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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**QUESTIONNAIRE REGARDING THE WORK OF THE COUNCIL OF EUROPE TO REINFORCE  
“THE EFFECTIVENESS OF THE COUNCIL OF EUROPE TREATY LAW”**

Document prepared by  
the Directorate General of Human Rights and Legal Affairs (DGHL)

## **Introductory comment**

At its 1084<sup>th</sup> meeting, the Committee of Ministers (CM) adopted the proposal of the Secretary General of the Council of Europe (CoE) to conduct a critical review of the relevance of CoE Conventions as one of the priorities for 2011<sup>1</sup> and to enhance their effectiveness through notably increased visibility. For this purpose, a “Task Force on Convention Review” composed of representatives of the Secretariat of the relevant steering committees and of the Treaty Office has been established notably to discuss possible means to implement this priority proposal in view of the elaboration of a Comprehensive Report for the attention of the Committee of Ministers by the end of September 2011.

In this regard, it is important to recall the already existing important contribution of the CDPC to this conventions’ review exercise. Indeed, at its 1087<sup>th</sup> meeting on 9 June 2010, the CM agreed to communicate Parliamentary Assembly’s (PACE) Recommendation 1920 (2010) “Reinforcing the effectiveness of Council of Europe treaty law” to the CDPC for information and possible comments by 15 October 2010 in particular concerning paragraph 1.4 of the Recommendation (see [Appendix I](#)). The CDPC has thus examined the status of all binding criminal law instruments and has adopted its opinion in this regard including on their classification (see [Appendix II](#) containing the comments made by the CDPC on PACE Recommendation 1920 (2010)) which may be summarised as follows:

- Group A: Active treaties (as listed under item 3.0 of CDPC’s opinion);
- Group B: Treaties that are still relevant but might require updating (as listed under item 3.1 of CDPC’s opinion);
- Group C: Treaties which may be considered as inactive (as listed under item 3.2 and 3.3 of CDPC’s opinion).

The above-mentioned Task Force is carrying out currently a preliminary review of all CoE Treaties including in the field of criminal law. In addition, this issue was discussed at the last Bureau meeting of the CDPC (Prague, 19-20 April 2011) which instructed the Secretariat to prepare a document on the state of affairs as regards criminal law instruments and treaties for its next plenary meeting (Strasbourg, 14-17 June 2011).

For this purpose, please find hereunder a questionnaire concerning criminal law conventions which may fall under the above-mentioned Groups A, B, C. Please do take into account that your answers are crucial to this conventions’ review exercise and should be as far as possible clear, objective and reasoned.

Please send your replies to the Secretariat ([stephanie.burel@coe.int](mailto:stephanie.burel@coe.int)) by 06 June 2011 at the latest.

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<sup>1</sup> “*the review of the relevance of Council of Europe conventions*”

Council of Europe conventions constitute a unique integrated system collectively defined and agreed upon by the member States. They are a key strength and comparative advantage of the Organisation. The Secretary General proposes to take stock of the situation by conducting a critical review of their relevance. This will provide the basis for decisions on follow-up including measures to increase the visibility and the number of parties to relevant conventions.”

## **Questionnaire:**

1. Concerning criminal law conventions falling under Group A:
  - a) Do you agree that each of the classified conventions is indeed “active”?
  - b) Should you disagree, please state whether the convention(s) concerned should in fact be re-classified under Group B? Please justify your reasoning.
2. Concerning criminal law conventions falling under Group B:
  - a) Do you agree that each of the classified conventions are still relevant but may require updating?
  - b) If so, for each convention concerned please provide a brief explanation of its relevance and on why it should be possibly updated.
  - c) Should you disagree, please state whether the convention(s) concerned could be classified under Group A or Group C and justify your reasoning. If you consider that the convention(s) should in fact be classified under Group C, please go to questions 3. b) and c).
3. Concerning criminal law conventions falling under Group C:
  - a) Do you agree that these conventions are indeed inactive?
  - b) If so, for countries which have not ratified any of these conventions, please justify your reasoning which may also found the absence of ratification by your country and for countries which have ratified, please also indicate which grounds led to your country's ratification.
  - c) Specify whether measures should be taken either to:
    - establish their active status with an update or an overhaul?
    - or
    - establish them officially as obsolete and discourage further accessions?
4. Are there any additional comments and concerns you wish to make concerning the effectiveness of Council of Europe Conventions in the field of criminal law including possible means to enhance it?

