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ANNEX

ANNEX

to the

Proposal for a Council Decision

**on the signing, on behalf of the European Union, of the additional Protocol to the
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the
Proceeds from Crime and on the Financing of Terrorism**

ANNEX

Final text of the Proposal

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

Preamble

The member States of the Council of Europe and the other 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, hereinafter referred to as “the Convention”), opened for signature in Warsaw on 16 May 2005, signatories hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Emphasising that combating crimes generating illicit proceeds, including organised crime, money laundering and the financing of terrorism, both in Europe and globally, while fully respecting human rights, is essential for peace, stability, justice, democracy and the rule of law;

Concerned by the evolving threats posed by money laundering and the financing of terrorism, and mindful of the challenges faced by the Parties in addressing them;

Determined to strengthen and further develop measures for effective asset recovery, including the identification, tracing, freezing, seizure, confiscation and management of assets of criminal origin, and to promote asset sharing and the reuse of confiscated property;

Convinced of the need for robust investigative methods and asset recovery frameworks targeting assets of criminal origin through financial investigations, and for measures to enhance co-operation among a wide range of institutions, including financial intelligence units, asset recovery offices, asset management offices, law enforcement, prosecutorial and judicial authorities, supervisory authorities and the private sector;

Underlining the importance of developing new tools in the field of confiscation, and of ensuring a more systematic application of confiscation measures;

Acknowledging the necessity of reinforcing the international legal framework for co-operation to facilitate the effective application of asset recovery measures across borders;

Recognising the human rights and fundamental freedoms enshrined, in particular, in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and its protocols, and in the International Covenant on Civil and Political Rights;

Bearing in mind Council of Europe treaties on co-operation in criminal matters and other agreements and arrangements between the Parties to the Convention;

Taking into account the relevant treaties of the Council of Europe, in particular the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), the Convention on the Prevention of Terrorism (CETS No. 196), the Convention on Cybercrime (ETS No. 185), the Criminal Law Convention on Corruption (ETS No. 173), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), together with their respective protocols, and taking account of relevant United Nations conventions and their protocols, European Union legislation on asset recovery and anti-money laundering and international standards such as the recommendations adopted by the Financial Action Task Force (FATF);

Recognising the need to supplement and modernise certain aspects of the Convention;

Desiring that this Protocol will contribute to a more effective response to the challenges of asset recovery and to strengthened co-operation between the Parties in this field,

Have agreed as follows:

Chapter I – Common provisions

Article 1 – Purpose

The purpose of this Protocol is to supplement and modernise, between the Parties, the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Article 2 – Use of terms

1. For the purposes of this Protocol, the following definitions apply in addition to those set out in the Convention:

a. a “financial investigation” is an investigation into financial affairs related to criminal conduct with a view to any or all of the following:

- i. identifying the extent of criminal networks and/or the scale of criminality;
- ii. identifying and tracing property liable to confiscation;
- iii. collecting information which may be used in criminal proceedings and/or proceedings in relation to identification, tracing, freezing, seizure and confiscation of property;

b. “virtual asset” means a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology, and that can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets;

c. “virtual asset service provider” means any natural or legal person that, as a business, conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- i. exchanges between virtual assets and fiat currencies;
- ii. exchanges between one or more forms of virtual assets;
- iii. transfers of virtual assets;
- iv. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and

v. participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

2. For the purposes of the Convention and this Protocol, the term “financing of terrorism” means the offences set out in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, with reference to:

- a. the acts set out in Article 2, paragraph 1, sub-paragraphs *a* or *b*, of the International Convention for the Suppression of the Financing of Terrorism;
- b. the offences defined by the Council of Europe Convention on the Prevention of Terrorism and its amending protocol; and
- c. the offences defined by the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217).

Chapter II – Measures to be taken at national level

Section 1 – Confiscation measures

Article 3 – Extended confiscation

1. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate, wholly or in part, the property of a person convicted of money laundering, the financing of terrorism or of one of the categories of offences in the appendix to the Convention, where the court is satisfied that such property is derived from or obtained, directly or indirectly, from criminal conduct.

2. Provided that paragraph 1 of this article applies to money laundering and the financing of terrorism, each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve its right to apply paragraph 1 of this article:

- a. only insofar as the offence for which a person is convicted is liable to generate, directly or indirectly, a major economic advantage;
- b. only insofar as the offence is punishable by deprivation of liberty or a detention order for a maximum of at least four years; and/or
- c. only to a list of specified offences.

3. In determining whether the property in question is derived from criminal conduct, all circumstances relevant to the case shall be taken into account, including the disproportion between the value of the property and the lawful income of the convicted person.

