

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 11 March 2024

PC-ENV(2024)02

COMMITTEE OF EXPERTS ON THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

3rd meeting

27-29 February 2024

Strasbourg, Council of Europe

MEETING REPORT

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

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The 3rd meeting of the PC-ENV took place on 27-29 February 2024 at the Council of Europe in Strasbourg. The Committee continued with the first reading of the articles of the draft Convention that had not been examined at the 2nd meeting (Articles 31 to 56).

Chapter IV – Substantive criminal law

Articles 31 (“Sanctions and measures”) and 32 (“Aggravating circumstances”) were agreed with few amendments (mainly on 31 where two possible measures on legal persons were added: a) publication of a judicial decision or part of it and b) obligation to install due diligence schemes; and on 32 where a new aggravating circumstance related to the case where substantial profits were made, was proposed to be re-examined at the next meeting). A new Article 31bis (“Deferred prosecution of environmental judicial agreements”) was suggested and will be discussed at the next meeting. On Article 33, there was a general agreement to keep this article in square brackets and make a final decision at the next meeting. It was clarified that this same provision can be found in many other Council of Europe conventions.

Chapter V – Investigation, prosecution and procedural law

Article 34 (“Initiation and continuation of proceedings”) was considered acceptable by the group. New wording was proposed for Article 35, which is now titled “Rights to participate in proceedings”, which was well accepted, with additional clarifications to be made in the Explanatory Report.

On Article 36 (“International co-operation in criminal matters”), the Committee generally agreed on the text taking notably into account that this is a general standard provision already existing in many other Council of Europe conventions. However, two improvements were required and agreed: a) to simplify the wording of paragraph 1 and b) this provision needs to be completed by a specific article on data protection. Therefore, a new Article 36 bis “Data protection” was envisaged and two options for a possible formulation were suggested.

The PC-ENV considered that Article 37 (“Information”) required further reflection and the vast majority of the delegations expressed serious doubts about the need and the real added value of keeping this provision in the Convention. Therefore, the article was kept in the draft Convention between square brackets for further debates at the next meeting.

Chapter VI – Measures for protection

Some delegations proposed amendments to the wording of Article 38 (“The standing of victims in criminal investigations and proceedings”) and Article 39 (“Protection of witnesses”), which were added for examination at the next meeting.

Delegations also proposed amendments to Article 40, now entitled “Protection of persons who report offences and cooperate with justice” and concluded that the provision should be placed between square brackets to be revisited at the next meeting.

Chapter VII – Monitoring mechanism

The Committee agreed on the need and appropriateness of a monitoring mechanism and held an exchange of views on its possible functions. Some delegations raised concern on the potential administrative burden stemming from a “strong” mechanism such as the one currently presented by the Secretariat in the draft Convention (inspired by the Istanbul Convention). Delegations concluded this initial debate on Chapter VII by asking the Secretariat to provide an alternative Chapter with provisions drafted taking inspiration from previous Council of Europe Conventions disposing of a “softer” monitoring system, for comparison. Whatever the final mechanism will be, there was general agreement on deleting Article 45 (“Parliamentary involvement in monitoring”).

The second option will help the debates to be held at the next meeting on the choice for a basis model for a monitoring mechanism. The group will evaluate the current monitoring mechanism provisions presented in the initial draft Convention with the new model to be circulated, with a view to choosing one of these options as the basis for a subsequent article-by-article negotiation.

Chapter VIII – Relationship with other international instruments, Chapter IX – Amendments to the Convention, and Chapter X – Final clauses

The group held an exchange of views with Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law of the Treaty Office of the Council of Europe, concerning Chapters VIII, IX and X.

Most elements of these chapters, being standard Council of Europe provisions, were generally accepted. However, there were several amendments proposed to the wording of Article 46 (“Relationship with other international instruments”), which has been retitled as “Relationship with other sources of international law”.

Moreover, the Committee agreed to place the 4th paragraph of Article 53 (“Reservations”), as well as all Article 54 (“Validity and review of reservations”) between square brackets until further discussions at the next meeting, noting that these provisions, which are linked, should be re-examined together.

