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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

REVIEW OF THE COUNCIL OF EUROPE CONVENTIONS WITHIN THE DIRECT RESPONSIBILITY OF THE CDPC

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General introduction

Since its foundation in 1949, the Council of Europe has prepared more than 200 conventions, building a significant common European legal heritage.

The Secretary General decided to take stock of the situation of the Council of Europe's conventions and has therefore drafted a report on the review of Council of Europe conventions (SG/Inf(2012)12, 12 May 2012). This exercise serves several purposes:

- draw up a list of key conventions which can provide a common legal platform for all member States in the fields of Human Rights, the Rule of Law and Democracy;
- identify those conventions which need updating in order to retain or increase their relevance over the next ten years;
- identify ways of promoting accession to the relevant conventions by non-member States;
- suggest measures which might increase the relevance, the visibility of, and the number of Contracting Parties to, Council of Europe conventions.

At its 1168th meeting (10 April 2013), the Committee of the Ministers took note of the Secretary General's report and instructed the steering and ad hoc committees to carry out an examination of the conventions for which they have been given responsibility, in order to:

- propose ways of improving the visibility, impact and efficiency of some or all of the conventions for which they have been given responsibility;
- draw the attention of member States to the relevant conventions;
- where necessary, identify any operational problems or obstacles to ratification of the relevant conventions, and draw the attention of member States to reservations;
- encourage States to regularly examine the possibility and/or desirability of becoming a Party to new Council of Europe conventions;
- assess the necessity or the opportunity of drafting amendments or additional protocols to the conventions for which they have been given responsibility or drafting supplementary conventions.

At its 65th plenary meeting (2-5 December 2013), the CDPC took note of these two documents. On 7 and 8 April 2014, the Bureau of the CDPC decided to instruct the Secretariat to prepare a document containing all relevant information on the conventions within the CDPC's responsibility.

This document aims to, in a first part, provide general information on the Conventions, which are under the CDPC's direct responsibility. In a second part, some points for consideration will be offered on each of these Conventions.

Due to their recentness, three Conventions have been excluded from the present document, considering that it is not yet possible to make an assessment. These are:

- Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No.: 210) entered into force on 1st August 2014;
- Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (CETS No.: 211);
- Council of Europe Convention against Trafficking in Human Organs (CETS No.: 216).

Part 1: General information on the Conventions

1) European Convention on the Punishment of Road Traffic Offences (ETS No.: 52)

The Convention aimed to address the increase, in the 1990's, in road traffic between Parties and the dangers consequent upon the violation of rules designed to protect road users. It sets out a framework of mutual co-operation for more effective punishment of road traffic offences in the territories of the Parties.

The Convention derogates from the principle of territoriality by empowering a Party in whose territory a road traffic offence has been committed to choose between instituting proceedings itself or requesting the State of residence of the offender to prosecute the offence.

A list of offences to which the Convention applies appears in Annex 1 of the Convention, named the "Common Schedule of Road Traffic Offences".

Open for signature by the member States of the Council of Europe, in Strasbourg, on 30 November 1964.

Entry into force: 18 July 1972.

Number of signatures: 15 Member States of the Council of Europe.

Number of ratifications: 5 Member States of the Council of Europe.

2) European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (ETS No.: 101)

The aim of the Convention is to set up a system for controlling the movements of firearms from one country to another. It applies in all cases where a firearm located in the territory of a Party is sold, transferred or otherwise disposed of to a person resident in the territory of another Party, or where it is transferred permanently and without change in the possession thereof to the territory of another Party.

The Convention offers two alternative methods of controlling the movement of firearms:

- the "notification" system, with an obligation on the Party in which the firearm was originally located to notify the Party on the territory of which the person is resident of the sale, transfer or other transaction;
- the "double authorization" system, whereby the transaction may not take place without the previous agreement of the two States concerned.

The Parties also undertake to afford each other mutual assistance in the suppression of illegal traffic and in the tracing and locating of firearms transferred from the territory of one State to the territory of another.

Open for signature by the member States of the Council of Europe, in Strasbourg, on 28 June 1978.

Entry into force: 1 July 1982.

Number of signatures: 23 member States of the Council of Europe.

Number of ratifications/accessions: 15 member States of the Council of Europe.

3) European Convention on the Compensation of Victims of Violent Crimes (ETS No.: 116)

This Convention puts upon States that become a Party to it the obligation to compensate the victims of intentional and violent offences resulting in bodily injury or death. The obligation to compensate is limited to offences committed on the territory of the State concerned, regardless of the nationality of the victim.

Open for signature by the member States of the Council of Europe, in Strasbourg, on 24 November 1983.

Entry into force: 1 February 1988.

Number of signatures: 32 Member States of the Council of Europe.

Number of ratifications: 25 Member States of the Council of Europe.

4) European Convention on Offences relating to Cultural Property (ETS No.: 119)

Based on the concept of common responsibility and solidarity in the protection of European cultural heritage, the Convention aims to protect cultural property against criminal activities. To achieve this objective the Parties undertake to enhance public awareness of the need for protection, to co-operate in the prevention of offences against cultural property, to acknowledge the seriousness of such offences and to provide for adequate sanctions or measures with a view to co-operating in the prevention of offences relating to cultural property and in the discovery of cultural property removed.

Open for signature by the member States of the Council of Europe, in Delphi, on 23 June 1985.

Entry into force: The Convention will enter into force after 3 ratifications.

Number of signatures: 6 Member States of the Council of Europe.

Number of ratifications: 0.

5) Convention on Insider Trading (ETS No.: 130)

The Convention provides for mutual assistance through the exchange of information between those responsible at national level for the surveillance of stock exchange transactions in order to discover and identify as rapidly as possible the preparation of irregular operations of insider trading.

Parties may, by simple declaration, extend this mutual assistance machinery to the search for those responsible for other irregular deals which could adversely affect equal access to information for all stock market traders or the quality of the information supplied to investors in order to ensure honest dealing (fraudulent financial operations, "rigging" of stock market prices, "laundering" of the proceedings of crime, etc.).

The Parties undertake to afford each other the widest measure of mutual assistance in criminal matters relating to offences involving insider trading.

Open for signature by the member States of the Council of Europe, in Strasbourg, on 20 April 1989.

Entry into force: 1 October 1991.

Number of signatures: 9 Member States of the Council of Europe.

Number of ratifications: 8 Member States of the Council of Europe.

Protocol to the Convention on Insider Trading (ETS No.: 133)

The Protocol allows Parties which are members of the European Union to apply Union rules and therefore not to apply the rules arising from this Convention (ETS No.: 130) except in so far as there is no Union rule governing the particular subject concerned.

Open for signature by the member States of the Council of Europe signatories to the Convention, in Strasbourg, on 11 September 1989.

Entry into force: 1 October 1991.

Number of signatures: 9 Member States of the Council of Europe.

Number of ratifications: 8 Member States of the Council of Europe.

6) Convention on the Protection of Environment through Criminal Law (ETS No.: 172)

The Convention is aimed at improving the protection of the environment at European level by deterring behaviour which is most harmful to it and at harmonising national legislation in this field.

This legal instrument establishes as criminal offences a number of acts committed intentionally or through negligence where they cause or are likely to cause lasting damage to the quality of the air, soil, water, animals or plants, or result in the death of or serious injury to any person.

It defines the concept of criminal liability of natural and legal persons, specifies the measures to be adopted by states to enable them to confiscate property and define the powers available to the authorities, and provides for international co-operation.

The sanctions available must include imprisonment and pecuniary sanctions and may include reinstatement of the environment, the latter being an optional provision in the Convention.

Another major provision concerns the possibility for environmental protection associations to participate in criminal proceedings concerning offences provided for in the Convention.

Open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration, in Strasbourg, on 4 November 1998.

Entry into force: This Convention will enter into force after 3 ratifications.

Number of signatures: 14 Member States of the Council of Europe.

Number of ratifications: 1 Member State of the Council of Europe.

Part II: Points for consideration on the Conventions

1) European Convention on the Punishment of Road Traffic Offences (ETS No.: 52)

The European Convention on the Punishment of Road Traffic Offences was opened for signature by the Council of Europe member States on 30 November 1964. It came into force on 18 July 1972. It has been signed by 10 States[1] and ratified by five of them[2].

International element is a key element to take into consideration in road security. The figures given by the European Commission[3] in November 2013 are alarming; if non-resident drivers represent 5% of all road traffic in the European Union, they are nevertheless responsible for 15% of crimes of speeding. Furthermore, the driver of a registered vehicle abroad is three times more likely to commit a crime than a resident in the country of registration of his/her vehicle. Lastly, the European Union notes that in countries like France, where tourism and transit are important, speeding committed by non-residents represents 25% of crimes committed and can reach as high as 40-50% at certain times of the year[4].

I. The European Convention on the Punishment of Road Traffic Offences

Following its creation by the Committee of Ministers of the Council of Europe in 1957, the CDPC appointed a working party to elaborate a preliminary draft convention which allows the creation of a close link of solidarity on the subject of punishment of road traffic offences between member States. This preliminary draft was presented to the Committee of Ministers in 1961. They decided to open the Convention to signature at its 134th reunion in October 1964.

The Convention intends to address the fact that offenders to different non-resident highway codes avoid their obligations upon return to their country of residence. Also it establishes a double derogation from the principle of territory usually fixing the competent tribunal and the competent criminal law. It thus gives competence to the State of residence of the perpetrator of a road offence to pursue an offence committed on the territory of another state regardless of the nationality of the offender. It also offers the possibility to the State of residence to enforce the sentence handed down in the State of the offence itself.

The Convention is divided into five sections and is completed by two annexes.

