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

4th meeting

4-7 June 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 4th meeting of the PC-ENV took place on 4-7 June 2024 at the Council of Europe in Strasbourg, under the Chairmanship of Mr Šimon Pepřík (Czechia). The Committee continued with the second reading of the articles of the draft Convention that had not been re-examined at the 3rd meeting (Articles 29 to 56).

Chapter IV – Substantive criminal law

Articles 29 (“Jurisdiction”) and 30 (“Liability of legal persons”) were agreed and closed. The group agreed to add to Article 31 (“Sanctions and measures”) the two proposals on additional measures presented in the previous meeting: a) publication of a judicial decision or part of it and b) the obligation to install due diligence schemes. Article 31bis (“Deferred prosecution of environmental judicial agreements”), a new article suggested at the 3rd meeting, was deleted on the basis that the concept of deferred prosecution agreements exists only in a few member States.

The group agreed to include in Article 32 (“Aggravating circumstances”) a new aggravating circumstance related to the case where the offence generated substantial financial benefits or avoided substantial expenses. An additional paragraph clarifying that the aggravating circumstance related to where the offence “caused severe and widespread, or severe and long-term, or severe and irreversible damage” does not apply to the offence in Article 27 (“Particularly serious offence”) was included in order to ensure that there is a clear relationship between those two provisions.

On Article 33, the square brackets were removed, and the drafting group agreed on its content and inclusion.

Chapter V – Investigation, prosecution and procedural law

Article 34 (“Initiation and continuation of proceedings”) was accepted by the group. The new wording proposed for Article 35 (now titled “Rights to participate in proceedings”) in the previous meeting was also accepted by the delegations.

A new section titled “International co-operation” was added to ensure optimal clarity and includes now three Articles. On Article 36 (“International co-operation in criminal matters”), the Committee agreed to accept the alternative formulation which clearly sets out the purposes for which the Parties shall co-operate with each other. Article 37 (“Information”) was subject to much discussion before the PC-ENV agreed on a new wording and to keep the provision in the Convention. The two articles were complemented by a specific article on data protection, setting out the conditions which need to be compiled with for personal data to be transferred.

Chapter VI – Measures for protection

The Committee agreed on the content and wording of Articles 38 (“The standing of victims in criminal investigations and proceedings”), 39 (“Protection of witnesses”), and 40 (now entitled “Protection of persons who report offences or cooperate with justice”).

Chapter VII – Monitoring mechanism

Following concerns raised by some delegations in the previous meeting on the potential administrative burden stemming from a “strong” monitoring mechanism, the Secretariat had provided an alternative Chapter with provisions drafted taking inspiration from previous Council of Europe Conventions disposing of a “softer” monitoring system. The PC-ENV agreed to include the “new” monitoring mechanism as proposed by the Secretariat. Delegations also discussed several potential measures to be included in the rules of procedure of the Committee of Parties to further ensure proper and effective monitoring and implementation of the Convention.

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

The amendments proposed to the wording of Article 46 (now titled “Relationship with other sources of international law”) in the previous meeting were accepted by the group. Concerning Article 48 (“Effects of

this Convention”), a new paragraph was included which sets out that Parties which are member States of the European Union will continue to apply European Union rules in their mutual relations, but with a clarification that this is without prejudice to the full application of the Convention in relations with other Parties. Articles 47, 49, 50, 51, and 52 were agreed and closed.

Concerning Article 53 (“Reservations”), two additions were made. Firstly, Article 29 paragraph 1.d, namely the obligation to establish jurisdiction when the offence is committed by one of a Party’s nationals abroad, was added to paragraph 2 of Article 53 to make it possible for Parties to reserve the right not to apply this provision or to apply it only in specific circumstances. The previous paragraph 3 (the right to provide for non-criminal sanctions instead of criminal sanctions) was deleted as it was considered unnecessary for the purposes of this Convention. A new paragraph 3 was introduced providing the possibility for regional integration organisations, based on its harmonised law, to declare and specify the scope of certain notions in the Convention. Concerning the withdrawal of reservations, the drafting Committee agreed to keep paragraph 4 of Article 53 and delete Article 54.

Discussion on remaining issues, including the preamble

The PC-ENV proceeded with discussing the issues which were remaining, and agreement was reached on all issues.

