

## FULL COMMENTARY ON THE COUNCIL OF EUROPE'S DRAFT CONVENTION ON THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

Caption

**Red bold italics** = proposed deletion

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### **JUSTIFICATION**

*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”.*

## **PREAMBLE**

### **#2 AMENDMENT proposal regarding: Preamble**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

The member States of the Council of Europe and the other signatories to this Convention,  
[...]  
Taking into account the case law of the European Court of Human Rights which sets important standards in the fight against environmental crime;  
Bearing in mind the Directive [add new Directive]/EC of the European Parliament and of the Council of [day month year] on the protection of the environment through criminal law;  
Bearing in mind the 1992 United Nations Framework Convention on Climate Change and the 1998 Convention on access to information, Public Participation in Decision-making and Access to justice in Environmental matters.  
Bearing in mind the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the 1992 Convention on Biological Diversity;

The member States of the Council of Europe and the other signatories to this Convention,  
[...]  
Taking into account the case law of the European Court of Human Rights which **provides an indirect protection of the right to a health environment and** sets important standards in the fight against environmental crime;  
Bearing in mind the Directive [add new Directive]/EC of the European Parliament and of the Council of [day month year] on the protection of the environment through criminal law;  
Bearing in mind the 1992 United Nations Framework Convention on Climate Change and the 1998 Convention on access to information, Public Participation in Decision-making and Access to justice in Environmental matters **(Aarhus Convention) which recognises the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.**

Bearing in mind the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL), and its Protocols; the 1974 International Convention for the Safety of Life at Sea (SOLAS); the 1982 United Nations Convention on the Law of the Sea; and the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes;

Bearing in mind the 1979 Convention on the Physical Protection of Nuclear Material and its Amendment; the 1979 Convention on Long-range Transboundary Air Pollution; the 1989 Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the 1991 Convention on Environmental Impact Assessment in a Transboundary Context; the 1997 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management; the 2001 Stockholm Convention on Persistent Organic Pollutants; and the 2013 Minamata Convention on Mercury;

Recalling the principles of the 1972 Declaration of the United Nations Conference on the Human Environment and the 1992 Declaration of the United Nations on Environment and Development;

Recalling the Paris Agreement, adopted at COP 21 on 12 December 2015 and opened for signatures on 22 April 2016, the Glasgow Climate Pact, adopted at COP 26 by the Parties to the United Nations Framework Convention on Climate Change; and the Kunming-Montreal Global Biodiversity Framework, adopted by the Parties to the 1992 Convention on Biological Diversity on 18 December 2022;

Recalling the following Resolutions by the General Assembly of the United Nations: 75/196 of 16 December 2020, entitled “Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”; **75/311 of 23 July 2021, entitled “Tackling illicit trafficking in wildlife”**; and 76/185 of 11 January 2022, entitled “Preventing and combating crimes that affect the environment”;

Recalling the United Nations Economic and Social Council resolutions 1996/10 of 23 July 1996, entitled “The role of criminal law in the protection of the environment”; as well as the resolution 2013/40 of 25 July 2013 on crime prevention and criminal justice responses to illicit trafficking in protected species of wild fauna and flora; and the resolution 2008/25 of 24 July 2008 on international co-operation in preventing and combating illicit international trafficking in forest products, including timber, wildlife and other forest biological resources;

Recalling the Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development, adopted by the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Kyoto, Japan, from 7 to 12 March 2021;

Bearing in mind the **1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS) and the 1992 Convention on Biological Diversity (CBD)**;

Bearing in mind the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL), and its Protocols; the 1974 International Convention for the Safety of Life at Sea (SOLAS); the 1982 United Nations Convention on the Law of the Sea; and the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes;

Bearing in mind the 1979 Convention on the Physical Protection of Nuclear Material and its Amendment; the 1979 Convention on Long-range Transboundary Air Pollution; the 1989 Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the 1991 Convention on Environmental Impact Assessment in a Transboundary Context; the 1997 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management; the 2001 Stockholm Convention on Persistent Organic Pollutants; and the 2013 Minamata Convention on Mercury;

Recalling the principles of the 1972 Declaration of the United Nations Conference on the Human Environment and the 1992 Declaration of the United Nations on Environment and Development;

Recalling the Paris Agreement, adopted at COP 21 on 12 December 2015 and opened for signatures on 22 April 2016, the Glasgow Climate Pact, adopted at COP 26 by the Parties to the United Nations Framework Convention on Climate Change; and the Kunming-Montreal Global Biodiversity Framework, adopted by the Parties to the 1992 Convention on Biological Diversity on 18 December 2022;

**Bearing in mind the 2000 United Nations Convention against Transnational Organized Crime, in particular article 2, subparagraph (b), which defines a serious crime as a “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”;**

**Recalling the following Resolutions by the General Assembly of the United Nations, entitled “Tackling illicit trafficking in wildlife”: 69/314 of 30 July 2015, 71/326 of 11 September 2017, 73/343 of 20 September 2019, and 75/311 of 23 July 2021, which call upon Member States to make illicit trafficking in protected species of wild fauna and flora a serious crime, in accordance with their national legislation and as defined by the United Nations Convention against Transnational Organized Crime;**

Recognising the primary role and responsibility of States in defining their policies and strategies to prevent and combat environmental crime;

Taking account of the existing research on the cost of environmental crime;

Acknowledging that activities of organised environmental crime hinder and undermine efforts undertaken by States to protect the environment, promote the rule of law and achieve sustainable development;

Recognising that environmental crime has a negative impact on economies, public health, human safety, food security, livelihoods and habitats;

Recognising the fundamental role of effective international co-operation in preventing and combating environmental crime and to this end acknowledging the importance of addressing, tackling and effectively responding to international challenges and barriers that hinder such co-operation;

Acknowledging also the important contributions of other relevant stakeholders, including the private sector, civil society, non-governmental organisations, the media, academia and the scientific community, in preventing and combating environmental crime;

Recognising that environmental crime increasingly has extraterritorial effects and takes the form of international trafficking, which, along with the acceleration of degradation phenomena (climate change, erosion of biodiversity, depletion of natural resources, destruction of habitats, etc.), prompts the need for general minimum standards in criminal law as part of a common and collaborative international framework;

Recognising that environmental crime is likely to take many forms, which the law needs to identify, define and criminalise in a clear, effective and proportionate manner, fully respecting the principle of legality;

Have agreed as follows:

Recalling *also* the following Resolutions by the General Assembly of the United Nations: 75/196 of 16 December 2020, entitled “Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”; 76/185 of 11 January 2022, entitled “Preventing and combating crimes that affect the environment” *and 76/300 of 28 July 2022, entitled “The human right to a clean and sustainable environment”*;

Recalling the United Nations Economic and Social Council resolutions 1996/10 of 23 July 1996, entitled “The role of criminal law in the protection of the environment”; as well as the resolution 2013/40 of 25 July 2013 on crime prevention and criminal justice responses to illicit trafficking in protected species of wild fauna and flora; and the resolution 2008/25 of 24 July 2008 on international co-operation in preventing and combating illicit international trafficking in forest products, including timber, wildlife and other forest biological resources;

*Recalling the United Nations Commission on Crime Prevention and Criminal Justice resolution 31/1 of 20 May 2022, entitled “Strengthening the international legal framework for international cooperation to prevent and combat illicit trafficking in wildlife”*;

Recalling the Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development, adopted by the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Kyoto, Japan, from 7 to 12 March 2021;

*Recalling the 2030 Agenda on Sustainable Development (Agenda 2030); underlining the importance of implementing Agenda 2030 in all its three dimensions - economic, social and environmental - in a balanced and integrated manner; paying particular attention to the following Goals and their targets: SDG 14.A (implement and enforce international sea law), SDG 15.7 (eliminate poaching and trafficking of protected species), SDG 15.C (combat global poaching and trafficking), SDG 16.4 (strengthen national institutions to prevent violence and combat terrorism and crime)*;

Recognising the primary role and responsibility of States in defining their policies and strategies to prevent and combat environmental crime;

*Recognising that Europe as a region has a global responsibility in combating environmental crimes, which are increasing at an alarming pace.*

Taking account of the existing research on the cost of environmental crime;

Acknowledging that activities of organised environmental crime hinder and undermine efforts undertaken by States to protect the environment, promote the rule of law and achieve sustainable development;

Recognising that environmental crime has a negative impact on economies, **biodiversity, climate change**, public **and animal** health, human safety, food security, livelihoods and habitats;

Recognising the fundamental role of effective international co-operation in preventing and combating environmental crime and to this end acknowledging the importance of addressing, tackling and effectively responding to international challenges and barriers that hinder such co-operation;

Acknowledging also the important contributions of other relevant stakeholders, including the private sector, civil society, non-governmental organisations, the media, academia and the scientific community, in preventing, **reporting** and combating environmental crime;

Recognising that environmental crime increasingly has extraterritorial effects and takes the form of international trafficking, which, along with the acceleration of degradation phenomena (climate change, erosion of biodiversity, depletion of natural resources, destruction of habitats, **rates of species extinctions, disturbance of ecological balance**, etc.), prompts the need for general minimum standards in criminal law as part of a common and collaborative international framework;

Recognising that environmental crime is likely to take many forms, which the law needs to identify, define and criminalise in a clear, effective, **dissuasive** and proportionate manner, fully respecting the principle of legality;

Have agreed as follows:

## ARTICLES

### CHAPTER I – PURPOSES, SCOPE, DEFINITIONS, NON-DISCRIMINATION AND GENERAL OBLIGATIONS

**#3 AMENDMENT proposal regarding:  
Chapter I – Purposes, scope, definitions, non-discrimination and general obligations  
Article 1 – Purpose of the Convention**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>Article 1 – Purpose of the Convention</b></p> <p>1 The purpose of this Convention is:</p> <ul style="list-style-type: none"> <li>a. to prevent and combat environmental crime;</li> <li>b. to promote and enhance national and international co-operation against environmental crime;</li> <li>c. to establish minimum rules to guide States in their national legislation;</li> </ul> <p>and thereby promote and enhance the protection of the environment.</p> <p>[2 In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.]</p>	<p><b>Article 1 – Purpose of the Convention</b></p> <p>1 The purpose of this Convention is:</p> <ul style="list-style-type: none"> <li>a. to prevent and combat environmental crime;</li> <li>b. to promote and enhance national and international co-operation against environmental crime;</li> <li>c. to establish minimum rules to guide States in their national legislation <b>on the definition and sanctioning of environmental criminal offences;</b></li> </ul> <p>and thereby <b>harmonise legislation and</b> promote and enhance the protection of the environment <b>in Europe.</b></p> <p>[2 In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.]</p>

#### **JUSTIFICATION**

*The purpose of the Convention, as stated in the preamble, is much broader than preventing and combating environmental crime, promoting and enhancing international cooperation and establishing minimum rules.*

*Environmental crimes are currently considered low risk/high gain activities by criminals. The offences referred to in this draft include the most serious environmental crimes. It should be specified that harmonising rules across Europe is also a priority objective of this Convention, to prevent criminals from taking advantage of countries/regions with weaker legislation. More details on offences and sanctions will allow for greater clarity, and therefore greater implementation and harmonisation of rules.*



**#4 AMENDMENT proposal regarding:  
Chapter I – Purposes, scope, definitions, non-discrimination and general obligations  
Article 3 – Definitions**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 3 – Definitions**

For the purposes of this Convention:

- a. [the term “environment” shall mean the Earth, its biosphere, cryosphere, lithosphere, hydrosphere **and** atmosphere;]
- b. the term "unlawful" shall mean infringing a law, an administrative regulation or a decision taken by a competent authority;
- c. the term "water" shall mean all kinds of groundwater and surface water including the water of lakes, rivers, oceans and seas;
- d. the term "ecosystem" shall mean a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;
- e. the term “habitat” shall mean the place or type of site where an organism or population naturally occurs;
- f. the term “wild fauna or flora” shall mean undomesticated animals **living independently of humans** and plants growing in a natural state, **independent of humans, therefore not cultivated**;
- g. the term “waste” shall mean any substance or object which the holder discards or intends or is required to discard.

**Article 3 – Definitions**

For the purposes of this Convention:

- a. [the term “environment” shall mean the Earth, its biosphere, cryosphere, lithosphere, hydrosphere, atmosphere, **including the integrity of all the biotic and abiotic elements of ecosystems, their functions and mutual interactions and the earth’s planetary boundaries**;
- b. the term "unlawful" shall mean infringing a law, an administrative regulation or a decision taken by a competent authority, **even if carried out under an authorisation by a competent authority when the authorisation was obtained fraudulently or by corruption, extortion or coercion, or when breaching a condition of authorisation**;
- c. the term "water" shall mean all kinds of groundwater and surface water including the water of lakes, rivers, oceans and seas;
- d. the term "ecosystem" shall mean a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;
- e. the term “habitat” shall mean the place or type of site where an organism or population naturally occurs;
- f. the term “wild fauna or flora” shall mean undomesticated animals, **whether alive or dead**, and plants **and fungi** growing in a natural state, **or any readily recognizable part or derivative thereof**;
- g. the term “waste” shall mean any substance or object which the holder discards or intends or is required to discard;
- h. the term ‘legal person’ shall mean any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations, unless national law allows for public bodies exercising State authority to be included;**

*i. the term 'victim' shall mean:*

*(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;*

*(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;*

*j. the term 'public concerned' shall mean both natural and legal persons or groups of persons including local communities, affected or likely to be affected by the offences established in this Convention. For the purposes of this definition, Parties shall ensure that members of the public having a sufficient interest or maintaining the impairment of a right as well as civil society organisations, including non-governmental organisations, promoting the protection of the environment and meeting any proportionate requirements under domestic law shall be deemed to be members of the public concerned;*

*k. the term 'severe' shall mean damage which involves very serious adverse changes, disruption or harm to any element of the environment, ecosystems, wildlife populations or their habitats, as well as grave impacts on human life, or natural, cultural or economic resources;*

*l. the term 'widespread' shall mean damage which extends beyond a limited geographic area, is cross-border in nature, or is suffered by an entire ecosystem or species, or population, or a large number of human beings;*

*m. the term 'long-term' in relation to damage shall mean that such damage is irreversible or cannot be redressed through natural recovery within a reasonable period of time;*

*n. the term 'environmental damage' shall mean damage which results in serious harm to any person's health, or substantial damage to the quality of air, the quality of soil or the quality of water, or to biodiversity, ecosystem services and functions, animals or plants, their populations or their habitats, or which is detrimental to anything that grows, blooms and lives.*

*o. the term 'ecosystem services' shall mean direct and indirect contributions of ecosystems to the wellbeing of society as a whole and to the economic, social, cultural and other benefits that people derive from those ecosystems, as well as direct and indirect services provided by ecosystems as an intrinsic property of their functionality (e.g. pollination, nutrient cycling, nitrogen fixation, fruit and seed dispersal);*

- p. the term 'offering for sale' shall mean offering for sale and any action that may reasonably be construed as such, including advertising or causing to be advertised for sale and invitation to trade, and including when these activities are occurring online, irrespective of the place of establishment or residence of the providers of the intermediary online services and/or of the traders;*
- q. the term 'sale' shall mean any form of sale, including online, irrespective of the place of establishment or residence of the providers of the intermediary online services and/or of the traders. For the purposes of this Convention, hire, barter or exchange shall be regarded as sale; cognate expressions shall be similarly construed;*
- r. the term 'trade' shall mean the introduction into the national territory, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within the national territory, of specimens subject to the provisions of this Convention. For the purposes of this definition, it also covers the offering for trade occurring online, irrespective of the place of establishment or residence of the providers of the intermediary online services and/or of the traders;*
- s. the term 'placing on the market' shall mean supplying or making available to another Party for the first time, for payment or free of charge, or using for its own account in the case of a producer, and includes customs release for free circulation in the national territory or that of another Party. For the purposes of this definition, it also covers the placing on the market occurring online;*
- t. the term 'property' shall mean property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;*
- u. the term 'proceeds' shall mean any economic advantage derived directly or indirectly from a criminal offence consisting of any form of property, and including any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;*
- v. the term 'instrumentalities' means any property used or intended to be used, in any manner, wholly or partially, to commit a criminal offence;*
- w. the term 'freezing' shall mean the temporary prohibition of the transfer, destruction, conversion, disposal or movement of property or temporarily assuming custody or control of property;*