Article 4 – Non-conviction-based confiscation

1. Each Party shall adopt such legislative and other measures as may be necessary to enable it, in accordance with the fundamental principles of its domestic law, to confiscate property without a criminal conviction where a court is satisfied that such property is derived from or obtained, directly or indirectly, from criminal conduct.

2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve its right to apply paragraph 1 of this article:

- a. where other confiscation measures may not be applied;
- b. where the property to be confiscated has been identified during an investigation related to a criminal offence;

- c. where the property to be confiscated has been frozen or seized during an investigation related to a criminal offence;
- d. where the court is satisfied that the property to be confiscated is derived or obtained from criminal conduct committed within the framework of a criminal organisation, and that this conduct is liable to generate, directly or indirectly, a major economic advantage;
- e. where the offence is punishable by deprivation of liberty or a detention order for a maximum of at least four years; and/or
- f. where the criminal investigation has been initiated in relation to a list of specified offences.

3. Each Party may, additionally to paragraphs 1 and 2, adopt such legislative and other measures as may be necessary to enable it to confiscate, without a criminal conviction, proceeds, instrumentalities or property of equivalent value where both of the following conditions are met:

- a. criminal investigations or proceedings have been initiated and the relevant criminal proceedings could have led to a criminal conviction but the proceedings could not be continued due to death, incapacity to stand trial due to illness, absconding or in situations where the statute of limitations for the underlying crime is below fifteen years and has expired;
- b. where the proceeds, instrumentalities or property of equivalent value are derived from, or directly or indirectly linked to, the criminal offences in relation to which the investigations or proceedings have been initiated, at least where the offences are liable to generate major economic advantages.

Article 5 – Confiscation from third parties

1. Each Party shall adopt such legislative and other measures as may be necessary to enable it to freeze, seize and confiscate proceeds or property the value of which corresponds to such proceeds owned or held by third parties, without prejudice to the rights of bona fide third parties.

2. Parties may extend the obligation provided in paragraph 1 of this article to instrumentalities.

3. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve its right to apply this article only where the proceeds or property the value of which corresponds to such proceeds have been transferred, directly or indirectly, by a suspected or accused person to third parties, or acquired by third parties from a suspected or accused person, where the third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation.

Section 2 – Investigative and provisional measures

Article 6 – Provisional measures

1. The provisions of Article 4 of the Convention shall apply to any property liable to confiscation pursuant to this Protocol.

2. Each Party shall adopt such legislative and other measures as may be necessary to enable it to take, on an urgent basis, and, where appropriate, *ex parte* or without prior notice, subject to its constitutional principles and the basic concepts of its legal system, provisional measures to prevent the dissipation of assets liable to confiscation under the Convention and this Protocol.

Parties shall limit the temporary validity of these urgent provisional measures where they do not constitute freezing or seizure measures that take the form of an order.

Article 7 – Investigative powers and techniques

1. Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities, in accordance with the applicable provisions of domestic procedural law, to order that records kept by financial institutions and virtual asset service providers, including any records kept pursuant to their customer due diligence obligations as defined in Article 13, paragraph 2, sub-paragraphs *a.i* and *iii*, of the Convention, be made available or be seized in order to carry out the provisional and confiscation measures provided for in the Convention and this Protocol. A Party shall not decline to act under the provisions of this article on grounds of bank or financial secrecy.

2. Without prejudice to paragraph 1 of this article, each Party shall adopt such legislative and other measures as may be necessary to enable it to:

a. determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any financial institution or virtual asset service provider located in its territory and, if so, to obtain all details of the identified accounts;

b. obtain the particulars of specified accounts held in financial institutions or virtual asset service providers and of operations of financial institutions and virtual asset service providers which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account;

c. monitor, during a specified period, the operations of financial institutions and virtual asset service providers that are being carried out through one or more identified accounts; and

d. ensure that financial institutions and virtual asset service providers do not disclose to the customer concerned or to other third persons that information has been sought or obtained in accordance with paragraph 2, sub-paragraphs *a*, *b* or *c*, of this article, or that an investigation is being carried out.

Article 8 – Financial investigations

1. Each Party shall adopt such legislative or other measures as may be necessary to ensure that the competent authorities responsible for investigating and/or, where appropriate, prosecuting money laundering, the financing of terrorism or any of the categories of offences in the appendix to the Convention, are able to carry out proactive financial investigations at least in all cases related to the financing of terrorism and in respect of offences liable to generate a major economic advantage.

2. Each Party shall adopt such legislative or other measures as may be necessary to ensure that the financial investigations referred to in paragraph 1 of this article may be conducted either independently, alongside or within the framework of a criminal investigation.

