



2024/1764

24.6.2024

COUNCIL DECISION (EU) 2024/1764

of 13 June 2024

authorising the Commission to participate, on behalf of the European Union, in negotiations on an additional protocol to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1) and (2), Article 83(1) and (2) and Article 87(2), in conjunction with Article 218(3) and (4), thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Union signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism ('the Convention') on 2 April 2009. The Convention has been signed by 25 Member States, 23 of which have ratified it.
- (2) On 23 November 2023, the Committee of Ministers of the Council of Europe adopted the Terms of Reference establishing the Committee of Experts on Criminal Asset Recovery ('the Terms of Reference'). The Committee of Experts on Criminal Asset Recovery is entrusted, under the authority of the Committee of Ministers and the European Committee on Crime Problems, to elaborate an additional protocol supplementing the Convention ('the additional protocol'). That work began on 29 May 2024 and is due to be completed by the end of 2025.
- (3) According to the Terms of Reference, the additional protocol is intended to contain provisions to enhance certainty and consistency in the sharing of confiscated assets between States Parties in transnational cases, provisions to ensure the 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 cooperation regarding and the execution of requests in transnational cases, and any other issue which the Committee of Experts on Criminal Asset Recovery deems to be of consequence to strengthen cooperation among Parties with respect to asset recovery.
- (4) The Union has already adopted common rules that overlap to a large extent with certain elements being considered for the content of the additional protocol. Those common rules include in particular Regulation (EU) 2018/1805 of the European Parliament and of the Council ⁽¹⁾ and Directive (EU) 2024/1260 of the European Parliament and of the Council ⁽²⁾, which replaced Directive 2014/42/EU of the European Parliament and of the Council ⁽³⁾. Moreover, Council Framework Decisions 2003/577/JHA ⁽⁴⁾ and 2006/783/JHA ⁽⁵⁾ remain applicable in the relations between certain Member States. Those common rules of Union law might be affected or altered in scope by specific aspects of the additional protocol, within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union (TFEU).

⁽¹⁾ 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 (OJ L 303, 28.11.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1805/oj>).

⁽²⁾ Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation (OJ L 2024/1260, 25.5.2024, ELI: <http://data.europa.eu/eli/dir/2024/1260/oj>).

⁽³⁾ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39, ELI: <http://data.europa.eu/eli/dir/2014/42/oj>).

⁽⁴⁾ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45, ELI: http://data.europa.eu/eli/dec_framw/2003/577/oj).

⁽⁵⁾ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59, ELI: http://data.europa.eu/eli/dec_framw/2006/783/oj).

- (5) In order to protect the integrity of Union law and to ensure consistency between the rules of international law and those of Union law, it is necessary that the Commission participate in the negotiations on the additional protocol as regards matters falling within the Union's competence, as defined by the Treaties, and in respect of which the Union has adopted rules or is expected to adopt rules in the foreseeable future.
- (6) This Decision is without prejudice to the division of competences between the Union and its Member States as defined by the Treaties, to the participation of Member States in the negotiations on matters falling outside the mandate granted to the Commission, or to any subsequent decision to conclude the additional protocol.
- (7) The negotiating directives set out in the addendum to this Decision are addressed to the Commission and can be revised and further developed if appropriate depending on the evolution of the negotiations.
- (8) In view of the fact that all Member States are also Members of the Council of Europe, the Member States participating in the negotiations on the additional protocol should, in accordance with the principle of sincere cooperation as referred to in Article 4(3) of the Treaty on European Union (TEU), in full mutual respect, support the Union negotiator in carrying out the tasks which flow from the Treaties. In accordance with the principle of sincere cooperation, the Commission and the Member States should cooperate closely during the negotiation process, including via regular contact with the Member States' experts and their representatives in Strasbourg.
- (9) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (10) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to participate in negotiations, on behalf of the Union, as regards matters falling within the Union's competence, as defined by the Treaties, and in respect of which the Union has adopted rules or is expected to adopt rules in the foreseeable future, on an additional protocol to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.
2. The negotiations shall be conducted on the basis of the negotiating directives set out in the addendum to this Decision. The Council may subsequently issue additional directives to the Commission.

Article 2

The negotiations shall be conducted in consultation with the Council Working Party on Judicial Cooperation in Criminal Matters ('the COPEN Working Party'), which is hereby designated as the special committee within the meaning of Article 218(4) TFEU.

The Commission shall regularly report to the COPEN Working Party on the progress of the negotiations and shall forward all negotiating documents to it as early as possible.

Whenever so requested by the Council, the Commission shall report to it on the conduct and the outcome of the negotiations, including in writing.

Article 3

This Decision is addressed to the Commission.

Done at Luxembourg, 13 June 2024.

For the Council

The President

N. DE MOOR