- x. *the term ‘confiscation’ shall mean a final deprivation of property ordered by a court in relation to a criminal offence;*
- y. *the term ‘criminal organisation’ shall mean a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit;*
- z. *the term ‘take’ when referring to ‘wild fauna and flora’ shall mean taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct;*
- aa. *the term ‘health’ shall mean a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity in line with the One Health Approach;*
- bb. *the term ‘One Health Approach’ shall mean an integrated, unifying approach that aims to sustainably balance and optimise the health of people, animals, plants and ecosystems. It recognises that the health of humans, domestic and wild animals, plants, and the wider environment including ecosystems are closely interlinked and inter-dependent.*

### **JUSTIFICATION**

Article relocation: *we suggest moving the article on definitions at the end of Chapter I, to make it more reader-friendly. We also suggest that the Chapter following this article is dedicated to listing the criminal offences established under this Convention.*

Other proposed amendments:

*In its evaluation assessment of the EU Environmental Crime Directive, the European Commission established that a key reason for the lack of complete and inconsistent implementation of that Directive was the lack of clarity of certain terms used in the Directive’s text. In its revision proposal, the EU Commission has proposed definitions of several terms.*

*Learning from this experience, the Convention text should aim to provide as much clarity as possible by defining as clearly as possible the above listed terms that are used in the Convention’s text, and which proposed definitions come from the following sources:*

- *Point a: amendment to the definition of ‘environment’ based on the opinion report of the European Parliament’s Committee on Environment, Public Health and Food Safety (EP ENVI Committee) on the revision of the EU Environmental Crime Directive (EU ECD)*
- *Point b: amendment to the definition of ‘unlawful’ based on the European Commission’s original proposal on the revision of the EU ECD. The addition of ‘or when such conduct breaches a condition of authorisation’ comes from the European Parliament’s official report on the revision of the EU ECD (serving as the basis for trilogue negotiations between the three EU institutions).*

- *Point h: [NEW] the definition of ‘legal person’ is rendered necessary by the use of the term throughout the Convention. The exclusion of State authorities and public bodies is in line with the scope of the Convention and its actual Article 4. The definition proposed here comes from the European Commission’s original proposal on the revision of the EU ECD.*
- *Point i: [NEW] the definition of ‘victim’ is also rendered necessary by its use throughout the Convention. The definition proposed here comes from Article 2(1), point (a), of Directive 2012/29/EU of the European Parliament and of the Council.*
- *Point j: [NEW] the definition of ‘public concerned’ relates to the Amendment proposal #48. The definition proposed here comes from the European Parliament’s Committee on Petitions (EP PETI Committee)’s opinion on the revision of the EU ECD.*
- *Point k: [NEW] the definitions of ‘severe’ and ‘widespread’ based on the opinion report of the EP ENVI Committee on the revision of the ECD. Most of the wording of these definitions are reused in EP’s official position on the revision of the ECD.*
- *Point m: [NEW] the definition of ‘long term’ comes from the EP’s official position on the revision of the ECD.*
- *Point n: [NEW] definition of ‘environmental damage’ comes from the EP’s official position on the revision of the ECD. It is important to add ‘habitats’ to the original definition to ensure it covers the full scope of the environment.*
- *Point o: [NEW] definition of ‘ecosystem services’ is inspired by the definition used in the EU Directive on Soil Monitoring and Resilience proposed by the European Commission and by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)*
- *Points p, q, r: the terms ‘offering for sale’, ‘sale’ and ‘trade’ have the meaning attributed to them in Article 2 (i), (p), and (u) of Council Regulation (EC) No 338/97.*
- *Point s: the term ‘placing on the market’ the term placing on the market” have the meanings attributed to it in Article 3 (12) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council, in Article 3 (9) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council, in Article 3 (1) (j) of Regulation (EU) No 528/2012 of the European Parliament and of the Council, in Article 2 (b) of Regulation (EU) No 995/2010 of the European Parliament and of the Council, in Article 3 (20) of Regulation (EC) No 1005/2009 of the European Parliament and of the Council, and Article 2 (10) of Regulation (EU) No 517/2014 of the European Parliament and of the Council.*

*NB: the elements referring to online trade in points p, q, r, and s, “irrespective of the place of establishment or residence of the providers of the intermediary online services and of the traders” is based on the provisions of the EU Digital Services Act. Advances in technology and connectivity across the world enable criminal offenders to carry out their activities online and it is crucial that this Directive also tackle environmental crimes when facilitated and/or taking place over the internet. For example, rising buying power, and demand for illegal wildlife products have increased the ease of exchange from poacher to consumer between continents. This has created largely unregulated online markets for criminals to sell illegally obtained wildlife products. Research undertaken by IFAW, WWF, TRAFFIC and others has shown that the scale of cyber enabled wildlife crime is significant and growing, and this needs to be explicitly addressed by the Convention.*

- *Points t, u, v, w, x: [NEW] definitions found in the proposal for an EU Directive on asset recovery and confiscation (currently being developed)*
- *Point y: [NEW] the definition of ‘criminal organisation’ found in the [Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime](#).*
- *Point z: [NEW] the definition of ‘take’ is based on the definition of ‘taking’ in the [Convention on the Conservation of Migratory Species of Wild Animals \(CMS\)](#)*
- *Point aa and bb: [NEW] the definition of ‘health’ is necessary to ensure that interpretation of the term used throughout the Convention is uniform among all Parties. The definition proposed here was identified by the World Health Organisation in line with the One Health approach also defined here.*

**#5 AMENDMENT proposal regarding:**  
**Chapter I – Purposes, scope, definitions, non-discrimination and general obligations**  
**Article 5 – State obligations and due diligence**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>Article 5 – State obligations and due diligence</b></p> <p>1 Parties shall <b>refrain from engaging</b> in the commission of any offence established in accordance with this Convention and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.</p> <p>2 Parties shall take the necessary legislative and other measures <b>to exercise due diligence</b> to prevent, investigate, punish and provide reparation for the commission of offences established in accordance with this Convention that are perpetrated by non-State actors.</p>	<p><b>Article 5 – State obligations</b></p> <p>1 Parties shall <b>not engage</b> in the commission of any offence established in accordance with this Convention and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.</p> <p>2 Parties shall take the necessary legislative and other measures to prevent, investigate, punish and provide reparation for the commission of offences established in accordance with this Convention that are perpetrated by non-State actors.</p>

**CHAPTER II – INTEGRATED POLICIES AND DATA COLLECTION**

**#6 AMENDMENT proposal regarding:**  
**Chapter II – Integrated policies and data collection**  
**Chapter title**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>Chapter II – Integrated policies and data collection</b></p>	<p><b>Chapter VI – Integrated policies</b></p>

**JUSTIFICATION**

*As proposed in Amendment proposal #1 (contents), the content of Chapter II related to Integrated policies should be moved down and a separate, new chapter, should be created and dedicated to data collection and research. A Chapter dedicated to criminal offences should be created and placed right under Chapter I to facilitate the reading and comprehension of the Convention.*

**#7 AMENDMENT proposal regarding:**

**Chapter II – Integrated policies and data collection**

**Article 6 – Comprehensive and co-ordinated policies**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>Article 6 – Comprehensive and co-ordinated policies</b></p> <p>1 Parties shall take the necessary legislative and other measures to adopt and implement effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat the commission of any offence established in accordance with this Convention.</p> <p>2 Parties shall take the necessary legislative or other measures to establish appropriate mechanisms for co-ordination and co-operation at strategic and operational levels among all their competent authorities involved in preventing and combating offences established in accordance with this Convention. Such mechanisms shall be aimed at:</p> <ul style="list-style-type: none"> <li>a. ensuring a common understanding of the relationship between criminal and administrative enforcement, as well as the adoption of common priorities;</li> <li>b. exchange of information for strategic and operational purposes;</li> <li>c. exchange of best practices.</li> </ul> <p>3 Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat the commission of any offence established in accordance with this Convention.</p> <p>4 Measures taken pursuant to this article shall involve all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, including the judiciary, public prosecutors, law enforcement agencies, and, where appropriate, non-governmental organisations and other relevant organisations and entities.</p>	<p><b>Article 27 – Comprehensive and co-ordinated policies</b></p> <p>1 Parties shall take the necessary legislative and other measures to adopt and implement effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat the commission of any offence established in accordance with this Convention.</p> <p>2 Parties shall take the necessary legislative or other measures to establish appropriate mechanisms for co-ordination and co-operation at strategic and operational levels among all their competent authorities involved in preventing and combating offences established in accordance with this Convention. Such mechanisms shall be aimed at:</p> <ul style="list-style-type: none"> <li>a. ensuring a common understanding of the relationship between criminal and administrative enforcement, as well as the adoption of common priorities;</li> <li>b. exchange of information for strategic and operational purposes;</li> <li>c. exchange of best practices.</li> </ul> <p>3 Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat the commission of any offence established in accordance with this Convention.</p> <p>4 Measures taken pursuant to this article shall involve all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, including the judiciary, public prosecutors, law enforcement agencies, and, where appropriate, non-governmental organisations and other relevant organisations and entities.</p> <p><b>5 Parties shall strengthen, and where necessary establish, specialised enforcement, inspection, prosecutorial and judicial units to detect, investigate, prosecute and adjudicate environmental crime. Those units shall operate also in</b></p>

5 Parties shall **consider assigning** specialised investigation units, prosecutors and judges to work on the prevention, investigation, prosecution and adjudication of offences established in accordance with this Convention.

**cross-border environmental crime cases.**

**6 Parties shall strengthen, and where necessary establish, national specialised coordination bodies with a focal point to liaise both with the specialised units within its national territory, and the focal points of other Parties.**

7 Parties shall **assign** specialised **professionals along the enforcement, inspection, prosecutorial and judicial chain, including customs authorities,** investigation units, prosecutors, **lawyers,** and judges **with expertise in environmental crime,** to work on the prevention, investigation, prosecution and adjudication of offences established in accordance with this Convention.

**8 Where the environmental offences are suspected to be of a cross-border nature, competent authorities of Parties shall without delay refer the information related to these cases to appropriate bodies.**

### **JUSTIFICATION**

*Amendments to paragraph 5 are based on the European Parliament's official position on the EU ECD. Amendments to paragraphs 6 and 7 are based on the European Parliament's ENVI Committee's opinion report on the EU ECD.*

*In common with many other types of crime, including sexual offences, financial crime, trafficking in narcotics, human trafficking etc., enforcement officers in the fight against environmental crime require a certain level of specialisation, so that they are equipped to:*

- 1. Identify incidents or situations that are indicative of a high risk of an environmental crime being committed;*
- 2. In the case of wildlife crime, have sufficient skills in the identification of flora and fauna, and their parts and derivatives, that they are able to assess the likelihood of a wildlife crime being committed and handle seized animals, etc.*

*Similarly, while much emphasis is placed on training or "sensitising" the judiciary, it is prosecutors who must argue the gravity of environmental crime before the Courts, and this requires a certain level of training and knowledge.*

*To ensure that environmental crimes are identified, investigated and punished in accordance with the Convention, specialised units with expertise in environmental crime within the enforcement, inspection, prosecutorial and judicial authorities should be established and/or strengthened, designated and assigned to environmental cases. Examples of specialised environmental crime units in France and Germany should be considered. Additionally, to improve cross-border coordination and cooperation, crucial to address the transnational nature of many of these crimes, national specialised coordination bodies should be established, with a focal point to liaise both with the specialised units in its country and the focal points of other countries. These units and bodies should all be provided with adequate financial and human resources, as well as adequate tools and specialised and homogeneous training to carry out their duties effectively. To be read in conjunction with Amendment proposal #49.*



**#8 AMENDMENT proposal regarding:**  
**Chapter II – Integrated policies and data collection**  
**Article 7 – National strategy**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 7 – National strategy**

Parties shall take the necessary legislative and other measures to establish a national strategy on preventing and combating offences established in accordance with this Convention, addressing:

- a. the objectives and priorities of national policy in this area;
- b. the roles and responsibilities of **the** competent authorities;
- c. the modes of co-ordination and co-operation between the competent authorities;
- d. the resources needed and how specialisation of enforcement professionals will be supported;
- e. the procedures and mechanisms for regular monitoring **and** evaluation of the results achieved;
- f. the assistance of international networks working on matters directly relevant to preventing and combating offences established in accordance with this Convention and related infringements.

*Amendment*

**Article 28 – National strategy**

**1** Parties shall take the necessary legislative and other measures to establish a national strategy on preventing and combating offences established in accordance with this Convention, addressing:

- a. the objectives and priorities of national policy in this area, **including in the case of cross-border crimes, and taking account of their obligations under other regional or international agreements;**
- b. the roles and responsibilities of **all** competent authorities **involved in countering the criminal offences referred to in this Convention;**
- c. the modes of co-ordination and co-operation between the competent authorities **within their territory and between their competent authorities and the competent authorities of other Parties;**
- d. the resources needed **and allocated** and how specialisation of enforcement professionals will be **trained and** supported;
- e. the procedures and mechanisms for regular monitoring, evaluation, **collecting data and reporting** of the results achieved;
- f. the assistance of international networks working on matters directly relevant to preventing and combating offences established in accordance with this Convention and related infringements;
- g. the use of administrative, civil and criminal law to address infringements related to the offences within the scope of this Convention;**
- h. the use of the proceeds of administrative and criminal sanctions for environmental restoration actions;**
- i. the measures for protection, support and assistance established in accordance with Chapter VI of this Convention.**

**2 Parties shall ensure that their national strategy is reviewed and updated at regular intervals of no longer than 3 years, on a risk-analysis and impact**

*assessment based approach, in order to take account of relevant developments and trends and related threats regarding environmental crime.*

### **JUSTIFICATION**

*These suggested amendments are based on the European Commission's original proposal and European Parliament's official position on the revision of the EU ECD.*

*Cross-border cooperation is essential to the effectiveness of the Convention. National Strategies should detail the measures that Parties intend to adopt and implement to facilitate coordination and cooperation intra and inter-State.*

*For transparency purposes, Parties should also provide information on the resources that will be allocated to the implementation of the National Strategy, as well as details on training provided to the relevant professionals and on the support, assistance and protection measures for victims and collaborators of justice referred to under Article 40 (now Article 38 - see Amendment proposal #54).*

*Parties should also detail how they intend to fulfil their reporting duties under the Convention in their National Strategies and ensure these Strategies are reviewed and updated at regular intervals to ensure they remain effective.*

#### **#9 AMENDMENT proposal regarding: Chapter II – Integrated policies and data collection Article 8 – Financial resources**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

#### **Article 8 – Financial resources**

Parties shall **allocate** appropriate financial and **human** resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat the commission of any offence established in accordance with this Convention.

#### **Article 29 – Resources**

*1 Parties shall take the necessary legislative and other measures to ensure that their national authorities which detect, investigate, prosecute or adjudicate environmental offences, and authorities which make the inspections, have sufficient qualified human resources with expertise in environmental crime, including customs authorities, the police, public prosecutors, lawyers, judges, official bodies designated under Article [6] of this Convention, and any other relevant professionals long the enforcement, inspection, prosecutorial and judicial chain.*

*2 Parties shall take the necessary legislative and other measures to designate and provide regular training to the professionals referred to in paragraph 1 and to ensure these are provided with appropriate and sufficient financial, technical and technological resources for the effective performance of their function related to the adequate implementation of integrated policies, measures and programmes to prevent and combat the commission of any offence established in*

accordance with this Convention.

**3 Parties shall take the necessary legislative and other measures to ensure that technical expertise is made available to all relevant authorities along the enforcement, inspection, prosecutorial and judicial chain.**

#### JUSTIFICATION

*The proposed amendments to paragraphs 1, 2 and 3 are based on the EU Commission's original proposal for the revision of the EU ECD. The additional paragraph (paragraph 4) is based on the European Parliament's official position on the revision of the ECD.*

*Resourcing requirements should cover all types of resources, including human resources, and not be limited to financial resources only.*

*As per our suggested edits to the table of contents, Article 6 (Comprehensive and co-ordinated policies) is now Article 26.*

#### **#10 AMENDMENT proposal regarding: Chapter II – Integrated policies and data collection Article 9 – Non-governmental organisations and civil society**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

#### **Article 9 - Non-governmental organisations *and* civil society**

Parties shall recognise, encourage and support, at all levels, the work of relevant nongovernmental organisations and of civil society active in preventing and combating environmental crime and establish effective co-operation with these organisations.

