



Strasbourg, 25 March 2021

CDPC(2021)4

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

WORKING GROUP OF EXPERTS ON THE ENVIRONMENT AND CRIMINAL LAW (CDPC-EC)

Discussion paper

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

I. Background

The Convention on the Protection of the Environment through Criminal Law was opened for signature by member States of the Council of Europe and non-member States on 4 November 1998. However, it was only ratified by one Council of Europe member State (Estonia in 2002) and consequently remains unimplemented.

At its last plenary meeting, (3-4 November 2020), the CDPC decided to set up the ad hoc Working Group on the Environment and Criminal Law (CDPC-EC), to discuss the possible way forward in this domain. The ad hoc Working Group is composed of experts representing member States of the Council of Europe, who were designated by their representatives in the CDPC, with recognised expertise in the environmental situation and the challenges States are now facing regarding environmental crime. They are assisted in their work by one scientific expert.

The magnitude of environmental concern and the risk of environmental and biodiversity degradation now prompts the CDPC-EC Working Group to discuss the possible way forward, by **assessing whether creating a new Convention or modernising the existing Convention is feasible and appropriate.**

II. Objective

The European Committee on Crime Problems (CDPC),

Having regard to the Strategic Framework of the Council of Europe and notably the “Key strategic priorities of the Council of Europe over the next four years”, point 10: “The fight against environmental degradation and climate change. Addressing the challenges that these pose to the protection of human rights has become a priority, in particular as their impact will undoubtedly increase in the coming years”.

Having regard to its Terms of Reference, and in particular that the CDPC is instructed to: (i) “steer legal co-operation among the Council of Europe member States in order to assist them to develop modern penal policies. In particular, it shall develop common standards in the fields of criminal law, including both substantive and procedural aspects;” and (ii) “provide an intergovernmental setting for the negotiation and finalisation of draft legal instruments”;

Having regard to Resolution Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, in particular Article 14, thereof;

Decides as follows:

- To set up an ad hoc Working Group consisting of experts appointed by the members of the CDPC to discuss the possible way forward on the Environment and Criminal Law;
- To discuss the possible way forward by assessing whether the creation of a new Council of Europe instrument on the Protection of the Environment through Criminal Law or modernising the existing Convention is feasible and appropriate or not;
- To carry out this assessment through a comprehensive feasibility study produced by the Working Group.

III. Preliminary reflections concerning the way forward

The objective of this discussion paper is to present some avenues for reflection which can serve as a basis for discussions at the first meeting of the Working Group. These aspects may be used within the feasibility study to assess whether the creation of a new Convention or the modernisation of the existing Convention is feasible or not.

All members of the Working Group are welcome and encouraged to present any other matters they may regard as beneficial, based on their expertise.

- a) The analysis, in each member State, of the reasons for the failure of the 1998 Convention on Protecting the Environment through Criminal Law;
- b) The identification of the current and future environmental challenges/risks facing States;
- c) Comparative law analysis: the analysis of current action on environment and criminal law within and outside of Europe;
- d) Analysis and evaluation of current national criminal law systems, including criminalisation techniques in environmental criminal law;
- e) The reflection on the very purpose of a new or updated instrument (identification of needs);
- f) The identification of common denominators for the existing national penal systems;
- g) Determination of the guiding principles of criminal and environmental law;
- h) Determination of the major axes of a possible new or updated instrument:
 - Environmental concepts to be integrated and defined;
 - Substantial criminal law;
 - Procedural criminal law;
 - Preventative measures;
 - Protective measures;
 - International cooperation measures;
 - Mechanisms for monitoring the implementation of the instrument;
- i) Any other issue which it deems to be of consequence on Protecting the Environment through Criminal Law.

IV. Composition

Participants:

The ad hoc Working Group is composed of experts representing member States of the Council of Europe, who were designated by their representatives in the CDPC, with recognised expertise in the environmental situation and the challenges States are now facing regarding environmental crime. They are assisted in their work by one scientific expert.

The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the state whose representative has been elected Chair)¹.

The ad hoc Working Group may have recourse to (a) consultant(s) within the limits of the budgetary appropriations for the CDPC.

¹ On the condition that future meetings will be held in person due to the ongoing COVID-19 pandemic

The following bodies and committees of the Council of Europe are invited to appoint one representative each to participate in the work of the ad hoc Working Group at their own expense:

- The Parliamentary Assembly of the Council of Europe;
- Other committees or bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives without the right to vote and without defrayal of expenses:

- European Union;
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America.

Observers:

Any other relevant intergovernmental and Supranational Organisations and States may request the observer status to participate in the work of the ad hoc Working Group at their own expense as stated in the Resolution Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

V. Working methods

The approved CDPC-EC Chair will lead the discussions and work with the CDPC Secretariat to ensure the work progresses efficiently.

The Working Group should collaborate through the exchange of knowledge and experiences to discuss the way forward on the Environment and Criminal Law. This will be addressed by assessing whether a new Convention or modernising the existing Convention is feasible and appropriate or not, through a feasibility study prepared by the Working Group.

The Working Group shall report on the progress of its work to the Bureau of the CDPC and to the CDPC itself and, as necessary, request and/or receive instructions from the Bureau and the CDPC concerning the fulfilment of its tasks as set out in this decision.

The rules of procedure of the Working Group are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

Whenever appropriate, it will prioritise environmentally sound working methods, such as virtual meetings facilitated by information technology and written consultations.