Section I lays down the fundamental principles. This section authorises the State of residence to pursue an offence committed on the territory of another State or to enforce a sanction which has become definitive outside of its jurisdiction. Section I equally defines the applicable law in these situations[5].

Section II is dedicated to the prosecution in the State of residence. It permits, in particular, the supply of information in relation to the time-limits for court action and also the legal value of documents issued in the State in which the prosecution occurred.

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[1] Germany, Austria, Belgium, Cyprus, Denmark, France, Georgia, Greece, Italy, Luxembourg, Netherlands, Portugal, Romania, Sweden and Turkey

[2] Cyprus, Denmark, France, Romania and Sweden

[3] http://ec.europa.eu/transport/newsletters/2013/11-08/articles/cbe_memo_en.htm (English only)

[4] The English version says the “very busy periods of the year”, we can think of school holidays, but also the tourist periods such as summer or during the period of winter sports

[5] Concerning the definition of the offence, the law of the State of the offence is applicable. Concerning prosecution and execution, it is the laws of the State of residence which apply.

Section III addresses enforcement in the State of residence. The principle of *non bis in idem* is invoked here, as well as the question of payment of fines. One article foresees for example the situation of non-payment of a fine and the recourses available in the State of residence to obtain that payment.

Section IV lays down “general provisions”. It foresees particularly the question of costs of proceedings, but also the question of exchange of information between the different States, particularly concerning the final decision given.

Finally, Section V contains the final provisions.

It is interesting to note that the core of the Convention is found in annex 1. This annex aims to determine the “Common Schedule of Offences”, to know the offences covered by the Convention. Seven offences are covered by the Convention:

1. Manslaughter or accidental injury on the roads.
2. "Hit and run" driving, i.e., the wilful failure to carry out the obligations placed on drivers of vehicles after being involved in a road accident.
3. Driving a vehicle while:
    a. intoxicated or under the influence of alcohol;
    b. under the influence of drugs or other products having similar effects;
    c. unfit because of excessive fatigue.
4. Driving a motor-vehicle not covered by third-party insurance against damage caused by the use of the vehicle.
5. Failure to comply with a direction given by a policeman in relation to road traffic.
6. Non-compliance with the rules relating to:
    a. speed of vehicles;
    b. position and direction of vehicles in motion, meeting of oncoming traffic, overtaking, changes of direction and proceeding over level crossings;
    c. right of way;
    d. traffic priority of certain vehicles such as fire-engines, ambulances and police vehicles;
    e. signs, signals and road markings, in particular "stop" signs;
    f. parking and halting of vehicles;
    g. access of vehicles or classes of vehicles to certain roads (for example, on account of their weight or dimensions);
    h. safety devices for vehicles and loads;
    i. marking descriptive (signalisation) of vehicles and loads;
    j. lighting of vehicles and use of lamps;
    k. load and capacity of vehicles;
    l. registration of vehicles, registration plates and nationality plates.
7. Driving without a valid licence.

Annex II, offers the possibility to States to make reservations.

II. Points for consideration concerning the European Convention on the Punishment of Road Traffic Offences

A number of elements concerning the European Convention on the Punishment of Road Traffic Offences are noteworthy.

i) An unusual convention

Firstly, placing the offences in an appendix can seem surprising and so can the choice to not open the text of the Convention with definitions of key terms. Expressions such as “road traffic offence” or “traffic rules” are defined in Section V, namely the final provisions.

Furthermore, the rules proposed by the Convention are very different from the rules of jurisdiction generally used in criminal law. If it is true that to detach jurisdiction is a good initiative in order to achieve the enforcement of a sanction abroad, this view is not compatible with the reality of road traffic sanctions imposed. In fact the majority of criminal sanctions imposed in this domain are fines; other penalties, such as imprisonment are reserved for the most serious offences. At that time, it seemed difficult for a State to collect a fine linked to an offence committed in another State and aiming to repair a public disorder which was caused kilometers away from its territory. In this regard, it is interesting to note that the possibility is given to States to make a reservation in which they will not apply Section III of the Convention, enforcement in the State of residence.

The Convention of the Council of Europe foresees that the request for proceedings is addressed by the Ministry of Justice of the State of the offence to the Ministry of Justice of the State of residence. The communications can then be exchanged directly by the competent authorities. In the age of the Internet and electronic communications, it is worth asking whether the choice of this channel of communication is still relevant.

ii) Other international instruments

At European level there exist other rules of co-operation on this subject. In observing the reservations formulated by Denmark, we realise that it applies other provisions in relation to the member countries of the Nordic Council. In the same manner, bilateral agreements for road traffic offences exist already between France, Luxembourg, Switzerland and Belgium.

We can find an Agreement on co-operation in the frame of procedures relating to road traffic offences[6] which is part of the Schengen acquis. This fixes a co-operation procedure and exchange of information on road traffic offences and also effects the question of pecuniary penalties on the subject.

The European Union is trying to establish its own rules relating to road traffic offences. A first attempt was undertaken by Directive 2011/82/EU facilitating the cross-border exchange of information on road safety related offences[7] adopted on 25 October 2011. This establishes a system of exchange of information between member States of the European Union. Following action by the European Commission introduced before the European Court of Justice, Directive 2011/82/EU was annulled[8] by a judgement of 6 May 2014, due to the legal basis chosen. All the same the European Court of Justice chose to keep the effects of the directive ”until the entry into force within a reasonable period of time — which may not exceed twelve months as from the date of delivery of the judgment — of a new directive based on the correct legal basis”.

[6] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:41999D0011&from=FR (decision of the executive Committee deciding the approval of this agreement)

[7] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0082&qid=1415979178076&from=FR

[8] Case C-43/12, European Commission against European Parliament, Council of the European Union http://curia.europa.eu/juris/document/document.jsf?text=&docid=151775&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=742186

The European Union did not delay in taking note of this decision since the European Commission presented a proposal for a new directive facilitating cross-border exchange of information on road safety related offences[9] on 18 July 2014. The substantive rules of the proposal for the new directive are not very different from the annulled directive. It mainly focused on correcting the legal basis of the last directive. A number of elements are interesting if we make a comparison with the text of the European Convention on the Punishment of Road Traffic Offences:

- The European Union opts more for creating an information exchange between authorities, rather than focusing on the enforcement of decision and on the prosecution as such. Thus it provides the access of authorities of member States to the relevant information of other member States. Member States whereby the offence took place can therefore immediately turn towards the person breaking the road traffic regulations without having to seek the intermediate of the authorities of the State of registration.;
- The European Union Directive, unlike the Council of Europe Convention, lays down a model of a letter requesting assistance, but also a letter of notification of an offence[10]. The Council of Europe Convention does not impose any translation obligations, and five States reported that, through the reservations, they wanted to see the documents transmitted accompanied by a translation, either in their official language, or in one of the official languages of the Council of Europe[11]. Imposing the sending of the letter of notification in a language understood by the offender complies with the right to a fair trial set by article 6 of the European Convention on Human Rights[12];
- The offences covered by the European Union Directive are very close to those set by the Convention of the Council of Europe. Nevertheless, certain offences seem to be more up to date than those set by the European Convention on the Punishment of Road Traffic Offences. The European Union takes into account the use of a mobile telephone or any other electronic devices.

iii) A Convention directed at the most serious offences

The Convention of the Council of Europe seems to be intended to deal with the most serious road traffic offences, which is to say those which are the most susceptible to be qualified as a crime or an offence. It is not clear if the States initiate such a procedure to obtain the enforcement of a sanction deemed to be weak or a sanction for which the costs of the procedure would be more important than the resulting benefit.

The European Union has put in place a system of mutual recognition to financial sanctions by the member States through the Framework Decision 2005/214/JAI on the application of the principle of mutual recognition to financial penalties[13] of 24 February 2005. The decision imposing the financial penalty is forwarded from the issuing State, i.e. the member State which issued the decision to the executing State, which is the member State which enforces the decision on its territory.

The directive facilitating cross-border exchange of information on road safety related offences refers to this framework decision, and it is without doubt through this channel that its scope is limited: in fact, a State can refuse to recognise and to enforce the decision if the

[9] http://eur-lex.europa.eu/resource.html?uri=cellar:d3ba20c5-0e5f-11e4-a7d0-01aa75ed71a1.0001.01/DOC_1&format=PDF
[10] http://eur-lex.europa.eu/resource.html?uri=cellar:d3ba20c5-0e5f-11e4-a7d0-01aa75ed71a1.0001.01/DOC_2&format=PDF
[11] Cyprus, Denmark, Italy, Romania and Sweden
[12] http://conventions.coe.int/Treaty/EN/Treaties/Html/005.htm
[13] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005F0214&from=FR

fine imposed does not exceed 70€, in order to avoid that the costs incurred are less than the expected benefits of the payment of the fine.

Conclusions

The CDPC concluded that most of the Council of Europe member States would not be interested to amend this Convention. Therefore, at the present time, the updating of this Convention is not regarded as a priority.

2) European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (ETS No.: 101)

Introduction

The European Convention on the Control of the Acquisition and Possession of Firearms by Individuals was opened for signature on 28 June 1978. It came into force on 1 July 1982. It has been ratified by 14 States[14], one State[15] has acceded to it and it has been signed by 8 States[16].

I) The European Convention on the Control of the Acquisition and Possession of Firearms by Individuals

In the 1970s, there was a growing awareness among European States concerning the danger posed by firearms and their role in endangering public safety and order.

On 6 October 1971, ten members of the Parliamentary Assembly of the Council of Europe (PACE) tabled a motion for a recommendation on the control of crimes of violence (Doc. 3031). They considered that the acquisition and possession of firearms needed to be harmonised across European States.