Second reading of Articles 1 to 28 of the draft Convention on the Protection of the Environment through Criminal Law

The PC-ENV proceeded with the second reading of Articles 1 to 28 of the draft Convention, and agreement was reached on most issues.

On Article 3 (“Definitions”), the group agreed on the deletion of the definition of “environment” and decided on the definitions of “unlawful”, “water”, “ecosystem” and “waste”. At the request of some delegations who pointed out the need to hold further discussions, two other definitions (“habitat” and “fauna or flora”) are also preliminary deleted but kept in square brackets so that the issue of keeping these two definitions or not will be revisited, since this is very much linked to other articles in the Convention where these terms are used, especially those containing substantive criminal law.

Most of the other articles examined during the second reading were deemed acceptable, in some cases subject to minor amendments.

The group concluded in favour of the deletion of articles 5 (“State obligations and due diligence”) and 9 (“Non-governmental organisations and civil society”).

On Chapter IV (“Substantive criminal law”), there was a general positive reaction to the new structure in the revised draft Convention, which was proposed by the Secretariat taking into account the group’s suggestions through written comments and the debates held during the 2nd meeting. The Committee pointed out that the changes – which included the separation of the offences by article, organised thematically into Sections – provided better clarity and readability and should therefore be accepted, with minor adjustments in the titles.

Certain horizontal questions on the formulation to be adopted throughout the text were discussed, such as to delete the words “and other” before “measures” and to consider the opportunity to delete the word “necessary” before “legislative”. Also some other issues were identified as requiring further examination, such as the wording “fauna or flora” or “animals or plants” and the addition of a sentence on a notification from Parties to identify the domestic provisions that they decide to make subject to paragraph 1 of certain provisions on substantive criminal law and notify them to the Secretariat / GREEN (or any other monitoring body established by the Convention). Certain structural questions were also raised, such as the division of Articles 24 and 24bis on offences involving wild fauna and flora and the matter of choosing a list of which offences to be included under Article 28, paragraph 2 (“attempt”).

Concerning Article 27 (previously titled “Ecocide” and currently preliminary retitled “Offences related to severe, widespread, long-term environmental damage”), the group agreed on the content of the provision, as revised after the 2nd meeting, and to reflect on different terms that can be employed in the provision (such as “serious crime”, “qualified offence” or another possible solution) in order to clearly qualify the offence itself.

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, and will be distributed to the PC-ENV shortly.

The 4th meeting of the PC-ENV will be held from 4 to 6 June 2024 (with a possible 4th day on 7 June) at the Council of Europe in Strasbourg. The Chair thanked the participants and reminded the delegations that in the next meeting the group will finalise the negotiations on all the provisions of the draft Convention, and a final decision is to be made on the content of all the articles. The Chair also underlined the only remaining issue to be dealt with by the PC-ENV before concluding its work will be then to agree on the Explanatory Memorandum. He proposed to consider how to do that at the next meeting.

APPENDIX I – Agenda

27 February 2024	
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 third meeting
	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 31 - 40
<i>11:00 a.m.</i>	<i>Coffee break</i>
	Continued
<i>12:30 – 2:00 p.m.</i>	<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"> • Chapter VII - Monitoring mechanism
<i>3:30 p.m.</i>	<i>Coffee break</i>
	Continued
5:30 p.m.	End of day one
28 February 2024	
9:30 a.m.	Presentation of Chapters VIII, IX and X of the draft Convention by the Treaty Office
<i>11:00 a.m.</i>	<i>Coffee break</i>
	Presentation of the revised draft Convention on the Protection of the Environment through Criminal Law and its second reading
<i>12:30 – 2:00 p.m.</i>	<i>Lunch break</i>
	Continued
<i>3:30 p.m.</i>	<i>Coffee break</i>
	Continued
5:30 p.m.	End of day two

29 February 2024	
9:30 a.m.	Possible second reading of the whole draft Convention
11:00 a.m.	<i>Coffee break</i>
	Continued
12:30 – 2:00 p.m.	<i>Lunch break</i>
	Continued
	Identification of next steps
	Summary of discussions, outcomes and dates of next meeting
4:00 p.m.	Concluding remarks and close of the meeting

Appendix II – List of participants

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* * * *

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