3. Each Party shall adopt such legislative or other measures as may be necessary to ensure that the financial investigations referred to in Article 2, paragraph 1, sub-paragraph *a*, of this Protocol may be conducted at all stages of the criminal proceedings by the respective competent authorities, including after a final conviction or following confiscation pursuant to the Convention and this Protocol.

4. Each Party may take such legislative or other measures to establish multidisciplinary groups specialised in financial investigations.

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

1. Each Party shall adopt such legislative and other measures as may be necessary to establish a central, automated mechanism or other similarly effective and timely mechanisms, enabling the identification of any natural or legal person holding bank accounts, payment accounts, securities accounts and safe-deposit boxes kept by financial institutions, and virtual asset accounts kept by virtual asset service providers, together with the beneficial owners of such accounts and any person authorised to act on behalf of an account holder.

2. Each Party shall ensure that the financial intelligence unit and, for the purpose of the prevention, detection, investigation or prosecution of serious criminal offences, or supporting an investigation concerning a serious criminal offence, including the identification, tracing, freezing and seizure of property related to such offences, the asset recovery office and other designated competent authorities are entitled to have access to the central, automated mechanism or other similarly effective and timely mechanisms, and to the information contained therein, as may be necessary for the exercise of their functions.

3. Parties shall adopt such measures as may be necessary to comply with the applicable data protection legislation and to establish safeguards governing the processing of the information necessary to achieve the purpose of this article.

Section 3 – Financial intelligence unit

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

1. Each Party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by a financial intelligence unit when there is a suspicion that a transaction, an account, such as a bank, securities, payment or virtual asset account or a business relationship is related to money laundering, the financing of terrorism or any of the categories of offences in the appendix to the Convention, to suspend the use of that account, the business relationship or the transaction or to withhold consent for the transaction to go ahead.

2. The suspension or withholding of consent pursuant to paragraph 1 of this article shall be imposed by the financial intelligence unit in order to preserve the funds, perform its analyses, assess whether the suspicion is confirmed and, if so, to disseminate the results of the analyses to the competent authorities to allow for the adoption and enforcement of appropriate measures.

3. Each Party shall ensure that the maximum duration of any suspension or withholding of consent pursuant to paragraph 1 of this article is subject to the relevant provisions of domestic law and is limited to what is strictly necessary to achieve the objectives laid down in paragraph 2 of this article.

4. Each Party shall adopt such legislative and other measures as may be necessary to provide for specific safeguards, as appropriate, to protect the fundamental rights of the persons affected by the suspension or withholding of consent ordered by the financial intelligence unit pursuant to paragraph 1 of this article.

5. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the financial intelligence unit is empowered to lift the suspension or withholding of consent at any time if it concludes that the suspension or withholding of consent is no longer necessary to fulfil the objectives set out in paragraph 2 of this article.

6. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the

Council of Europe, reserve its right not to apply this article to the suspension of accounts and business relationships.

Section 4 – Asset recovery office

Article 11 – Asset recovery office

1. Each Party shall adopt such legislative or other measures as may be necessary to establish or designate one or more authorities as an asset recovery office with responsibility to:

identify and trace property liable to confiscation in support of other competent authorities; and co-operate with the asset recovery offices of other Parties.

2. For the purposes of paragraph 1 of this article, each Party shall ensure that the asset recovery office can effectively exchange information with the competent national authorities in accordance with its domestic law.

3. Each Party shall adopt such legislative and other measures as may be necessary to enable one of its asset recovery offices, without prejudice to the powers of other competent authorities, to take urgent provisional measures, in accordance with Article 6, paragraph 2, of this Protocol, in cross-border cases in order to preserve property identified and traced when there is an imminent risk of its disappearance. The duration of such measures shall not exceed seven working days.

4. Each Party shall adopt such legislative and other measures as may be necessary to ensure that an asset recovery office does not maintain urgent provisional measures longer than necessary to fulfil the objectives set out in paragraph 3 of this article.

Article 12 – Access to information by asset recovery offices

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the asset recovery office has timely access to the information that it requires to properly undertake its functions, subject to the principles of necessity and proportionality, and without prejudice to domestic procedural safeguards.

2. For the purposes of paragraph 1 of this article, and without prejudice to Articles 9 and 17 of this Protocol, each Party shall ensure that the asset recovery office has at least:

a. immediate and direct access to information on real estate, national citizenship and the national population, commercial and business entities, vehicles, aircraft, watercraft and beneficial ownership, provided that the information is stored in centralised or interconnected registers or databases held by public authorities;

b. immediate and direct access, or access upon request, to information on mortgages and loans, information contained in national currency and currency exchange databases, information on border crossings, customs data, including cross-border physical transfers of cash and bearer negotiable instruments, information on the financial statements of companies, and information on wire transfers, account balances and transfers of virtual assets;

c. immediate and direct access, or access upon request, to fiscal information, social security information and information held by the authorities competent for preventing, detecting, investigating or prosecuting criminal offences, under the conditions established by domestic law.