The European Committee on Crime Problems (CDPC) decided at its 22nd Plenary meeting (in May 1973) to set up a sub-committee, which was in charge of studying how to deal with the issue of the firearms, and how to harmonise member States' regulations on the sale, possession, carriage and use of firearms. The sub-committee fulfilled the first part of its terms of reference ("to consider and prepare effective regulations concerning the import and export of firearms") by drawing up the draft Convention on the Control of the Acquisition and Possession of Firearms by Individuals.

On 23 May 1977, the Bureau of the CDPC decided to transmit the aforementioned draft Convention to the Committee of Ministers. The Committee of Ministers requested an opinion by the PACE.

In its opinion No. 87 (1978), the PACE welcomed the draft Convention. It considered that this Convention would help in combating terrorism and other crimes of violence. The Committee of Ministers was also called upon to open the draft Convention for signature and ratification by member States in a timely manner, which took place in March 1978.

The first chapter of this Convention is devoted to definitions and general provisions. It defines the most important terms of the Convention: firearms, person, dealer and resident. This chapter also calls on States to afford each other mutual assistance through the appropriate administrative authorities in the suppression of the illegal traffic in firearms and in the tracing and locating of firearms transiting through various territories. Article 3 also allows Parties to prescribe laws and regulations concerning firearms which are not incompatible with the provisions of the Convention. Article 4 excludes from its scope of application the transactions between States or between parties acting on behalf of States.

The Convention offers two alternative methods of controlling the movement of firearms:

[14] Cyprus, Czech Republic, Denmark, Germany, Iceland, Italy, Luxembourg, Moldova, Netherlands, Poland, Portugal, Romania, Slovenia and Sweden.
[15] Azerbaijan.
[16] Georgia, Greece, Ireland, Malta, Russia, Spain, Turkey and United Kingdom.

- the "notification" system, with an obligation on the Party in which the firearm was originally located to notify the Party on the territory of which the person is resident of the sale, transfer or other transaction (Chapter II);
- the "double authorisation" system, whereby the transaction may not take place without the previous agreement of the two States concerned (Chapter III).

Chapter IV concerns the Final Provisions.

Finally, there are also two appendixes to the Convention:

- the first one defines what is meant by firearms under the Convention. It provides an exhaustive list. This list gives an accurate description and it is very technical;
- the second one offers the possibility to States to formulate reservations. It contains 4 subparagraphs and gives a wide scope for reservations.

II) Points for consideration concerning the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals

The Convention is inspired by the Benelux Convention on arms and ammunition signed in Brussels on 9 December 1970. This Convention sets up a system which maintains controls in the three States at a satisfactory level through the harmonisation of legislation, without adversely affecting trade with outside States.

The European Union has also drawn up directives concerning firearms:

- Council Directive 91/477/EEC of 18 June 1991 on the control of the acquisition and possession of weapons[17]. It establishes four categories of firearms. It states that a European firearms pass is issued by the authorities of an EU country to any person lawfully entering into possession of and using a firearm. A computerised data-filing system into which these firearms are to be registered must be set up by EU countries. A person that meets the requirements for the acquisition and possession of any firearm may be given a multiannual licence. Any movements of the firearm must be communicated to the competent authorities, regular verifications must be carried out to evaluate whether the person continues to meet the requirements and the maximum time limits specified by national law must be respected. These formalities apply to all firearms, excluding weapons of war;
- This Directive was amended by the Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008[18].

In 2006, the EU also developed a Strategy to combat illicit accumulation and trafficking of small arms and light weapons and their ammunition[19]. This Strategy was designated after the United Nations noted that 600 million light weapons are in circulation in the world and, of the 49 major conflicts in the 1990s, 47 were fought using those arms as the main weapons. The EU decided to contribute at a regional level to the fight began by the UN against those small arms and light weapons.

There is wide awareness concerning firearms not only in the EU, but also worldwide. The UN has drawn up a number of texts concerning firearms:

[17] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31991L0477&from=EN
[18] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0051&from=FR
[19] http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%205319%202006%20INIT

- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime[20], which was adopted by the General Assembly on 8 June 2001;
- The landmark Arms Trade Treaty, regulating the international trade in conventional arms - from small arms to battle tanks, combat aircraft and warships -, which entered into force on 24 December 2014[21].

Article 2 of the CoE Convention states that "The contracting Parties undertake to afford each other mutual legal assistance through the appropriate administrative authorities in the suppression of traffic in firearms and in the tracing and locating of firearms transferred from the territory of one State to the territory of another". Thus, the criminal law aspects become diluted. Furthermore, the Explanatory Report to the CoE Convention refers to the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters, which was opened to signature by the member States of the Council of Europe on 15 March 1978 and entered into force on 1 January 1983 (ETS No. 100)[22].

Lastly, the Convention uses the notion of "habitual residence", which excludes *de facto* a number of situations from its field of application.

Conclusion

Although this was an advantageous convention at the time when the Council of Europe drafted it, since then other international instruments have been set up, in particular by the UN and other international organisations. Therefore, amending this Convention is not regarded as a priority.

[20] http://www.unodc.org/documents/treaties/UNTOC/Publications/A-RES%2055-255/55r255e.pdf
Link to the Convention itself:
http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf
[21] https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf
[22] http://conventions.coe.int/Treaty/en/Treaties/Html/100.htm

3) European Convention on the Compensation of Victims of Violent Crimes (ETS No.: 116)

Introduction

The European Convention on the Compensation of Victims of Violent Crimes was opened for signature on 24 November 1983 and came into force on February 1988. Ratified by twenty-five Council of Europe member states[23], it was also signed by eight states which have not yet ratified it[24].

From the 1960s onwards various Council of Europe member states set up schemes to compensate victims from public funds where compensation was otherwise unavailable.

The Council of Europe noted the existence of these various arrangements and elected to issue the European Convention on the Compensation of Victims of Violent Crimes to permit harmonisation of the relevant rules at European level while offering solutions in connection with cross-border procedures.

I) The European Convention on the Compensation of Victims of Violent Crimes

A first step was taken on 28 September 1977 with the adoption by the Committee of Ministers of the Council of Europe of Resolution (77) 27[25] on the compensation of victims of crime. This was followed by the introduction of such schemes in various Council of Europe member states.

In 1981 the CDPC embarked on the drafting of the Convention. This seeks to harmonise the guiding principles on the compensation of victims of violent crimes and to give them binding force at European level. It is also intended to ensure co-operation between the parties in compensating victims of violent crimes.

Part I is devoted to fundamental principles and lays down the general principles which should govern compensation of victims of violent crimes by specifying in particular the types of offences that may create eligibility for compensation. These must be intentional, violent and the direct cause of serious bodily harm or health damage to the victim. There is no exhaustive list of offences in the actual text of the Convention.

Part II of the Convention relates to international co-operation. This part is rather short (two articles) and principally provides that states shall give each other “the maximum possible assistance” in the matter. The explanatory report refers to the European Convention on Mutual Assistance in Criminal Matters (CETS No. 30) and to its Protocol (CETS No. 099), as well as to the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters (CETS No. 100), and to bilateral or multilateral agreements concluded between the Contracting States to aid international co-operation in this field.

Finally, Part III of the Convention sets out the final clauses customary for European conventions.

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[23] Albania, Germany, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Cyprus, Croatia, Denmark, Spain, Estonia, Finland, France, Liechtenstein, Luxembourg, Montenegro, Norway, Netherlands, Portugal, Czech Republic, Romania, United Kingdom, Slovakia, Sweden and Switzerland.

[24] Armenia, Greece, Hungary, Iceland, Lithuania, Serbia, Turkey and Ukraine.

[25] https://wcd.coe.int/ViewDoc.jsp?id=669829&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

II) Points for consideration concerning the European Convention on the Compensation of Victims of Violent Crimes

Taking account of victims of crime is a frequent concern in the various international instruments.

The UN on 29 November 1985 adopted Resolution 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[26] defining the rights of victims in criminal proceedings, notably the right to redress. The UN supplemented its apparatus by adopting a Resolution G.A. 60/147 of 16 December 2005[27], this time centred on victims of gross violations of international humanitarian law. In this text, the UN confirms the necessity of a right to reparation for victims.

Regarding the European Convention on the Compensation of Victims of Violent Crimes, albeit fairly satisfactory in terms of ratifications and signatures, it is not without criticisms. True enough, when in the explanatory memorandum to the Proposal for a Council Directive on compensation to crime victims[28] it is written that "The 1983 European Convention has undoubtedly had an important impact […]. However, […] it has not reached all the way in ensuring a complete coverage of all citizens of the EU. […] the minimum standard it sought to establish is not commensurate with the degree of protection that EU citizens and legal residents should be able to expect".

As early as 1989 and the entry into force of the Council of Europe Convention, the European Parliament adopted a resolution[29] on compensation to victims of violent crimes. In 1998 the Vienna Programme[30] of the Council and the Commission was approved. This envisages in particular studying the question of aid to victims, making a comparative survey of victim compensation schemes, and assessing the feasibility of deciding appropriate measures within the European Union.

In 1999 the European Commission presented a communication[31] aimed at improving the situation of crime victims in the European Union. On 28 September 2001 the Commission issued a Green Paper on compensation to crime victims[32]. In the Green Paper, the adoption of minimum standards of compensation, by requiring the Member States to guarantee victims a reasonable level of compensation, is seen as a priority field of action. It is also recommended that Member States sign and / or ratify the Council of Europe Convention.