#### **Article 31 – Non-governmental organisations, civil society *and other relevant stakeholders***

**1** Parties shall recognise, encourage and support, at all levels, the work of relevant nongovernmental organisations and of civil society active in preventing and combating environmental crime and establish effective co-operation with these organisations.

**2** *Where appropriate, Parties shall act in cooperation with all relevant stakeholders, including but not limited to non-governmental organisations, recognising their role in the detection and reporting of environmental offences.*

#### JUSTIFICATION

*This article should recognise the involvement and establish measures to facilitate cooperation with all relevant stakeholders, especially non-governmental organisations and civil society, as they are often at the forefront of detecting, identifying, reporting and combating environmental offences.*

*The [NEW] paragraph 1 in this amendment is based on the EU Commission's original proposal for the revision of the EU ECD.*

**#11 AMENDMENT proposal regarding:  
Chapter II – Integrated policies and data collection  
Article 10 – Data collection and research**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 10 – Data collection and research**

**1 For the purpose of the implementation of this Convention, Parties shall undertake to:**

- a. collect disaggregated relevant statistical data at regular intervals on cases concerning offences established in accordance with this Convention;**
- b. support research in the field of environmental crime, in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.**

**[2 Parties shall provide the group of experts, as referred to in Article 41 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.]**

**3 Parties shall take the necessary legislative and other measures to ensure that the information collected pursuant to this article is available to the public.**

*Deleted (transformed into a separate, new, dedicated Chapter (under Amendment proposal #55).*

**JUSTIFICATION**

*To facilitate the reading and application of its provisions, Article 10 under CHAPTER II should be transformed into a separate chapter dedicated to data collection and research. Please see the proposed new Chapter X - Data collection and research (under Amendment proposal #55).*

**#12 AMENDMENT proposal regarding:  
Chapter II – Integrated policies and data collection  
[NEW Article]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**[NEW] Article 31 (b) – Investigative tools**

**Parties shall take the necessary legislative and other measures to ensure that effective investigative tools, such as those which are used in countering organised crime, financial crime, cybercrime, or other serious crime cases, are available for investigating or prosecuting offences established in accordance with this Convention.**

**JUSTIFICATION**

*Specific tools used to combat other serious crimes should be made available to relevant authorities, as appropriate, to combat environmental crime. These should include, inter alia, the interception of communications, covert surveillance including electronic surveillance, controlled deliveries, the monitoring of bank accounts and other financial investigation tools. It is best to include here a reference to financial and cyber-related tools to guide Parties' efforts, especially as cyber and financial crimes are becoming increasingly interlinked to environmental crimes (especially wildlife crimes).*

*Advances in technology and connectivity across the world enable criminal offenders to carry out their activities online and it is crucial that this Convention also tackles environmental crimes when facilitated and/or taking place over the internet. Research undertaken by IFAW, WWF, TRAFFIC and others has shown that the scale of cyber-enabled wildlife crime is significant and growing and this needs to be explicitly addressed by the Convention.*

**CHAPTER III – PREVENTION**

**#13 AMENDMENT proposal regarding:  
Chapter III – Prevention  
Chapter title**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Chapter III – Prevention**

**Chapter V – Prevention**

**JUSTIFICATION**

*As suggested in Amendment proposal #1 (Contents), Chapter III should be moved down and the third Chapter of the Convention (following Chapter II on Criminal offences) should be dedicated to Liability, sanctions and measures.*

**#14 AMENDMENT proposal regarding:  
Chapter III – Prevention  
Article 11 – General obligations**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 11 – General obligations**

1 Parties shall take the necessary legislative and other measures for the prevention of the commission of any offence established in accordance with this Convention by any natural or legal person.

2 Parties shall take the necessary legislative and other measures to encourage all members of society to contribute actively to preventing the commission of any offence established in accordance with this Convention.

3 Parties shall take the necessary legislative and other measures to promote changes in the social and cultural patterns of behaviour with a view to eradicating customs, traditions and all other practices which may cause substantial damage to animals or plants, or which involve the killing, destruction and taking **of a non-negligible quantity** of specimens of wild fauna or flora species.

*Amendment*

**Article 22 – General obligations**

1 Parties shall take the necessary legislative and other measures for the prevention of the commission of any offence established in accordance with this Convention by any natural or legal person.

2 Parties shall take the necessary legislative and other measures to encourage all members of society to contribute actively to preventing the commission of any offence established in accordance with this Convention.

3 Parties shall take the necessary legislative and other measures to promote changes in the social and cultural patterns of behaviour with a view to eradicating customs, traditions and all other practices which may cause substantial damage **to the quality of air, the quality of soil or the quality of water, or to biodiversity, ecosystem services and functions, or** to animals or plants **their populations or their habitats**, or which involve the killing, destruction and taking of specimens of wild fauna or flora species.

**4 Parties shall take the necessary legislative and other measures to put in place proactive and effective law enforcement and anti-corruption tools (including but not limited to risk assessments and situational crime prevention) to facilitate the effective prevention of the commission of any offence established in accordance with this Convention.**

**JUSTIFICATION**

*These additional tools would enable to cover prevention in a more holistic way. Some enforcement tools can act as preventive measures against environmental crime.*

**#15 AMENDMENT proposal regarding:**  
**Chapter III – Prevention**  
**Article 12 – Training of professionals**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 12 – Training of professionals**

1 Parties shall **provide** appropriate multidisciplinary, technical and legal expertise and training, on a regular basis, for the relevant professionals dealing with the prevention, investigation, prosecution and adjudication of offences established in accordance with this Convention, including the police, public prosecutors, judges and any other relevant staff.

2 Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases concerning offences established in accordance with this Convention.

*Amendment*

**Article 30 – Training of professionals**

1 Parties shall **ensure that** appropriate multidisciplinary, technical and legal expertise and training, **are provided** on a regular basis, for the relevant professionals dealing with the prevention, investigation, prosecution and adjudication of offences established in accordance with this Convention, including **customs authorities**, the police, public prosecutors, **lawyers**, judges and any other relevant staff.

2 Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases concerning offences established in accordance with this Convention, **as well as providing tools to effectively fight financial and cyber-crimes associated with such offences.**

**JUSTIFICATION**

*As suggested in Amendment proposal #1 (Contents), Article 12 relating to the training of professionals should be moved under the Chapter on 'Integrated policies' as training is more of an enforcement than a prevention tool. Training allows to develop capacities and is therefore closely linked to resources.*

*More specific text is needed to ensure that training requirements enable the effective implementation of the Convention and that financial and cyber-crimes require specific knowledge and dedicated training.*

**#16 AMENDMENT proposal regarding:**  
**Chapter III – Prevention**  
**Article 13 – Awareness-raising**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

<p><b>Article 13 – Awareness-raising</b></p> <p>1 Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with civil society and non-governmental organisations, especially those aimed at the protection of the environment, where appropriate, to increase awareness and understanding among the general public of the different manifestations of environmental crime, its consequences on economies, public health, human safety, food security, livelihoods <b>and</b> habitats and the need to prevent it.</p> <p>2 Parties shall take the necessary legislative and other measures to ensure the wide dissemination among the general public of information on measures available to prevent offences established in accordance with this Convention.</p>	<p><b>Article 23 – Awareness-raising</b></p> <p>1 Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with civil society and non-governmental organisations, especially those aimed at the protection of the environment, where appropriate, to increase awareness and understanding among the general public <b>and all relevant stakeholders, including but not limited to, the private sector and national authorities</b>, of the different manifestations of environmental crime, its consequences on economies, public health, human safety, food security, livelihoods, habitats, <b>species conservation and animal welfare</b>, and the need to prevent it.</p> <p>2 Parties shall take the necessary legislative and other measures to ensure the wide dissemination among the general public <b>and stakeholders referred to in paragraph 1</b>, of information on measures available to prevent offences established in accordance with this Convention.</p>
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**JUSTIFICATION**

*Cooperation and awareness of all members of society is necessary in the fight against environmental crimes, including from the private sector and national authorities (e.g. judicial and enforcement agencies).*

**#17 AMENDMENT proposal regarding:  
Chapter III – Prevention  
Article 14 – Education**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>Article 14 – Education</b></p> <p>1 Parties shall take the necessary legislative and other measures to include teaching material on issues such as the protection of biodiversity, ecosystems, sustainability and the fight against climate change, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.</p> <p>2 Parties shall take the necessary legislative and other measures to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.</p>	<p><b>Article 24 – Education</b></p> <p>1 Parties shall take the necessary legislative and other measures to include teaching material on issues such as the protection of biodiversity, ecosystems, sustainability, <b>animal welfare</b>, and the fight against climate change, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.</p> <p>2 Parties shall take the necessary legislative and other measures to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.</p>



**3 Parties shall take the necessary legislative and other measures to develop and undertake research and education programmes, including the study of the origin and motivation for committing environmental crimes.**

**JUSTIFICATION**

*Understanding the origins and motivation of environmental crime is essential for taking preventive measures, approaching crime from a psychosocial perspective and profiling criminals.*

**#18 AMENDMENT proposal regarding:**

**Chapter III – Prevention**

**Article 15 – Participation of the private sector and the media**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 15 – Participation of the private sector and the media**

Parties shall **encourage** the private sector, in particular industries and the information, communications, food, banking and finance sectors **to** implement internal norms through self-regulation or co-regulation in order to protect the environment and prevent offences established in accordance with this Convention.

**Article 25 – Participation of the private sector and the media**

Parties shall **take the necessary legislative and other measures to engage** the private sector, in particular industries and the information, communications, food, banking and finance sectors **and ensure they adopt and** implement internal norms through self-regulation or co-regulation in order to protect the environment and prevent offences established in accordance with this Convention, **including through the introduction of relevant reporting systems.**

**JUSTIFICATION**

*The involvement and participation of relevant stakeholders from the private sector must be enhanced as they are crucial to efficiently combat environmental crime.*

## CHAPTER IV – SUBSTANTIVE CRIMINAL LAW

**#19 AMENDMENT proposal regarding:**  
**Chapter IV – Substantive criminal law**  
**Chapter title**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Chapter IV – *Substantive criminal law***

**Chapter II – *Criminal offences***

### **JUSTIFICATION**

*To facilitate the reading and application of this Convention, a chapter should be dedicated to the list of criminal offences that are established under this Convention. The Chapter should be renamed ‘Criminal offences’ and moved up and placed right after Chapter I as per our proposed changes to the content table.*

**#20 AMENDMENT proposal regarding:**  
**Chapter IV – Substantive criminal law**  
**[NEW Article]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

***[NEW] Article 6 (i) – Conduct constituting an offence***

***Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the conduct referred to under the Articles 6 to 15 (b) of this Convention, when committed unlawfully and intentionally, or with serious negligence.***

### **JUSTIFICATION.**

*Instead of specifying in each article that a particular conduct shall be established as criminal offences ‘when committed unlawfully and intentionally’, this could be clarified once in an introduction paragraph to the Chapter, and therefore cover all the articles under that Chapter. When committed with serious negligence or in disregard of due diligence and duty of care, or the obligation to be aware, conduct referred to under this Chapter should also constitute a criminal offence.*

*Negligence is a well-known concept in criminal legal systems across the region. Criminalising negligent environmental offences was an obligation set in the 1998 Convention and was not listed as one of the reasons the Convention never entered into force in the feasibility study. There is therefore no ground as to why it should not be present in the new Convention.*

*Additionally, an unlawful conduct, when committed in ignorance of the law should also be a crime. Ignorance should not constitute an excuse to consider that any of the conduct listed under this Chapter is not a crime.*

*Note: an alternative to this article is proposed in Amendment proposal #34. If the approach of Amendment proposal #34 is chosen over that of Amendment proposal #20, the references to “when committed unlawfully and intentionally” should be kept in the relevant articles.*

**#21 AMENDMENT proposal regarding:**

**Chapter IV – Substantive criminal law**

**[NEW Article] – NB: solution proposed by the European Parliament to address the future proofing issue of the ECD**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
	<p><b>Article 6 (ii) – Autonomous offences</b></p> <p><b><i>Without prejudice to Chapter IV, parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, any conduct, when committed unlawfully and intentionally, or with serious negligence, causing or likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.</i></b></p>

**JUSTIFICATION**

*Using articles to establish a list of criminal offences as proposed in the draft Convention represents a risk in terms of ‘future proofing’: the Convention will become outdated if new legal instruments establishing new environmental crimes are developed. The Convention must be “future proof” and be promptly amended to account for criminal conduct established under new legal instruments in the future. This amendment is inspired by the European Parliament’s official position on the revision of the EU Environmental Crime Directive.*

**#22 AMENDMENT proposal regarding:  
Chapter IV – Substantive criminal law  
Article 17 – Unlawful discharge, emission or introduction of materials, substances or radiation**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 17 – Unlawful discharge, emission or introduction of materials, substances or radiation**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the discharge, emission or introduction of a quantity of materials or substances or ionising radiation into air, soil or water which causes or is likely to cause death or serious **injury** to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the placing on the market of a product, the use of which results in the discharge, emission or introduction of a quantity of materials or substances or ionising radiation into air, soil or water, which causes or is likely to cause death or serious **injury** to any person or substantial damage to air, water or soil quality, or to animals or plants as a result of the product's use on a larger scale.

3 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the manufacture, placing or making available on the market, import, export or use of restricted substances according to domestic law, whether on their own, in mixtures or in articles, including their incorporation into articles, when such a conduct causes or is likely to cause death or serious **injury** to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

4 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the manufacture, production, processing, handling, use, holding, storage, transport, import, export or disposal of radioactive material or substances, when such a conduct causes or is likely to cause death or serious **injury** to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

5 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and**

*Amendment*

**Article 6 – Unlawful discharge, emission or introduction of materials, substances or radiation**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the discharge, emission or introduction of a quantity of materials, **energy** or substances or ionising radiation into air, soil or water which causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or the quality of water, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**.

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the placing on the market, **including online**, of a product, the use of which results in the discharge, emission or introduction of a quantity of materials, **energy** or substances or ionising radiation into air, soil or water, which causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to air, water or soil quality, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**, as a result of the product's use on a larger scale.

3 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the manufacture, placing or making available on the market, **including online**, import, export or use of restricted substances according to domestic law, whether on their own, in mixtures or in articles, including their incorporation into articles, when such a conduct causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or the quality of water, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**.

4 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the manufacture, production, processing, handling, use, holding, storage, transport, import, export or disposal of radioactive material or substances, when such a conduct causes or is to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or the quality of water, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**.

**intentionally**, the manufacture, use, storage, import or export of mercury, mercury compounds and mixtures of mercury and mercury-added products when such a conduct causes or is likely to cause death or serious **injury** to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

6 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the production, placing on the market, import, export or use of ozone depleting substances or production, placing on the market, import or export of products and equipment containing or relying on such substances.

7 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the placing on the market, import, use, or release of fluorinated greenhouse gases, or placing on the market or import of products and equipment containing or relying on such gases.

5 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the manufacture, use, storage, import or export of mercury, mercury compounds and mixtures of mercury and mercury-added products when such a conduct causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or the quality of water, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**.

6 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the production, placing on the market, **including online**, import, export or use of ozone depleting substances or production, placing on the market, **including online**, import or export of products and equipment containing or relying on such substances.

7 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the placing on the market, **including online**, import, **export**, use, or release of fluorinated greenhouse gases, or placing on the market, **including online**, or import of products and equipment containing or relying on such gases.

