



Strasbourg, 8 October 2021

CDPC-EC(2021)3

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

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

MEETING REPORT

3rd meeting

7 October 2021

Teleconference

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

Following its decisions at the 78th Plenary meeting on 3-4 November 2020, the CDPC set up an ad hoc Working Group on the Environment and Criminal Law (CDPC-EC), consisting of experts appointed by the members of the CDPC. The Working Group was entrusted with the main task of assessing whether the drafting of a new Council of Europe Convention on the Protection of the Environment through Criminal Law to replace the existing 1998 Convention (ETS No.172), is feasible and appropriate or not, through a comprehensive Feasibility Study produced by the Working Group.

The Working Group held its third meeting via the electronic platform KUDO, on 7 October 2021. The meeting was dedicated to the examination of the Preliminary Draft of the Feasibility Study on the Protection of the Environment through Criminal Law prepared by the Scientific Expert Ms Véronique Jaworski, which was sent to all members of the Working Group prior to the meeting, following the decisions taken at the second meeting of the Working Group, held on 15 June 2021.

Mr Thomas Grégoire, elected Chair of the Working Group, opened the meeting and welcomed all participants. Mr Grégoire provided information on the Parliamentary Assembly draft Recommendation and draft Resolution titled 'Addressing issues of criminal and civil liability in the context of climate change', which were both unanimously adopted by the Parliamentary Assembly on 29 September 2021.

The Chair noted that both texts make significant reference to the work of the CDPC-EC, recommending that 'the Committee of Ministers draft, without delay, a new legal instrument to replace the Convention on the Protection of the Environment through Criminal Law (ETS No.172)', in order to have a legal instrument better adapted to the current challenges. Mr Carlo Chiaromonte, Head of the Criminal Law Division welcomed all participants on behalf of the CDPC Secretariat and informed the Working Group that hybrid meetings may be possible soon, should the sanitary situation allow it and made a more detailed presentation of the PACE work on environment.

The Chair expressed his appreciation for the comprehensive work of Ms Jaworski (the Preliminary Draft Feasibility Study) and encouraged all Delegations to express their views on the text, to move the work of the CDPC-EC forward. Ms Jaworski was invited to present the prepared Preliminary Draft Feasibility Study in which she provided a clear overview of the structure of the document, emphasising that the purpose is to list the main elements that could serve as a basis for reflection and discussion on the issue of a possible new legal instrument to be developed. The first part of the text is thus dedicated to the examination of the appropriateness of adopting a new instrument (preferably a convention) and the second part refers to the legal issues to be included in a new instrument and the different options for dealing with these.

Following Ms Jaworski's presentation, the Chair opened the floor to all Delegations to exchange views. The Working Group expressed their appreciation for the work prepared and noted several areas for consideration and further work. Specific references were made to the concept of 'International Cooperation' which is prominent throughout the text. States noted that many international legal instruments already exist in this domain and should be both referred to and utilised in the work of the CDPC-EC.

For example, the 1959 Council of Europe, European Convention on Mutual Assistance in Criminal Matters (No.030) and its additional protocols thereto (No.099 and No.182), and the 2014 CDPC text on 'Model Provisions for Council of Europe Criminal Law Conventions' (CDPC (2014) 17 Fin), which intends to set out a 'model Convention' that may be used, as guidance, by future negotiators of draft Criminal Law Conventions. The need, therefore, to further develop 'common rules for enhanced international cooperation', is not necessarily justified.

Various Delegations noted that the specific concepts, under item 2.1.3.1. 'Definitions', could, at this stage, just be listed as possible elements to be included, rather than defined. The Working Group also expressed the need for a more critical and analytical approach to the text. With specific reference to item 2.2. 'Substantive Criminal Law: Offences, Perpetrators, Penalties', some Delegations noted that specifying the relationship between administrative and criminal law is a step in the right direction, however, some concepts could be examined more closely, such as references to a 'hierarchy of enforcement authorities' or environmental damage as a result of the 'cocktail effect'. Such elements may benefit from further clarification and analysis of the different legal traditions of each State, to respect existing domestic legislation and to reconcile with the principle of legal certainty.

Furthermore, the Working Group raised the issue of the Responsibility of Legal Persons under item 2.2.2. of the Study, with regards to the question of making the criminal liability of legal persons mandatory. This aspect was considered potentially controversial given the variations in its nature across different domestic legislations. The Working Group, therefore, highlighted the need to look into the operational needs of this notion and its utility in a possible Council of Europe instrument. Regarding the scope and characterisation of such offences mentioned under item 2.2. namely on proposals pertaining to sanctions, Delegations noted that this will require specific analysis of the possible advantages and drawbacks of certain measures. The final proposal was to use the "Model provisions" document adopted by the CDPC in this regard.