In this framework, Directive 2004/80/EC[33] of 29 April 2004 relating to compensation to crime victims was adopted by the European Union. This establishes the obligation for Member States to provide in their national legislation for schemes on compensation to victims of violent intentional crime, committed in their territories, and for the introduction of a system facilitating access to compensation for victims in cross-border situations. This directive is very comprehensive and exactly itemises the procedure for compensating victims.

Comparing the Council of Europe Convention and the European Union directive, both texts are found to have shortcomings:

[26] http://www.un.org/documents/ga/res/40/a40r034.htm
[27] http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx
[28] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52002PC0562&rid=1
[29] A 3-13/89 C 256 of 12 September 1989, p. 32.
[30] OJ C 19 of 23 January 1999, p. 1, para. 51 (c).
[31] hhttp://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:51999DC0349
[32] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52001DC0536
[33] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0080&rid=1

- Both exclude legal persons from their scope and do not contemplate the possibility that the state could make up such a body's financial deficit;
- While the two texts concurred in dealing solely with compensation for deliberate "violent" offences, neither defines what it means by "violent". Although this allows the implementing authorities to be left a margin of manoeuver, it may nonetheless form an obstacle to legal certainty. The European Union proposal for a directive moreover suggested an article devoted to defining the terms used by the directive. This provision was not embodied in the final version of the text.

The European Union Directive lays down certain rules missing from the Council of Europe Convention:

- The Directive stipulates that the information exchanged by the States Parties be written in the official languages or in one of the languages of the Member State of the receiving authority, corresponding to one of the languages of the Community institutions, or in another language of the Community institutions which the Member State has declared its readiness to accept. Similar linguistic recommendations can be found in the reservations expressed by the member states on the Council of Europe Convention;
- The European Union's use of the term "crime" affords a wider perspective of the offences concerned, not being confined to violent offences alone. Thus it allows more persons to be brought under the state compensation scheme while nevertheless limiting its scope to violations of physical integrity;
- The European Union Directive lays down less restrictive conditions than the Council of Europe Convention. In fact the scope of the Convention *de facto* excludes tourists and frontier workers since it reserves compensation for nationals of the States Parties to the Convention and nationals of member states permanently resident in the state in whose territory the offence was committed. The conclusions of the XIth International Penal Law Congress[34] (Budapest, 9-14 September 1974) also incline towards identical conditions of compensation for all victims, without considerations of nationality or residence;
- The possibilities allowed states by the Council of Europe Convention to reduce and cancel compensation[35] are liable to establish a kind of "rank order" of victims;
- Whereas the information exchange procedure is thoroughly described in the European Directive, the Council of Europe Convention has a more general and less precise intent.

The above-mentioned European Union Directive was supplemented by a decision of the Commission of 19 April 2006[36] establishing standard forms for the transmission of applications and decisions pursuant to Council Directive 2004/80/EC relating to compensation to crime victims.

[34] http://www.penal.org/IMG/pdf/NEP21anglais.pdf
[35] Applicant's financial situation, conduct of the victim before, during or after the offence, or in relation to the damage caused, whether the victim is implicated in organised crime or belongs to an organisation perpetrating violent offences, whether compensation is liable to be conflict with sense of justice or public policy.
[36] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006D0337&from=FR

In more general terms, the European Union considered victims' welfare in the framework of the "Stockholm Programme – an open and secure Europe serving and protecting citizens"[37] adopted on 10 and 11 December 2009. In this context, the Council of the European Union adopted on 8 June 2011 a "Roadmap for strengthening the rights and protection of victims"[38] proposing a plan in several stages. One of its key measures is review of the directive on compensation for crime victims. At present, a number of measures have been taken in that respect[39]:

- A directive establishing minimum standards on the rights, support and protection of victims of crime adopted on 25 October 2012[40]. This directive replaces the Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings[41] and guarantees victims recognition and respectful treatment, adequate protection and support, and access to justice. It significantly strengthens the rights of victims and their family members to receive information, support and protection, together with their procedural rights when participating in criminal proceedings. It also contains provisions ensuring that professionals receive training suited to victims' needs and encouraging co-operation between Member States, as well as raising awareness of victims' rights. The Directorate General of Justice of the Commission has published a guidance document to help Member States in that regard[42];
- The regulation on mutual recognition of protection measures in civil matters[43].

Conclusion

The CDPC considers that some improvements could be made to the Convention. However, the question of making amendments or considering practical solutions will be further studied. In particular, the CDPC thinks that it could be possible, for instance, to deal with the situation of tourists becoming victims. Updating the Convention is a possibility.

[37] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF
[38] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011G0628(01)&from=FR
[39] These may be found on the page: http://ec.europa.eu/justice/criminal/victims/index_en.htm (consulted on 5 November 2014).
[40] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0029
[41] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:en:PDF
[42] http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf (English only).
[43] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:181:0004:0012:en:PDF

4) European Convention on Offences relating to Cultural Property (ETS No.: 119)

I. Introduction

The Convention on Offences relating to Cultural Property was opened for signature by Council of Europe member States in Delphi on 23 June 1985, but has never entered into force. Indeed, only six States have signed it, and none have ratified it.

The main aim of this convention is to combat illicit trafficking in cultural property through criminal law and to promote co-operation between States. It thus serves as a complement to the European Convention on Mutual Assistance in Criminal Matters (ECMA) and the European Convention on Extradition (ECEx). A further aim is to protect European cultural heritage and to raise public awareness of the damages caused by illicit trafficking in cultural property.

According to some statistics, illicit trafficking of cultural property is the third most common form of international criminality after arms and drugs trafficking. This estimate should be treated with caution, however, as accurate figures in this area are very difficult to come by.[44] Still, as recent developments illustrate, illicit trafficking in cultural property is a significant phenomenon. Switzerland, for example, returned a number of archaeological objects to Italy in March 2014,[45] and in July 2014 Germany returned a few thousands artefacts to Greece.[46]

The importance of illicit trafficking in cultural property, whether because of its scale or because of a growing awareness of the need to protect cultural heritage, can be seen in the number of international and regional conventions, with many organisations now seeking to curb the traffic in cultural property. At an international level, on 14 November 1970, UNESCO adopted a Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property which is probably the most important convention in this area (127 States Parties).

Similarly, Unidroit adopted a Convention on Stolen or Illegally Exported Cultural Objects on 24 June 1995. The aim of this Convention is to supplement the 1970 UNESCO Convention, by focusing more specifically on civil law aspects. As will be seen below, the rules on bona fide acquisition are a key issue in combating the illicit traffic in cultural property.

At the same time, the United Nations Office on Drugs and Crime (UNODC) is currently framing guidelines on “Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking”.[47]

At European level, there is a Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State dated 15 March 1993[48] and a Regulation of 9

[44] This is partly because clandestinely excavated objects are not inventoried before they appear on the market with the result that it is difficult to assess the scale of this traffic, owing to lack of awareness of the unlawful acts. At the same time, most States keep statistics on the types of offences committed and not the type of property affected by the offence, making it difficult to determine which of the offences recorded specifically related to cultural property. See: www.interpol.com.

[45] For further information: https://www.news.admin.ch/message/index.html?lang=fr&msg-id=52210 (consulted on 26 August 2014) (French only).

[46] For further information: http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_08/07/2014_541191 (consulted on 26 August 2014) and https://plone.unige.ch/art-adr/news-actualite/over-10-600-artifacts-looted-in-wwii-returned-to-greece (consulted on 26 August 2014).

[47] https://www.unodc.org/unodc/en/organized-crime/trafficking-in-cultural-property-mandate.html (consulted on 26 August 2014).

[48] This directive was revised in May 2014.

December 1992 on the export of cultural objects (Council Regulation No. 3911/92). The Directive concerns the export of cultural objects within EU Member States whereas the Regulation deals with the export of cultural objects outside the European Union.

When discussing illicit trafficking in cultural property, it is important to bear in mind that countries are "split" between "exporting" States which tend to favour tougher laws on trafficking and "importing" States which, on the contrary, wish to protect the art market and prefer flexible laws in this area.

In the light of the above, it is worth looking at the reasons preventing States from ratifying the Council of Europe Convention on Offences relating to Cultural Property.

II. Illicit trafficking in cultural property

It is important firstly to consider briefly what illicit trafficking in cultural property involves. Usually what is meant by the term "illicit trafficking in cultural property" is the following:[49]

- the illicit export of cultural property
- illicit excavations
- criminal offences relating to cultural property

a) Illicit export:

Cultural property is deemed to have been illicitly exported if it is removed from a country's national territory (whether by its legitimate owner or otherwise), in breach of national legislation on the protection of cultural heritage. Such legislation generally comes under the heading of public law. Whenever a State requests the return of cultural property that has been illicitly exported from its territory therefore (i.e. in breach of the national legislation prohibiting the export of the property or making such export subject to authorisation) and imported into the territory of another State, the implication is that the requested State recognises the public law legislation of the requesting State. Recognising and enforcing another State's public law is often problematic, however. As a result, illicitly exported property is seldom returned to the State of origin solely on the ground that there has been a breach of the latter's national legislation, owing to a failure to recognise foreign public law. International co-operation in cases of illicit export of cultural property (which, furthermore, has not been the subject of a criminal offence) very often remains a dead letter therefore.

b) Illicit excavations:

The term "illicit excavations" refers to the unlawful appropriation of property that has been excavated either lawfully or unlawfully. Such excavations generally concern archaeological objects and many States treat the unlawful appropriation of excavated objects as a criminal offence.

c) Criminal offences:

The most common criminal offences as regards illicit trafficking in cultural property are theft, receiving, unlawful appropriation of products of excavations and laundering. Unlike in the case of illicit export, States are favourably disposed towards international co-operation in criminal matters, because the offences in question are, in general, universally recognised as criminal acts.