3. Parties shall put in place such measures as may be necessary to comply with applicable data protection legislation and to establish safeguards governing the processing of the information necessary to achieve the purpose of this article.

4. Where the information specified in paragraph 2 of this article is not held in centralised or interconnected registers or databases, each Party shall ensure that the asset recovery office has access to such information through other mechanisms in a streamlined and standardised manner.

Section 5 – Asset management

Article 13 – General principles of management

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure proper management of property frozen, seized or confiscated pursuant to the Convention and this Protocol until its final disposal.

2. Each Party shall ensure that, where justified by the nature of the property, the authorities competent for the management of frozen or seized property assess the property that might become the object of a confiscation order with a view to minimising its estimated management costs and preserving the value of such property until its final disposal.

Article 14 – Asset management office

1. Each Party shall adopt such legislative and other measures as may be necessary to establish or designate one or more competent authorities to function as an asset management office to ensure the proper management of frozen, seized and confiscated property.

2. The asset management office shall have the following functions:

managing the property or providing support and expertise to other competent authorities for the management of such property;

co-operating and exchanging information with the competent authorities responsible for identifying, tracing, freezing, seizing and confiscating property; and

co-operating with the competent authorities responsible for the management of frozen, seized and confiscated property in other Parties.

3. For the purposes of paragraph 2, sub-paragraph c, of this article, each Party shall designate a maximum of two contact points which shall have the capacity to carry out communications in a timely manner with the contact points of other Parties and shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of its designated contact points.

4. For the purposes of applying paragraph 3 of this article, a Party can designate a third contact point where it is necessary pursuant to its constitutional principles.

Article 15 – Pre-confiscation sale

1. Each Party shall adopt such legislative and other measures as may be necessary to enable the sale of seized and frozen property, before a final decision regarding the seized or frozen property is taken, where:

the property is perishable or rapidly depreciating;

the storage or maintenance costs are unreasonable compared to the market value; or

the management of the property requires special conditions and expertise which are not readily available.

2. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the interests of the affected person are taken into account when issuing an order for the pre-confiscation sale of property and that, with the exception of cases where the affected

person has absconded or cannot be located, the affected person is notified and, except in cases of urgency, given the opportunity to be heard before the sale. The affected person shall have the possibility to request the sale of the property.

3. Earnings from such sales shall be secured and managed pursuant to Article 13 of this Protocol until a final decision is taken regarding the seized or frozen property.

Article 16 – Use of frozen, seized and confiscated property

1. Each Party shall consider adopting such legislative or other measures as may be necessary to allow for the use of confiscated property, and the revenues generated therefrom, under the conditions set out in domestic law, for purposes of social reuse, in the public interest or for other specific aims.

2. Each Party may adopt such legislative or other measures as may be necessary to allow for the use of frozen or seized property, under the conditions set out in domestic law, for purposes of social reuse, in the public interest or for other specific aims.

Article 17 – Information on frozen, seized and confiscated property

1. Each Party shall adopt such legislative and other measures as may be necessary to set up efficient tools or mechanisms enabling the identification, in a timely manner, of frozen, seized or confiscated property and, where appropriate, the actual or estimated value of such property.

2. Each Party shall ensure that asset management offices and, where appropriate, asset recovery offices and other competent authorities are able to obtain, in a timely manner, through the tools and mechanisms referred to in paragraph 1 of this article, the information on frozen, seized and confiscated property necessary for the performance of their tasks.

3. Parties shall put in place such measures as may be necessary to comply with applicable data protection legislation and to establish safeguards governing the processing of the information necessary to achieve the purpose of this article.

Chapter III – International co-operation

Section 1 – Principles of international co-operation

Article 18 – General principles and measures for international co-operation

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the enforcement of foreign freezing, seizure or confiscation orders is not made conditional on conducting a domestic investigation. This provision shall be without prejudice to the power of the competent authorities in the requested Party to review the foreign order and issue any orders necessary to give it effect with regard to property located in its territory.

2. Parties shall also ensure that a request to take provisional measures is not refused on the sole ground that the domestic order on which it is based was made by an authority other than a judicial authority, where the authority in question is designated as a competent authority by the requesting Party and where the domestic order in question was validated by a judicial authority prior to the transmission of the request.

