netherlands
Bosnia and Herzegovina	North Macedonia
Bulgaria	Poland
Croatia	Portugal
Cyprus	Romania
Denmark	Russian Federation*
Estonia	San Marino
France	Serbia
Georgia	Slovak Republic
Germany	Slovenia
Greece	Spain
Hungary	Sweden
Italy	Türkiye
Latvia	Ukraine
Lithuania	United Kingdom

*\*Non-Member of the Council of Europe*

### **International Organisation**

European Union

A low-risk, high-reward criminal activity, trafficking in human beings is considered to be one of the most lucrative crimes and one of the most profitable business models of organised crime. While progress has been made in understanding the scale of the problem, most of the efforts to combat human trafficking are still focused on prosecuting the crime of trafficking itself, rather than on the proceeds of crime. Experience shows, however, that the fight against organised crime is only effective when criminals are deprived of the assets obtained through their activities, and tackling trafficking also means tackling the financing of trafficking.

The Council of Europe Convention on Action against Trafficking in Human Beings provides a comprehensive framework for combating trafficking in human beings from a human-rights based and victim-centred perspective. Article 23(3) of the Convention places an obligation on States Parties to implement financial sanctions enabling them to confiscate the instrumentalities and proceeds of human trafficking offences.

This thematic review clarifies the scope of Article 23(3) and takes stock of its implementation by the States Parties. It puts forth recommendations to ensure that the international obligations related to the financial aspects of the fight against human trafficking are better understood and put into practice.

[trafficking@coe.int](mailto:trafficking@coe.int)  
[www.coe.int/trafficking](http://www.coe.int/trafficking)

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