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## Appendix I

**Parliamentary Assembly**  
**Assemblée parlementaire**



Recommendation 1920 (2010)<sup>1</sup>

Reinforcing the effectiveness of Council of Europe treaty law

1. The Parliamentary Assembly, referring to its [Resolution 1732](#) (2010) on reinforcing the effectiveness of Council of Europe treaty law, considers that one of the Council of Europe's main functions is to draw up standards on human rights and the rule of law that together form a coherent body of European conventions. It therefore asks the Committee of Ministers to:

1.1. approve an action plan to secure the early ratification by all member states of the core Council of Europe treaties, as defined in the appendix to the Assembly resolution, with the fewest possible reservations;

1.2. urge member states to withdraw their reservations, derogations and restrictive declarations concerning Council of Europe treaties, particularly the European Convention on Human Rights (ETS No. 5), and instruct the Committee of Legal Advisers on Public International Law (CAHDI) to intensify its existing efforts in this area to reduce the use of such clauses;

1.3. agree on a programme of action for new conventions to be drawn up, as a matter of priority, over the next five years;

1.4. instruct the Steering Committee for Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC), in close co-operation with the Council of Europe's Legal Advice Department and the Treaty Office, to examine the binding legal instruments within their respective areas of authority, with a view to identifying:

1.4.1. treaties that are still relevant but require updating;

1.4.2. treaties that are obsolete and should be abrogated;

1.4.3. treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and which should be withdrawn;

1.5. in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts, consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties.

2. The Assembly is also concerned about the possible effects of the increased use, at the request of the European Union, of so-called disconnection clauses in Council of Europe treaties. To ensure the coherence of Council of Europe treaty law, and to avoid establishing new dividing lines in Europe, it asks the Committee of Ministers to draw up strict guidelines to control this practice, based on the work of the CAHDI. The Assembly also urges the European Union to accede to the Council of Europe's conventions, in particular the European Convention on Human Rights, as provided for in the Lisbon Treaty.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 21 May 2010 (see [Doc. 12175](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Prescott).*

## Appendix II

### **Comments by the European Committee on Crime Problems (CDPC) on PACE Recommendation 1920 (2010) on “Reinforcing the effectiveness of Council of Europe treaty law”**

#### **1.0 Introduction**

At its 1087th meeting on 9 June 2010, the Committee of Ministers (Deputies) agreed to communicate the Parliamentary Assembly’s Recommendation 1920 (2010) “Reinforcing the effectiveness of Council of Europe treaty law” to the CDPC for information and possible comments, by 15 October 2010.

The CDPC takes note of the request to the Committee of Ministers in paragraph 1.4 of the Recommendation to ‘instruct...the (CDPC)...in close cooperation with the Council of Europe’s Legal Advice Department and Treaty Office, to examine the binding legal instruments within its area of authority,’ to identify treaties that are still relevant but might require updating, treaties that are obsolete and treaties which have lost their relevance and have not come into force within a certain number of years of their adoption. Under its terms of reference, the CDPC regularly follows up the functioning and implementation of treaties coming within its field of competence.

In order to assess the relevance or obsolescence of a particular instrument, the CDPC report considers the overall number of states to have ratified it (both member and non-member states), in the context of the circumstances of each Convention or Protocol: for example, have member states had sufficient time to implement it, or has the instrument been superseded by subsequent instruments.<sup>6</sup> Whilst these are not necessarily the only criteria to evaluate the effectiveness of treaties, they are of particular importance and provide a sound basis for the analysis.

The findings of this assessment have then been evaluated in order to define the three principal contexts specified by section 1.4 of the Recommendation, thus:

- treaties that are still relevant but require updating (section 1.4.1 of the Recommendation);
- treaties that are obsolete (section 1.4.2 of the Recommendation);
- treaties which have lost their relevance and have not come into force within a certain number of years of their adoption (section 1.4.3 of the Recommendation).