Article 19 – Transfer of data

1. Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or its Protocol may be used by the Party to which such data has been transferred only:

a. for the purpose of processes or proceedings to which the Convention or its Protocol applies;

- b. for other judicial and administrative proceedings directly related to the proceedings mentioned under paragraph 1, sub-paragraph *a*, of this article;
 - c. to prevent an immediate and serious threat to public security.
2. Such data may, however, be used for any other purpose if prior consent to that effect is given by the Party from which the data have been transferred or the data subject.
3. Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or its Protocol where:
- a. such data cannot be provided in compliance with its domestic legislation; and/or
 - b. the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, as modernised by the protocol amending that convention (CETS No. 223), done at Strasbourg on 10 October 2018, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.
4. Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or its Protocol may require the Party to which the data has been transferred to give information on the use made of such data.
5. Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or its Protocol, personal data which it transmits to another Party not be used by the latter for the purposes of paragraph 1 of this article unless with its previous consent.

Section 2 – Investigative assistance

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

1. Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any financial institution or virtual asset service provider located in its territory and, if so, shall provide to the requesting Party the particulars of the identified accounts, including all records held by financial institutions or virtual asset service providers pursuant to their customer due diligence obligations, as defined in Article 13, paragraph 2, sub-paragraphs *a.i* and *iii*, of the Convention.
2. The obligation set out in this article shall apply only to the extent that the information is in the possession of the financial institution or virtual asset service provider keeping the account.
3. In addition to the requirements of Article 37 of the Convention, the requesting Party shall, in its request:
- state why it considers that the requested information is likely to be of substantial value for the purpose of the criminal investigation into the offence;
 - state on what grounds it presumes that the financial institutions or virtual asset service providers in the requested Party hold the account and specify, to the widest extent possible, which financial institutions or virtual asset service providers and/or accounts may be involved; and
 - include any additional information available which may facilitate the execution of the request.

4. The requested Party may make the execution of such a request dependent on the same conditions as it applies in respect of requests for search and seizure.

5. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve its right to apply this article only to money laundering, the financing of terrorism and to the categories of offences in the appendix to the Convention.

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

1. On request by another Party, the requested Party shall provide the particulars of specified accounts held by financial institutions and virtual asset service providers, and of operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

2. The obligation set out in this article shall apply only to the extent that the information is in the possession of the financial institution or virtual asset service provider holding the account.

3. In addition to the requirements of Article 37 of the Convention, the requesting Party shall, in its request, indicate why it considers the requested information relevant for the purposes of the criminal investigation into the offence.

4. The requested Party may make the execution of such a request dependent on the same conditions as it applies in respect of requests for search and seizure.

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

1. Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the operations that are being carried out by financial institutions and virtual asset service providers through one or more accounts specified in the request and communicate the results thereof to the requesting Party.

2. In addition to the requirements of Article 37 of the Convention, the requesting Party shall, in its request, indicate why it considers the requested information relevant for the purposes of the criminal investigation into the offence.

3. The decision to monitor shall be taken in each individual case by the competent authorities of the requested Party, with due regard for the domestic law of that Party.

4. The practical details regarding the monitoring shall be agreed between the competent authorities of the requesting and requested Parties.

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

1. By mutual agreement, the competent authorities of two or more Parties may establish and operate a joint investigation team in their territories for the purpose of the recovery of property liable to confiscation pursuant to the Convention and this Protocol, where enhanced co-ordination is deemed to be particularly useful. Such teams shall be established for a limited period, which may be extended by mutual consent, and their composition shall be determined in the agreement establishing the team. A joint investigation team may, in particular, be set up:

a. where investigations by one Party into property liable to confiscation pursuant to the Convention and this Protocol require difficult and demanding investigations with links to other Parties; or

b. where investigations by a number of Parties pursuant to the Convention and this Protocol require co-ordinated and concerted action in the Parties involved.

A request for the setting-up of a joint investigation team may be made by any of the Parties concerned. The team shall be established in one of the Parties in which the investigations are expected to be carried out.

2. Requests for the establishment of a joint investigation team shall include:

- a. the authority making the request;
- b. the object of and the reason for the request;
- c. where possible, any other information relevant to the investigation;
- d. where known and appropriate, the name and address of the affected persons;
- e. proposals concerning the composition of the team.

3. A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

- a. the leader of the team shall be a representative of the competent authority in charge of the investigation in the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under domestic law;
- b. the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in paragraph 3, sub-paragraph *a*, of this article, taking into account the conditions set by their own authorities in the agreement on setting up the team;
- c. the Party in which the team operates shall make the necessary organisational arrangements for it to do so.

4. In this article, members of the joint investigation team from the Party in which the team operates are referred to as “members”, while members from Parties other than the Party in which the team operates are referred to as “seconded members”.

5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.

6. Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.

7. Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.

8. Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned, in accordance with the relevant instruments or arrangements.