**8 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the placing on the market, including online, import, export, use, cultivation, or release into the environment, or placing of genetically modified organisms where such activities are illegal.**

## **JUSTIFICATION**

*The references to conduct committed 'unlawfully and intentionally' can be deleted as it is now captured in the introduction to the Chapter (see Amendment proposal #20).*

*Elements related to harm to people's health, and serious damages to biodiversity, ecosystem services and functions were inspired by the European Parliament's official position on the revision of the EU ECD. Ecosystems and populations should also receive specific protection alongside individual wild animal and plant species and their habitats. The conservation status of particular species of wild fauna and flora can differ widely between regions. Healthy ecosystems are essential to the survival of wild species that depend on them and ecosystem alterations can have profound impacts on wild species populations, even within suitable habitats.*

*Cybercrime and online trafficking should also be captured in this article. Advances in technology and connectivity across the world enable criminal offenders to carry out their activities online and it is crucial that this Convention also tackle environmental crimes when facilitated and/or taking place over the internet.*

*The [NEW] Paragraph 8 related to genetically modified organisms is based on a provision of the European Parliament's official position on the revision of the EU ECD.*

**#23 AMENDMENT proposal regarding:**  
**Chapter IV – Substantive criminal law**  
**Article 18 – Unlawful collection, transport, recovery, disposal or shipment of waste**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>Article 18 – Unlawful collection, transport, recovery, disposal or shipment of waste</b></p> <p>1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, <b>when committed unlawfully and intentionally</b>, the collection, transport, recovery or disposal of waste, the supervision of such operations and the after-care of disposal sites, including action taken as a dealer or a broker (waste management), when such conduct:</p> <ul style="list-style-type: none"> <li>a. concerns hazardous waste as defined in accordance with domestic law <b>and when it concerns is undertaken in a non-negligible quantity</b>;</li> <li>b. concerns other waste than referred to in point (a) and causes or is likely to cause death or serious <b>injury</b> to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.</li> </ul> <p>2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, <b>when committed unlawfully and intentionally</b>, the shipment of waste, <b>when such shipment is undertaken in a non-negligible quantity</b>, whether executed in a single shipment or in several shipments which appear to be linked.</p>	<p><b>Article 7 – Unlawful collection, transport, recovery, disposal or shipment of waste</b></p> <p>1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the collection, transport, <b>treatment</b>, recovery or disposal of waste, the supervision of such operations and the after-care of disposal sites, including action taken as a dealer or a broker (waste management), when such conduct:</p> <ul style="list-style-type: none"> <li>a. concerns hazardous waste as defined in accordance with domestic law;</li> <li>b. concerns other waste than referred to in point (a) and causes or is likely to cause death or serious <b>harm</b> to any person's <b>health</b> or substantial damage to the quality of air, the quality of soil or the quality of water, <b>or to biodiversity, ecosystem services and functions</b>, or to animals or plants, <b>their populations or their habitats</b>.</li> </ul> <p>2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the shipment of waste, whether executed in a single shipment or in several shipments which appear to be linked.</p>

**JUSTIFICATION**

*The references to conduct committed 'unlawfully and intentionally' can be suppressed as it is now captured in the proposed new Article 6 (i) under Amendment proposal #20).*

*The addition of 'treatment' was recommended by the European Parliament's ENVI Committee in its opinion report on the revision of the EU ECD: while EU legislation mostly refers to waste handling as collection, transport, recovery and disposal of waste, there are certain pieces of EU waste legislation such as the Directive 2000/53/EC on end-of life vehicles which refer specifically to the treatment of waste. Therefore, treatment should be added to the text.*

*Minuscule quantities of some hazardous waste (i.e. fly ashes from incinerators) are so toxic that the definition of negligible quantity of Article 3(5) is not appropriate for hazardous waste.*

*Other proposed edits are consistent with and justified under Amendment proposal #22. They are based on the European Parliament's official position on the revision of the EU ECD.*

**#24 AMENDMENT proposal regarding:**

**Chapter IV – Substantive criminal law**

**Article 19 – Unlawful operation or closure of an installation concerning a dangerous activity or dangerous substances**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 19 – Unlawful operation or closure of an installation concerning a dangerous activity or dangerous substances**

Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the operation or closure of an installation in which a dangerous activity is carried out or in which dangerous substances or mixtures are stored or used, when such a conduct causes or is likely to cause death or serious **injury** to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

*Amendment*

**Article 8 – Unlawful operation or closure of an installation concerning a dangerous activity or dangerous substances**

Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the operation or closure of an installation in which a dangerous activity is carried out or in which dangerous substances or mixtures are stored or used, when such a conduct causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or the quality of water, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**.

**JUSTIFICATION**

*Proposed edits are consistent with and justified under Amendment proposal #22. They are based on the European Parliament's official position on the revision of the EU ECD.*

**#25 AMENDMENT proposal regarding:**

**Chapter IV – Substantive criminal law**

**Article 20 – Unlawful disposal or recycling of ships or ship-source discharges of polluting substances**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 20 – Unlawful disposal or recycling of ships or ship-source discharges of polluting substances**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the failure of the owner of a ship to comply with the applicable requirements which impose recycling of a ship at ship recycling facilities, when such a conduct causes or is likely to cause death or serious **injury** to any person

*Amendment*

**Article 9 – Unlawful disposal or recycling of ships or ship-source discharges of polluting substances**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the failure of the owner of a ship to comply with the applicable requirements which impose recycling of a ship at ship recycling facilities, when such a conduct causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or

<p>or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.</p> <p>2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, <b>when committed unlawfully and intentionally</b>, the ship-source discharges of polluting substances, when such a conduct causes or is likely to cause death or serious <b>injury</b> to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants, be it the result of a single act or the conjunction of repeated minor cases that do not individually do so.</p>	<p>the quality of water, <b>or to biodiversity, ecosystem services and functions</b>, or to animals or plants, <b>their populations or their habitats</b>.</p> <p>2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the ship-source discharges of polluting substances, when such a conduct causes or is likely to cause death or serious <b>harm</b> to any person's <b>health</b> or substantial damage to the quality of air, the quality of soil or the quality of water, <b>or to biodiversity, ecosystem services and functions</b>, or to animals or plants, <b>their populations or their habitats</b>, be it the result of a single act or the conjunction of repeated minor cases that do not individually do so.</p>
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**JUSTIFICATION**

*Proposed edits are consistent with and justified under Amendment proposal #22. They are based on the European Parliament's official position on the revision of the EU ECD.*

**#26 AMENDMENT proposal regarding:  
Chapter IV – Substantive criminal law  
Article 21 – Unlawful abstraction of surface water or groundwater**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>Article 21 – Unlawful abstraction of surface water or groundwater</b></p> <p>Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, <b>when committed unlawfully and intentionally</b>, the abstraction of surface water or groundwater which causes or is likely to cause substantial damage to the ecological status or potential of surface water bodies or to the quantitative status of groundwater bodies.</p>	<p><b>Article 10 – Unlawful abstraction of surface water or groundwater</b></p> <p>Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the abstraction of surface water or groundwater which causes or is likely to cause substantial damage to the ecological status or potential of surface water bodies or to the quantitative status of groundwater bodies.</p>

**JUSTIFICATION**

*The references to conduct committed 'unlawfully and intentionally' can be deleted as it is now captured in the new Article 6 (i) under Amendment proposal #20).*



**#27 AMENDMENT proposal regarding:**  
**Chapter IV – Substantive criminal law**  
**Article 22 – Trading of unlawfully harvested timber**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 22 – Trading of unlawfully harvested timber**

Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the placing on the market of unlawfully harvested timber, or of timber products derived from such timber, except for cases where the conduct concerns a negligible quantity.

**Article 11 – Trading of unlawfully harvested timber**

Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the **procurement and/or** placing on the market, **including online**, of unlawfully harvested timber, or of timber products derived from such timber, except for cases where the conduct concerns a negligible quantity.

**JUSTIFICATION**

*The references to conduct committed ‘unlawfully and intentionally’ can be deleted as it is now captured in the new Article 6 (i) under Amendment proposal #20).*

*Environmental criminal activities occurring online should also be captured in this article. Advances in technology and connectivity across the world enable criminal offenders to carry out their activities online and it is crucial that this Convention also tackle environmental crimes when facilitated and/or taking place over the internet. Research undertaken by IFAW, WWF, TRAFFIC and others has shown that the scale of cyber enabled wildlife crime is significant and growing and this needs to be explicitly addressed by the Convention.*

*The notion of ‘procurement’ should be included as it covers the obtaining of illegal timber with the intention of trading, loosely based on the definition of “illicit trafficking” in the [UNTOC Firearms Protocol](#) which states that “Illicit trafficking shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components...”*

**#28 AMENDMENT proposal regarding:**  
**Chapter IV – Substantive criminal law**  
**Article 23 – Unlawful fishing**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

### Article 23 – Unlawful fishing

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the fishing activities conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws, administrative regulations or decisions taken by competent authorities, including the catching, placing **in** the market, processing, importing, or exporting of the products of such activities, except for cases where the conduct concerns a negligible quantity.

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the fishing activities conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, which have not been reported to that State or have been misreported to the relevant national authority, in contravention of national laws, administrative regulations or decisions taken by competent authorities of that State, except for cases where the conduct concerns a negligible quantity.

3 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the fishing through the use of fishing explosives, electric current, firearms, bottom trawling, or of soporific or toxic substances, or other instruments or gear that are similarly destructive or non-selective with regard to wildlife, or that cause or are likely to cause the mass destruction of marine animals, plants and their environment.

### Article 12 – Unlawful fishing

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the fishing activities conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws, administrative regulations or decisions taken by competent authorities, including the catching, placing **on** the market, **including online**, processing, **discarding**, importing, or exporting of the products of such activities, except for cases where the conduct concerns a negligible quantity.

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the fishing activities conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, which have not been reported to that State or have been misreported to the relevant national authority, in contravention of national laws, administrative regulations or decisions taken by competent authorities of that State, except for cases where the conduct concerns a negligible quantity.

3 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the fishing through the use of fishing explosives, electric current, firearms, bottom trawling, or of soporific or toxic substances, or other instruments or gear that are similarly destructive or non-selective with regard to wildlife, or that cause or are likely to cause the mass destruction of marine animals, plants and their environment, **with due regard to other relevant agreements such as the United Nations High Seas treaty**.

### JUSTIFICATION

*The references to conduct committed ‘unlawfully and intentionally’ can be deleted as it is now captured in the new Article 6 (i) under Amendment proposal #20).*

*Environmental criminal activities occurring online should also be captured in this article. Advances in technology and connectivity across the world enable criminal offenders to carry out their activities online and it is crucial that this Convention also tackle environmental crimes when facilitated and/or taking place over the internet.*

*Including ‘discarding’ is necessary to incorporate the illegal discarding of bycatch, reflecting the landing obligations in international fisheries regulations.*

**#29 AMENDMENT proposal regarding:**  
**Chapter IV – Substantive criminal law**  
**Article 24 – Unlawful killing or trading of wild fauna or flora**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 24 – Unlawful killing or trading of wild fauna or flora**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the killing, destruction, taking of, possession, sale or offering for sale of a specimen or specimens of wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens.

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the trading in specimens of wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens.

*Amendment*

**Article 13 – Unlawful killing or trading of wild fauna or flora**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the killing, destruction, taking of, **import, export**, possession, sale or offering for sale, **including online**, of a specimen or specimens of wild fauna or flora species, **or parts or derivatives thereof**, except for cases where the conduct concerns a negligible quantity of such specimens **and does not adversely affect the conservation of the populations or natural habitats of such species. Such acts shall be considered unlawful when committed in contravention of:**

- a. Any international agreement concerning or relating to the protection, conservation, management, trade or use of wild fauna or flora binding on the State Party; or**
- b. Any applicable domestic or foreign law concerning the protection, conservation management, trade or use of wild fauna or flora.**

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the trading in specimens of wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens **and does not significantly adversely affect the populations or natural habitats of such species. Such acts shall be considered unlawful when committed in contravention of:**

- a. Any international agreement concerning or relating to the protection, conservation, management, trade or use of wild fauna or flora binding on the State Party; or**
- b. Any applicable domestic or foreign law concerning the protection, conservation management, trade or use of wild fauna or flora.**

**3 Parties shall also adopt, as may be necessary, legislative and other measures to establish as a criminal offence, the falsifying or illicitly altering of any permit, certificate or other document required for the import, export, transport, sale (including by electronic means), receipt, introduction from the sea, acquisition, possession, purchase, delivery, movement or transfer of specimens of wild**

*fauna and flora or parts or derivatives thereof.*

*4 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law all acts referred to in paragraphs 1, 2 and 3, when they concern non-protected wild fauna or flora species the protection of which is necessary for the conservation of protected species that are part of the same ecosystem.*

#### **JUSTIFICATION**

*The references to conduct committed ‘unlawfully and intentionally’ can be deleted as it is now captured in the new Article 6 (i) under Amendment proposal #20).*

*Cybercrime and online trafficking should also be captured in this article. Advances in technology and connectivity across the world enable criminal offenders to carry out their activities online and it is crucial that this Convention also tackle environmental crimes when facilitated and/or taking place over the internet.*

*All acts mentioned in paragraphs 1, 2 and 3, when referring to species that are protected either by international, regional, national or local laws, should be criminalised. The same acts should also be established as crimes when they concern non-protected wild fauna or flora species the protection of which is necessary for the conservation of protected species that are part of the same ecosystem. In certain instances, the removal of a single individual from a population, ecosystem or habitat can dramatically affect the conservation status of that population, ecosystem or habitat. As such, the conservation status of these elements should be analysed to determine if the acts referred to in this article constitute an offence or not.*

#### **#30 AMENDMENT proposal regarding:**

#### **Chapter IV – Substantive criminal law**

#### **Article 25 – Unlawful deterioration of habitats or disruption of ecosystems**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

#### **Article 25 – Unlawful deterioration of habitats or disruption of ecosystems**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally, the** causing **of** deterioration of a habitat, or the disturbance of **animal species** within a protected site, when this deterioration or disturbance is significant.

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally,** the bringing into the national territory, placing on the market, keeping, breeding, transporting, using, exchanging, permitting to reproduce, grow or cultivate, releasing into the environment, or spreading of invasive alien species of concern, **when such conduct causes or is likely to cause death or serious**

#### **Article 14 – Unlawful deterioration of habitats or disruption of ecosystems**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **any conduct** causing **the** deterioration of a habitat, or the disturbance of **wild fauna or flora** within a protected site, when this deterioration or disturbance is significant, **including when it poses a danger to populations of wild fauna or flora or ecosystems.**

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the bringing into the national territory, placing on the market, **including online,** keeping, breeding, transporting, using, exchanging, permitting to reproduce, grow or cultivate, releasing into the environment, or spreading of invasive alien species of concern.

***injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.***

#### **JUSTIFICATION**

*The references to conduct committed ‘unlawfully and intentionally’ can be deleted as it is now captured in the new Article 6 (i) under Amendment proposal #20). Other proposed edits are consistent with and justified under Amendment proposal #22. They are based on the European Parliament’s official position on the revision of the EU ECD.*

*The introduction of invasive alien species or the illegal exploitation of very small populations of endemic species can cause irreversible and substantial conservation damage.*

*Environmental criminal activities occurring online should also be captured in this article. Advances in technology and connectivity across the world enable criminal offenders to carry out their activities online and it is crucial that this Convention also tackles environmental crimes when facilitated and/or taking place over the internet.*

#### **#31 AMENDMENT proposal regarding: Chapter IV – Substantive criminal law [NEW Article]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

- [NEW] Article 14 (b) – Unlawful conduct harmful to non-human animals***  
***Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law:***
- a. mistreatment, by any means or procedures, resulting in unnecessary or avoidable injury to or suffering of animals;***
  - b. the use in any environments of poison, poisoned bait, explosives or any other substance with destructive capacity for wildlife, that is prohibited by national legislation or by any international agreements.***

#### **JUSTIFICATION**

*This new article is based on a similar article adopted by the EP PETI Committee in the opinion report on the ECD. We agree that the unnecessary injury or suffering or killing of domesticated, tamed and wild animals should be criminalised. Unnecessary injury or suffering or killing refers to circumstances where such actions are not indispensable. This would therefore exclude, among others, legal animal control, hunting or farming activities.*

**#32 AMENDMENT proposal regarding:  
Chapter IV – Substantive criminal law  
Article 26 – Unlawful mining and trafficking in minerals and metals**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 26 – Unlawful mining and trafficking in minerals and metals**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the extraction and trade of minerals and metals, including the placing on the market, distributing, brokering, offering, keeping, dealing, processing, purchasing, selling, supplying, storing or transporting of minerals and metals, or of products derived from such unlawfully extracted minerals and metals, when such a conduct causes or is likely to cause death or serious **injury** to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the extraction of minerals and metals in a protected site, ecosystems and habitats, when such a conduct causes or is likely to cause death or serious **injury** to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

3 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, **when committed unlawfully and intentionally**, the mining through the use of dangerous equipment, device or chemical, including the use of explosives, mercury or cyanide, when such a conduct causes or is likely to cause death or serious **injury** to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.

