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Reinforcing the effectiveness of Council of Europe treaty law

Reply to Recommendation¹: Recommendation 1920 (2010)
Committee of Ministers

1. The Committee of Ministers has examined with interest Parliamentary Assembly [Recommendation 1920 \(2010\)](#) on “Reinforcing the effectiveness of Council of Europe treaty law”. It has transmitted it to the Committee of Legal Advisers on Public International Law (CAHDI), the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC), for information and comments. The Committee of Ministers agreed to communicate the recommendation to the European Union for information together with this reply.

2. The Committee of Ministers notes that the Council of Europe conventions constitute a unique integrated system of legal standards collectively defined within the Organisation and agreed upon by the member states. It considers that the Council of Europe should continue to play a major role in setting standards and developing international law in the areas of human rights’ protection, democracy and the rule of law.

3. In relation to the Parliamentary Assembly’s recommendation that the Committee of Ministers approve an action plan to secure ratification by all member states of the core Council of Europe treaties listed in an Appendix to Assembly [Resolution 1732 \(2010\)](#) on reinforcing the effectiveness of Council of Europe treaty law, the Committee of Ministers agrees with the Assembly that these are important conventions. It notes that their level of ratification is generally very high and that all, or almost all, Council of Europe member states have ratified a large part of the conventions enumerated. In addition, the Committee of Ministers or other Council of Europe bodies are regularly following the situation as regards the instruments with less ratifications. As an example can be mentioned the Committee’s yearly “tour de table” on the state of ratification of the European Social Charter and the European Social Charter (revised) and its related instruments. Moreover, twice a year, the Committee reviews the state of ratification of the protocols to the European Convention on Human Rights providing for the abolition of the death penalty. In accordance with their terms of reference, steering and ad hoc committees such as the Committee of Experts on Terrorism (CODEXTER) regularly review the situation as regards the ratification of instruments within their respective remits and report back to the Committee of Ministers. As a final example of measures taken to increase ratification of important Council of Europe conventions can be mentioned the recently launched campaign to stop sexual violence against children which will promote ratification of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Committee of Ministers will pursue this work which is very much in line with the Assembly’s recommendations, and will also undertake further steps to increase the level of participation in these and other instrumental conventions of the Council of Europe.

4. With regard to the issue of reducing the use of reservations, derogations and restrictive declarations, the Committee of Ministers refers to the activities carried out by CAHDI (see below), on which the latter reports regularly to the Committee of Ministers. CAHDI may also be asked to resume its listings of problematic reservations and declarations to treaties applicable to the fight against terrorism.

5. With regard to the Parliamentary Assembly’s recommendation for “pan-European model acts to supplement its treaties”, the Committee of Ministers notes that according to Article 15 of the Statute of the Council of Europe, it is the competent body of the Council of Europe to adopt decisions and/or to address

1. adopted at the 1114th meeting of the Ministers’ Deputies (25 May 2011).



recommendations to member states. The Statute foresees only two different categories of legal acts to be adopted by the Committee of Ministers, either conventions or recommendations. Furthermore, without ignoring the possible harmonising effect that such model acts might entail, such acts would not be consistent with the Council of Europe treaty practice. Moreover, states and their authorities should retain the flexibility required to incorporate international treaties into the respective domestic legal orders. Given that the Council of Europe member states have different systems of transforming treaty obligations into their national laws, it is not clear whether “pan-European model acts” could be of significant assistance in facilitating the implementation of Council of Europe treaties.

6. As regards the suggestion of the Parliamentary Assembly concerning the practice of the so-called “disconnection clause”, the Committee of Ministers recalls CAHDI’s report on the consequences of the so-called “disconnection clauses” and stresses the importance of maintaining a coherent approach when using such clauses in line with the Ministers’ Deputies decision of 10 December 2008.

7. Accession of the European Union to the European Convention on Human Rights is a high priority for the Council of Europe. The Committee of Ministers has given the CDDH the task “to elaborate, in co-operation with representative(s) of the European Union to be appointed by the latter, a legal instrument, or instruments, setting out the modalities for EU accession to the Convention, including its participation in the Convention system; and, in this context, to examine any related issue.” To facilitate this work, the CDDH has established an informal working group which has met on several occasions and is making good progress. The chairmanship of the Committee of Ministers informs the Parliamentary Assembly regularly about the progress made in this respect. It is hoped that the work under way will be completed rapidly.

