



Strasbourg, 20 October 2023

PC-ENV(2023)06

COMMITTEE OF EXPERTS ON THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW (PC-ENV)

2nd meeting

16-18 October 2023

Strasbourg, Council of Europe

MEETING REPORT

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

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I. Background

On 23 November 2022, the Committee of Ministers of the Council of Europe adopted the Terms of Reference for a new Committee of Experts on the Protection of the Environment through Criminal Law (PC-ENV). The PC-ENV was subsequently established and entrusted with the elaboration of a new draft Convention on the Protection of the Environment through Criminal Law.

The PC-ENV held its 1st meeting, in Strasbourg, on 3-4 April 2023. Following the decisions of the first meeting, a draft Convention on the Protection of the Environment through Criminal Law, prepared by the Secretariat in consultation with the Chair and Vice-Chair, was sent to all PC-ENV members, who then provided written comments to form as a basis for future negotiations.

II. Opening of the second meeting

The PC-ENV held its 2nd meeting on 16-18 October 2023 at the Council of Europe in Strasbourg. The meeting was opened by Mr Šimon Pepřík, Chair of the PC-ENV, who welcomed all participants and expressed his appreciation for the contributions received. He briefly presented the background to the PC-ENV's work, highlighting that the establishment of the PC-ENV followed from a comprehensive Council of Europe Feasibility Study which identified the appropriateness and feasibility of a new Convention on the Protection of the Environment through Criminal Law, and reminded participants of the outcomes of its 1st meeting. He also outlined the aim of the 2nd meeting, noting that the PC-ENV would provide general comments on the draft Convention followed by the first reading of Articles 1-30 based on the written comments provided by the delegations.

Mr Carlo Chiaromonte, Secretary to the PC-ENV, presented the structure of the draft Convention.

Representatives of the European Commission presented a brief explanation concerning its mandate representing 25 EU member States.

III. General comments on the Draft Convention by PC-ENV members

The Chair opened the floor for delegations to provide general comments on the draft Convention. Many delegations thanked the Secretariat and expressed their general satisfaction with the text of the draft Convention. The PC-ENV reaffirmed its commitment to work on a draft text that can become a successful Convention ratified by a high number of States and that will therefore enhance the global capacity for responding to environmental crime, given the gravity of its impacts and its links to biodiversity loss, climate change and organised crime.

Delegations affirmed the importance of drafting the future Convention with a view on enhancing the protection of the environment through criminal law while maintaining coherence with existing international texts on the topic and respecting the well-established criminal law principles such as the principles of legality, foreseeability and proportionality.

Some delegations also underlined the importance of taking into account the specificities of States' constitutional traditions, domestic law systems and national circumstances.

IV. First reading on the provisions of the draft Convention on the Protection of the Environment through Criminal Law

Chapter I – Purposes, scope, definitions, non-discrimination and general obligations

The Chair opened the floor for a first reading of the draft Convention, inviting delegations to provide specific comments on each Article, starting from Chapter I "Purposes, scope, definitions, non-discrimination and general obligations". The PC-ENV considered Articles 1 "Purpose of the Convention" and 4 "Principle of non-discrimination" generally acceptable, subject to refinements in their redaction.

On Article 2 "Scope of the Convention", most delegations agreed to place paragraph 2 between square brackets and reconsider it at the next meeting.

On Article 3 “Definitions”, the members considered whether the term “environment” should be deleted and raised questions on several other definitions, notably of the terms “unlawful” and “wild fauna or flora”. Delegations underlined the need to hold further discussions concerning the definitions since this is very much linked to other articles, especially those containing substantive criminal law provisions. They pointed out the important contributions of other international treaties in this respect, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Some delegations suggested adding to Article 3 definitions such as “serious crime” and “victim”. It was decided to revisit this article at a later stage.

Most delegations agreed to place Article 5 “State obligations and due diligence” between square brackets and reconsider it at the next meeting.

Chapter II – Integrated policies and data collection

While the delegations generally welcomed the provisions of this Chapter aiming at ensuring better coordination and co-operation in national policies designed to prevent and combat the offences established in the draft Convention, they also highlighted the need to take into consideration the additional administrative burden these measures may cause to different States and the possibility of allowing therefore for more flexibility.