**Article 15 – Unlawful mining and trafficking in minerals and metals**

1 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the extraction and trade of minerals and metals, including the placing on the market, **including online**, distributing, brokering, offering, keeping, dealing, processing, purchasing, selling, supplying, storing or transporting of minerals and metals, or of products derived from such unlawfully extracted minerals and metals, when such a conduct causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or the quality of water, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**.

2 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the extraction of minerals and metals in a protected site, ecosystems and habitats, when such a conduct causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or the quality of water, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**.

3 Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, the mining through the use of dangerous equipment, device or chemical, including the use of explosives, mercury or cyanide, when such a conduct causes or is likely to cause death or serious **harm** to any person's **health** or substantial damage to the quality of air, the quality of soil or the quality of water, **or to biodiversity, ecosystem services and functions**, or to animals or plants, **their populations or their habitats**.

**JUSTIFICATION**

*The references to conduct committed 'unlawfully and intentionally' can be deleted as it is now captured in the new Article 6 (i) under Amendment proposal #20). Other proposed edits are consistent with and justified under Amendment proposal #22. They are based on the European Parliament's official position on the revision of the EU ECD.*

*Environmental criminal activities occurring online should also be captured in this article. Advances in technology and connectivity across the world enable criminal offenders to carry out their activities online and it is crucial that this Convention also tackles environmental crimes when facilitated and/or taking place over the internet.*

**#33 AMENDMENT proposal regarding:**  
Chapter IV – Substantive criminal law  
[NEW Article]

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**[NEW] Article 15 (b) – Unlawful damage or deterioration of a forest**  
**Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, any conduct, when committed unlawfully and intentionally, or with serious negligence.**

**JUSTIFICATION**

*Healthy forests are key to mitigate climate change, preserve biodiversity and, due to the other essential services they provide, support human life. However, natural disasters in recent years have demonstrated how fragile they are. As such, any significant human-induced damage or deterioration of forests should be considered a crime.*

**#34 AMENDMENT proposal regarding:**

Chapter IV – Substantive criminal law

[NEW Article] – NB: proposed alternative to AMENDMENT proposal #20 related to the proposed introduction to this Chapter

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 16 (b) – Serious negligence**  
**Parties shall take the necessary legislative or other measures to ensure that the conduct referred to in Articles 6 to 15 (b) of this Convention also constitutes a criminal offence, when committed with serious negligence.**

**JUSTIFICATION**

*This article constitutes an alternative to the proposed new Article 6 (i) introduced in Amendment proposal #20. If the approach of Amendment proposal #34 is chosen over that of Amendment proposal #20, the references to “when committed unlawfully and intentionally” should be kept in the relevant articles, and not suppressed as suggested in different Amendment proposals under this Chapter.*

*When committed with serious negligence or in disregard of due diligence obligations and duty of care as understood in domestic law, or the obligation to be aware, conduct referred to under this Chapter should also constitute a criminal offence.*

*Negligence is a well-known concept in criminal legal systems across the region. Criminalising negligent environmental offences was an obligation set in the 1998 Convention and was not listed as one of the reasons the Convention never entered into force in the feasibility study. There is therefore no ground as to why it should not be present in the new Convention.*

*Additionally, an unlawful conduct, when committed in ignorance of the law should also be a crime. Ignorance shouldn't constitute an excuse to consider that any of the conduct listed under this Chapter is not a crime.*

**#35 AMENDMENT proposal regarding:  
Chapter IV – Substantive criminal law  
Article 28 – Aiding or abetting and attempt**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 28 – Aiding or abetting and attempt**

1 Parties shall take the necessary legislative or other measures to establish as **an** offence, **when committed unlawfully and intentionally**, aiding **or** abetting the commission of the offences established in accordance with this Convention.

2 Parties shall take the necessary legislative or other measures to establish as offences, **when committed unlawfully and intentionally**, attempts to commit the offences established in accordance with this Convention.

**Article 17 – Inciting, aiding or abetting and attempt**

1 Parties shall take the necessary legislative or other measures to establish as **a criminal** offence, **organising, inciting, directing**, aiding, abetting, **facilitating or counselling** the commission of the offences established in accordance with this Convention.

2 Parties shall take the necessary legislative or other measures to establish as **criminal** offences, attempts to commit or the participation as an accomplice in an offence established in accordance with this Convention.

**JUSTIFICATION**

*The incitement to commit an offence established under this Convention should also be established as a criminal offence. This is aligned with the European Commission's proposal for the revision of the EU ECD, and supported both by the European Parliament and Council in their official positions.*

**#36 AMENDMENT proposal regarding:  
Chapter IV – Substantive criminal law  
[NEW Article]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*



**[NEW] Article 17 (b) – Attempts to hinder or interfere in reporting and/or proceedings and breaches of confidentiality**

**Parties shall take the necessary legislative and other measures to provide for effective, proportionate and dissuasive sanctions applicable to natural or legal persons that:**

- a. hinder or attempt to hinder reporting;**
- b. retaliate against or discriminate or harass or attempt to intimidate any persons referred to in this Article;**
- c. bring vexatious proceedings against persons referred to in this Article;**
- d. breach the duty of maintaining the confidentiality of the identity of persons referred to in this Article;**
- e. otherwise attempt to interfere in the proceedings.**

**JUSTIFICATION**

*This article is based on content from the EU Directive on the protection of persons who report breaches of Union law. These provisions are important to guarantee the protection of those reporting environmental crimes. Furthermore, it is important to sanction anyone who is or is attempting to hinder reporting or criminal proceedings.*

**#37 AMENDMENT proposal regarding:  
Chapter IV – Substantive criminal law  
[NEW Article]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**[NEW] Article 17 (c) – Assessments of the damage and quantity**

**1 Parties shall take the necessary legislative or other measures to ensure that their national legislation specifies that the following elements shall be taken into account, where relevant, when assessing whether the damage or likely damage is substantial for the purpose of this Convention:**

- a. the baseline condition of the affected environment;**
- b. whether the damage is long-lasting, medium term or short term;**

- c. severity of the damage;*
- d. extent of the damage, including any potential cross-border damage;*
- e. reversibility of the damage;*
- f. the duration of the infringement or non-compliance;*
- g. any financial benefits derived from the damage caused by the perpetrators;*
- h. the scale of financial benefits gained by committing the offence;*
- i. the monetary value of the environmental damage caused by the offence;*
- j. whether the offence was committed in the framework of a criminal organisation;*
- k. the conservation status and trend of the species, populations, habitats, ecosystems and natural resources affected;*
- l. the feasibility and estimated cost of restoration of areas affected by environmental damage;*
- m. the number of persons who are victims of the environmental damage;*
- n. the cross-border dimension of the crime, including the cross-border character of the environmental damage and the cross-border characteristics of any criminal organisation.*

*2 Parties shall take the necessary legislative or other measures to ensure that their national legislation specifies that the following elements shall be taken into account when assessing whether the activity is likely to cause damage to human health, the quality of air, the quality of soil or the quality of water, or to biodiversity, ecosystem services and functions, or to animals or plants, their populations or their habitats, for the purpose of this Convention:*

- a. the conduct relates to an activity which is considered as risky or dangerous, requires an authorisation which was not obtained or updated or complied with, or is carried out under an authorisation that is illegal, obtained fraudulently or through corruption, extortion or coercion;*
- b. the extent to which the values, parameters or limits set out in legal acts or in an authorisation issued for the activity are exceeded;*
- c. whether any material or substance used is classified as dangerous or hazardous;*
- d. the consequences for human health and the violation of human rights.*

**3 Parties shall take the necessary legislative or other measures to ensure that their national legislation specifies that the following elements shall be taken into account when assessing whether the quantity is negligible or non-negligible for the purpose of this Convention:**

- a. the number of items subject to the offence;**
- b. the extent to which the regulatory threshold, including a hazardousness and toxicity threshold, value or another mandatory parameter is exceeded;**
- c. the feasibility and cost of restoration of environmental damage, taking into account the value of the ecosystem service supplied;**
- d. the conservation status of the relevant populations of fauna or flora species concerned;**
- e. the potential quantity of financial benefits accrued by committing the offence;**
- f. whether the offence was committed in the framework of a criminal organisation or linked to corruption, fraud, extortion, or coercion.**

### **JUSTIFICATION**

*To facilitate the interpretation and application of this Convention by the Parties and their relevant authorities, an extreme clarity in the terms employed in the Convention's text is required. This is notably the case for the terms 'substantial damage', 'likely to cause damage' and 'negligible quantity' which are employed at many points throughout the text. Defining such terms might be complex as many elements will need to be taken into account, and judicial authorities must be provided with flexibility when determining whether or not these terms apply to a particular case. As such, the approach already employed in the European Commission's proposal for the revision of the EU ECD (supported both by the European Parliament and Council in their official position), which has been followed in this proposed amendment, offers a solution.*

*Alternatively, the CDPC Secretariat Directorate General might decide to develop definitions for each term under the relevant article of this Convention.*

*Paragraph 1: assessing 'substantial damage' - references to 'monetary value', 'scale of financial benefits', and 'species conservation status and trend':*

*It is important to be able to impose appropriate sanctions depending on the cost of what was lost. Quantifying the monetary value of an ecosystem might also make more Parties aware of the importance of the damage inflicted.*

*The impact of the damage also depends on the conservation status of the affected species and habitats. This addition is also coherent with the definition of "significant negative impact" included in the EC Guidance document on the strict protection of animal species of Community interest under the Habitats Directive.*

*Paragraph 3: assessing 'negligible quantity' - references to 'relevant populations of fauna and flora', 'financial benefits' and offence committed in the framework of a criminal organisation':*

*By specifying that the definition should take into account the conservation status of the relevant populations, and not just the conservation status of the species, we ensure that when a species is damaged in one area no argument can be made that nationwide or globally the species is overall fine.*

*Examining the quantity in the offences in the context of financial gains is essential as the offences covered in this article are among the most lucrative environmental crimes.*

Reference to organised crime and corruption should be made because the offences covered in this article are often committed by organised crime groups and provide a hotbed for corruption, seriously affecting the rule of law and undermining public confidence (see EMPACT 2022-2025 priorities which include a priority on environmental crime, with a focus on waste and wildlife trafficking).

**#38 AMENDMENT proposal regarding:  
Chapter IV – Substantive criminal law  
Article 29 – Jurisdiction**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>Article 29 – Jurisdiction</b></p> <p>1 Parties shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:</p> <ul style="list-style-type: none"> <li>a. in their territory; or</li> <li>b. on board a ship flying their flag; or</li> <li>c. on board an aircraft registered under their laws; or</li> <li>d. by one of their nationals; or</li> <li>e. against one of their nationals.</li> </ul> <p>2 Parties shall take the necessary legislative and other measures to establish jurisdiction over any offence established in accordance with this Convention, when the alleged offender is present in their territory and cannot be extradited to another State, solely on the basis of their nationality.</p> <p>3 For the prosecution of offences established in accordance with this Convention, Parties shall take the necessary legislative and other measures to ensure that their jurisdiction as regards paragraph 1.d is not subordinated to the condition that the acts are criminalised at the place where they were performed.</p> <p>4 Where more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties concerned shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for prosecution.</p>	<p><b>Article 33 – Jurisdiction</b></p> <p>1 Parties shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:</p> <ul style="list-style-type: none"> <li>a. in their territory; or</li> <li>b. on board a ship flying their flag; or</li> <li>c. on board an aircraft registered under their laws; or</li> <li>d. by one of their nationals, <b>or habitual residents, or legal persons established on their territory;</b> or</li> <li>e. against one of their nationals <b>or habitual residents; or</b></li> <li>f. <b>the damage occurred on their territory; or</b></li> <li>g. <b>the offence was committed for the benefit of a legal person established on their territory; or</b></li> <li>h. <b>the offence was committed on behalf of a legal person established on the same territory as that of the offender; or</b></li> <li>i. <b>the offence was committed by a public official and the public authority is established within their territory; or;</b></li> <li>j. <b>the offence damages or risks damaging the environment and/or the conservation of native wildlife populations and their habitats, or of ecosystems, on their territory.</b></li> </ul> <p>2 Parties shall take the necessary legislative and other measures to establish jurisdiction over any offence established in accordance with this Convention, when the</p>

<p>5 Without prejudice to the general rules of international law, this Convention shall not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.</p>	<p>alleged offender is present in their territory and cannot be extradited to another State, solely on the basis of their nationality.</p> <p>3 For the prosecution of offences established in accordance with this Convention, Parties shall take the necessary legislative and other measures to ensure that their jurisdiction as regards paragraph 1.d is not subordinated to the condition that the acts are criminalised at the place where they were performed.</p> <p>4 Where more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties concerned shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for prosecution.</p> <p>5 Without prejudice to the general rules of international law, this Convention shall not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.</p>
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**JUSTIFICATION**

Article relocation:

*As per our suggested amendments to the content table, Article 29 should be moved from Chapter IV - Substantive criminal law (turned into Chapter II - Criminal offences) under Chapter V - Investigation, prosecution and procedural law (turned into Chapter VII - Reporting, investigation, prosecution and procedural law), which would be renamed it 'Involvement and cooperation with relevant stakeholders'.*

Proposed amendment to article content:

*Parties should establish jurisdiction over offences committed by and/or on behalf and/or for the benefit of a legal person established on its territory.*

**[NEW CHAPTER] – LIABILITY, SANCTIONS AND MEASURES**

<p><b>#39 AMENDMENT proposal regarding:</b>  <b>[NEW CHAPTER] Chapter III – Liability, sanctions and measures</b>  <b>[NEW] Chapter title and introduction</b></p>	
<p><i>Text proposed by the CDPC Secretariat Directorate General I</i></p>	<p><i>Amendment</i></p>
	<p><b>[NEW] Chapter III – Liability, sanctions and measures</b></p>

*Parties shall take the necessary and appropriate measures, including having effective procedures in place, to ensure that the offences referred to in this Convention are punishable by effective, proportionate and dissuasive sanctions and measures.*

**JUSTIFICATION**

*To enhance the clarity and user-friendly aspect of the Convention, a separate chapter dedicated to Liability, sanctions and measures should be created, reusing content from Articles 30, 31 and 32 of the draft Convention's text. This will facilitate the interpretation and application of this Convention by the Parties and their relevant authorities, and result in more consistent rules across Europe.*

**#40 AMENDMENT proposal regarding:  
[NEW CHAPTER] Chapter III – Liability, sanctions and measures  
[NEW Article]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 18 (i) – Criminal liability**

*Parties shall take the necessary legislative or other measures to ensure that from the moment a conduct becomes unlawful, the perpetrator cannot invoke the issuance of an authorisation in order to avoid criminal liability.*

**JUSTIFICATION**

*This amendment proposal is based on a similar provision proposed by the European Parliament in its official position on the revision of the EU ECD. We believe that such a provision should be included in the Convention to reinforce its impact, by limiting get away opportunities for criminals, such as late request for authorisation. Currently environmental crime is seen as a low risk/high reward activity. Environmental criminals must be punished with deterrent sanctions to increase Parties' efforts to combat environmental crime.*

**#41 AMENDMENT proposal regarding:  
[NEW CHAPTER] Chapter III – Liability, sanctions and measures  
Article 30 – Liability of legal persons**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

### Article 30 – Liability of legal persons

1 Parties shall take the necessary legislative and other measures to ensure that legal persons can be held liable for offences established in accordance with this Convention, when committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within that legal person, based on:

- a. a power of representation of the legal person;
- b. an authority to take decisions on behalf of the legal person;
- c. an authority to exercise control within the legal person.