8. The Committee of Ministers recalls that the Secretary General’s proposals on Council of Europe priorities for 2011 included a “review of the relevance of Council of Europe conventions”, which “will provide the basis for decisions on follow-up including measures to increase the visibility and the number of parties to relevant conventions”. On 17 February 2011, the Secretary General issued an “Outline of Convention Review”,² the main objectives of which is to identify: a set of conventions, applicable throughout the European continent, with a view to creating a common legal platform applicable in all member states in the areas of human rights, rule of law and democracy; obsolete conventions; conventions in need of modernisation (revision/updating); ways of promoting accession by non member states and ways of facilitating EU accession. The next step is the elaboration, in close consultation with the national authorities, relevant steering committees and CAHDI, of a comprehensive report for the attention of the Committee of Ministers by the end of September 2011. The report will also contain proposals for measures for each group of conventions, with the focus being on increasing the efficiency of individual instruments and the Council of Europe’s convention body as a whole.

9. The Committee of Ministers invites the Secretary General to keep in mind the Assembly’s recommendations and its list of important conventions in the elaboration of the above-mentioned report. The Committee of Ministers for its part will keep the Parliamentary Assembly informed about the outcome of this activity.

2. Document SG/Inf(2011)2.

Appendix 1 – Comments by the Committee of Legal Advisers on Public International Law (CAHDI)

1. On 9 June 2010, the Ministers' Deputies forwarded Parliamentary Assembly [Recommendation 1920 \(2010\)](#) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 15 October 2010.

2. In its recommendation, the Parliamentary Assembly asks the Committee of Ministers to:

- approve an action plan to secure the early ratification by all member states of the core Council of Europe treaties, as defined in the appendix to the Assembly resolution, with the fewest possible reservations;
- urge member states to withdraw their reservations, derogations and restrictive declarations concerning Council of Europe treaties, particularly the European Convention on Human Rights, and instruct the Committee of Legal Advisers on Public International Law (CAHDI) to intensify its existing efforts in this area and to reduce the use of such clauses;
- agree on an action programme of new conventions to be drawn up, as a matter of priority, over the next five years;
- instruct the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC), in close co-operation with the Council of Europe's Legal Advice Department and the Treaty Office, to examine the binding legal instruments within their respective areas of authority, with a view to identifying:
 - treaties that are still relevant but require updating;
 - treaties that are obsolete and should be abrogated;
 - treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and which should be withdrawn;
- in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts, consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties.

Furthermore, the Assembly asks the Committee of Ministers to draw up strict guidelines to control the practice of the so-called disconnection clause in Council of Europe treaties, on the base of the work of the CAHDI, in order to ensure the coherence of the Council of Europe treaty law, and to avoid establishing new dividing lines in Europe.

3. The CAHDI examined the above-mentioned Recommendation at its 40th meeting (Tromsø, 16-17 September 2010) and adopted the following comments which are of particular relevance to the activities of the CAHDI and to its mandate (public international law).

4. From the outset, the CAHDI observes that the Council of Europe conventions constitute a unique integrated system of legal standards collectively defined within the Organisation and agreed upon by the member states. The Council of Europe should continue playing a major role in setting standards and developing international law in the areas of human rights' protection, democracy and the rule of law.

5. In this context, and as regards the issue of reducing the use of reservations, derogations and restrictive declarations, the CAHDI has conducted two specific recent activities in its capacity as European Observatory of reservations to international treaties. Since 1998, the CAHDI regularly considers a list of outstanding reservations to international treaties, concluded within and outside the Council of Europe. Members of the CAHDI are therefore regularly called upon to consider outstanding reservations and declarations and to exchange views on national positions. A table of objections to these clauses is regularly presented to the Committee of Ministers together with abridged reports of the CAHDI meetings. This activity constitutes one of the core activities of the CAHDI.

