Parliamentary Assembly
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COUNCIL OF EUROPE
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Opinion 311 (2026)[1]

Draft 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

Parliamentary Assembly

1. The Parliamentary Assembly congratulates the European Committee on Crime Problems (CDPC) and the Committee of Experts on Criminal Asset Recovery (PC-RAC) on the finalisation of the draft additional protocol to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (hereinafter the "draft additional protocol").

2. Since the adoption, in 2005, of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198, hereinafter "the Warsaw Convention"), organised crime, money laundering and the financing of terrorism have evolved significantly, taking advantage of the increasingly easier movement of capital across borders and advanced technological developments, including the rise of virtual assets. Existing asset recovery measures have proven insufficient, with only around 2% of estimated criminal proceeds being seized and confiscated. This presents an urgent need to develop and implement effectively additional legal frameworks.

3. In this context, the Assembly regrets that the Warsaw Convention, despite having been opened for signature more than two decades ago, has still not been signed or ratified by several Council of Europe member States, and that it has not been ratified by the European Union. It calls on these States and the European Union to sign and/or ratify it as soon as possible. The Assembly also calls on observer States of the Council of Europe and States whose parliaments enjoy observer or partner for democracy status with the Assembly to consider signing, ratifying or acceding to this convention if they have not already done so.

4. In the light of its extensive work on combating organised crime, money laundering and the financing of terrorism, including its Resolution 2218 (2018) "Fighting organised crime by facilitating the confiscation of illegal assets", its Resolution 2279 (2019) "Laundromats: responding to new challenges in the international fight against organised crime, corruption and money laundering", its Resolution 2365 (2021) "Urgent need to strengthen financial intelligence units – Sharper tools needed to improve confiscation of illegal assets" and its Resolution 2434 (2022) "How to put confiscated criminal assets to good use?", the Assembly welcomes the draft additional protocol as an answer to its long-standing recommendations. It notes with satisfaction that the draft additional protocol provides for a significant expansion of tools aimed at enabling early cross-border asset tracing, confiscation of property deriving from criminal conduct, management of seized assets and victim compensation. Once adopted, the draft additional protocol will become the most significant update to the Council of Europe asset recovery framework, further strengthening the Organisation's leading role in the fight against organised crime, money laundering and the financing of terrorism.

5. The Assembly also refers to the extensive case law of the European Court of Human Rights (the Court), which considers that States have a wide margin of appreciation in implementing policies to fight crime, including confiscation of property that is presumed to be of unlawful origin, both within the framework of criminal proceedings subject to a conviction or in non-conviction-based proceedings, as well as extended confiscation. It is therefore appropriate that the draft additional protocol leaves States Parties a certain margin

1. *Assembly debate* on 23 April 2026 (17th sitting) (see Doc. 16385, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Constantinos Efstathiou). *Text adopted by the Assembly* on 23 April 2026 (17th sitting).

of discretion when enacting domestic legislation to implement its provisions. The Assembly further reiterates the primary role of national courts in protecting human rights when confiscating property and notes that the Court considers that, in general, Article 6 of the European Convention on Human Rights (ETS No. 5, the Convention) does not prevent States from using presumptions that the assets were acquired unlawfully and reversing the burden of proof onto the applicant to demonstrate their lawful origin. The same approach has been adopted by the Court under Article 1 of Protocol No. 1 to the Convention (ETS No. 9).

6. The Assembly shares the position of the European Court of Human Rights and reiterates its own view that non-conviction-based and extended confiscation mechanisms are both proportionate and necessary measures for effective law enforcement. It reaffirms that such mechanisms remain fully compatible with human rights standards, including the presumption of innocence and the right to the peaceful enjoyment of possessions, provided that they are governed by appropriate legal frameworks and subject to effective and independent judicial oversight.

7. Referring to its Resolution 2509 (2023) "Transnational repression as a growing threat to the rule of law and human rights", the Assembly reiterates that the misuse of anti-money laundering and anti-terror financing measures constitutes one of the tools of transnational repression. Having regard to the judgment of the European Court of Human Rights in the case of *Shorazova v. Malta*, the Assembly reminds member States that mutual legal assistance under international treaties should be carried out in compliance with international human rights standards. It therefore welcomes the safeguards included in the draft additional protocol, which aim to ensure the practical and effective protection of the fundamental rights of the persons affected by the measures implemented under its provisions, in particular the explicit wording of Article 31. In this context, the Assembly considers that future States Parties to the protocol should pay particular attention to specific and credible allegations of transnational repression and political persecution when examining co-operation requests under the protocol and make use of the option to refuse such requests on human rights grounds, in accordance with Article 28 of the Warsaw Convention and their existing obligations under international human rights law.

8. Referring further to its Resolution 2605 (2025) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine" and its Resolution 2557 (2024) "The role of sanctions in countering the Russian Federation's war of aggression against Ukraine", the Assembly notes the utility of tools provided for under the Warsaw Convention and its future additional protocol for tracing, seizing, freezing and/or confiscating the proceeds of crimes related to the Russian Federation's war of aggression against Ukraine.

9. Considering that the draft additional protocol implements the Assembly's long-standing proposals contained in its past resolutions and recommendations, the Assembly recommends that the draft additional protocol be adopted by the Committee of Ministers and opened for signature as soon as possible.

10. With a view to strengthening the procedural guidelines and further improving its provisions, the Assembly proposes the following amendment to the draft additional protocol:

> 10.1. in Article 10, paragraph 3, add the following sentence at the end of the paragraph: "Where the duration of such measures exceeds seven working days, each Party shall ensure that their extension is subject to an authorisation by a court."

11. Finally, the Assembly notes that its role in the process of drafting new Council of Europe conventions and protocols merits careful reflection. It regrets that, save for a few exceptions, most of its past proposals for amendments to draft instruments have not been accepted by the Committee of Ministers, without any real explanation. The Assembly also notes that in order to accommodate the Committee of Ministers' requests to adopt its opinions as soon as possible, it has needed to resort to debates under urgent procedure, thereby significantly limiting its capacity to properly reflect upon the presented drafts. While such haste may occasionally be warranted by exceptional circumstances, it should not become the norm. Accordingly, the Assembly invites the Committee of Ministers to engage in dialogue with the aim of establishing a more effective and inclusive opinion process, allowing the Assembly to have a more meaningful impact on the preparation of new Council of Europe binding instruments.