It should be noted at the outset that by far the majority of extant instruments in the criminal law field appear to be sufficiently active and well-supported by member states to require no further action.

#### **2.0 By Percentage of Member States (“MS”) Ratifications**

##### **2.1 Ratification by All 47 member states**

The following criminal law Conventions/Protocols have been ratified by all forty-seven Council of Europe member states:

<b>CETS No.</b>	<b>Title</b>
024	<a href="#">European Convention on Extradition</a> (47+2) <i>Status: active.</i>
030	<a href="#">European Convention on Mutual Assistance in Criminal Matters</a> (47+1) <i>Status: active.</i>

141	<a href="#">Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (47+1)</a> <i>Status: active.</i>
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***Suggested Status: Active and complete***

## **2.2 80-99% MS Ratified**

**The following eight instruments have been ratified by most member states:**

<b>CETS No.</b>	<b>Title</b>
098	<a href="#">Second Additional Protocol to the European Convention on Extradition (40+1)</a> <i>Status: active.</i>
099	<a href="#">Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (40)</a> <i>Status: active.</i>
112	<a href="#">Convention on the Transfer of Sentenced Persons (46+ 18)</a> <i>Status: active.</i>
120	<a href="#">European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (41)</a> <i>Status: active.</i>
135	<a href="#">Anti-Doping Convention (46+4)</a> <i>Status: active.</i>
173	<a href="#">Criminal Law Convention on Corruption (42 +1)</a> <i>Status: active.</i>

## **2.3 50-79% MS Ratified**

<b>CETS No.</b>	<b>Title</b>
073	<a href="#">European Convention on the Transfer of Proceedings in Criminal Matters (25)</a> <i>Status: update.</i>
086	<a href="#">Additional Protocol to the European Convention on Extradition (37+1)</a> <i>Status: active.</i>
116	<a href="#">European Convention on the Compensation of Victims of Violent Crimes (25)</a> <i>Status: update.</i>
167	<a href="#">Additional Protocol to the Convention on the Transfer of Sentenced Persons (35)</a> <i>Status: active.</i>
185	<a href="#">Convention on Cybercrime (29+1)</a> <i>Status: active.</i>
188	<a href="#">Additional Protocol to the Anti-Doping Convention (25+1)</a> <i>Status: active.</i>
191	<a href="#">Additional Protocol to the Criminal Law Convention on Corruption (25)</a> <i>Status: active.</i>
197	<a href="#">Council of Europe Convention on Action against Trafficking in Human Beings (30)</a> <i>Status: active.</i>

## **2.4 30-49% MS Ratified**

<b>CETS No.</b>	<b>Title</b>
051	<a href="#">European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (19)</a> <i>Status: update.</i>
070	<a href="#">European Convention on the International Validity of Criminal Judgments (22)</a> <i>Status: update.</i>
182	<a href="#">Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters</a>

	(19+1) <i>Status: active.</i>
189	<a href="#">Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems</a> (18) <i>Status: active.</i>
198	<a href="#">Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism</a> (21) <i>Status: active.</i>

## 2.5 <30% MS Ratified

This group represent the instruments most sparsely supported by member states.

CETS No.	Title
052	<a href="#">European Convention on the Punishment of Road Traffic Offences</a> (5) <i>Status: update.</i>
119	<a href="#">European Convention on Offences relating to Cultural Property</a> (0) <i>Status: lost its relevance.</i>
130	<a href="#">Convention on Insider Trading</a> (8) <i>Status: update/ lost its relevance.</i>
133	<a href="#">Protocol to the Convention on Insider Trading</a> (8) <i>Status: update/ lost its relevance..</i>
156	<a href="#">Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances</a> (13) <i>Status: update.</i>
172	<a href="#">Convention on the Protection of Environment through Criminal Law</a> (1) <i>Status: lost its relevance.</i>
201	<a href="#">Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse</a> (8) <i>Status: active.</i>

## 3.0 Opinion on the Parliamentary Assembly's Recommendation 1920 (2010).

In light of this analysis, the CDPC finds that the following treaties should be considered to remain active, either because they have been ratified by a majority of member states, or because they are recent and, as such, states still need time to ratify:

- (024) [European Convention on Extradition](#) (47+2)
- (030) [European Convention on Mutual Assistance in Criminal Matters](#) (47+1)
- (086) [Additional Protocol to the European Convention on Extradition](#) (37+1)
- (098) [Second Additional Protocol to the European Convention on Extradition](#) (40+1)
- (099) [Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters](#) (40)
- (112) [Convention on the Transfer of Sentenced Persons](#) (46+ 18)
- (120) [European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches](#) (41)
- (135) [Anti-Doping Convention](#) (46+4)
- (141) [Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime](#) (47+1)
- (167) [Additional Protocol to the Convention on the Transfer of Sentenced Persons](#) (35)
- (173) [Criminal Law Convention on Corruption](#) (42+1)
- (182) [Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters](#) (19+1)
- (185) [Convention on Cybercrime](#) (29+1)
- (188) [Additional Protocol to the Anti-Doping Convention](#) (25+1)
- (189) [Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems](#) (18)
- (191) [Additional Protocol to the Criminal Law Convention on Corruption](#) (25)
- (197) [Council of Europe Convention on Action against Trafficking in Human Beings](#) (30)
- (198) [Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from](#)

Crime and on the Financing of Terrorism (21)

(201) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (9)

### 3.1 Treaties that are still relevant but might require updating.

The CDPC considers that the following criminal law instruments are still relevant but may require updating:

(051) *European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders* (19)

This instrument was originally signed by 17 member states, and was ultimately ratified by 19. The issues it was designed to address are partly dealt with in the European Convention on the International Validity of Criminal Judgments (CETS 070), which it has been proposed to update in section 3.1, above.

(052) *European Convention on the Punishment of Road Traffic Offences* (5)

In spite of the low number of states who have ratified this Convention, it has been deemed worthy of updating this instrument, as the issue remains very much a priority of member states.

(070) *European Convention on the International Validity of Criminal Judgments* (22)  
and;

(073) *European Convention on the Transfer of Proceedings in Criminal Matters* (25)

Similarly, these two instruments deal with pertinent issues and it is noted that they have been ratified by roughly half of the Council of Europe's member states. Given recent developments in international legal cooperation within the criminal law field, it may be necessary to update or perhaps even consolidate them, in light of such changes.

(116) *European Convention on the Compensation of Victims of Violent Crimes* (25)

This issue is likewise an issue which continues to be debated, currently within the wider context of the general standing and rights of victims. Given more than half of member states have ratified it, it has been deemed more appropriate to review and update it.

(156) *Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances* (13)

This Convention came into force in 2000 and was originally signed by 22 member states. However it was only ratified by 13, most recently the Ukraine and Ireland in 2007. Of the member states who signed up to it in 1995, the year it was adopted (Greece, Italy, Norway, Sweden and the UK), only Norway subsequently ratified.

Of the 13 states which did ratify however, the geographic distribution is interesting, as they together form a corridor of states from central Europe to the rest of the world. This corridor begins with the Black Sea coastlines of the Ukraine and Romania, through the land-locked states of Hungary, Slovakia, Austria and the Czech Republic, to states with access to every European coast: the Atlantic Ocean (Ireland); the Adriatic Sea (Slovenia); the Mediterranean Sea (Cyprus); the Baltic Sea (Lithuania, Latvia, Germany); and the North/Norwegian Seas (Norway).

This, plus the fact that the most recent ratifications occurred less than three years ago, indicates it is potentially highly relevant to specific member states, and the CDPC considers that it should therefore be reviewed with a view to updating.

### 3.2 Treaties that have entered into force but may be considered to be obsolete.

As a result of this review, the CDPC proposes that the following criminal law instruments may be judged obsolete:

(130) *Convention on Insider Trading* (8)

and;

(133) *Protocol to the Convention on Insider Trading* (8)



These were originally signed by 9 member states, of which only 8 ultimately ratified. It is likely that they have simply been superseded by more recent legal instruments.

### **3.3 Treaties which have not entered into force and which may be considered to have lost their relevance.**

The following two treaties never came into force, and it is considered that they have lost their relevance:

#### *(119) [European Convention on Offences relating to Cultural Property](#) (0)*

This Convention was immediately superseded by a UN instrument. It was also problematic for many states, as it instigated the criminalisation of perpetrators even in cases where there existed no apparent intent. Of only six original signatories, none ultimately ratified it.