6. With regard to reservations to international treaties applicable to the fight against terrorism, the CAHDI has specifically – since its 23rd meeting (4-5 March 2002) – held exchanges on views on possible problematic reservations to regional and universal conventions relating to the fight against terrorism with a view to co-ordinating the positions taken by member states. Since then, the CAHDI has produced a list of possibly problematic reservations. In 2004, the Ministers' Deputies examined the list, and invited the member states concerned to consider withdrawing their respective reservations. They further invited the Secretary General to notify to non-member states the conclusions of CAHDI with regard to their respective reservations and invited member states to volunteer to approach those non-member states with regard to their respective problematic

reservations. In 2009, the Deputies took note of a Revised List of Problematic Reservations and Declarations to International Treaties Applicable to the Fight against Terrorism. The CAHDI stands ready to reopen this activity if such an interest is expressed by states and/or decision-making bodies of the Council of Europe.

7. Furthermore, the CAHDI takes note of the suggestion of the Parliamentary Assembly to involve the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) – together with the Council of Europe's Legal Advice Department and the Treaty Office – in the review of the Council of Europe binding legal instruments with the aim of identifying treaties that require updating, that are obsolete or which have lost their relevance. Taking into account the nature of this activity and the scope of the competence of the CAHDI (public international law), the CAHDI expresses its interest to remain closely associated to this Council of Europe activity. In this respect, the CAHDI would like to recall that it has already conducted activities which are pertinent to this new activity, suggested by the Assembly in this recommendation, such as the activities on the role of the depositaries of treaties, within or outside the Council of Europe, on consent of states to be bound by the treaty, and on state succession in Europe relating to treaties.

8. Moreover, the CAHDI takes note of the suggestion made by the Parliamentary Assembly's recommendation to "consult the CAHDI on the possible adoption by the Council of Europe of pan-European model acts to supplement its treaties" (...) "in the light of changes in European law within the European Union, particularly the advent of framework decisions or community acts".

9. In this sense, the CAHDI would like to underline that, according to Article 15 of the Statute of the Council of Europe, the Committee of Ministers is the competent body of the Council of Europe to adopt decisions and/or to address recommendations to member states. Additionally, the CAHDI would like to recall that, in this regard, the Statute foresees only two different categories of legal acts to be adopted by the Committee of Ministers, either conventions or recommendations.

10. In response to the Parliamentary Assembly suggestion concerning "pan-European model acts to supplement its treaties", the CAHDI observes, without ignoring the possible harmonising effect that such model acts might entail, that such a proposal would not be consistent with the Council of Europe treaty practice. Moreover, the CAHDI observes that states and their authorities should retain the flexibility required to incorporate international treaties into their respective domestic legal orders. Given that the Council of Europe member states have different systems of transforming treaty obligations into their national laws, it is also not clear whether "pan-European model acts" could be of significant assistance in facilitating the implementation of Council of Europe treaties.

11. Finally, as regards the suggestion of the Parliamentary Assembly concerning the practice of the so-called disconnection clause, the CAHDI recalls its report on the consequences of the so-called "disconnection clause" and stresses the importance of maintaining a coherent approach in the use of such clauses in line with the Ministers' Deputies decision of 10 December 2008. In this respect, the CAHDI stands ready to work closely with the relevant decision-making bodies of the Council of Europe if the need arises.

Appendix 2 – Comments by the Steering Committee for Human Rights (CDDH)