2 Apart from the cases provided for in paragraph 1, Parties shall take the necessary legislative and other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4 Such liability shall be without prejudice to the criminal liability of a natural person who **has** committed **the** offence.

### Article 18 – Liability of legal persons

1 Parties shall take the necessary legislative and other measures to ensure that legal persons can be held liable for offences established in accordance with this Convention, when committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within that legal person, based on:

- a. a power of representation of the legal person **and/or**;
- b. an authority to take decisions on behalf of the legal person **and/or**;
- c. an authority to exercise control within the legal person.

2 Apart from the cases provided for in paragraph 1, Parties shall take the necessary legislative and other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4 Such liability shall be without prejudice to the criminal liability of natural persons, **including corporate board members**, who **have** committed **an** offence **established under this Convention**.

**5 Parties shall take the necessary legislative and other measures to ensure that legal persons that commit an offence established under this Convention can be held liable under civil law, where relevant, for any harm or damage they cause as a result of that offence, and, in conformity with national law, can be required to compensate the natural and legal persons who have suffered that harm or damage or incurred costs associated with investigating, reporting or suing the offender, or have been successful in the outcome of a proceeding, and required to fully cover the cost of reinstating the environment or to compensate for the damage caused where reinstatement is not feasible.**

### JUSTIFICATION

*Amendment proposals are based on text from the European Parliament's official position on the revision of the EU ECD. We believe these additions will enhance the effectiveness of the Convention by incorporating provisions on the responsibility and sanctioning of those holding responsible functions in infringing legal persons.*

**#42 AMENDMENT proposal regarding:  
[NEW CHAPTER] Chapter III – Liability, sanctions and measures  
Article 31 – Sanctions and measures**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 31 – Sanctions and measures**

1 Parties shall take the necessary legislative and other measures to ensure that the offences established in accordance with this Convention, when committed by natural persons, are punishable by effective, proportionate and dissuasive sanctions, which take into account the seriousness of the offence. The sanctions available shall include imprisonment **and** monetary sanctions.

2 Parties shall take the necessary legislative and other measures to ensure that legal persons held liable in accordance with Article 30 are subject to effective, proportionate and dissuasive sanctions, which shall include criminal **or non-criminal** monetary sanctions, **and could** include other measures, such as:

- a.** temporary or permanent disqualification from exercising commercial activity;
- b.** exclusion from entitlement to public benefits or aid;
- c.** temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions **and withdrawal of permits and authorisations**;
- d.** placing under judicial supervision;
- e.** a judicial winding-up order.

**3 Parties shall take the necessary legislative and other measures, in accordance with domestic law, to permit seizure and confiscation of:**

- a. instrumentalities used to commit an offence established in accordance with this Convention;**
- b. proceeds derived from such an offence, or property whose value corresponds to such proceeds.**

*Amendment*

**Article 19 – Sanctions and measures *for natural and legal persons***

1 Parties shall take the necessary legislative and other measures to ensure that the offences established in accordance with this Convention, when committed by natural persons, are punishable by effective, proportionate and dissuasive sanctions, which take into account the seriousness of the offence. The sanctions available shall include:

- a. a maximum term of imprisonment of four years or more;**
- b. criminal monetary sanctions that are proportionate to the gravity and duration of the damage caused as well as to the financial benefits accrued by committing the offence and sufficiently significant to fulfil their punitive and deterrent function;**
- c. the obligation to reinstate the environment.**

**The sanctions available may include other measures, such as:**

- a. temporary or permanent exclusions from access to public funding, including tender procedures, grants, concessions and licences;**
- b. disqualification from exercising a leading position or other functions of the type used for committing the offence within a legal person;**
- c. withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;**
- d. temporary bans on running for elected or public office;**
- e. national publication of the judicial decision relating to the conviction or any sanctions or measures applied;**
- f. reimbursement of costs incurred by third parties who have investigated, reported or sued the offender;**
- g. obligation to cover costs of care and treatment of any affected animals and of the placement of confiscated animals in appropriate interim or long-term facilities;**
- h. lifelong prohibition on working with and owning animals;**



4 Parties shall **consider taking** the necessary legislative and other measures, **in accordance with domestic law**, to include among the sanctions and measures applicable to natural and legal persons **the reinstatement of** the environment, according to the following provisions:

- a. the competent authority **may** order the **reinstatement of** the environment in relation to an offence established in accordance with this Convention, **subject to certain conditions**;
- b. the competent authority may make an order for the reinstatement of the environment that has not been complied with executable at the expense of the person subject to the order **or that person may be liable to other criminal or non-criminal sanctions instead of or in addition to it**;
- c. in the hypothesis of impossibility of reinstatement of the environment in loco, the competent authority may determine the reinstatement of the environment in a different location, habitat or ecosystem characterised by similar environmental conditions as the area directly affected by the offence, in which the reinstatement of the environment may produce similarly beneficial results to the quality of air, the quality of soil or the quality of water, or to animals or plants.

- i. **bans on pursuing activities which have resulted in committing the offence**;
- j. **a requirement to pay the costs of the proceedings borne by the successful party, in accordance with conditions and exceptions provided for in national law applicable to court proceedings**;
- k. **a requirement to compensate victims of the offence**;
- l. **in accordance with domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established under this Convention**.

2 Parties shall take the necessary legislative and other measures to ensure that **the offences established in accordance with this Convention, when committed by legal persons held liable in accordance with Article 30 are punishable** by effective, proportionate and dissuasive sanctions, which shall include:

- a. criminal monetary sanctions **that are proportionate to the gravity and duration of the damage caused, and sufficiently significant to fulfil their punitive and deterrent function. When determining the appropriate level of monetary sanctions, the benefits accrued from the offence as well as the annual turnover of the legal person shall be taken into account. The maximum level of monetary sanction shall not be less than 15% of the total worldwide turnover of the legal person in the three business years preceding the fining decision**;
- b. **the obligation to reinstate the environment**.

**The sanctions available may include** other measures, such as:

- a. temporary or permanent disqualification from exercising commercial activity;
- b. exclusion from entitlement to public benefits or aid;
- c. temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;
- d. **withdrawal of permits, licences and authorisations, or bans on pursuing activities which have resulted in committing the offence**;
- e. placing under judicial supervision;
- f. a judicial winding-up order;
- g. **temporary or permanent closure of establishments used for committing the offence**;

- h. obligation of companies to install due diligence schemes for enhancing compliance with environmental standards, where this is not already a legal obligation under national law;*
- i. publication of the judicial decision relating to the conviction or any sanctions or measures applied, where this is not already a legal obligation under national law;*
- j. payment of civil liability, particularly in cases where environmental reinstatement is no longer possible;*
- k. reimbursement of costs incurred by third parties who have investigated, reported or sued the offender;*
- l. obligation to cover costs of care and treatment of affected animals and of the placement of confiscated animals in appropriate interim or long-term facilities;*
- m. lifelong prohibition on working with and owning animals.*

**3** Parties shall *take* the necessary legislative and other measures to ensure that *the obligations* applicable to natural and legal persons *to reinstate* the environment, *referred in paragraphs 1 and 2, are established* according to the following provisions:

- a. the competent authority shall order the perpetrator to reinstate the environment the environment, within a given time period;*
- b. the competent authority may make an order for the reinstatement of the environment that has not been complied with executable at the expense of the person subject to the order;*
- c. when the perpetrator is not in capacity or does not have the expertise to reinstate the environment, the competent authority may oblige the perpetrator to fully cover the cost of reinstatement by experts, to ensure the appropriate and effective restoration of the environment;*
- d. in the hypothesis of impossibility of reinstatement of the environment in loco, the competent authority may determine the reinstatement of the environment in a different location, habitat or ecosystem characterised by similar environmental conditions as the area directly affected by the offence, in which the reinstatement of the environment may produce similarly beneficial results to the quality of air, the quality of soil or the quality of water, or to animals or plants, their populations or their habitats;*
- e. in the hypothesis of impossibility of reinstatement of the environment in or ex loco, the competent authority may order the perpetrator to compensate for the damage caused;*

- f. *when the reinstatement of the environment has been ordered by the competent authority, the competent authority shall take measures to verify that the appropriate reinstatement of the environment has occurred within the given time period.*

### **JUSTIFICATION**

#### Article title and deletion of paragraph 3:

*As per our suggested amendments to the content table, the article's title should specify that the article covers sanctions and measures both for natural and legal persons, to facilitate reading. Alternatively, it could be decided to have two separate articles, one on 'sanctions and measures for natural persons', one on 'sanctions and measures for legal persons'.*

*A separate, new chapter, dedicated to freezing and confiscation should be created to cover elements of Paragraph 3 (see Amendment proposal #45).*

#### Other proposed amendments:

*These amendments are based on the EU Commission's proposal for the revision of the EU ECD, broadly supported by the European Parliament and European Council on their official positions on the EU ECD. The latest Europol report on serious crimes included environmental crime in the main areas for risk of serious and organised crime. There is already agreement amongst Parties that have endorsed related Resolutions and other commitments in the UN General Assembly and elsewhere, that environmental crime is a serious crime.*

*Environmental crimes are currently considered low risk/high gain activities by criminals. The offences referred to in this proposal include the most serious environmental crimes. Sanctioning standards for both natural and legal persons must be more precise 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 for criminals. As such, sanctions for natural persons should, as a minimum, include a maximum deprivation of liberty of at least four years, as per the [definition of 'serious crime' in the United Nations Convention against Transnational Organised Crime](#). 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, it is essential that convicted perpetrators of these crimes do not receive any profits or benefits from their crime (financial or otherwise) as a result of leniency. 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.*

*The reinstatement of the environment or the compensation of damages caused to the environment must be an obligation. Such reinstatement shall take place within an appropriate given period and be carried out, when needed, by experts, when the perpetrator does not have the expertise or in-house capacity to ensure the appropriate restoration of the environment. Indeed, in many cases the perpetrator will not possess such expertise. Moreover, one might find it counterintuitive to entrust a person with repairing the damages they have caused. Systems should be put in place to verify that the reinstatement orders have been fulfilled appropriately and impose penalties when it has not been the case.*

**#43 AMENDMENT proposal regarding:  
[NEW CHAPTER] Chapter III – Liability, sanctions and measures  
Article 32 – Aggravating circumstances**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 32 – Aggravating circumstances**

Parties shall take the necessary legislative and other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of domestic law, be taken into consideration as aggravating circumstances in determining the sanctions in relation to the offences established in accordance with this Convention:

- a.** the offence caused severe and widespread, or severe and long-term, or severe and irreversible damage to human health or to the environment;
- b.** the offence was committed in the framework of a criminal organisation;
- c.** the offence involved the use of false or forged documents **by the offender**;
- d.** the offence was committed by a public official when performing their duties;
- e.** the perpetrator has previously been convicted of offences established in accordance with this Convention.

*Amendment*

**Article 20 – Aggravating circumstances**

Parties shall take the necessary legislative and other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of domestic law, be taken into consideration as aggravating circumstances in determining the sanctions in relation to the offences established in accordance with this Convention:

- a.** *the offence caused the death of, or serious harm to the health of any person or animal;*
- b.** the offence caused severe and widespread, or severe and long-term, or severe and irreversible damage to human health or to the environment, *including wild species of fauna and flora, and their habitats, or to an ecosystem;*
- c.** the offence was committed in the framework of a criminal organisation;
- d.** the offence involved the use of false or forged documents, *or breached a condition of authorisation;*
- e.** the offence was committed by a public official when performing their duties;
- f.** the perpetrator has previously been convicted of offences established in accordance with this Convention *or other relevant legislation.*
- g.** *the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly;*
- h.** *the offender does not provide assistance to inspection and other enforcement authorities when legally required;*
- i.** *the offender actively obstructs inspection, custom controls or investigation activities, destroys evidence, or intimidates or interferes with witnesses or complainants;*
- j.** *the offence involved murder, corruption, money laundering, fraud, document counterfeit, extortion, coercion and other forms of intimidation, or was committed together with other criminal offences;*

- k. the offence was committed within a protected area;*
- l. the offence involved killing, destruction, torture or any other severe form of mistreatment or caused the unnecessary and avoidable suffering of animals;*
- m. the offence was committed intentionally or in the awareness that it causes or is likely to cause human rights violations or substantial damage to the environment;*
- n. the offence was committed as a result of a deliberate, negligent or, reckless conduct that caused or is likely to cause damage to the cultural heritage of a territory;*
- o. the activity constitutes a violation of due diligence obligations or noncompliance with related decisions made by competent authorities.*

#### **JUSTIFICATION**

*These amendments are based on the EU Commission’s proposal for the revision of the EU ECD, broadly supported by the European Parliament and European Council on their official positions on the EU ECD. We support these provisions as we believe they should all constitute aggravating circumstances.*

*Substantial damage to species, species populations, ecosystems or habitats that are protected under EU or internal legislation should be taken into consideration as aggravating circumstances. Protected sites have a high value for biodiversity conservation, hence it is important to elevate sanctions for the most significant cases.*

*Any conduct involving criminal or illegal activities such as murder, corruption etc (point j), or violating obligations (point o) or hindering or attempting to hinder reporting or criminal proceedings (point i) should all constitute aggravating circumstances. Similarly, conduct committed intentionally or with awareness of the conduct’s consequences, or committed deliberately or negligently or recklessly should also constitute aggravating circumstances.*

*The objective of point (j) is to cover crime convergence, i.e. cases where an offender commits several criminal offences simultaneously (e.g. waste trafficking and financial crimes). Indeed, environmental crimes are often committed with other crimes which are not necessarily related to the environment but to violations of other legislation.*

*Cruelty or lack of consideration towards animals should also be taken into consideration as an aggravating circumstance.*

**#44 AMENDMENT proposal regarding:  
[NEW CHAPTER] Chapter III – Liability, sanctions and measures  
[NEW Article]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

***[NEW] Article 20 (b) – Precautionary measures  
Parties shall take the necessary legislative and other measures to ensure that***

*their competent judicial authorities may order the immediate cessation of the unlawful conducts referred to in this Convention, or impose measures to prevent the execution of such conducts, in order to avert damage being caused to the environment.*

#### **JUSTIFICATION**

*This amendment is based on the European Parliament's official position on the EU ECD and we support its content. When an unlawful conduct has been reported/identified or when it has been identified that there are risks of such a conduct, Parties and their competent authorities should be enabled to order the immediate cessation of the conduct or prevent it from happening.*

### **[NEW CHAPTER] CHAPTER IV – FREEZING AND CONFISCATION**

#### **#45 AMENDMENT proposal regarding: [NEW Chapter]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

#### ***[NEW CHAPTER] Chapter IV – Freezing, seizure and confiscation***

***1 Parties shall take the necessary legislative and other measures, in accordance with domestic law, to permit the tracing, identification, freezing, seizure and confiscation of assets, including:***

- a. instrumentalities used to or intended to be used in the commission or contribution to the commission an offence established in accordance with this Convention;***
- b. proceeds derived from such an offence, or property whose value corresponds to such proceeds;***
- c. property of any description, whether corporeal or incorporeal, movable or immovable, derived from such an offence or that the offender is in possession of or using illegally.***

***2 Parties shall take the legislative and other measures to ensure seized, frozen***

*and confiscated properties, proceeds and instrumentalities are appropriately managed, in line with their nature, and, where possible, used to finance restoration of the environment or remediation of any damage caused, or to provide compensation for the environmental damage, in accordance with national law.*

*3 In instances where an offence established under this Convention involves wildlife, Parties shall:*

- a. ensure the systematic seizure of wildlife, including both live wild animals and/or animal parts and derivatives, if there are any suspicions that such wildlife is associated with any of the offences established under this Convention, or that it could be moved, sold on, or, in the case of live wild animals, killed, before the end of the investigation and any associated legal processes. The systematic seizure of wildlife should also be ensured in cases where there are any perceived risks for health or biosecurity.*
- b. ensure swift decision-making through administrative processes when live animals are seized or confiscated;*
- c. ensure that seized or confiscated live wild animals are appropriately housed, fed, and cared for, according to their specific needs, throughout the process. In the case of a confiscation, live wild animals shall be disposed of in a manner which prioritises conservation outcomes and individual animal welfare, with due regard for relevant legislation and guidance provided by CITES and other international bodies such as the IUCN.*
- d. where appropriate, consider destroying confiscated products derived from wildlife or offering them to appropriate public entities for genuine educational and/or conservation purposes.*

