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

www.coe.int/cdpc | dgi-cdpc@coe.int
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.
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

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FINLAND / FINLANDE
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Ms Heidi NUMMELA
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 NAINTOS, 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
Mr António FOLGADO, Legal Adviser, Cabinet of the Minister for Justice

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SLOVENIA / SLOVÉNIE
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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

* * * *

EUROPEAN UNION / UNION EUROPÉENNE

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


Mr Carlo CHIAROMONTE Head of Criminal Law Division / Secretary to the CDPC
Chef de la Division du droit pénal / Secrétaire du CDPC

Ms Phoebe JAMIESON Administrative Officer / Administrateur

Ms Marjaliisa JÄÄSKELÄINEN Assistant / Assistante

**Interpreters / Interprètes**

Mme Corinne McGEORGE
M. Nicolas GUITTONNEAU
APPENDIX II

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
<table>
<thead>
<tr>
<th>Time</th>
<th>Session Details</th>
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<tbody>
<tr>
<td>10:00</td>
<td><strong>Opening of the meeting</strong>&lt;br&gt; Welcome and opening remarks by Mr Thomas GRÉGOIRE, chair of the CDPC-EC Working Group</td>
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<tr>
<td></td>
<td>Presentation of the draft skeleton of the Feasibility Study, prepared by Ms Véronique JAWORSKI, the Council of Europe Independent Expert</td>
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<tr>
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<td>Examination and exchange of views by the Working Group on the draft skeleton of the Feasibility Study</td>
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<tr>
<td>12:30 – 14:30</td>
<td><strong>Lunch break</strong></td>
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<td></td>
<td>Continued discussions and identification of possible elements to be added, removed or modified</td>
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<td>17:00</td>
<td><strong>End of day one</strong></td>
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<td>Finalisation of the draft skeleton of the Feasibility Study</td>
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<td>Identification of next steps</td>
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<td></td>
<td>Summary of discussions, outcomes and dates of next meeting</td>
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<td>17:00</td>
<td><strong>Concluding remarks and close of the meeting</strong></td>
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# 7 octobre 2021

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

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<td>Identification des prochaines étapes</td>
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<td>Résumé des discussions, résultats et dates de la prochaine réunion</td>
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<tr>
<td>17h00</td>
<td><strong>Remarques finales et clôture de la réunion</strong></td>
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