1. The Steering Committee for Human Rights (CDDH) takes notes of [Recommendation 1920 \(2010\)](#) of the Parliamentary Assembly on “Reinforcing the effectiveness of Council of Europe treaty law” in which the Parliamentary Assembly suggests that, notably, certain binding legal instruments be examined with a view to identifying those that are relevant but require updating, and urges the European Union to accede to Council of Europe Conventions, in particular to the European Convention on Human Rights, as provided for in the Lisbon Treaty. In its recommendation, the Parliamentary Assembly also underlines the importance of ratification, by all member states, of certain Council of Europe treaties.
2. The CDDH draws attention to the fact that at present, the reform of the European Court of Human Rights and the accession of the European Union to the European Convention on Human Rights represent two principal activities of the CDDH and its subordinate bodies. It is expected that as a result of each, it will be necessary to amend the European Convention on Human Rights.
3. Within the framework of the ongoing work on the reform of the European Court of Human Rights and as a follow-up to the Interlaken Declaration, the CDDH has been instructed by the Committee of Ministers, *inter alia*, “to elaborate specific proposals for measures requiring amendment of the Convention, including proposals, with different options, for a filtering mechanism within the European Court of Human Rights and proposals for making it possible to simplify amendment of the Convention’s provisions on organisational issues”. As requested, the CDDH will submit to the Committee of Ministers an interim activity report by 15 April 2011 and a final report by 15 April 2012.
4. Concerning the accession of the European Union to the Convention, the CDDH has been instructed by the Committee of Ministers “to elaborate, in co-operation with representative(s) of the European Union to be appointed by the latter, a legal instrument, or instruments, setting out the modalities of accession of the European Union to the European Convention on Human Rights, including its participation in the Convention system; and, in this context, to examine any related issue.” To facilitate the work, the CDDH has established an informal working group on the accession of the European Union to the European Convention on Human Rights (CDDH-UE).

Appendix 3 – Comments by the European Committee on Legal Co-operation (CDCJ)

1. Following the adoption by the Parliamentary Assembly, on 21 May 2010, of [Recommendation 1920 \(2010\)](#) on “Reinforcing the effectiveness of Council of Europe treaty law”, the Committee of Ministers³ decided to send this recommendation to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 15 October 2010.
2. The CDCJ took note of this recommendation of the Parliamentary Assembly and decided to make the following comments.
3. The CDCJ welcomes the reference made by the Parliamentary Assembly to “one of the Council of Europe’s main functions [, which] is to draw up standards on human rights and the rule of law that together form a coherent body of European conventions”. The CDCJ has been working for many years to enhance and promote the rule of law and has drawn up many conventions on the subject.
4. The CDCJ takes note of the reference in the list of “core” Council of Europe treaties (appended to [Resolution 1732 \(2010\)](#) on “Reinforcing the effectiveness of Council of Europe treaty law”) to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the Civil Law Convention on Corruption (ETS No. 174), while regretting the absence of other important Council of Europe conventions (particularly the European Convention on the Exercise of Children’s Rights (ETS No. 160) and the European Convention on Nationality (ETS No. 166), to name but two). The CDCJ wishes to underline that the existence of this list does not in any way affect the legal status of the Council of Europe conventions.
5. The CDCJ takes note of the request to the Committee of Ministers in paragraph 1.4 of the recommendation to “instruct ... the European Committee on Legal Co-operation (CDCJ) ... in close co-operation with the Council of Europe’s Legal Advice Department and the Treaty Office, to examine the binding legal instruments” within its area of authority to identify treaties that are still relevant but require updating, treaties that are obsolete and should be abrogated and treaties which have lost their relevance and have not come into force within a certain number of years of their adoption and should be withdrawn. Under its terms of reference, the CDCJ is responsible for monitoring “the functioning and implementation of the international instruments coming within its field of competence”. This exercise has already been underway for some time.
6. In this connection, the CDCJ would emphasise that at its 84th plenary meeting (6-9 October 2009), it decided to review several targeted conventions within its field of competence such as those relating to intellectual property and patent, liability and administrative law. The Bureau of the CDCJ extended this process to the conventions on commercial and financial law. The reports prepared on the subject⁴ were presented at the plenary meeting on 11 to 14 October 2010, as the relevance of some of the conventions concerned has been questioned.
7. Lastly, it should be noted that the Secretary General’s proposals on Council of Europe priorities for 2011,⁵ included a “review of the relevance of Council of Europe conventions”, which “will provide the basis for decisions on follow-up including measures to increase the visibility and the number of parties to relevant conventions”. The CDCJ suggests that it would be wise to await the outcome of this review.

3. 1087th meeting, 9 June 2010.

4. Memorandum on targeted conventions: CDCJ (2010) 8 rev. (intellectual property and patent, liability) and CDCJ (2010) 18 (commercial and financial law).