*4 Where appropriate, Parties shall consider using confiscated proceeds derived from and properties and instrumentalities used or intended to be used in the commission or contribution to the commission of an offence to:*

- a. cover the costs of reinstating the environment or compensate for the damage caused if the damage is irreversible;*
- b. cover the costs associated with the appropriate management housing and care of seized and confiscated live animals, as well as other expenses incurred as a result of the seizure and/or confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention;*

- c. *compensate victims and repair damages caused;*
- d. *reimbursement of expenses incurred by natural or legal persons who have investigated, reported, sued the offender, and/or actively participated in criminal proceedings;*
- e. *payment of civil liability, particularly in cases where environmental reinstatement is no longer possible;*
- f. *finance measures aimed at preventing and combating similar crimes.*

### **JUSTIFICATION**

Proposal to create a new Chapter:

*As per our suggested amendments to the content table, and to facilitate the reading, interpretation and application of the Convention, we suggest creating a new Chapter dedicated to provisions relating to 'freezing and confiscation', re-using content from Article 31, paragraph 3 (see justification under Amendment proposal #45).*

*Note this is the approach followed in the revision proposal of the EU ECD, broadly supported by the European Parliament and European Council.*

Other proposed amendments:

- *Paragraph 1 points a and b: content from Article 31, paragraph 3 (see justification under Amendment proposal #45).*
- *Paragraph 1 point b: 'property' must also be addressed in this Chapter as property, as defined in Amendment proposal #6 might also be frozen or confiscated. E.g. assets such as wild live animals or products derived from wildlife are neither instrumentalities or proceeds. It is also important that these terms are clearly defined in the relevant article.*
- *Paragraph 2: based on the European Parliament's official position on the EU ECD.*

*The management of confiscated assets should be addressed in the Convention, guided by the principle that proceeds from crimes should be used to repair the damages caused, including compensating victims and financing measures aimed at combating similar crimes, and to ensure that criminals do not retain any benefits or profits from the crime.*

*Special provisions should be outlined for the freezing and confiscation of wildlife, which should benefit from special management measures.*

*As most of the time confiscated animals cannot be returned to the State of export, rescue centres have a crucial role in the fight against wildlife trafficking. However, they suffer from a chronic lack of funds and consideration. The result is that sometimes inappropriate rescue centres are selected, data is lost, animals are lost and potentially re-enter the illegal trade. Using confiscated financial assets to support appropriate rescue centres for confiscated wildlife would also be coherent with CITES Resolution 17.8 on Disposal of illegally traded specimens. Guidance on the confiscation of live wild specimens and wildlife products particularly should be included given the specificities of these assets, as per relevant provisions of CITES Resolution Conf. 17.8 on Disposal of illegally traded and confiscated specimens of CITES-listed species.*

*Given the greater biosecurity and animal welfare risks associated with illegal activities, confiscation should be systematic if there is any doubt that live wild animals are being traded illegally and that such trade constitutes a criminal offence under this Convention, or that their husbandry is associated with other crimes covered by this Convention. Confiscation should also be systematic if there is a risk that live animals will be killed, sold or moved, before the end of the investigation/prosecution. Finally, consideration should be given to confiscating products derived from wildlife where there are any perceived risks for health or biosecurity.*



## CHAPTER V – INVESTIGATION, PROSECUTION AND PROCEDURAL LAW

### #46 AMENDMENT proposal regarding:

Chapter V – Investigation, prosecution and procedural law

Chapter title

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

Chapter **V** – ~~Investigation, prosecution and procedural law~~

Chapter **VIII** – **Reporting, investigation, prosecution and procedural law**

### JUSTIFICATION

*As proposed in Amendment proposal #1 (contents), Chapter V should be moved down. The chapter should also address processes for the reporting of environmental crimes.*

### #47 AMENDMENT proposal regarding:

Chapter V – Investigation, prosecution and procedural law

[NEW Article]

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**[NEW] Article 32 (i) - Fair access to reporting**

***Parties shall take the necessary legislative and other measures to ensure that all natural and legal persons are given fair access to adequate reporting channels, instruments and processes to report environmental crimes.***

### JUSTIFICATION

*This Amendment proposal is based on the European Parliament's ENVI Committee opinion report on the ECD with additional provisions inspired by the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. This article must be read in conjunction with paragraph 5 of Article 37 (Amendment proposal #54).*

**#48 AMENDMENT proposal regarding:**  
Chapter V – Investigation, prosecution and procedural law  
Article 35 - Rights for groups to participate in proceedings

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 35 - Rights for *groups* to participate in proceedings**

Parties shall **consider taking** the necessary legislative and other measures to grant any **group, foundation or association which, according to its statutes, aims at the protection of the environment**, the right to participate in criminal proceedings concerning offences established in accordance with this Convention, in accordance with domestic law.

*Amendment*

**Article 34 - Rights for *the public* to participate in proceedings**

**1** Parties shall **take** the necessary legislative and other measures to grant any **member of the public concerned** the right to participate in criminal proceedings concerning offences established in accordance with this Convention, in accordance with domestic law.

**2** Parties shall, in accordance with their national law, take the necessary legislative and other measures to ensure that information on the progress of proceedings is published.

**3** Parties shall, in the general public interest, make the following information available to the public:

- a. any final judgement in a trial;
- b. information enabling the public concerned to know about the state of the proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such sharing of information.

**JUSTIFICATION**

*Nature, though the primary victim of environmental crime, lacks legal personality, making it challenging to grant typical victim rights for seeking redress. Thus, a minimum set of rights should be extended to the general public, representing nature as a victim of environmental crime.*

*For transparency and accountability purposes the general public should be given access to certain information throughout and at the end of the criminal proceedings.*

**#49 AMENDMENT proposal regarding:**  
Chapter V – Investigation, prosecution and procedural law  
Article 36 – International co-operation in criminal matters

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

### **Article 36 – International co-operation in criminal matters**

1 Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant international and regional instruments on co-operation in civil and criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- a. preventing, combating and prosecuting offences established in accordance with this Convention, including seizure and confiscation;
- b. protecting and providing assistance to collaborators of justice and witnesses;
- c. investigations or proceedings concerning the offences established in accordance with this Convention;
- d. enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties.

2 If a Party that makes extradition or mutual legal assistance in criminal matters conditional on the existence of a treaty receives a request for extradition or legal assistance in criminal matters from a Party with which it has no such a treaty, it may, acting in full compliance with its obligations under international law and subject to the conditions provided for by the domestic law of the requested Party, consider this Convention as the legal basis for extradition or mutual legal assistance in criminal matters in respect of the offences established in accordance with this Convention and may apply, mutatis mutandis, Articles 16 and 18 of the United Nations Convention on Transnational Organized Crime (UNTOC) to this effect.

### **[NEW CHAPTER] Chapter VII – International *coordination and* co-operation in criminal matters**

1 Parties shall *coordinate and* co-operate with each other *at strategic and operational levels*, in accordance with the provisions of this Convention, and through the application of relevant international and regional instruments on co-operation in civil and criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- a. preventing, combating and prosecuting offences established in accordance with this Convention, including seizure and confiscation, *and ensuring appropriate handling and disposal of seized and confiscated specimen*;
- b. protecting and providing assistance to collaborators of justice and witnesses;
- c. investigations or proceedings concerning the offences established in accordance with this Convention;
- d. enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties.

*2 Parties shall take the necessary legislative and other measures to establish appropriate mechanisms for coordination and cooperation at strategic and operational levels among all relevant competent authorities. Such mechanisms, as a minimum shall:*

- a. *ensure common priorities and understanding of the relationship between criminal and administrative enforcement;*
- b. *facilitate the exchange of information for strategic and operational purposes, including on, but not limited to:*
  - i. *organised criminal groups known to take part or suspected of taking part in offences established in accordance with this Convention;*
  - ii. *the means of concealment used in the illicit trafficking in specimens and ways of detecting them;*
  - iii. *the methods and means, points of dispatch, embarkation and destination points, relevant customs processes and forms, as well as routes, carriers and means of transportation, known to be or suspected of being used the illicit trafficking in specimens; and*
  - iv. *legislative experiences and practices and measures to prevent, combat, and eradicate illicit trafficking in specimens.*
- c. *enable consultation in individual investigations;*

- d. promote the exchange of best practices;*
- e. in accordance with applicable law, facilitate the exchange of relevant information between competent authorities to prevent convicted persons from reoffending in relation to the offences referred to in Articles 3 and 4, including in other States;*
- f. provide assistance to European networks of practitioners working on matters relevant to combating environmental offences and related infringements,*

*and may take the form of specialised units and bodies with a designated point of contact, national enforcement networks, joint training activities and memoranda of understanding between competent authorities, referred to in Article 5.*

**3** If a Party that makes extradition or mutual legal assistance in criminal matters conditional on the existence of a treaty receives a request for extradition or legal assistance in criminal matters from a Party with which it has no such a treaty, it may, acting in full compliance with its obligations under international law and subject to the conditions provided for by the domestic law of the requested Party, consider this Convention as the legal basis for extradition or mutual legal assistance in criminal matters in respect of the offences established in accordance with this Convention and may apply, mutatis mutandis, Articles 16 and 18 of the United Nations Convention on Transnational Organized Crime (UNTOC) to this effect.

*4 Cooperation with third countries should be facilitated, in particular by encouraging and supporting the establishment of effective measures and mechanisms to combat environmental crimes and by ensuring improved international cooperation in this field.*

*5 Within 12 months of the entry into force of this Convention, the Group of experts on the protection of the environment and action against environmental crime referred to in Article 41 shall draw up a report on measures for further strengthening coordination and cooperation between the Parties.*

## **JUSTIFICATION**

### Article relocation:

As proposed in Amendment proposal #1 (contents), Article 36 should be relocated from Chapter V – Investigation, prosecution and procedural law to Chapter II – Integrated policies and data collection (renamed ‘Chapter VI – Integrated policies’).

### Other proposed amendments:

Amendments to paragraph 2 are based on the European Commission’s proposal for the revision of the EU ECD (with point e being an addition from the European Parliament’s. Amendments to paragraphs 3 and 4 are based on the European Parliament’s PETI and DEVE Committees’ opinion reports on the ECD.

*Cross-border cooperation is essential to the effectiveness of the Convention. National specialised coordination bodies should have a focal point that will liaise with the coordination bodies' focal points of other Parties, in order to improve cross-border cooperation. Detailed information about the focal points should be limited to law enforcement agencies and judicial authorities to protect the staff's identity. These bodies must be trained homogeneously in order to improve cross-border cooperation. The international/global aspect of environmental crimes and cooperation with third countries should be addressed.*

## CHAPTER VI – MEASURES FOR PROTECTION, ASSISTANCE AND SUPPORT

**#50 AMENDMENT proposal regarding:  
Chapter VI – Measures for protection  
Chapter title**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**Chapter VI – Measures for protection**

**Chapter IX – Measures for protection, *assistance and support***

**#51 AMENDMENT proposal regarding:  
Chapter VI – Measures for protection  
Article 38 – The standing of victims in criminal investigations and proceedings**

*Text proposed by the by the CDPC Secretariat Directorate General I*

*Amendment*

**Article 38 – The standing of victims in criminal investigations and proceedings**

1 Parties shall take the necessary legislative and other measures to protect the rights and interests of victims at all stages of criminal investigations and proceedings, in particular by:

- a. informing them of their rights and the services at their disposal and, upon request, the follow-up given to their complaint, the charges retained, the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification, and their role therein as well as the outcome of their cases;

**Article 36 – The standing of victims in criminal investigations and proceedings**

1 Parties shall take the necessary legislative and other measures to protect the rights and interests of victims at all stages of criminal investigations and proceedings, in particular by:

- a. informing them of their rights and the services at their disposal and, upon request, the follow-up given to their complaint, the charges retained, the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification, and their role therein as well as the outcome of their cases;

- b. enabling them, in a manner consistent with the procedural rules of domestic law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered;
- c. providing them with appropriate support services so that their rights and interests are duly presented and taken into account;
- d. providing effective measures for their safety, **as well as** that of their families, from intimidation and retaliation.

2 Parties shall take the necessary legislative and other measures to ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.

3 Parties shall take the necessary legislative and other measures to ensure that victims have access to legal aid, in accordance with domestic law and provided free of charge where warranted, **when it is possible for them to have the status of parties to criminal proceedings.**

4 Parties shall take the necessary legislative and other measures to ensure that victims of an offence established in accordance with this Convention committed in the territory of a Party other than the one where they reside can make a complaint before the competent authorities of their State of residence.

5 Parties shall take the necessary legislative and other measures to provide the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.

- b. enabling them, in a manner consistent with the procedural rules of domestic law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered;
- c. providing them with appropriate support services so that their rights and interests are duly presented and taken into account;
- d. providing effective measures for their safety **and** that of their families, **as well as measures protecting them** from **any form of** intimidation and retaliation.

2 Parties shall take the necessary legislative and other measures to ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.

3 Parties shall take the necessary legislative and other measures to ensure that victims have access to legal aid, **and necessary assistance and support**, in accordance with domestic law and provided free of charge where warranted.

4 Parties shall take the necessary legislative and other measures to ensure that victims of an offence established in accordance with this Convention committed in the territory of a Party other than the one where they reside can make a complaint before the competent authorities of their State of residence.

5 Parties shall take the necessary legislative and other measures to provide the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.

**6 Parties shall take the necessary legislation and other measures to ensure that the victims are afforded the possibility of reimbursement of expenses in accordance with the Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime.**

**7 Parties shall take the necessary legislative and other measures to ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.**

**8 Parties shall take the necessary legislative and other measures to ensure that, in the course of criminal proceedings, victims are entitled to obtain adequate compensation from the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings. Where the offender is not capable of providing adequate compensation to the victims of its crime Parties shall take the necessary legislative and other**

*measures to ensure that adequate compensation is afforded to victims by other means.*

#### **JUSTIFICATION**

*The proposed amendments to paragraphs 1-5 are aligned with the EU Commission's proposal for the revision of the EU ECD, which included provisions for the protection and assistance and support of victims and persons reporting and/or collaborating in proceedings.*

*Additional amendment proposals (paragraphs 6-8) are aligned with the provisions of [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#) and [Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims](#).*

*Victims of an environmental crime must be guaranteed basic rights to reparation, including the right to reimbursement of expenses, right to the return of property, and right to compensation during criminal proceedings. When possible, compensation to victims should be paid by the offender, but in cases where the offender is unable to provide adequate compensation to the victims of its crimes, victims should be guaranteed compensation through other means. In such instances, the creation of a National Fund for victim compensation as per Amendment proposal #52 below could provide a solution.*

**#52 AMENDMENT proposal regarding:**  
**Chapter VI – Measures for protection**  
**[NEW Article]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

***[NEW] Article 36 (b) - National Fund for victim compensation and environmental restoration***

***1. Parties shall establish a national fund for the compensation of victims of environmental crimes not covered by already existing national schemes for compensation to victims of crimes established under this Convention.***

***2. The fund provided for in paragraph 1 shall also be dedicated to the financing of environmental and ecological restoration, in addition to the restoration obligations foreseen in this Convention.***

***3. The fund shall be financed inter alia using the monetary sanctions foreseen in this Convention and, where applicable, through the proceeds derived from and properties and instrumentalities used or intended to be used in the commission or contribution to the commission of the offence that have been confiscated in accordance with the relevant provisions of this Convention.***

## JUSTIFICATION

*This Amendment proposal is inspired by the European Parliament's official position on the EU ECD. In order to guarantee compensation to victims of environmental crimes and ensure effective ecological and environmental decontamination, remediation or restoration, Parties should establish a dedicated National Fund to finance actions aimed at these purposes. Confiscated proceeds derived from the offence and instrumentalities used or intended to be used in the commission or contribution to the commission of the offence should be allocated, where applicable, to that fund.*

### **#53 AMENDMENT proposal regarding: Chapter VI – Measures for protection Article 39 – Protection of witnesses**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

#### **Article 39 – Protection of witnesses**

1 Parties shall take the necessary legislative and other measures to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings, who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2 Paragraph 1 of this article shall also apply to victims insofar **as they are witnesses**.