Articles 6 “Comprehensive and co-ordinated policies”, 7 “National strategy” and 10 “Data collection and research” were generally accepted and kept in the draft Convention, with some proposed amendments and the deletion of Article 7 (c). Delegations considered that Article 8 could be endorsed and proposed changing its title from “Financial resources” to “Resources”.

Most delegations considered Article 9 “Non-governmental organisations and civil society” to be generally acceptable, however in need of substantive amendments and clarifications. It was decided to revisit this article at a later stage.

Chapter III – Prevention

Several delegations questioned the inclusion of provisions falling outside the scope of criminal law when exchanging views on Chapter III “Prevention” and requested the deletion of Articles 14 “Education”, 15 “Participation of the private sector and the media” and 16 “Assessment of environmental claims”. On Article 11, most delegations were in favour of deleting paragraph 3.

Most delegations were in favour of proposed amendments on Article 12 “Training of professionals” and Article 13 “Awareness-raising” and agreed to revisit Article 13 at the next meeting. Many delegations expressed their wish to further develop the terminology adopted in these provisions in the Explanatory Report that will be discussed by the Committee at a later stage.

Chapter IV – Substantive criminal law

Before examining each of the offences presented in the draft Convention when examining Chapter IV “Substantive criminal law”, the members exchanged views on general aspects concerning several provisions present in the Chapter. Some delegations were in favour and some against the introduction of negligence in this Convention, considering the differences in domestic legal systems. The Committee decided to revisit this question in the next meeting.

Each paragraph of the articles on specific offences was examined individually. Article 17 “Unlawful discharge, emission or introduction of materials, substances or radiation”, Article 18 “Unlawful collection, transport, recovery, disposal or shipment of waste”, Article 21 “Unlawful abstraction of surface water or groundwater”, Article 22 “Trading of unlawfully harvested timber” and Article 24 “Unlawful killing or trading of wild fauna or flora” were generally considered welcome by delegations, with minor changes.

Article 19 “Unlawful operation or closure of an installation concerning a dangerous activity or dangerous substances” remained unaltered.

Members generally considered that Article 20 “Unlawful disposal or recycling of ships or ship-source discharges of polluting substances” and Article 25 “Unlawful deterioration of habitats or disruption of ecosystems” can be endorsed, with some amendments.

Most delegations proposed the deletion of Article 23 “Unlawful fishing”. Despite most delegations having spoken in favour of deleting it Article 26 “Unlawful mining and trafficking in minerals and metals”, some members of the group considered this could be an important provision going forward. Therefore, the group decided to place it between square brackets and reconsider it at the next meeting.

After an exchange of views between several delegations on Article 27 “Ecocide”, the Committee decided that the provision should remain in the draft Convention, in principle. The Group expressed a strong preference for “option B” and decided to delete “option A”. For the next meeting, members agreed to amend “option B” substantially or to propose a new text on its basis, and that the content to be developed for this provision should be elaborated taking into account existing national experiences on similar provisions concerning the most severe environmental offences, as well as ongoing work in this topic carried out in other fora.

While Article 28 “Aiding, abetting and attempt” was generally well received, some members pointed out that this provision should be applicable to some but not all offences present in the draft Convention.

Most elements of Article 29 “Jurisdiction”, being standard Council of Europe provisions, were generally accepted. However, some delegations requested the deletion of (1e) and (3) from Article 29, and the Committee agreed to place these excerpts between square brackets and reconsider them at the next meeting.

The specific negotiations were concluded with an exchange of views on Article 30, which was accepted.

The list of offences was generally well received by delegations, who nonetheless stressed the need clarify certain expressions, such as “negligible quantity” present in Articles 18, 22, and 24, in order to observe the principles of legality, foreseeability and legal certainty. They made suggestions on the terminology to be employed in most offences and proposed to present alternatives in written form ahead of the 3rd meeting.

The Chair concluded the debates on each provision by summarising the delegation’s comments and suggestions for modifications to the text of the draft Convention, forming a basis for future negotiations.

V. Next steps and closing of the meeting

The Chair underlined that the edited document containing the delegations’ comments and suggestions for modifications to the draft Convention would be finalised by the Secretariat, following the PC-ENV’s insightful debates, to include the alternative outlines of Articles 1-30 as proposed by delegations during this meeting. This document will be distributed to the PC-ENV well in advance of the substantive discussions to follow at the third meeting, which will be dedicated to the first reading negotiations of the remaining articles and to a debate on the questions raised during the 2nd meeting.