5. Document CM(2010)42 rev.

Appendix 4 – Comments by the European Committee on Crime Problems (CDPC)

1.0. Introduction

At their 1087th meeting on 9 June 2010, the Committee of Ministers' Deputies decided to communicate the Parliamentary Assembly's [Recommendation 1920 \(2010\)](#) on "Reinforcing the effectiveness of Council of Europe treaty law" to the CDPC for information and possible comments, by 15 October 2010.

The CDPC takes note of the request to the Committee of Ministers in paragraph 1.4 of the recommendation to 'instruct...the (CDPC)...in close co-operation with the Council of Europe's Legal Advice Department and Treaty Office, to examine the binding legal instruments within its area of authority,' to identify treaties that are still relevant but might require updating, treaties that are obsolete and treaties which have lost their relevance and have not come into force within a certain number of years of their adoption. Under its terms of reference, the CDPC regularly follows up the functioning and implementation of treaties coming within its field of competence.

In order to assess the relevance or obsolescence of a particular instrument, the CDPC report considers the overall number of states to have ratified it (both member and non-member states), in the context of the circumstances of each Convention or Protocol: for example, have member states had sufficient time to implement it, or has the instrument been superseded by subsequent instruments.⁶ Whilst these are not necessarily the only criteria to evaluate the effectiveness of treaties, they are of particular importance and provide a sound basis for the analysis.

The findings of this assessment have then been evaluated in order to define the three principal contexts specified by section 1.4 of the recommendation, thus:

- treaties that are still relevant but require updating (section 1.4.1 of the recommendation);
- treaties that are obsolete (section 1.4.2 of the recommendation);
- treaties which have lost their relevance and have not come into force within a certain number of years of their adoption (section 1.4.3 of the recommendation).

It should be noted at the outset that by far the majority of extant instruments in the criminal law field appear to be sufficiently active and well-supported by member states to require no further action.

2.0. By percentage of member states ("MS") ratifications

2.1. Ratification by all 47 member states

The following criminal law Conventions/Protocols have been ratified by all 47 Council of Europe member states:

ETS No.	Title
024	European Convention on Extradition (47+2) <i>Status: active.</i>
030	European Convention on Mutual Assistance in Criminal Matters (47+1) <i>Status: active.</i>
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (47+1) <i>Status: active.</i>

Suggested status: Active and complete

2.2. 80-99% MS ratified

The following eight instruments have been ratified by most member states:

ETS No.	Title
098	Second Additional Protocol to the European Convention on Extradition (40+1) <i>Status: active.</i>

6. Bracketed numbers inserted after each instrument indicate the number of states to have ratified: where '+ x' has been inserted, this indicates ratification by non-member states.

ETS No.	Title
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (40) <i>Status: active.</i>
112	Convention on the Transfer of Sentenced Persons (46+18) <i>Status: active.</i>
120	European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (41) <i>Status: active.</i>
135	Anti-Doping Convention (46+4) <i>Status: active.</i>
173	Criminal Law Convention on Corruption (42+1) <i>Status: active.</i>

2.3. 50-79% MS ratified

ETS No.	Title
073	European Convention on the Transfer of Proceedings in Criminal Matters (25) <i>Status: update.</i>
086	Additional Protocol to the European Convention on Extradition (37+1) <i>Status: active.</i>
116	European Convention on the Compensation of Victims of Violent Crimes (25) <i>Status: update.</i>
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons (35) <i>Status: active.</i>
185	Convention on Cybercrime (29+1) <i>Status: active.</i>
188	Additional Protocol to the Anti-Doping Convention (25+1) <i>Status: active.</i>
191	Additional Protocol to the Criminal Law Convention on Corruption (25) <i>Status: active.</i>
197	Council of Europe Convention on Action against Trafficking in Human Beings (30) <i>Status: active.</i>

2.4. 30-49% MS ratified

ETS No.	Title
051	European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (19) <i>Status: update.</i>
070	European Convention on the International Validity of Criminal Judgments (22) <i>Status: update.</i>
182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (19+1) <i>Status: active.</i>
189	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (18) <i>Status: active.</i>
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (21) <i>Status: active.</i>

2.5. <30% MS ratified

This group represent the instruments most sparsely supported by member states.