[49] See also Marie Boillat, Le trafic illicite de biens culturels et la coopération judiciaire internationale en matière pénale, Etudes en droit de l'art, vol. 22, Genève 2012, p. 197 s.

III. The Convention on Offences relating to Cultural Property:

The Convention on Offences relating to Cultural Property is made up of the basic text and three appendices. This Convention has been drafted in such a way as to impose certain "core" requirements on any States wishing to ratify it and to enable States which wish to go further in the fight against illicit trafficking in cultural property to include additional provisions, whether in terms of how cultural property is defined (Appendix II) or in terms of the types of conduct outlawed (Appendix III).

The basic text of the Convention focuses mainly on the scope, the principles governing co-operation in criminal matters and methods of inter-State co-operation with a view to the restitution of cultural property (execution of letters rogatory, proceedings, competence, etc.).

The real substance of the Convention is defined in the appendices, with Appendix II providing a definition of the cultural property covered by the Convention and Appendix III listing the types of conduct considered criminal offences under the Convention. We will therefore focus our attention on the appendices to the Convention.

Before examining the appendices, it is worth concentrating particularly on article 34 of the Convention on bilateral agreements. Since the aim of the Convention is to promote cooperation among States, article 34 should be drafted positively[50] and not negatively as it is currently drafted.

a) Definition of cultural property (Appendix II to the Convention):

Under Article 1 of the Convention, the definition of cultural property is divided into two parts. The first paragraph constitutes the "core" of the Convention (Art. 1 §1 of the Convention) and States are therefore bound to consider the property listed here as cultural property. They may or may not consider as cultural property the property mentioned in the second paragraph of the Convention (Art. 2 §2 of the Convention).

Article 1 of the 1970 UNESCO Convention defines the concept of cultural property, a definition that is now widely accepted as standard and which was adopted by Unidroit in the Unidroit Convention on Stolen or Illegally Exported Cultural Objects of 24 June 1995.

The definition provided in Article 1 of the Convention on Offences relating to Cultural Property is not the same as the commonly used one found in the 1970 UNESCO Convention. It also differs from the definition used in the European Directive (Art.1 of the Directive) which refers to the concept of "national treasure", on which individual States are then free to elaborate according to their domestic law.

In order to facilitate implementation of the Convention on Offences relating to Cultural Property, it might be helpful to adapt the definition of cultural property given in Appendix II to the definition provided in the 1970 UNESCO Convention, insofar as the vast majority of States which have ratified the 1970 Convention also belong to the Council of Europe. That said, some EU countries have admittedly entered a reservation concerning the definition given in the 1970 UNESCO Convention, in order that it should be compatible with their domestic law.[51]

[50] See for example the wording of the article 3 of the Unidroit Convention from 1995, which also deals with conclusion of bilateral agreements.

[51] For a comprehensive assessment on this subject, see Marie Cornu, La mise en œuvre de la Convention de l'UNESCO en Europe, Paris 2012 http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Cornu_en.pdf (consulted on 30 September 2014).

Again in order to make the Convention more effective, it would also be better to have a single definition of cultural property that would be binding for all member States rather than allowing them to pick and choose.

b) Criminal offences covered by the Convention

Appendix III to the Convention on Offences relating to Cultural Property lists the different criminal acts outlawed under the Convention. According to the Convention's explanatory report, this appendix is divided into two sections. The first section constitutes the "core" of the Convention, and is mandatory for all States wishing to ratify the instrument (Art. 3 § 1 of the Convention), while the second section contains a list of additional offences which individual States can decide to include or not when ratifying the Convention (Art. 3 § 2 of the Convention). According to Article 3 § 3 of the Convention, States may also add other behaviours that affect cultural property and are not listed in Appendix III to the Convention.

i) The core of the Convention (Appendix III §1)

Under the terms of Article 3 §1 of the Convention, States must recognise at least the following acts as criminal offences (Appendix III §1):

- thefts of cultural property
- appropriating cultural property with violence or menace
- receiving of cultural property where the original offence is listed in §1 and regardless of the place where the latter was committed.

This handful of offences makes up the "core" of the Convention. Theft (Appendix III §1 lit. a) and receiving (Appendix III §1 lit. c) are treated as offences in most legislations, whether they relate to cultural property or not. In principle, therefore, such illicit acts are already part of criminal law in the majority of States.

Appropriating cultural property with violence or the use of threats, on the other hand (Appendix III §1 lit. b) perhaps constitutes a more recent offence whose substance, because of how it is worded at present, is not easy to grasp. The limits between this type of conduct and theft with violence, for example, are very difficult to be determined. The appropriation of property that has been illicitly excavated is usually carried out without either violence or the use of threats. The difference between violence and the use of threats is likewise rather blurred. It is not easy, therefore, to determine to which types of conduct derived from illicit trafficking in cultural property this offence refers. In addition, "appropriating cultural property with violence or menace" is also related to the offence of receiving, because property which the perpetrator has appropriated with violence or menace may be the subject of a further offence, namely "receiving", under the terms of Appendix III §1. Since "appropriating cultural property with violence or menace" is one of the "core" offences listed in the Convention, it is important that it be defined more clearly.

Moreover, the offence of "Destruction or damaging of cultural property of another person" (appendix III §1 lit. d) could be a principal offence due to the frequent and recent episodes as well as the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, which has been approved unanimously by all the UNESCO member States in 2003.

ii) Illicit export (Appendix III §2):

Recognising the illicit export of cultural property as a criminal offence is not a *sine qua non* for ratifying the Convention (Appendix III § 2 lit. h) as it is not part of the "core".

The Council of Europe was the first to tackle the problem of illicit export of cultural property by outlawing such acts, the aim being to encourage international co-operation whenever property is illicitly exported from a State's national territory (even if no criminal offence has been committed).

It would appear, however, that States are not ready to make illicit export a criminal offence. If we look, for example, at the 1970 UNESCO Convention, it will be observed that, when it comes to implementing this Convention, national attitudes to illicit export can be broadly divided into two groups. Canada, for example, regards as illicit any import carried out in breach of national export legislation. The majority of States, however, have concluded bilateral agreements with various other States Parties to the 1970 UNESCO Convention, and regard as having been illicitly exported only the property referred to in those agreements.

Similarly and in an effort to achieve the best possible consensus, the text of the Unidroit Convention of 1995 has one set of rules for stolen property[52] and another for property that has been illegally exported. Because the Unidroit Convention is a legally binding instrument which places heavy obligations on the States concerned, it was important that property which had been stolen (and hence the subject of an offence) be treated differently from property that had been illegally exported.

Given States' reaction to the 1970 UNESCO Convention and the 1995 Unidroit Convention, and the fact that governments are already reluctant to recognise national legislation banning the export of cultural property, suggest it is too early to make illicit export a criminal offence. The mere mention of illicit export of cultural property as a criminal offence might be enough to deter some States from ratifying the Convention therefore.

iii) *Bona fide* acquisition (Appendix III § 2)

Protecting *bona fide* acquirers is a central plank in the fight against illicit trafficking in cultural property. In civil law systems, bona fide acquirer usually enjoys protection, unlike in common law systems where the "*nemo dat quod non habet* "rule applies.

In contrast to the 1970 UNESCO Convention which is not self-executing, the 1995 Unidroit Convention is directly applicable and contains rules whereby persons who acquired stolen property in good faith are not protected. It is mainly because of this lack of protection for *bona fide* acquirers that the Unidroit Convention has proved less popular than the UNESCO one, with States whose laws protect *bona fide* acquirers unwilling to change the rules in cases where the acquisition related to cultural property. As a result, only 36 States, most of them "exporting States", have signed up to the Unidroit Convention.

The acquisition in a grossly negligent manner of cultural property obtained as the result of theft or of an offence against property other than theft (§2 lit. c Appendix III) is not one of the

[52] It is worth noting that under Art. 3 para. 2 of the Unidroit Convention, any object derived from clandestine excavation is considered stolen, when consistent with the law of the State where the excavation took place.

"core" offences listed in the Council of Europe Convention on Offences relating to Cultural Property. States can thus decide whether to include it or not at the time of ratification. It is not clear from reading this offence whether a *bona fide* acquirer, even if guilty of gross negligence, might, in certain circumstances, be protected. Similarly, it could be useful to specify what we mean by "circumstances" surrounding the acquisition[53].

Even though the acquisition in a grossly negligent manner of cultural property obtained as the result of theft or of an offence against property other than theft is not among the "core" offences listed in the Convention, this could still pose an impediment to ratification therefore. It might also be advisable to make it clear what is meant by "grossly negligent". Even in civil law systems, an acquirer will only benefit from *bona fide* protection if they are deemed to have exercised due diligence when acquiring the cultural property.

IV. Final considerations

To sum up, the Convention on Offences relating to Cultural Property introduces a system for combating illicit trafficking in cultural property through criminal law. It is important that the Council of Europe takes the necessary steps to ensure that this Convention, which responds to a real need to combat this problem, is ratified by a greater number of States.

It is felt that, in order to achieve this, a more readable text is needed. For with its dual definition of cultural property and large number of optional offences, the Convention is difficult to implement in practice.

As far as defining cultural property is concerned, it would seem sensible to adopt a definition in line with the one used in the 1970 UNESCO Convention or the European Directive. The disparity between the definitions is hardly conducive to a clear understanding and effective implementation of the Convention.

As regards criminal offences, the "core" of the Convention ought to be clarified, and in particular the offence of "appropriating cultural property with violence or menace".

In view of States' attitudes towards illicit export and the acquisition of cultural property in a negligent manner, it makes sense to keep such acts as non-core offences.