#### *(172) [Convention on the Protection of Environment through Criminal Law](#) (1)*

Of fourteen original signatories, only one member state has ratified this Convention. This is perhaps explained by an EU Directive that was implemented along these lines almost immediately, thus EU member states were focused more upon the EU instrument than this Convention. Furthermore, the sanctions were considered to be very harsh, as their application was envisaged even where there was no intent. Some states were also reluctant to ratify the articles relating to corporate responsibility.

### **4.0 Conclusion**

In conclusion, whilst it may appear that some criminal legal instruments have been ratified by only very few member states, this can be for a variety of reasons: some have only recently been adopted, for example the [Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#) (8 ratifications since 2007); the [Additional Protocol to the Convention on Cybercrime](#) (18 since 2003); and [Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism](#) (21 since 2005).

Furthermore, some instruments appear to have specific relevance for some states, but not for others, for example the [Agreement on Illicit Traffic by Sea](#) (13 since 1995). In other cases, Conventions or Protocols addressing issues which remain widely debated by member states, but which have only been ratified by a few - such as the [European Convention on the Compensation of Victims of Violent Crimes](#) - have been listed for review: such instruments may still be highly relevant for the states party to them, and it may simply be a question of updating.

On this basis, the CDPC is of the opinion that by far the majority of criminal legal instruments are active and up-to-date: indeed only two have not yet made it into force and only three appear under-supported by member states, all of which deal with issues that have subsequently been addressed by other instruments.

### Appendix III

#### Complete List of Criminal Law Instruments

CETS No.	Title	Total No. of Signatories		Total Ratifications	
		Member States	Non Member States	Member States	Non Member States
024	<a href="#">European Convention on Extradition</a>	42	0	47	2
030	<a href="#">European Convention on Mutual Assistance in Criminal Matters</a>	43	0	47	1
051	<a href="#">European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders</a>	17	0	19	0
052	<a href="#">European Convention on the Punishment of Road Traffic Offences</a>	15	0	5	0
070	<a href="#">European Convention on the International Validity of Criminal Judgments</a>	28	0	22	0
073	<a href="#">European Convention on the Transfer of Proceedings in Criminal Matters</a>	32	0	25	0
086	<a href="#">Additional Protocol to the European Convention on Extradition</a>	35	0	37	1
086	<a href="#">Additional Protocol to the European Convention on Extradition</a>	35	0	37	1
098	<a href="#">Second Additional Protocol to the European Convention on Extradition</a>	37	0	40	1
099	<a href="#">Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters</a>	39	0	40	0
112	<a href="#">Convention on the Transfer of Sentenced Persons</a>	39	2	46	18
116	<a href="#">European Convention on the Compensation of Victims of Violent Crimes</a>	31	0	25	0
119	<a href="#">European Convention on Offences relating to Cultural Property</a>	6	0	0	0
120	<a href="#">European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches</a>	37	0	41	0
130	<a href="#">Convention on Insider Trading</a>	9	0	8	0
133	<a href="#">Protocol to the Convention on Insider Trading</a>	9	0	8	0
135	<a href="#">Anti-Doping Convention</a>	40	2	46	4

141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	46	1	47	1
156	Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances	22	0	13	0
		<b>Total No. of Signatories</b>		<b>Total Ratifications</b>	
<b>CETS No.</b>	<b>Title</b>	<b>Member States</b>	<b>Non Member States</b>	<b>Member States</b>	<b>Non Member States</b>
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons	36	0	35	0
172	Convention on the Protection of Environment through Criminal Law	14	0	1	0
173	Criminal Law Convention on Corruption	45	3	42	1
182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	35	0	19	1
185	Convention on Cybercrime	42	4	29	1
188	Additional Protocol to the Anti-Doping Convention	31	1	25	1
189	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems	32	2	18	0
191	Additional Protocol to the Criminal Law Convention on Corruption	35	0	25	0
197	Council of Europe Convention on Action against Trafficking in Human Beings	43	0	30	0
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism	32	0	21	0
201	Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	41	0	9	0