Similarly, with reference to the concept of due diligence, under item 2.4. 'Prevention Measures', the Working Group expressed the importance of understanding precisely how this is regulated by looking at existing international legislation to see what operational needs would be covered by this notion.

On this basis, the Working Group agreed to adjourn the second day of the meeting (scheduled for 8 October 2021), in order to modify the existing text based on the fruitful discussions of the first day. The Working Group decided to instruct the Secretariat to distribute the updated Preliminary Draft Feasibility Study with substantial changes that will reflect the debates of this meeting to all members of the CDPC-EC Working Group as soon as possible. On receipt of this document, all Delegations will be invited to submit written proposals with regards to this text within a time frame that is sufficient for all delegations to consult their relevant national agencies and to accurately respond.

The Chair noted that all proposals will then be incorporated into the existing text and redistributed to the Working Group to form the basis of the discussions at the fourth meeting, expected to take place early 2022. The exact date, format and place of the next meeting will be communicated to all members of the Working Group in due course.

APPENDIX I

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 8 October 2021

CDPC-EC(2021)3LP Fin

**EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITE EUROPEEN POUR LES PROBLEMES
CRIMINELS
(CDPC)**

**Working Group on the Environment and Criminal Law (CDPC-EC) /
Groupe de travail sur l'environnement et le droit pénal (CDPC-EC)**

7 October / 7 octobre 2021

Council of Europe / Conseil de l'Europe, Strasbourg
Teleconference

List of participants / liste des participants

AUSTRIA / AUTRICHE

Mr Christian MAYER, Desk Clerk of two units in Criminal Legislation Directorate at the Ministry of Justice, Museumstrasse 7, Vienna

BELGIUM / Belgique**Apologised/Excusé**

Mme Sylvie HILGERS, Fonctionnaire sanctionnatrice déléguée – Attachée, Service public de Wallonie, Agriculture ressources naturelles environnement, Département de la Police et des Contrôles, Montagne Sainte-Walburge 2, bât 2 à 4000 Liège

Mme Delphine WYNANTS, Attachée, SPF Justice, Direction générale de la Législation, des Libertés et des Droits fondamentaux, Direction Droit pénal, Service des infractions et procédures particulières, 115 boulevard de Waterloo, 1000 Bruxelles

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BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Ms Sanela LATIĆ, Head of the Department for Cooperation with Judicial Bodies – Ministry of Justice

BULGARIA / BULGARIE

Mr Milen GEORGIEV, Chief Expert, Cooperation in Criminal Matters Unit, International Legal Cooperation and European Affairs Directorate, Ministry of Justice of the Republic of Bulgaria

CROATIA / CROATIE

Ms Mia BIČANIĆ ŠLOGAR, Head of Service, Ministry of Justice of the Republic of Croatia

CYPRUS / CHYPRE

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CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

Mr Šimon PEPŘÍK, Legislative Department, Ministry of Justice of the Czech Republic

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Ms Heidi NUMMELA

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Senior Specialised Prosecutor, National Prosecution Authority, Prosecution District of Southern Finland

FRANCE**Chair / Président**

M. Thomas GREGOIRE, Chef du bureau de la négociation pénale européenne et internationale

Mme Caroline BÖTSCHI, magistrate au sein du bureau de la négociation pénale européenne et internationale

GEORGIA / GÉORGIE

Ms Nino LATSABIDZE, Deputy Head of International Relations and European Integration Department, Ministry of Environmental Protection and Agriculture of Georgia

Ms Mariam KOTOLASHVILI, Specialist, Department for International Relations and Legal Affairs, Office of the Prosecutor General of Georgia

GERMANY / ALLEMAGNE

Mr Markus BUSCH, Federal Ministry of Justice and Consumer Protection

Ms Julia BARSCH, Federal Ministry of Justice and Consumer Protection

GREECE / GRÈCE

Mr Christos NAINOTOS, Deputy Prosecutor of the Court of First Instance of Thessaloniki

THE NETHERLANDS / PAYS-BAS

Ms Leontine SITEE, Senior Policy Officer, Ministry of Justice and Security, Turfmarkt 147, 2511 DP, The Hague

PORTUGAL

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RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

Mr Mikhail MOTURENKO, Senior Prosecutor of the International Cooperation Department of the Organizational and Legal Directorate of the Main Directorate of International Legal Cooperation of the Prosecutor General's Office of the Russian Federation

Mr Konstantin KOSORUKOV, Deputy to the Permanent Representative, Permanent Representation of the Russian Federation to the Council of Europe, 75, allée de la Robertsau - 67000 Strasbourg

SLOVENIA / SLOVÉNIE

Dr. Vasilka SANCIN, Associate Professor of International Law, Head of the Department of International Law, Director of the Institute for International Law and International Relations, Faculty of Law, University of Ljubljana, Poljanski nasip 2, 1000 Ljubljana