That said, the fact that offences are divided into "core" and non-core offences is hardly helpful when it comes to implementing the Convention. Under Article 26, which establishes the reciprocity rule, States have a duty to co-operate only if the cultural property affected by the act in question is defined as cultural property in both States and if both States have elected to include this act in the list of offences.

Other points:

- Might it be helpful to take stock of European Union law (Directive and Regulation)?
- Might it be worth creating a link with the Council of Europe Convention on the Protection of the Archaeological Heritage (Malta Convention)?

[53] For example, article 4 par. 4 of the Unidroit Convention describes the circumstances allowing to judge the buyers' good or bad faith: "In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances."

- Would it be helpful to make a link to UNODC's work and, in particular, the Convention against Transnational Organized Crime? The Council of Europe Convention perhaps does not do enough to underline the international dimension of the illicit trafficking of cultural goods.
- Would it be helpful to make a link with the treaties about the protection of heritage in times of war (simply in the preamble) since recent history demonstrates that it is in periods of instability that the most offences listed in appendices III are committed?

Conclusion

At its Plenary Session in December 2014, the CDPC considered this topic to be very interesting with the offences relating to cultural property worth examining in more detail. The CDPC asked the consultants to draft a Memorandum, containing some key issues on this subject. The Memorandum also contains some questions addressed to all CDPC delegations and has been sent to member States before the Plenary Session of June 2015. At this Session, following the replies received to these questions, the CDPC decided to set up a small drafting group of experts in order to continue working on this Convention.

5) Convention on Insider Trading (ETS No.: 130)

Protocol to the Convention on Insider Trading (ETS No.: 133)

Introduction

The Convention on Insider Trading was opened for signature on 20 April 1989 and came into force on 1 October 1991. Nine Council of Europe member States signed[54], and it was ratified by eight of them[55]. The Protocol on Insider Trading was opened for signature on 11 October 1989 and came into force on 1 October 1991. The signatures and ratifications are the same as for the Convention.

Organised crime and the various financial offences are definitely linked, and the European Union acknowledged this in its Directive 2003/6/EC[56] of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse). Indeed, preambular clause 14 thereof states that *"This Directive meets the concerns expressed by the Member States following the terrorist attacks on 11 September 2001 as regards the fight against financing terrorist activities"*.

The Council of Europe Convention on Insider Trading acknowledges the risk posed by these actions to human rights, democracy and rule of law.

I) The Council of Europe Convention on Insider Trading and its Additional Protocol

The Convention is intended to alleviate the difficulties which have emerged at international level in finding facts and culprits and in suppressing operations on organised stock market securities carried out in defiance of those principles. It emerged that one of the most important obstacles was ignorance of the identity and status of the persons actually involved, acting through persons resident outside the country concerned. Insider trading has the essential characteristic that the contentious transaction has the appearance of a lawful one. What makes the act reprehensible is that its perpetrator possesses information unknown to the public owing to his status or to the circumstances.

The Convention has the essential aim of creating mutual assistance by exchange of information between Parties, to enable supervision of securities markets to be carried out effectively and to establish whether or not persons carrying out certain financial transactions on the stock markets are insiders. It complements the Council of Europe European Convention on Mutual Assistance in Criminal Matters (ETS 30) which provides for mutual international assistance in the conduct of criminal justice proceedings.

Chapter I of the Convention supplies the definitions of certain terms used in the text. Accordingly, in Article 1 §1 it straightway makes clear what is to be understood by "insider" within its framework. Other concepts are also clarified in Article 1, such as "organised stock market", "stock" and "transaction".

Chapter II of the Convention establishes collaboration between the different parties' authorities, with due regard to the rights of persons implicated and to the interests of the States concerned. Above all, this chapter provides for collaboration founded on discretion and secrecy, which are essentials in the stock market and financial sector.

[54] Cyprus, Finland, Luxembourg, Norway, Netherlands, Czech Republic, United Kingdom, Slovenia and Sweden
[55] Only Slovenia has not ratified it
[56] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0006

Finally, Chapter III of the Convention provides for the eventuality of criminal prosecution. A link is established with the Convention on Mutual Assistance in Criminal Matters.

Concerning, the Additional Protocol to the Council of Europe Convention on Insider Trading has added an Article 16 bis to the Convention providing that States Parties also belonging to the European Union shall apply the Community rules, and not those of the Convention, in their mutual relations.

II) Points for consideration concerning the Council of Europe Convention on Insider Trading

Not long after the signature of the Council of Europe Convention, a Council Directive 89/592/EEC[57] was adopted on 13 November 1989, concerning co-ordination of regulations on insider dealing. This directive displayed two shortcomings that can also be held against the Council of Europe Convention:

- The ingredients of the offences had definitions too general for the goal of harmonisation to be deemed genuinely achieved;
- Neither instrument did not / does not cover market manipulations and, principally, dissemination of misinformation about the market, an offence which no doubt has all the gravity of, and may compound, the offence of insider trading.

The European Union therefore carried out an update of its legislation by adopting Directive 2003/6/EC[58] on insider dealing and market manipulation (market abuse) which it amended with Directive 2008/26/EC[59]. These directives exhibit several contrasts with the text of the Council of Europe Convention:

- Where the source of the privileged information behind the insider transaction is concerned, the European Union directives take account of the cases where the transaction does not arise from the culprit's profession or functions but from his criminal activities, whose preparation or perpetration could appreciably influence the price of one or more financial instruments or price formation on a regulated market as such;
- They contemplate the case of legal persons.

The European Union moreover, in each of its directives relating to this offence, takes note of the technical developments affecting the business world and does not rule out the possibility of regularly making updates of its legislation.

In 2014 the European Union carried out a further update of its legislation on insider offences by means of Directive 2014/57/EU[60] of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse. Through this directive, the European Union again demonstrates the strong link between insider transactions and market abuse.

The European Commission has adduced several reasons to justify this criminal-law directive:

[57] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31989L0592&from=FR
[58] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02003L0006-20110104&from=FR
[59] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0026&from=FR
[60] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0057&from=EN

- Deficiencies in the regulation of the new markets, platforms and an open market for trading in financial instruments;
- Deficiencies in the regulation of goods and their derivatives;
- The regulators' inability to enforce the previous directive effectively;
- Lack of legal certainty undermining the previous directive's effectiveness;
- Heavy administrative burdens, particularly for small and medium-sized enterprises.

Principally, the European Union has recognised that the legal framework provided by the previous directive has been outmoded by extension of the new technologies.

Consequently, Directive 2014/57/EU proves very comprehensive and criminalises attempting to commit, inciting, aiding and abetting.

It is also worth noting that the European Union confines criminal sanctions to the most serious offences

- Definition given by the State;
- Purpose served by the sanction;
- Severity of the sanction[61].

Conclusion

The CDPC agreed that reviewing this Convention and its additional Protocol is not a priority.

[61] *Hengel v/ Netherlands*, 8 June 1976; *Oztürk v/ Germany*, 21 February 1984

6) Convention on the Protection of the Environment Through Criminal Law (ETS No.: 172)

Introduction

The Convention on the Protection of the Environment through Criminal Law was opened for signature by Council of Europe member states and the non-member states which had contributed to its drafting on 4 November 1998. It has been signed by 14 member states[62] but ratified only by Estonia (in 2002). As three ratifications are required for it to enter into force, the Convention remains thus far dormant.

I) The Convention on the Protection of the Environment through Criminal Law

Following the 17th Conference of European Ministers of Justice held in Istanbul from 5 to 7 June 1990, the Council of Europe's Committee of Ministers set up a select committee of experts in 1991, known as the "Group of Specialists on the protection of the environment through criminal law" (PC-S-EN), later renamed the PC-EN. The committee started its work in October 1991 and completed it in November 1995. At its very first meeting, it decided to draw up a binding international treaty.

When the Convention was being drafted, it emerged that many states around the world had already enacted legislation on the environment through administrative law.

The Convention is divided into four sections.

Section I defines the terms used in the Convention. It is worth noting that only two terms are defined here, namely "unlawful" and "water".

Section II is divided into several articles. Article 2, for example, contains a list of intentional acts which states are required to treat as criminal offences. Section II likewise requires state to criminalise aiding or abetting the commission of such offences. Mention is also made of offences committed with negligence, although under the article on "negligent offences", states can choose to criminalise only offences which were committed with gross negligence. Some articles cater for offences that are considered to be less serious and allow states to choose between criminal and administrative sanctions. One article also lays down rules concerning jurisdiction in such matters. It is very broad in scope. The principle of proportionality of offences and penalties, confiscation measures, reinstatement of the environment, corporate liability and co-operation between authorities and rights for groups to participate in proceedings are also addressed in this section.

Section III contains only one article and deals with international co-operation. In this respect, the Convention on the Protection of the Environment through Criminal Law is meant to be supplemented by the Council of Europe conventions on extradition,[63] on mutual assistance in criminal matters, on the supervision of conditionally sentenced or conditionally released offenders, on the international validity of criminal judgments, on the transfer of proceedings in criminal matters, on the transfer of sentenced persons, and on laundering, search, seizure and confiscation of the proceeds from crime. Reference is also made to other international treaties in the environmental sphere which may be relevant in respect of international co-operation.[64]

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[62] Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, Romania, Sweden and Ukraine.

[63] http://www.conventions.coe.int/Treaty/EN/Treaties/Html/024.htm

[64] In particular the United Nations Convention on the Law of the Sea or the Vienna Convention on the Physical Protection of Nuclear Material

Section IV contains the final clauses.

