

*September 2023*

**FEEDBACK ON THE COUNCIL OF EUROPE'S DRAFT CONVENTION ON THE PROTECTION  
OF THE ENVIRONMENT THROUGH CRIMINAL LAW**

*Joint NGO briefing paper*

The Global Initiative to End Wildlife Crime and the European Environmental Bureau, together with the undersigned organisations, commend the European Committee on Crime Problems (CDPC) Secretariat, Directorate General I (Human Rights and Rule of Law) for preparing a comprehensive initial draft of the Convention on the Protection of the Environment through Criminal Law ('the draft Convention'). We believe this initial draft provides a good starting point for negotiations and we look forward to contributing to the work of the Committee of Experts on the Protection of the Environment through Criminal Law (PC-ENV) to develop an ambitious text by June 2024.

We warmly welcome the proposed objectives to establish minimum standards in environmental criminal law, encourage and facilitate coordinated policies and intra- and inter-State collaboration, and identify resourcing requirements to enable relevant authorities to effectively address environmental crime. We also welcome the reference to measures aimed at preventing crimes from occurring in the first place, and applaud the inclusion of provisions on the rights of whistleblowers, victims, witnesses and other collaborators of justice, as well as the recognition of the important role civil society organisations can play.

After carefully reviewing the draft Convention, we have a number of comments and suggestions aimed at improving the effectiveness of the Convention, which are summarised below. **For specific textual recommendations and an article-by-article analysis please consult [our full commentary](#).**

**GENERAL FEEDBACK**

To effectively prevent and combat environmental crime across Europe, greater harmonisation of environmental criminal law - and better coordination and cooperation in its enforcement - is urgently needed. Creating consistency among different countries' legislation would prevent criminals from exploiting loopholes and taking advantage of countries in which the rules and/or their enforcement are weaker. Clearly identifying conducts constituting a criminal offence is key.

It is also critical to clearly define minimum sanctions for such conducts that should be proportionate but dissuasive, as environmental crimes continue to be seen as low risk/high gain activities. The robust and consistent enforcement of the Convention by the Parties and their national authorities should be prioritised, as this will determine its effective impact.

**This briefing paper also receives support from the following civil society organisations:**



## **FUTURE PROOFING**

The draft proposal relies on a set of articles establishing a list of criminal offences under the Convention. It would be prudent for the Convention to include provisions to **enable the future incorporation of additional environmental criminal offences**. A solution is to include autonomous definitions encompassing any conduct which could become an environmental crime in the future.

## **ENFORCEMENT**

### **• *Greater legal clarity on terminology (definitions and guidance for interpretation)***

The Convention, which draft was broadly inspired by the EU Environmental Crime Directive (ECD), should build on the learnings of the Directive's evaluation uncovering that a lack of clarity in the ECD's language has impaired its implementation. In light of this, greater legal clarity is needed with regard to the definition of certain terms employed in the Convention (e.g. "substantial damage", "negligible quantity", "victim", "legal person" etc). Comprehensive guidelines should be developed to assist Parties in applying the Convention effectively and consistently.

### **• *Adequate resources, training and tools***

The designation, establishment and/or strengthening, and assignment of specialised units with expertise in environmental crime within the enforcement, inspection, prosecutorial and judicial authorities to environmental cases should be mandatory. These units must be provided with adequate financial and human resources, as well as the tools and training required to carry out their duties effectively.

## **PROPORTIONATE, DISSUASIVE AND HOMOGENEOUS SANCTIONS AND MEASURES**

Currently the draft Convention only includes a set of possible sanctions. However, **minimum standards for sanctions should be established** for both natural and legal persons to facilitate enforcement and uniformity and align with international standards relating to serious crimes. Sanctions will only be effective if they are set at a level that acts as a real and observable deterrent. As such, sanctions for natural persons should, as a minimum, include **deprivation of liberty of at least four years**, as per the definition of 'serious crime' in the United Nations Convention against Transnational Organised Crime (UNTOC). Monetary sanctions should impose a real financial impact on legal persons, and be calculated on the basis of their total worldwide turnover, taking into account any financial gains resulting from the criminal activity.

Moreover, convicted perpetrators should not be allowed to profit from their crimes as a result of lenient penalties. The financial burden of a monetary sanction should be at least as high as the combined cost of remediation of the damage caused, of the reinstatement of the environment, and any compensation associated with civil and environmental liability. Sanctions should include the ability to order remediation or reinstatement.

## **EFFECTIVE INTRA- AND INTER-STATE COORDINATION AND COOPERATION**

Comparable national strategies are essential for consistency in the fight against environmental crimes. They should detail how Parties intend to enforce the Convention, and be reviewed and updated at regular intervals.

National specialised coordination bodies should be established, with a focal point to liaise with both the specialised units within the national territory and the focal points of other Parties. Detailed information about the focal points should be restricted in order to protect the identity of staff. These bodies must receive homogeneous training and be provided with adequate resources and tools to enable the exchange of information and the sharing of good practices, in order to improve cross-border cooperation.

The global nature of environmental crimes and the need for cooperation with third countries to prevent and combat them should be addressed, and jurisdiction should be extended to increase environmental protection.

### **MONITORING, REPORTING AND EVALUATION**

An effective data reporting, monitoring and evaluation system should be established to evaluate the impact of the Convention and its enforcement. Detailed data should be regularly provided by Parties to the relevant monitoring authorities in a standard format, in order to facilitate evaluation and provide a greater understanding of new developments and trends in environmental crime, as well as to inform the list of environmental offences established under the Convention.

### **ADDITIONAL SUGGESTIONS AND COMMENTS**

- International Conventions regulating the trade in species of wild fauna and flora do not currently cover a large number of species which are protected in their country of origin. Once smuggled out from these countries, these specimens can be legally traded in the Council of Europe's territory. The Convention should establish as **a criminal offence the trade in, possession or use of any species that has been taken unlawfully from its country of origin.**
- The rights of access to information, participation and access to justice must be ensured in the Convention. This entails that raw statistical data on environmental crimes are published and made public alongside consolidated reports, and that relevant information about criminal proceedings related to environmental crimes is accessible to the public.
- **Whistleblowers, victims, witnesses** and other collaborators of justice must be protected and benefit from the same rights across the region. Whether they are natural or legal persons, their protection should be guaranteed, and they should be provided with the necessary assistance and support in the context of proceedings and this should be made explicit in the Convention. Reporting instruments should be put in place to enable whistleblowers to report environmental offences anonymously.
- We suggest reorganising and simplifying the table of contents of the Convention to facilitate its interpretation and application, including the creation of new Chapters dedicated to, for example, "Criminal offences" and "Liability, sanctions and measures".

**Detailed comments and specific textual recommendations on the draft Convention can be found in our [full commentary](#).**

### **ABOUT US AND CONTACTS**

**The Global Initiative to End Wildlife Crime** is a broad alliance of environmental, policy, legal, business and public health organisations and experts coming from across every continent, created to address serious gaps in the existing international legal framework for combating wildlife crime and regulating wildlife trade. For more information, visit our [website](#).

**The European Environmental Bureau** is the largest network of environmental citizens' organisations in Europe. It currently consists of over 180 member organisations in 40 countries, including a growing number of networks, and representing some 30 million individual members and supporters. For more information, visit our [website](#).

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