The Chair encouraged delegations to further reflect on these questions and noted that delegations wishing to provide elements on the topics discussed at the 2nd meeting are welcome to send them in written form ahead of the discussions to be held at the 3rd meeting.

The 3rd meeting of the PC-ENV will be held on 27-29 February 2024 at the Council of Europe in Strasbourg. The meeting close at 4:00 p.m. on Thursday, 29 February 2024. The Chair concluded the meeting by expressing his appreciation for the productive discussions.

To ensure continuity in the participation in the work already carried by the Committee, the same members should also attend future meetings, whenever possible.

APPENDIX I – Agenda

16 October 2023	
10:00 a.m.	Opening of the meeting
	Welcome and opening remarks by Mr Šimon Pepřík, Chair of the PC-ENV, and Mr Carlo Chiaromonte, Secretary to the PC-ENV
	Adoption of the agenda
	Background information and aim of the second meeting
	Presentation of the draft Convention on the Protection of the Environment through Criminal Law
	Opportunity for general comments on the Draft Convention before specific debates on provisions
	<i>Coffee break</i>
	Negotiations on the provisions of the draft Convention on the Protection of the Environment through Criminal Law on the basis of the written comments provided by the delegations: <ul style="list-style-type: none"> • Articles 1 - 5
12:30 – 2:00 p.m.	<i>Lunch break</i>
	Negotiations on the provisions of the draft Convention on the Protection of the Environment through Criminal Law on the basis of the written comments provided by the delegations: <ul style="list-style-type: none"> • Articles 6 - 10
	<i>Coffee break</i>
	Continued
5:30 p.m.	End of day one

17 October 2023	
9:30 a.m.	Negotiations on the provisions of the draft Convention on the Protection of the Environment through Criminal Law on the basis of the written comments provided by the delegations: <ul style="list-style-type: none"> • Articles 11 - 15
	<i>Coffee break</i>
	Continued
12:30 – 2:00 p.m.	<i>Lunch break</i>

	Negotiations on the provisions of the draft Convention on the Protection of the Environment through Criminal Law on the basis of the written comments provided by the delegations: <ul style="list-style-type: none"> Articles 16 - 20
	<i>Coffee break</i>
	Continued
5:30 p.m.	End of day two

18 October 2023	
9:30 a.m.	Negotiations on the provisions of the draft Convention on the Protection of the Environment through Criminal Law on the basis of the written comments provided by the delegations: <ul style="list-style-type: none"> Articles 21 - 25
	<i>Coffee break</i>
	Continued
12:30 – 2:00 p.m.	<i>Lunch break</i>
	Negotiations on the provisions of the draft Convention on the Protection of the Environment through Criminal Law on the basis of the written comments provided by the delegations: <ul style="list-style-type: none"> Articles 26 - 30
	<i>Coffee break</i>
	Identification of next steps
	Summary of discussions, outcomes and dates of next meeting
5:00 p.m.	Concluding remarks and close of the meeting

Appendix II - List of participants

MEMBER STATES / ETATS MEMBRES

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CYPRUS / CHYPRE

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Counsel of the Republic A

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Šimon PEPŘÍK

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ESTONIA / ESTONIE

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FINLAND / FINLANDE

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GEORGIA / GEORGIE

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Federal Ministry of Justice

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Deputy Prosecutor of the Appeals Court of Athens

IRELAND / IRLANDE

Ms Aoife BYRNE
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**STATES HAVING OBSERVER STATUS WITH THE COUNCIL OF EUROPE /
ETATS AYANT LE STATUT D'OBSERVATEURS AUPRES DU CONSEIL DE
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HOLY SEE / SAINT-SIEGE

Maître Jean PAILLOT

* * * *

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* * * *

**COUNCIL OF EUROPE BODIES AND INSTITUTIONS /
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PACE Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly

**STANDING COMMITTEE OF THE BERN
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Secretary of the Bern Convention on biodiversity

Ms Eleanor HOURIGAN

Secretary to the Committee on Legal Affairs and Human Rights - Committee on the Election of Judges to the European Court of Human Rights

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

**Directorate General of Human Rights and Rule of Law /
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