On Article 3 (“Definitions”), the group concluded in favour of the deletion of the definitions of “habitat” and “wild fauna or flora”. It was further agreed to move Article 12 (“Training of professionals”) to Chapter II (“Integrated policies and data collection”).

On Chapter IV (“Substantive criminal law”), the issues remaining were certain horizontal questions on the formulation to be adopted throughout the text, such as to delete the words “and other” before “measures” and to consider the opportunity to delete the word “necessary” before “legislative”. The PC-ENV agreed to keep the word “necessary” and to delete “and other” before “measures” in this Chapter as criminal offences can only be established through legislative measures. However, the reference to “and other measures” was decided to be kept in other Articles, e.g. the Articles included under the Chapter on “Measures for protection”. Another issue identified as requiring further examination in the previous meeting was the wording “fauna or flora” or “animals or plants”. The Committee concluded in favour of the latter.

The group discussed the division of Articles 24 and 24bis on offences involving wild fauna and flora, and agreed for Article 24 to cover killing, destruction, taking of and possession while Article 24bis covers domestic and international trade.

Concerning Article 27 (previously titled “Ecocide”), the Committee agreed to name this offence “particularly serious offence” and to provide for further explanation in the Explanatory Memorandum that while all offences in the Convention are serious, this offence is to be considered particularly serious. It was also agreed to add an additional section titled “General provisions of criminal law” after Article 27 to ensure clarity and readability.

The PC-ENV concluded in favour of including a list of offences under Article 28, paragraph 2 (“attempt”), and added an additional paragraph setting out the possibility for Parties to establish attempt as an offence for further offences laid down in the Convention.

Finally, the Committee discussed the preamble to which several additions were made, including reference to the important role of civil society in the area of prevention and detection of environmental crime, and the importance of due diligence by legal persons to ensure environmental protection and prevention of environmental offences. Reference to a number of Council of Europe Parliamentary Assembly Resolutions and Recommendations calling for the recognition of ecocide was also included.

Next steps and closing of the meeting

Following successful negotiations, the PC-ENV agreed on the text of the Convention and decided that it will not be open to debate again. The Chair congratulated the Committee on finalising and approving the text of the draft Convention on the Protection of the Environment through Criminal Law and underlined that the final text will be formatted by the Secretariat and distributed to the PC-ENV shortly.

The 5th and final meeting of the PC-ENV will be held from 7 to 9 October 2024 at the Council of Europe in Strasbourg and will be dedicated entirely and only to discuss and agree on the Explanatory Memorandum.

APPENDIX I – Agenda

4 June 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 fourth meeting
	Second reading of the provisions of the draft Convention on the Protection of the Environment through Criminal Law: <ul style="list-style-type: none"> • Articles 29 – 56
11:00 a.m.	<i>Coffee break</i>
	Continued
12:30 – 2:00 p.m.	<i>Lunch break</i>
	Continued
3:30 p.m.	<i>Coffee break</i>
	Continued
5:30 p.m.	End of day one

5 June 2024	
9:30 a.m.	Discussion on remaining issues, including the preamble
11:00 a.m.	<i>Coffee break</i>
	Continued
12:30 – 2:00 p.m.	<i>Lunch break</i>
	Continued
3:30 p.m.	<i>Coffee break</i>
	Continued
5:30 p.m.	End of day two

6 June 2024	
9:30 a.m.	Discussion on remaining issues, including the preamble
11:00 a.m.	<i>Coffee break</i>
	Continued
12:30 – 2:00 p.m.	<i>Lunch break</i>
	Continued
3:30 p.m.	<i>Coffee break</i>
	Continued
5:30 p.m.	End of day three

7 June 2024	
9:30 a.m.	Completion of the text of the draft Convention
11:00 a.m.	<i>Coffee break</i>
	Continued
12:30 – 2:00 p.m.	<i>Lunch break</i>
	Approval of the text of the draft Convention on the Protection of the Environment through Criminal Law
	Discussion on how to proceed with the Explanatory Memorandum
	Identification of next steps
	Summary of discussions and outcomes
4:00 p.m.	Concluding remarks and close of the meeting

Appendix II – List of participants

MEMBER STATES / ETATS MEMBRES

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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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* * * *

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