9. A seconded member of the joint investigation team may, in accordance with his or her domestic law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purposes of the investigations conducted by the team.

10. Information lawfully obtained by a member or seconded member while part of a joint investigation team, which is not otherwise available to the competent authorities of the Parties concerned, may be used for the following purposes:

- a. for the purposes for which the team has been set up;
- b. subject to the prior consent of the Party where the information became available, for detecting investigating and prosecuting criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance pursuant to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its protocols;
- c. for preventing an immediate and serious threat to public security and, without prejudice to paragraph 10, sub-paragraph *b*, if subsequently a criminal investigation is opened;
- d. for other purposes, to the extent that this is agreed between Parties setting up the team.

11. This article shall be without prejudice to any other existing provisions or arrangements on the setting-up or operation of joint investigation teams.

12. To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

Section 3 – Standard forms

Article 24 – Standard form for freezing or seizing property

1. Without prejudice to Article 35, paragraph 1, of the Convention, in order to request the freezing or seizing of property within the meaning of Article 21 of the Convention, Parties shall complete the standard form adopted by the Conference of the Parties established under the Convention pursuant to Article 35 of this Protocol, shall sign it and shall certify its content as being accurate and correct.

2. The requesting Party shall provide the requested Party with a translation of the standard form in an official language of the requested Party or in any other language that the requested Party will accept. The declarations made by Parties in accordance with Article 35, paragraph 3, of the Convention shall apply, *mutatis mutandis*, for this purpose. A translation of the decision, on which the form is based, shall be provided only upon request by the competent authorities of the requested Party if consultation of that decision is necessary.

3. A request for the freezing or seizing of property made in accordance with paragraph 1 of this article may be refused if the standard form is incomplete or manifestly incorrect and has not been completed or corrected following consultations between the requested and requesting Parties, in accordance with Article 38 of the Convention.

4. This article will be applicable from the day the Conference of the Parties adopts the standard forms referred to in paragraph 1 of this article.

Article 25 – Standard form for the confiscation of property

1. Without prejudice to Article 35, paragraph 1, of the Convention, in order to request the confiscation of property within the meaning of Article 23 of the Convention, Parties shall complete the standard form adopted by the Conference of the Parties established under the Convention pursuant to Article 35 of this Protocol, shall sign it and shall certify its content as being accurate and correct.

2. The requesting Party shall provide the requested Party with a translation of the standard form in an official language of the requested Party or in any other language that the requested Party will accept. The declarations made by Parties in accordance with Article 35, paragraph 3, of the Convention shall apply, *mutatis mutandis*, for this purpose. A translation of the decision, on which the form is based, shall be provided only upon request by the competent authorities of the requested Party if consultation of that decision is necessary.

3. A request for the confiscation of property made in accordance with paragraph 1 of this article may be refused if the standard form is incomplete or manifestly incorrect and has not been completed or corrected following consultations between the requested and requesting Parties, in accordance with Article 38 of the Convention.

4. This article will be applicable from the day the Conference of the Parties adopts the standard forms referred to in paragraph 1 of this article.

Section 4 – Return and sharing of property

Article 26 – Return of property

1. When acting on a request made by another Party in accordance with Articles 23 and 24 of the Convention, Parties shall, if so requested, give priority consideration to returning confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to its legitimate owners.

2. When acting on a request made by another Party in accordance with Articles 21 and 22 of the Convention, Parties shall also, if so requested, give priority consideration to returning frozen or seized property to the requesting Party prior to a final decision on its confiscation, so that it can return such property to its legitimate owners, where the following conditions are met:

- a. the legitimate owner's title to the property is established and not contested;
- b. the property is not required as evidence in criminal proceedings in the requested Party; and
- c. the rights of the affected persons are not prejudiced.

3. When acting on a request made by another Party in accordance with Articles 21 and 22 of the Convention, Parties may also, if so requested, give priority consideration to returning frozen or seized property to the requesting Party prior to a final decision on its confiscation so that it can give compensation to the victims of the crime, where the following conditions are met:

- a. the decision on compensation is final;
- b. the property to be disposed of for the purpose of compensating the victim is not required as evidence in criminal proceedings in the requested Party; and
- c. the rights of the affected persons are not prejudiced.

Article 27 – Sharing of property

1. Without prejudice to Articles 25 and 32 of the Convention, Articles 26 and 31 of this Protocol and the rights of identifiable legitimate owners and victims, where money is obtained as the result of the execution of a confiscation order in accordance with Articles 23 and 24 of

the Convention and the amount obtained exceeds 10 000 euros or the equivalent in convertible currency, it shall be shared equally between the requesting and the requested Party, unless otherwise agreed on a case-by-case basis. For confiscated property other than money, the requesting and requested Parties shall consult on the appropriate arrangements for the disposal of the property in question.