II) Points for consideration concerning the Convention on the Protection of the Environment through Criminal Law

The Convention on the Protection of the Environment through Criminal Law has not yet come into force. In the opinion of some, such as Paul Chaumont, judge and legal adviser at France's Court of Cassation, this is one of those conventions that is "doomed never to [come into force]", but which still serves as a "model" and has the potential to "influence other international instruments and the case-law of regional courts".[65]

Several factors may account for the fact that the Convention has never come into force.

i) Economic competitiveness

One school of thought is that, for reasons of economic competitiveness, the environment is not a priority for European states. This view holds that European states are reluctant to impose environmental standards on their companies when the same standards are not in force elsewhere, thereby having a distorting effect on competition.

Looking at the matter from an economic competitiveness standpoint, it would seem more sensible to have a global initiative. International efforts have already proven less than satisfactory, however. The Kyoto Protocol[66] was merely declarative in nature and the international community experiences difficulties in adopting a binding instrument in this area.

ii) A too complex subject to be unified

Some authors argue that it is difficult for a single text to cover all activities which pose a serious threat to the environment.[67] They claim that the vague and general nature of the concepts of damage and environment, along with the subjective nature of the test for seriousness in this field, make it difficult to reconcile the creation of such a general offence with the requirements of constitutional and international law.

Above all, environmental law is a very wide subject that covers numerous sectorial fields. Most of the international instruments in operation today do not claim to provide comprehensive protection for the environment, preferring instead to deal with a particular sector. Some instruments, for example, are concerned with water[68] (or, even more narrowly, the sea[69]), air[70] or soil.[71] Some even aim to protect a particular region, as in the case of the

[65] See his statement at the inaugural meeting of the environment committee of the *Association des hautes juridictions de cassation des pays ayant en partage l'usage du français* held in Porto-Novo (Benin) on 26 and 27 June 2008, available at: http://www.ahjucaf.org/IMG/pdf/pdf_Actes_Porto-Novo.pdf (French only)

[66] http://unfccc.int/resource/docs/convkp/kpeng.pdf

[67] In particular, Jacques-Henri Robert, *La Convention sur la protection de l'environnement par le droit pénal,* Droit de l'environnement, 09.1999, n°7, p.15

[68] For example, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for the Community action in the field of water policy, http://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:32000L0060&rid=1

[69] For example, the United Nations Convention on the Law of the Sea of 10 December 1982, http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_f.pdf

[70] For example, the Convention on Long-range Transboundary Air Pollution drafted by the United Nations Economic Commission for Europe entered into force on 28 January 1988.

[71] Worth mentioning here is the European Soil Charter adopted by the Committee of Ministers on 30 May 1972,

Alpine Convention[72] which was concluded between eight Alpine states and the European Union to preserve biodiversity in the Alps.

iii) An overly punitive approach

It could be argued that the Convention went too far, too fast and that in 1998 states were not yet ready to criminalise practices which had an adverse effect on the environment. The Council of Europe was, after all, the first to propose that environmental crimes be treated as criminal offences at international level.

It is important to note that states are often more inclined to prefer civil or administrative sanctions in this area. Despite this tendency, however, the Council of Europe Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment of 21 June 1993 (ETS No. 150)[73] has not been any more successful than its criminal-law equivalent: it has been signed by nine member states,[74] none have yet ratified it.

It is interesting to note that environmental instruments in general are more influenced by the principle of precaution[75] which governs environmental law. They accordingly aim to establish specific rules to prevent pollution from occurring in the first place. The Council of Europe Convention takes more of a retrospective approach to such acts.

iv) An already large body of conventions

The environmental sphere is already extensively regulated, at both international and regional level. There were over three hundred conventions relating to the environment in the 1980s alone and the trend has continued ever since. As early as 1972, we saw the introduction of the United Nations Environment Programme (UNEP)[76] to address environmental problems at regional and national level.

Directive No. 2008/99/EC[77] of the European Parliament and of the Council on the protection of the environment through criminal law was finally adopted on 19 November 2008. This very comprehensive directive requires states to "*provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment*".

This directive dealing with the criminal aspects of environmental law is part of a wide range of European texts related to the environment. There are about a hundred EU texts establishing rules and limits in the environmental sphere. This particular directive aimed at criminalising infringements of these rules should therefore be seen as an extension of the European Union's work in this area.

There are two main differences between the Council of Europe Convention and the European Directive of 2008:

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https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=588295&SecMode=1&DocId=644074&Usage=2

[72] http://www.alpconv.org/en/convention/framework/default.html?AspxAutoDetectCookieSupport=1

[73] http://www.conventions.coe.int/Treaty/EN/Treaties/Html/150.htm

[74] Cyprus, Finland, Greece, Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands and Portugal

[75] This is enshrined in Principle 15 of the Rio Declaration on Environment and Development, "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities […]". Text of the Declaration available at http://www.un.org/french/events/rio92/rio-fp.htm

[76] UNEP website: http://www.unep.org/

[77] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099

- While the Council of Europe Convention criminalises all types of negligence, and leaves it to states to reserve the right to punish only those offences committed as a result of serious negligence, the EU Directive restricts its scope to cases of serious negligence;
- In addition, the EU Directive refers only to cases of “significant” deterioration and excludes from its scope activities having a “negligible” impact.

At the same time, one of the advantages of the Council of Europe Convention is that it lays down arrangements for international co-operation, thereby avoiding the presence of “environmental havens” within Europe. In addition, it provides that groups may participate in proceedings, which is a definite plus at a time when the number of environmental NGOs is growing. Lastly, it requires states to establish jurisdiction, which is not provided for in the Directive.

Having overlapping international instruments does nevertheless make it considerably more complicated to implement a coherent set of criminal-law provisions in the environmental sphere.

Conclusion

The CDPC considers that the environment is an important topic. However, taking into account the very comprehensive legislation of the European Union in this field and that only one State has ratified this convention and only two non-member States of the European Union have signed it, the CDPC considers that the updating this Convention is not a priority, for the time being.

Appendix

Charts of signatures and ratifications

Status as of 15/06/2015

- European Convention on the Punishment of Road Traffic Offences (ETS No.: 52)
- European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (ETS No.: 101)
- European Convention on the Compensation of Victims of Violent Crimes (ETS No.: 116)
- European Convention on Offences relating to Cultural Property (ETS No.: 119)
- Convention on Insider Trading (ETS No.: 130)
- Protocol to the Convention on Insider Trading (ETS No.: 133)
- Convention on the Protection of Environment through Criminal Law (ETS No.: 172)

Source : Treaty Office on http://conventions.coe.int

European Convention on the Punishment of Road Traffic Offences (ETS No.: 52)

Treaty open for signature by the member States and for accession by non-member States

Opening for signature
Place: Strasbourg
Date : 30/11/1964

Entry into force
Conditions: 3 Ratifications.
Date : 18/7/1972

Member States of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania										
Andorra										
Armenia										
Austria	11/12/1964									
Azerbaijan										
Belgium	22/12/1964									
Bosnia and Herzegovina										
Bulgaria										
Croatia										
Cyprus	24/4/1967	16/4/1969	18/7/1972			X				
Czech Republic										
Denmark	22/9/1966	17/4/1972	18/7/1972		X	X		X		
Estonia										
Finland										
France	30/11/1964	16/9/1968	18/7/1972		X	X				
Georgia	17/6/1999									
Germany	30/11/1964									
Greece	21/1/1965									
Hungary										
Iceland										
Ireland										
Italy	9/6/1965				X	X				
Latvia										
Liechtenstein										
Lithuania										
Luxembourg	30/11/1964									
Malta										
Moldova										
Monaco										
Montenegro										

Netherlands	7/4/1965									
Norway										
Poland										
Portugal	18/6/1980									
Romania	24/7/1995	25/2/1998	26/5/1998			X				
Russia										
San Marino										
Serbia										
Slovakia										
Slovenia										
Spain										
Sweden	23/3/1972	28/4/1972	1/8/1972		X	X				
Switzerland										
The former Yugoslav Republic of Macedonia										
Turkey	13/9/1965				X					
Ukraine										
United Kingdom										

Non-members of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.

Total number of signatures not followed by ratifications:	10
Total number of ratifications/accessions:	5

Notes:
a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (ETS No. 101)

Treaty open for signature by the member States and for accession by non-member States

Opening for signature	Entry into force
Place: Strasbourg	Conditions: 3 Ratifications
Date : 28/6/1978	Date : 1/7/1982

Member States of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania										
Andorra										
Armenia										
Austria										
Azerbaijan		28/3/2000 a	29/6/2000				X			
Belgium										
Bosnia and Herzegovina										
Bulgaria										
Croatia										
Cyprus	29/8/1979	12/10/1981	1/7/1982		X					
Czech Republic	7/5/1999	18/1/2002	1/5/2002		X		X			
Denmark	28/6/1978	11/8/1989	1/12/1989		X	X	X			
Estonia										
Finland										
France										
Georgia	15/10/2002									
Germany	28/6/1978	5/2/1986	1/6/1986		X	X	X			
Greece	9/11/1979									
Hungary										
Iceland	27/9/1982	20/6/1984	1/10/1984				X			
Ireland	28/6/1978									
Italy	23/1/1985	23/8/1989	1/12/1989				X			
Latvia										
Liechtenstein										
Lithuania										
Luxembourg	13/9/1978	11/6/1982	1/10/1982		X		X			
Malta	16/11/1988									
Moldova	3/11/1998	5/3/2003	1/7/2003			X	X			
Monaco										

Montenegro										
Netherlands	7/7/1980	25/11/1981	1/7/1982		X		X	X		
Norway										
Poland	23/5/2002	2/6/2005	1/10/2005		X	X	X			
Portugal	20/11/1979	2/10/1986	1/2/1987		X		X			
Romania	24/7/1995	7/12/1998	1/4/1999				X			
Russia	10/12/1999									
San Marino										
Serbia										
Slovakia										
Slovenia	9/6/1999	29/5/2000	1/9/2000				X			
Spain	25/11/1986									
Sweden	12/1/1982	26/3/1982	1/7/1982		X	X	X			
Switzerland										
The former Yugoslav Republic of Macedonia										
Turkey	3/4/1979									
Ukraine										
United Kingdom	28/6/1978				X					

Total number of signatures not followed by ratifications:	8
Total number of ratifications/accessions:	15

Notes:
a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".