ETS No.	Title
052	European Convention on the Punishment of Road Traffic Offences (5) <i>Status: update.</i>
119	European Convention on Offences relating to Cultural Property (0) <i>Status: lost its relevance.</i>
130	Convention on Insider Trading (8) <i>Status: update/lost its relevance.</i>
133	Protocol to the Convention on Insider Trading (8) <i>Status: update/lost its relevance.</i>
156	Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (13) <i>Status: update.</i>
172	Convention on the Protection of Environment through Criminal Law (1) <i>Status: lost its relevance.</i>
201	Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (8) <i>Status: active.</i>

3.0. Opinion on the Parliamentary Assembly's Recommendation 1920 (2010)

In light of this analysis, the CDPC finds that the following treaties should be considered to remain active, either because they have been ratified by a majority of member states, or because they are recent and, as such, states still need time to ratify:

- (024) European Convention on Extradition (47+2)
- (030) European Convention on Mutual Assistance in Criminal Matters (47+1)
- (086) Additional Protocol to the European Convention on Extradition (37+1)
- (098) Second Additional Protocol to the European Convention on Extradition (40+1)
- (099) Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (40)
- (112) Convention on the Transfer of Sentenced Persons (46+18)
- (120) European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (41)
- (135) Anti-Doping Convention (46+4)
- (141) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (47+1)
- (167) Additional Protocol to the Convention on the Transfer of Sentenced Persons (35)
- (173) Criminal Law Convention on Corruption (42+1)
- (182) Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (19+1)
- (185) Convention on Cybercrime (29+1)
- (188) Additional Protocol to the Anti-Doping Convention (25+1)
- (189) Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (18)
- (191) Additional Protocol to the Criminal Law Convention on Corruption (25)
- (197) Council of Europe Convention on Action against Trafficking in Human Beings (30)
- (198) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (21)
- (201) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (9)

3.1. Treaties that are still relevant but might require updating

The CDPC considers that the following criminal law instruments are still relevant but may require updating:

(051) *European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders* (19)

This instrument was originally signed by 17 member states, and was ultimately ratified by 19. The issues it was designed to address are partly dealt with in the European Convention on the International Validity of Criminal Judgments (ETS No. 070), which it has been proposed to update in section 3.1 above.

(052) *European Convention on the Punishment of Road Traffic Offences* (5)

In spite of the low number of states who have ratified this Convention, it has been deemed worthy of updating this instrument, as the issue remains very much a priority of member states.

(070) *European Convention on the International Validity of Criminal Judgments* (22)

and;

(073) *European Convention on the Transfer of Proceedings in Criminal Matters* (25)

Similarly, these two instruments deal with pertinent issues and it is noted that they have been ratified by roughly half of the Council of Europe's member states. Given recent developments in international legal co-operation within the criminal law field, it may be necessary to update or perhaps even consolidate them, in light of such changes.

(116) European Convention on the Compensation of Victims of Violent Crimes (25)

This issue is likewise an issue which continues to be debated, currently within the wider context of the general standing and rights of victims. Given more than half of member states have ratified it, it has been deemed more appropriate to review and update it.

(156) Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (13)

This Convention came into force in 2000 and was originally signed by 22 member states. However it was only ratified by 13, most recently the Ukraine and Ireland in 2007. Of the member states who signed up to it in 1995, the year it was adopted (Greece, Italy, Norway, Sweden and the United Kingdom), only Norway subsequently ratified.

Of the 13 states which did ratify however, the geographic distribution is interesting, as they together form a corridor of states from central Europe to the rest of the world. This corridor begins with the Black Sea coastlines of the Ukraine and Romania, through the land-locked states of Hungary, Slovakia, Austria and the Czech Republic, to states with access to every European coast: the Atlantic Ocean (Ireland); the Adriatic Sea (Slovenia); the Mediterranean Sea (Cyprus); the Baltic Sea (Lithuania, Latvia, Germany); and the North/Norwegian Seas (Norway).

This, plus the fact that the most recent ratifications occurred less than three years ago, indicates it is potentially highly relevant to specific member states, and the CDPC considers that it should therefore be reviewed with a view to updating.