2. When sharing property pursuant to paragraph 1 of this article, the requesting and requested Parties may agree to include in the sharing arrangement other Parties which have contributed to the successful recovery of the property. Parties may furthermore decide to share property confiscated in accordance with a domestic confiscation order with Parties that provided investigative or other assistance in accordance with the Convention or this Protocol, where such assistance contributed to the successful confiscation.

3. Where confiscated property is to be shared between the requesting and requested Parties in accordance with paragraphs 1 and 2 of this article, the requested Party may first deduct costs of a substantial or extraordinary nature which were necessary in order to comply with requests under this Protocol or the Convention and which facilitated the confiscation of the property concerned.

Section 5 – Financial intelligence unit

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

1. Each Party shall adopt such legislative and other measures as may be necessary to permit urgent action to be taken by a financial intelligence unit, at the request of a foreign financial intelligence unit, when there is a suspicion that a transaction, an account such as a bank, securities, payment or virtual asset account or a business relationship is related to money laundering, the financing of terrorism or any of the categories of offences in the appendix to the Convention, to suspend the use of that account, the business relationship or the transaction or to withhold consent for the transaction to go ahead.

2. The suspension shall be in place for such periods and subject to the same conditions as apply in the domestic law of the requested Party in respect of this power.

3. The action referred to in paragraph 1 of this article shall be taken where the requested financial intelligence unit is satisfied, upon justification by the requesting financial intelligence unit, that the use of the account, the business relationship or the transaction going ahead would have been suspended or consent for the transaction to go ahead would have been withheld if the account, business relationship or transaction had raised suspicion at the national level.

4. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve its right not to apply this article to the suspension of accounts and business relationships.

Section 6 – Asset recovery offices

Article 29 – International co-operation between asset recovery offices

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that its asset recovery office exchanges information with the asset recovery offices of other Parties, either spontaneously or upon request, for the purposes of identifying and tracing property liable to confiscation. Requests for information shall state the reasons for the request and include any information available that may facilitate the identification of the property.

2. The exchange of information pursuant to paragraph 1 of this article may be refused if:
- a. the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interest of the requested Party;
 - b. the execution of the request is likely to prejudice investigations or current proceedings, or pose an imminent threat to the life or physical integrity of a person;
 - c. the execution of the request is clearly disproportionate or irrelevant to the purposes for which it was made;
 - d. the offence to which the request relates is a political offence, with the exception of the financing of terrorism; or
 - e. the requested Party considers that compliance with the action sought would be contrary to the principle of *ne bis in idem*.
3. The requested asset recovery office shall consult with the requesting asset recovery office before refusing a request. Any refusal to provide information shall be appropriately explained.
4. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the asset recovery office responds promptly to reasoned requests and, unless prevented from doing so for compelling reasons, within fourteen days for non-urgent requests and within three days for urgent requests concerning databases to which the asset recovery office has direct access. Where the information requested is accessible only indirectly, or where the request would impose a disproportionate burden, the requested asset recovery office may extend the time limit for responding to twenty-one days for non-urgent requests and seven days for urgent requests. Where the requested asset recovery office assesses that it will not be able to comply with the applicable time limits, it shall promptly inform the requesting asset recovery office.
5. For the purposes of facilitating cross-border co-operation between asset recovery offices, each Party shall designate a maximum of two contact points which shall have the capacity to carry out communications in a timely manner with the contact points of other Parties and shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of its designated contact points.
6. For the purposes of applying paragraph 5 of this article, a Party can designate a third contact point where it is necessary pursuant to its constitutional principles.

Section 7 – Asset management

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

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that Article 6 of the Convention and Articles 15 and 17 of this Protocol apply to property frozen, seized or confiscated at the request of another Party.
2. The management of property frozen, seized or confiscated at the request of another Party shall be governed by the law of the requested Party.

Chapter IV – Safeguards, training and resources

Article 31 – Safeguards and remedies

1. Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Protocol are subject to the conditions and

safeguards provided for under its domestic law, which shall ensure adequate protection of human rights and freedoms, and incorporate the principles of necessity and proportionality.

2. Without prejudice to Article 8 of the Convention, each Party shall adopt such legislative and other measures as may be necessary to ensure that the persons affected by provisional measures, including measures provided in Article 6 of this Protocol, pre-confiscation sale orders or confiscation pursuant to the Convention or this Protocol, have the right to an effective legal remedy and to a fair trial in order to protect their rights. Parties shall also guarantee the rights of the defence.

3. Each Party shall ensure that the persons affected by a confiscation measure pursuant to the Convention or this Protocol are summoned to the confiscation proceedings.