#### **Article 37 – Protection of witnesses**

1 Parties shall take the necessary legislative and other measures to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings, who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

**2 Parties shall take the necessary legislative and other measures to provide the necessary support and assistance to witnesses in the context of criminal proceedings.**

**3 Parties shall take the necessary legislative and other measures to ensure that witnesses who report an offence and/or participate in criminal proceedings, are afforded the possibility of reimbursement of expenses incurred as a result of reporting the offence and/or their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.**

4 Paragraph 1 of this article shall also apply to victims insofar.

## JUSTIFICATION

*These amendments are aligned with the EU Commission's proposal for the revision of the EU ECD, broadly supported by the European Parliament and Council, and which included provisions for the protection as well as assistance and support for victims, witnesses, and persons reporting and/or collaborating in proceedings.*



**#54 AMENDMENT proposal regarding:  
Chapter VI – Measures for protection  
Article 40 – Protection of collaborators of justice**

*Text proposed by the CDPC Secretariat Directorate General I*

**Article 40 – Protection of collaborators of justice**

1 Parties shall take the necessary legislative and other measures to provide effective and appropriate protection for **those** who report the offences established in accordance with this Convention or otherwise co-operate with the investigating **or** prosecuting authorities.

2 Parties shall **consider taking** the necessary legislative and other measures to ensure that the confidentiality rules imposed by **internal** law on certain professionals do not constitute an obstacle to the effective and appropriate protection for these professionals who, under appropriate conditions, report offences established in accordance with this Convention or otherwise co-operate with the investigating or prosecuting authorities, **if they have reasonable grounds to believe that as serious offence established in accordance with this Convention has been committed and further serious offences are to be expected.**

*Amendment*

**Article 38 – Protection of collaborators of justice**

1 Parties shall take the necessary legislative and other measures to provide effective and appropriate protection for **both natural and legal persons** who report the offences established in accordance with this Convention or otherwise co-operate with the investigating, prosecuting **or adjudicating** authorities.

**2 Parties shall take the necessary legislative and other measures to ensure that the persons referred to in paragraph 1 are provided with the necessary support and assistance in the context of criminal proceedings.**

**3** Parties shall **take** the necessary legislative and other measures to ensure that the confidentiality rules imposed by **domestic** law on certain professionals do not constitute an obstacle to the effective and appropriate protection for these professionals who, under appropriate conditions, report offences established in accordance with this Convention or otherwise co-operate with the investigating or prosecuting authorities.

**4 Parties shall take the necessary legislative and other measures to ensure that natural and legal persons who report and offence and/or participate in criminal proceedings, are afforded the possibility of reimbursement of expenses incurred as a result of investigating, reporting the offence and/or their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.**

**5 Parties may consider establishing appropriate instruments, channels and processes to enable the anonymous reporting of environmental offences, where such instruments and processes do not yet exist.**

**JUSTIFICATION**

*These amendments are aligned with the EU Commission's proposal for the revision of the EU ECD, broadly supported by the European Parliament and Council, and which included provisions for the protection as well as assistance and support for victims, witnesses, and persons reporting and/or collaborating in proceedings.*

*To ensure a harmonised interpretation of this article, it is important to specify that these provisions cover both natural and legal persons. Legal persons such as environmental NGOs are often at the forefront of identifying and reporting environmental offences and/or collaborating in criminal proceedings. Also, other organisations including companies or associations might witness or suspect an offence committed by a third party (natural or legal person) and decide to report and/ collaborate in*

criminal proceedings. It is therefore important that legal persons are benefitting from the same rights of protection and assistance and support as natural persons under this article.

It is also crucial that all victims, witnesses, and persons reporting and/or collaborating in proceedings benefit from the same rights and protection in all Member States to avoid that criminals concentrate in regions where reporting and/or collaborating in proceedings is discouraged due to lighter protection and guarantees to such persons.

Paragraph 5 must be read in conjunction with Amendment proposal #47 (Article 32 (i)) on the fair access to reporting. This Amendment proposal is based on the European Parliament's ENVI Committee opinion report on the ECD with additional provisions inspired by the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Persons witnessing or suspecting the commission of environmental crimes might not know how to report them and/or be scared of possible repercussions. Instruments and processes should be put in place to facilitate the reporting of environmental offences, and be made available to the general public. To encourage whistleblowers who fear reprisals to report offences, there should be systems available to report offences anonymously.

## [NEW CHAPTER] CHAPTER X – DATA COLLECTION AND RESEARCH

### #55 AMENDMENT proposal regarding: [NEW CHAPTER]

Text proposed by the CDPC Secretariat Directorate General I	Amendment
<p><b>Article 10 – Data collection and research</b></p> <p>1 For the purpose of the implementation of this Convention, Parties shall undertake to:</p> <ul style="list-style-type: none"> <li>a. collect disaggregated relevant statistical data at regular intervals on cases concerning offences established in accordance with this Convention;</li> <li>b. support research in the field of environmental crime, in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.</li> </ul> <p>[2 Parties shall provide the group of experts, as referred to in Article 41 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.]</p>	<p><b>[NEW CHAPTER] Chapter X – Data collection and research</b></p> <p>1 For the purpose of the implementation of this Convention, Parties shall undertake to:</p> <ul style="list-style-type: none"> <li>a. collect disaggregated relevant statistical data at regular intervals on cases concerning offences established in accordance with this Convention;</li> <li>b. support research in the field of environmental crime, in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention;</li> <li>c. <b>consider the outcomes of such research in identifying the need to update relevant national legislation to include new criminal environmental offences as well as in setting priorities for the effective implementation and enforcement of the Convention through relevant legislative policy mechanisms.</b></li> </ul>

**3** Parties shall take the necessary legislative and other measures to ensure that the information collected pursuant to this article *is* available to the public.

*d. consider the outcomes of such research in identifying the need to propose amendments to this Convention in accordance with Article [47] with a view notably to updating the list of offences established in this Convention.*

**2** *The statistical data referred to in paragraph 1 (a) shall include the following, as a minimum:*

- a. the number of environmental crime cases reported;*
- b. the number of environmental crime cases investigated, including those involving cross-border cooperation;*
- c. the median, average and maximum length of the criminal investigations of environmental crimes;*
- d. the number of convictions for environmental crime;*
- e. the number of natural persons convicted and sanctioned for environmental crime;*
- f. the number of legal persons sanctioned for environmental crime or equivalent offences;*
- g. the number of dismissed court cases for environmental crime;*
- h. the types and levels of sanctions imposed for environmental crime, broken down into categories of environmental offences according to this Convention.*
- i. the number of environmental crime cases prosecuted and adjudicated;*
- j. the total number of convictions for environmental crime;*
- k. the number of convictions for environmental crimes related to offences committed in the framework of a criminal organisation;*
- l. the number of convictions for environmental crimes related to offences committed by a public official or involving a public authority;*
- m. the number of court cases ended due to the expiration of the limitation period;*

**4** Parties shall provide the group of experts, as referred to in Article 41 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.

**5** Parties shall take the necessary legislative and other measures to ensure that the information collected pursuant to this article *and a consolidated review of their statistics are updated, published and made easily* available to the public *in a standard format, at least every two years.*

## JUSTIFICATION

### Article relocation / transformation into Chapter:

As proposed in Amendment proposal #1 (contents), Article 10 under CHAPTER II should be turned into a separate chapter dedicated to data collection and research. To facilitate the reading, interpretation and application of the Convention, this new Chapter should be placed closer to the Chapter on Monitoring.

### Other proposed amendments:

These amendments are based on the EU Commission's proposal for the revision of the EU ECD. The reference to cross-border cooperation (point b) is proposed by the European Parliament in its official position on the EU ECD. Points k, l and m are proposed by the European Parliament's LIBE Committee's opinion report on the ECD. Edits to paragraph 4 are based on the EP ENVI Committee's opinion report on the ECD.

The collection of statistical data in a standard way and at regular intervals to ensure data is still up-to-date will be crucial to evaluate the impact/effectiveness of the Convention, and decide on future measures necessary to address new issues and trends.

Citizens should have access to unfiltered national statistical data. Without sufficient environmental crime statistics, citizens cannot judge the extent of the problem and are incapable of holding their governments accountable for potential failure to adequately address environmental crimes.

To facilitate the reporting of statistical data, Parties require clear details on what data will be collected and when. This enables them to establish the necessary monitoring mechanisms and ensures timely communication to the relevant authorities. It will also help Parties adopt measures aligned with these indicators and contribute to harmonisation efforts. The adoption of a standard format for data transmission will facilitate the evaluation process.

Note, as per our suggested amendments to the content table, 'Article 47 - Amendments' of the Draft Convention would become 'Article 45 - Amendments'.

## [CHAPTER VII – MONITORING MECHANISM]

### **#56 AMENDMENT proposal regarding:** **[Chapter VII – Monitoring mechanism]** **Chapter title**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**[Chapter VII – Monitoring mechanism]**

**[Chapter XI – Monitoring mechanism]**

**#57 AMENDMENT proposal regarding:  
[Chapter VII – Monitoring mechanism]  
[Article 41 – Group of experts on the protection of the environment and action against environmental crime]**

*Text proposed by the CDPC Secretariat Directorate General I*

**[Article 41 – Group of experts on the protection of the environment and action against environmental crime]**

[1 The Group of experts on the protection of the environment and action against environmental crime (hereinafter referred to as “GREEN”) shall monitor the implementation of this Convention by the Parties.

2 GREEN shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as multidisciplinary expertise. Its members shall be elected by the Committee of the Parties from among candidates nominated by the Parties for a term of office of four years, renewable once, and chosen from among nationals of the Parties.

3 The initial election of 10 members shall be held within a period of one year following the entry into force of this Convention. The election of five additional members shall be held following the 25th ratification or accession.

4 The election of the members of GREEN shall be based on the following principles:

- a. they shall be chosen according to a transparent procedure from among persons of high moral character, known for their recognised competence in the fields of environmental protection and of action against environmental crime, or having demonstrated professional experience in the areas covered by this Convention;
- b. no two members of GREEN may be nationals of the same State;
- c. they should represent the main legal systems;
- d. they should represent relevant actors and agencies in the fields of environmental protection and of action against environmental crime;
- e. they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions, and shall be available to carry out their duties in an effective manner.

5 The election procedure of the members of GREEN shall be determined by the Committee of Ministers of the Council of Europe, after consulting with and

*Amendment*

**[Article 39 – Group of experts on the protection of the environment and action against environmental crime]**

[1 The Group of experts on the protection of the environment and action against environmental crime (hereinafter referred to as “GREEN”) shall monitor the implementation of this Convention by the Parties.

**[NEW] 1 (a) GREEN should carry out regular evaluations of the impact of this Convention and on the need to update the list of environmental criminal offences provided for in this Convention.**

2 GREEN shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as multidisciplinary expertise. Its members shall be elected by the Committee of the Parties from among candidates nominated by the Parties for a term of office of four years, renewable once, and chosen from among nationals of the Parties.

3 The initial election of 10 members shall be held within a period of one year following the entry into force of this Convention. The election of five additional members shall be held following the 25th ratification or accession.

4 The election of the members of GREEN shall be based on the following principles:

- a. they shall be chosen according to a transparent procedure from among persons of high moral character, known for their recognised competence in the fields of environmental protection and of action against environmental crime, or having demonstrated professional experience in the areas covered by this Convention;
- b. no two members of GREEN may be nationals of the same State;
- c. they should represent the main legal systems;
- d. they should represent relevant actors and agencies in the fields of environmental protection and of action against environmental crime;
- e. they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions, and shall be available to carry out their duties in an effective manner.

<p>obtaining the unanimous consent of the Parties, within a period of six months following the entry into force of this Convention.</p> <p>6 GREEN shall adopt its own rules of procedure.</p> <p>7 Members of GREEN, and other members of delegations carrying out the country visits as set forth in Article 43, paragraphs 9 and 14, shall enjoy the privileges and immunities established in the appendix to this Convention.]</p>	<p>5 The election procedure of the members of GREEN shall be determined by the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Parties, within a period of six months following the entry into force of this Convention.</p> <p>6 GREEN shall adopt its own rules of procedure.</p> <p>7 Members of GREEN, and other members of delegations carrying out the country visits as set forth in Article 43, paragraphs 9 and 14, shall enjoy the privileges and immunities established in the appendix to this Convention.]</p>
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**JUSTIFICATION**

*The proposed amendment is based on the EU Commission’s proposal for the revision of the EU ECD, broadly supported by the European Parliament and Council in their official positions.*

*Regular evaluations of the Convention will allow for assessing its impact/effectiveness, as well as deciding on future measures to address new issues and trends.*

*To facilitate the reporting of statistical data (CHAPTER VII - Monitoring Mechanisms), Parties require clear details on what data will be collected and when. This enables them to establish the necessary monitoring mechanisms and ensures timely communication to the relevant authorities. It will also help Parties adopt measures aligned with these indicators and contribute to harmonisation efforts. The adoption of a standard format for data transmission will facilitate the evaluation process (see more details on data collection under Amendment proposal #55).*

**#58 AMENDMENT proposal regarding:  
[Chapter VII – Monitoring mechanism]  
[Article 43– Procedure]**

<i>Text proposed by the CDPC Secretariat Directorate General I</i>	<i>Amendment</i>
<p><b>[Article 43 – Procedure]</b></p> <p>[1 Parties shall submit to the Secretary General of the Council of Europe, based on a questionnaire prepared by GREEN, a report on legislative and other measures giving effect to the provisions of this Convention, for consideration by GREEN.</p>	<p><b>[Article 41– Procedure]</b></p> <p>[1 Parties shall submit to the Secretary General of the Council of Europe, based on a questionnaire prepared by GREEN, a report on <b>existing and planned</b> legislative and other measures giving effect to the provisions of this Convention, for consideration by GREEN. <b>GREEN may advise Parties on the needs to amend this Convention in accordance with Article 47 with a view notably to updating the list of offences established in this Convention.</b></p>

**JUSTIFICATION**

*The Convention must be “future proof” and promptly amended to encompass criminal conduct established under new legal instruments in the future. GREEN may act as an Advisory Group to identify and signal to the Parties when there is a need for such amendments.*

*Note, as per our suggested amendments to the content table, ‘Article 47 - Amendments’ of the Draft Convention would become ‘Article 45 - Amendments’.*

**#59 AMENDMENT proposal regarding:  
[Chapter VII – Monitoring mechanism]  
[Article 44 – General recommendations]**

*Text proposed by the CDPC Secretariat Directorate General I*

*Amendment*

**[Article 44 – General recommendations]**

[GREEN may adopt, where appropriate, general recommendations on the implementation of this Convention.]

**[Article 42 – General recommendations]**

[GREEN may adopt, where appropriate, general recommendations on the implementation of this Convention.]

***GREEN shall in collaboration with relevant national authorities and stakeholders, develop sentencing guidelines in order to assist Parties in aligning their national legislations with the provision of this Convention.***

**JUSTIFICATION**

*Sentencing guidelines will assist Parties in defining and applying sanctions and measures that are dissuasive, effective and proportionate for different criminal behaviours. They will also address the resourcing, tools, and other practical requirements set by this Convention, facilitating its effective implementation and enhancing consistency and harmonization in sanction types, levels, and enforcement capacities among Parties. This is crucial to efficiently combat environmental crime, and prevent criminals from taking advantage of countries/regions with lighter legislation.*

*For sanctions to be truly effective and dissuasive, and to avoid the persistence of incentives for perpetrators, prosecuted offenders should not be allowed to profit from their crimes.*

*Nb: in its official position on the revision of the EU Environmental Crime Directive, the European Parliament is recommending the development of similar guidelines to assist EU Member States in implementing that Directive.*