R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

European Convention on the Compensation of Victims of Violent Crimes (ETS No.: 116)

Treaty open for signature by the member States and for accession by non-member States

Opening for signature	Entry into force
Place: Strasbourg Date : 24/11/1983	Conditions: 3 Ratifications. Date : 1/2/1988

Member States of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania	9/10/2003	26/11/2004	1/3/2005			X	X			
Andorra										
Armenia	8/11/2001									
Austria	12/4/2006	30/8/2006	1/12/2006		X		X			
Azerbaijan		28/3/2000 a	1/7/2000				X			
Belgium	19/2/1998	23/3/2004	1/7/2004				X			
Bosnia and Herzegovina	30/4/2004	25/4/2005	1/8/2005							
Bulgaria										
Croatia	7/4/2005	4/7/2008	1/11/2008				X			
Cyprus	9/1/1991	17/1/2001	1/5/2001			X	X			
Czech Republic	15/10/1999	8/9/2000	1/1/2001		X		X			
Denmark	24/11/1983	9/10/1987	1/2/1988				X	X		
Estonia	22/10/2003	26/1/2006	1/5/2006				X			
Finland	11/9/1990	15/11/1990	1/3/1991				X			
France	24/11/1983	1/2/1990	1/6/1990			X	X			
Georgia										
Germany	24/11/1983	27/11/1996	1/3/1997			X	X			
Greece	24/11/1983									
Hungary	8/11/2001									
Iceland	30/11/2001									
Ireland										
Italy										
Latvia										
Liechtenstein	7/4/2005	17/12/2008	1/4/2009				X			
Lithuania	14/1/2004									
Luxembourg	24/11/1983	21/5/1985	1/2/1988				X			
Malta										
Moldova										

Monaco										
Montenegro	8/3/2010	19/3/2010	1/7/2010				X			
Netherlands	24/11/1983	16/7/1984	1/2/1988				X	X		
Norway	24/11/1983	22/6/1992	1/10/1992				X			
Poland										
Portugal	6/3/1997	13/8/2001	1/12/2001				X			
Romania	8/4/2005	15/2/2006	1/6/2006				X			
Russia										
San Marino										
Serbia	12/10/2010									
Slovakia	14/12/2006	12/3/2009	1/7/2009							
Slovenia										
Spain	8/6/2000	31/10/2001	1/2/2002			X	X			
Sweden	24/11/1983	30/9/1988	1/1/1989				X			
Switzerland	15/5/1990	7/9/1992	1/1/1993				X			
The former Yugoslav Republic of Macedonia										
Turkey	24/4/1985									
Ukraine	8/4/2005									
United Kingdom	24/11/1983	7/2/1990	1/6/1990				X	X		

Non-members of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.

Total number of signatures not followed by ratifications:	8
Total number of ratifications/accessions:	25

Notes:
a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

European Convention on Offences relating to Cultural Property (ETS No.: 119)

Treaty open for signature by the member States and for accession by non-member States

Opening for signature	Entry into force
Place: Delphi	Conditions: 3 Ratifications.
Date : 23/6/1985	Date : //

Member States of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania										
Andorra										
Armenia										
Austria										
Azerbaijan										
Belgium										
Bosnia and Herzegovina										
Bulgaria										
Croatia										
Cyprus	25/10/1985									
Czech Republic										
Denmark										
Estonia										
Finland										
France										
Georgia										
Germany										
Greece	23/6/1985									
Hungary										
Iceland										
Ireland										
Italy	30/7/1985									
Latvia										
Liechtenstein	23/6/1985									
Lithuania										
Luxembourg										
Malta										
Moldova										
Monaco										
Montenegro										

Netherlands										
Norway										
Poland										
Portugal	23/6/1985									
Romania										
Russia										
San Marino										
Serbia										
Slovakia										
Slovenia										
Spain										
Sweden										
Switzerland										
The former Yugoslav Republic of Macedonia										
Turkey	26/9/1985									
Ukraine										
United Kingdom										

Non-members of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.

Total number of signatures not followed by ratifications:	6
Total number of ratifications/accessions:	

Notes:
a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

Convention on Insider Trading (ETS No.: 130)

Treaty open for signature by the member States and for accession by the non-member States

Opening for signature	Entry into force
Place: Strasbourg	Conditions: 3 Ratifications.
Date : 20/4/1989	Date : 1/10/1991

Member States of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania										
Andorra										
Armenia										
Austria										
Azerbaijan										
Belgium										
Bosnia and Herzegovina										
Bulgaria										
Croatia										
Cyprus	28/10/1991	8/2/1994	1/6/1994							
Czech Republic	15/10/1999	8/9/2000	1/1/2001			X				
Denmark										
Estonia										
Finland	13/9/1995	13/9/1995	1/1/1996							
France										
Georgia										
Germany										
Greece										
Hungary										
Iceland										
Ireland										
Italy										
Latvia										
Liechtenstein										
Lithuania										
Luxembourg	29/8/1997	29/8/1997	1/12/1997							
Malta										
Moldova										
Monaco										
Montenegro										

Netherlands	1/6/1993	4/7/1994	1/11/1994			X	X	X		
Norway	22/9/1989	11/4/1990	1/10/1991							
Poland										
Portugal										
Romania										
Russia										
San Marino										
Serbia										
Slovakia										
Slovenia	23/11/1993									
Spain										
Sweden	15/9/1989	3/6/1991	1/10/1991							
Switzerland										
The former Yugoslav Republic of Macedonia										
Turkey										
Ukraine										
United Kingdom	13/9/1989	21/12/1990	1/10/1991							

Non-members of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.

International Organisations

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.

Total number of signatures not followed by ratifications:	1
Total number of ratifications/accessions:	8

Notes:
a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

Protocol to the Convention on Insider Trading (ETS No.: 133)

Since its entry into force, this Protocol is an integrant part of the treaty ETS No. 130 and is no longer open for signature or ratification.

Opening for signature	Entry into force
Place: Strasbourg Date : 11/9/1989	Conditions: Ratification by Parties to Treaty ETS 130. Since its entry into force, this Protocol forms an integrant part of ETS 130. Date : 1/10/1991

Member States of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania										
Andorra										
Armenia										
Austria										
Azerbaijan										
Belgium										
Bosnia and Herzegovina										
Bulgaria										
Croatia										
Cyprus	28/10/1991	8/2/1994	1/6/1994	8						
Czech Republic	15/10/1999	8/9/2000	1/1/2001	8						
Denmark										
Estonia										
Finland	13/9/1995	13/9/1995	1/1/1996	8						
France										
Georgia										
Germany										
Greece										
Hungary										
Iceland										
Ireland										
Italy										
Latvia										
Liechtenstein										
Lithuania										
Luxembourg	29/8/1997	29/8/1997	1/12/1997	8						
Malta										

Moldova										
Monaco										
Montenegro										
Netherlands	1/6/1993	4/7/1994	1/11/1994	8						
Norway	22/9/1989	11/4/1990	1/10/1991							
Poland										
Portugal										
Romania										
Russia										
San Marino										
Serbia										
Slovakia										
Slovenia	23/11/1993			8						
Spain										
Sweden	15/9/1989	3/6/1991	1/10/1991							
Switzerland										
The former Yugoslav Republic of Macedonia										
Turkey										
Ukraine										
United Kingdom	13/9/1989	21/12/1990	1/10/1991							

Total number of signatures not followed by ratifications:	1
Total number of ratifications/accessions:	8

Notes:
(8) Date of signature of the Convention as amended by this Protocol.
a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

Convention on the Protection of Environment through Criminal Law (ETS No.: 172)

Treaty open for signature by the member States and the non-member States which have participated in its elaboration and for accession by other non-member States

Opening for signature	Entry into force
Place: Strasbourg	Conditions: 3 Ratifications.
Date : 4/11/1998	Date : //

Member States of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania										
Andorra										
Armenia										
Austria	7/5/1999									
Azerbaijan										
Belgium	7/5/1999									
Bosnia and Herzegovina										
Bulgaria										
Croatia										
Cyprus										
Czech Republic										
Denmark	4/11/1998									
Estonia	1/6/2001	26/4/2002								
Finland	4/11/1998									
France	4/11/1998									
Georgia										
Germany	4/11/1998									
Greece	4/11/1998									
Hungary										
Iceland	4/11/1998									
Ireland										
Italy	6/11/2000				X					
Latvia										
Liechtenstein										
Lithuania										
Luxembourg	17/3/1999									
Malta										
Moldova										
Monaco										

Montenegro										
Netherlands										
Norway										
Poland										
Portugal										
Romania	15/2/1999									
Russia										
San Marino										
Serbia										
Slovakia										
Slovenia										
Spain										
Sweden	4/11/1998									
Switzerland										
The former Yugoslav Republic of Macedonia										
Turkey										
Ukraine	24/1/2006									
United Kingdom										

Non-members of the Council of Europe

	Signature	Ratification	Entry into force	Notes	R.	D.	A.	T.	C.	O.
Canada										

Total number of signatures not followed by ratifications:	13
Total number of ratifications/accessions:	1

Notes:
a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.