3.2. Treaties that have entered into force but may be considered to be obsolete

As a result of this review, the CDPC proposes that the following criminal law instruments may be judged obsolete:

(130) Convention on Insider Trading (8)

and;

(133) Protocol to the Convention on Insider Trading (8)

These were originally signed by 9 member states, of which only 8 ultimately ratified. It is likely that they have simply been superseded by more recent legal instruments.

3.3. Treaties which have not entered into force and which may be considered to have lost their relevance

The following two treaties never came into force, and it is considered that they have lost their relevance:

European Convention on Offences relating to Cultural Property (0)

This Convention was immediately superseded by a UN instrument. It was also problematic for many states, as it instigated the criminalisation of perpetrators even in cases where there existed no apparent intent. Of only six original signatories, none ultimately ratified it.

(172) Convention on the Protection of Environment through Criminal Law (1)

Of 14 original signatories, only one member state has ratified this Convention. This is perhaps explained by an EU Directive that was implemented along these lines almost immediately, thus European Union member states were focused more upon the EU instrument than this Convention. Furthermore, the sanctions were considered to be very harsh, as their application was envisaged even where there was no intent. Some states were also reluctant to ratify the articles relating to corporate responsibility.

4.0. Conclusion

In conclusion, whilst it may appear that some criminal legal instruments have been ratified by only very few member states, this can be for a variety of reasons: some have only recently been adopted, for example the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (8 ratifications since 2007); the Additional Protocol to the Convention on Cybercrime (18 since 2003); and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (21 since 2005).

Furthermore, some instruments appear to have specific relevance for some states, but not for others, for example the Agreement on Illicit Traffic by Sea (13 since 1995). In other cases, Conventions or Protocols addressing issues which remain widely debated by member states, but which have only been ratified by a few – such as the European Convention on the Compensation of Victims of Violent Crimes – have been listed for review: such instruments may still be highly relevant for the states party to them, and it may simply be a question of updating.

On this basis, the CDPC is of the opinion that by far the majority of criminal legal instruments are active and up-to-date: indeed only two have not yet made it into force and only three appear under-supported by member states, all of which deal with issues that have subsequently been addressed by other instruments.

Appendix 1 – Complete list of criminal law instruments

ETS No.	Title	Total no. of signatories		Total ratifications	
		Member states	Non-member states	Member states	Non-member states
024	European Convention on Extradition	42	0	47	2
030	European Convention on Mutual Assistance in Criminal Matters	43	0	47	1
051	European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders	17	0	19	0
052	European Convention on the Punishment of Road Traffic Offences	15	0	5	0
070	European Convention on the International Validity of Criminal Judgments	28	0	22	0
073	European Convention on the Transfer of Proceedings in Criminal Matters	32	0	25	0
086	Additional Protocol to the European Convention on Extradition	35	0	37	1
098	Second Additional Protocol to the European Convention on Extradition	37	0	40	1
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	39	0	40	0
112	Convention on the Transfer of Sentenced Persons	39	2	46	18
116	European Convention on the Compensation of Victims of Violent Crimes	31	0	25	0
119	European Convention on Offences relating to Cultural Property	6	0	0	0
120	European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches	37	0	41	0
130	Convention on Insider Trading	9	0	8	0
133	Protocol to the Convention on Insider Trading	9	0	8	0
135	Anti-Doping Convention	40	2	46	4
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	46	1	47	1

ETS No.	Title	Total no. of signatories		Total ratifications	
		Member states	Non-member states	Member states	Non-member states
156	Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances	22	0	13	0
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons	36	0	35	0
172	Convention on the Protection of Environment through Criminal Law	14	0	1	0
173	Criminal Law Convention on Corruption	45	3	42	1
182	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	35	0	19	1
185	Convention on Cybercrime	42	4	29	1
188	Additional Protocol to the Anti-Doping Convention	31	1	25	1
189	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems	32	2	18	0
191	Additional Protocol to the Criminal Law Convention on Corruption	35	0	25	0
197	Council of Europe Convention on Action against Trafficking in Human Beings	43	0	30	0
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism	32	0	21	0
201	Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	41	0	9	0