SPAIN / ESPAGNE

Mme Elsa GARCIA-MALTRAS, Procureure auprès du Secrétariat Technique du Bureau du Procureur Général de l'État de l'Espagne

SWITZERLAND / SUISSE

Mme Manon SIMON, Juriste, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Domaine de direction Droit pénal, Unité Droit pénal international

Mme Géraldine ZUMWALD, Juriste, Département fédéral de l'environnement, des transports, de l'énergie et de la communication DETEC, Office fédéral de l'environnement OFEV, Division Droit, Service Coordination de l'exécution et de la surveillance

TURKEY / TURQUIE

Mr Hikmet YILDIZ, Rapporteur Judge, Directorate General for International Relations and EU Affairs, Ministry of Justice of the Republic of Turkey

Mr Güray GÜÇLÜ, Legal Counselor, Permanent Representation of Turkey to the Council of Europe

UKRAINE

Mr Stanislav SONICH, Chief Specialist of the International Cooperation and Protocol Work Sector of the State Environmental Inspectorate of Ukraine

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EXPERTS / INTERVENANTS

Mme Véronique JAWORSKI, Senior Lecturer, University of Strasbourg, Researcher at the SAGE political social sciences laboratory / Maître de conférence HDR à l'Université de Strasbourg, Chercheur à SAGE

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EUROPEAN UNION / UNION EUROPÉENNE

M. Pascal ROCHE, National Expert in Professional Training (NEPT), Elève de l'Ecole nationale d'administration (ENA), European Commission, Directorate-General for Justice and Consumers, LX40 06/02, B-1049 Brussels

SECRETARIAT OF THE COUNCIL OF EUROPE
SECRETARIAT DU CONSEIL DE L'EUROPE

Directorate General of Human Rights and Rule of Law /
Direction Générale des droits de l'Homme et Etat de Droit

Mr Carlo CHIAROMONTE	Head of Criminal Law Division / <u>Secretary to the CDPC</u> Chef de la Division du droit pénal / <u>Secrétaire du CDPC</u>
Ms Phoebe JAMIESON	Administrative Officer / Administrateur
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Interpreters / Interprètes

Mme Corinne McGEORGE
M. Nicolas GUITTONNEAU

APPENDIX II

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CDPC-EC(2021)OJ3

Strasbourg, 8 September / septembre 2021

**EUROPEAN COMMITTEE
ON CRIME PROBLEMS
COMITÉ EUROPÉEN
POUR LES PROBLÈMES CRIMINELS
(CDPC)**

**WORKING GROUP OF EXPERTS ON THE ENVIRONMENT
AND CRIMINAL LAW
GROUPE DE TRAVAIL D'EXPERTS SUR L'ENVIRONNEMENT
ET LE DROIT PENAL
(CDPC-EC)**

3rd Meeting / 3^{ème} réunion

7-8 October / 7-8 octobre 2021

Online / en ligne

**AGENDA
ORDRE DU JOUR**

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

7 October 2021	
10:00	Opening of the meeting Welcome and opening remarks by Mr Thomas GRÉGOIRE, chair of the CDPC-EC Working Group
	Presentation of the draft skeleton of the Feasibility Study, prepared by Ms Véronique JAWORSKI, the Council of Europe Independent Expert
	Examination and exchange of views by the Working Group on the draft skeleton of the Feasibility Study
12:30 – 14:30	<i>Lunch break</i>
	Continued discussions and identification of possible elements to be added, removed or modified
17:00	<i>End of day one</i>

8 October 2021	
10:00	Continued discussions
12:30 – 14:30	<i>Lunch break</i>
	Finalisation of the draft skeleton of the Feasibility Study
	Identification of next steps
	Summary of discussions, outcomes and dates of next meeting
17:00	<i>Concluding remarks and close of the meeting</i>

7 octobre 2021	
10h00	Ouverture de la réunion Bienvenue et remarques introductives, par M. Thomas GRÉGOIRE, président du Groupe de Travail CDPC-EC
	Présentation du projet de squelette de l'étude de faisabilité, préparé par Mme Véronique JAWORSKI, l'expert indépendant du Conseil de l'Europe
	Examen et échange de vues par le groupe de travail sur le projet de squelette de l'étude de faisabilité
12h30 – 14h30	<i>Pause de midi</i>
	Poursuite des discussions et identification des éventuels éléments à ajouter, supprimer ou modifier
17h00	<i>Fin du premier jour du réunion</i>

8 octobre 2021	
10h00	Poursuite des discussions
12h30 – 14h30	<i>Pause de midi</i>
	Finalisation du projet de squelette de l'étude de faisabilité
	Identification des prochaines étapes
	Résumé des discussions, résultats et dates de la prochaine réunion
17h00	<i>Remarques finales et clôture de la réunion</i>