4. Each Party shall ensure that a court can suspend the execution of a pre-confiscation sale order if otherwise there would be irreparable harm to the affected person.

Article 32 – Notification of decisions

1. Each Party shall ensure that decisions on provisional measures and confiscation pursuant to the Convention and this Protocol, as well as decisions on the pre-confiscation sale of property, are notified to the persons affected without undue delay. Such decisions shall set out the reasons for the measure and the rights and legal remedies available to the person affected.

2. A Party may allow its competent authorities to postpone notifying the person concerned of decisions on provisional measures for such period of time as is necessary to avoid jeopardising a criminal or financial investigation.

Article 33 – Security measures

1. Each Party shall ensure that asset recovery offices undertake all necessary measures, including security measures, to ensure that information processed under Articles 9, 12, 17 and 29 of this Protocol is not accessed by unauthorised persons.

2. Parties shall take the necessary measures to ensure that communication between asset recovery offices is carried out through secure channels.

Article 34 – Resources and training

1. Each Party shall adopt such legislative or other measures as may be necessary to ensure that asset recovery offices and asset management offices have adequate financial, human and technical resources to carry out their functions effectively.

2. Without prejudice to judicial independence and differences in the organisation of the judiciary, each Party shall ensure that adequate training is available to the competent authorities involved in financial investigations, asset identification, tracing, freezing, seizure, management and confiscation.

Chapter V – Monitoring mechanism and settlement of disputes

Article 35 – Monitoring mechanism and settlement of disputes

1. Article 48 of the Convention shall apply, *mutatis mutandis*, to this Protocol. The Conference of the Parties established under the Convention shall perform the functions set out in Article 48 of the Convention for the purposes of this Protocol, meeting in a composition restricted to the Parties to this Protocol, where appropriate.

2. The Conference of the Parties, meeting in a composition restricted to the Parties to this Protocol, shall adopt standard forms as provided for in Articles 24 and 25 of this Protocol.

3. The Conference of the Parties shall facilitate the exchange of information on significant legal, policy or practical developments pertaining to the areas covered by the Convention and this Protocol.

Chapter VI – Final provisions

Article 36 – Relationship with the Convention

The provisions of the Convention shall apply, *mutatis mutandis*, to the provisions of this Protocol.

Article 37 – Signature and ratification

This Protocol shall be open for signature by signatories to the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously expressed its consent to be bound by the provisions of the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 38 – Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three member States of the Council of Europe, have expressed their consent to be bound by this Protocol, in accordance with the provisions of Article 37.

2. In respect of any signatory which subsequently expresses its consent to be bound by it, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 39 – Accession

1. After the entry into force of this Protocol, any Party to the Convention may also accede to this Protocol.

2. In respect of any Party acceding to this Protocol under paragraph 1 of this article, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 40 – Territorial application

1. Any State or the European Union may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any Party may, at any later time, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.

3. Any declaration made under paragraphs 1 and 2 of this article may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 41 – Denunciation

1. Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
3. Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 42 – Relationship to other conventions and agreements

1. This Protocol does not affect the rights and undertakings of Parties derived from international multilateral instruments concerning special matters.
2. The Parties to this Protocol may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Protocol, for the purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Protocol, or if they have otherwise established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of this Protocol, if it facilitates international co-operation.
4. Parties which are members of the European Union shall, in their mutual relations, apply European Community and European Union rules insofar as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of this Protocol and without prejudice to its full application with respect to other Parties.

Article 43 – Declarations and reservations

1. Any State or the European Union may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance, approval or accession, make one or more of the declarations provided for in Article 19, paragraph 5, and Article 40, paragraphs 1 and 2, of this Protocol.
2. Any State or the European Union may, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it avails itself of one or more of the reservations provided for in Article 3, paragraph 2; Article 4, paragraphs 2 and 3; Article 5, paragraph 3; Article 10, paragraph 6; Article 20, paragraph 5; and Article 28, paragraph 4, of this Protocol. No other reservation may be made in respect of the provisions of this Protocol.
3. Any Party which has made a reservation under this article may, at any time, wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.
4. A Party which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision insofar as it has itself accepted it.

Article 44 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Protocol,

the European Union, any signatory, any State Party and any other State which has been invited to accede to the Convention of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. the date of entry into force of this Protocol in accordance with Article 38;
- d. any declaration, reservation or withdrawal of reservation made in accordance with Article 43;
- e. any declaration made in accordance with Article 14, paragraph 3, and Article 29, paragraph 5;
- f. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at xxx, this xxx day of xxx, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Protocol, to the European Union and to any State invited to accede to the Convention.

Appendix

The following paragraph is added to the appendix to the Convention:

v cybercrime.