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# **COMMITTEE OF EXPERTS ON THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW (PC-ENV)**

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## **Draft Convention on the Protection of the Environment through Criminal Law**

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

## Draft

### Council of Europe Convention on the Protection of the Environment through Criminal Law

#### Preamble

The member States of the Council of Europe and the other signatories to this Convention,

Recalling Appendix V of the Reykjavik Declaration, adopted at the 4th Summit of Heads of State and Governments of the Council of Europe (Reykjavik, 16-17 May 2023), in which the Heads of State and Government of the Council of Europe declared their commitment to strengthen their work at the Council of Europe on the human rights aspects of the environment, to identify the challenges raised by the triple planetary crisis of pollution, climate change and loss of biodiversity for human rights, and to contribute to the development of common responses thereto;

Recalling the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, the Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104, 1979) and the Council of Europe Landscape Convention (ETS No. 176, 2000);

Having regard to the European Convention on Extradition (ETS No. 24, 1957) and its Protocols; the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30, 1959) and its Protocols; the European Convention on the International Validity of Criminal Judgments (ETS No. 70, 1970); the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73, 1978); the Criminal Law Convention on Corruption (ETS No. 173, 1999); the Council of Europe Convention on Cybercrime (ETS No. 185, 2001) and its Protocols; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198, 2005);

Recalling the following Recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(88)18 concerning liability of enterprises having legal personality for offences committed in the exercise of their activities; Recommendation Rec(96)8 concerning crime policy in Europe in a time of change; Recommendation Rec(2001)11 concerning guiding principles on the fight against organised crime; Recommendation CM/Rec(2014)7 on the protection of whistleblowers; Recommendation Rec(2022)9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice and Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment;

Recalling Resolution (77) 28 on the contribution of criminal law to the protection of the environment of the Committee of Ministers of the Council of Europe;

Recalling the following Resolutions of the Parliamentary Assembly of the Council of Europe: 2210 (2018) on Climate change and implementation of the Paris Agreement; 2396 (2021) on Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe; 2398 (2021) on Addressing issues of criminal and civil liability in the context of climate change; and 2477 (2023) on Environmental impact of armed conflicts;

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;

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;

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:

## **Chapter I – Purposes, scope, definitions, non-discrimination and general obligations**

### **Article 1 – Purpose of the Convention**

1 The purpose of this Convention is:

- a. to prevent and combat environmental crime;
- b. to promote and enhance national and international co-operation against environmental crime;
- c. to establish minimum rules to guide States in their national legislation;

and thereby promote and enhance the protection of the environment.

[2 In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.]

## **Article 2 – Scope of the Convention**

1 This Convention shall apply to the prevention, investigation, and prosecution of offences established in accordance with this Convention.

2 This Convention shall apply in times of peace and in situations of armed conflict, wartime or occupation.

## **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 4 – Principle of non-discrimination**

The implementation of the provisions of this Convention by the Parties shall be secured without discrimination on any ground such as sex, race, language, age, religion, political or any other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.

## **Article 5 – State obligations and due diligence**

1 Parties shall refrain from engaging 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.

2 Parties shall take the necessary legislative and other measures to exercise due diligence 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.

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

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

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.

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:

- a. ensuring a common understanding of the relationship between criminal and administrative enforcement, as well as the adoption of common priorities;
- b. exchange of information for strategic and operational purposes;
- c. exchange of best practices.

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.

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.

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.

#### **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.

#### **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 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 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.

### **Chapter III – Prevention**

#### **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.

#### **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.

#### **Article 13 – Awareness-raising**

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 and habitats and the need to prevent it.

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.

#### **Article 14 – Education**

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.

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.

## **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 16 – Assessment of environmental claims**

Parties shall take the necessary legislative and other measures to regulate the assessment of the environmental impact, environmental aspects and environmental performance of a product object of an environmental claim in the context of a commercial communication, in order to prevent and combat the use of unclear, unsubstantiated or misleading environmental claims in commercial messages and representations.

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

### **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 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.

### **Article 18 – Unlawful collection, transport, recovery, disposal or shipment of waste**

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 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:

- a. concerns hazardous waste as defined in accordance with domestic law and when it concerns is undertaken in a non-negligible quantity;
- b. concerns other waste than referred to in point (a) and 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 shipment of waste, when such shipment is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked.

#### **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.

#### **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 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 ship-source discharges of polluting 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, be it the result of a single act or the conjunction of repeated minor cases that do not individually do so.

#### **Article 21 – Unlawful abstraction of surface water or groundwater**

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 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.

#### **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 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 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.

#### **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 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 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 27 – Ecocide]**

[Option a.]

[Parties shall take the necessary legislative and other measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, any conduct 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, biodiversity, ecosystem services and functions, or to animals or plants, when such conduct causes severe and widespread, or severe and long-term, or severe and irreversible damage.]

[Option b.]

[1 Parties shall take the necessary legislative and other measures to establish ecocide as a serious criminal offence under their domestic law.

2 For the purposes of this Convention, the term “ecocide” shall mean any action covered by the scope of the offences established in accordance with this Convention, when such action results in, and is committed with the knowledge that there was a substantial likelihood that it could result in severe and widespread, or severe and long-term, or severe and irreversible damage to human health or to the environment.]

#### **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 29 – Jurisdiction**

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:

- a. in their territory; or
- b. on board a ship flying their flag; or
- c. on board an aircraft registered under their laws; or
- d. by one of their nationals; or
- e. against one of their nationals.

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.

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.

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.

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.

#### **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 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.

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.

### **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.

### **Article 33 – Previous sentences passed by another Party**

Parties shall take the necessary legislative and other measures to provide for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the sanctions.

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

### **[Article 34 – Initiation and continuation of proceedings**

Parties shall take the necessary legislative and other measures to ensure that investigations or prosecution of offences established in accordance with this Convention should not be subordinate to a complaint and that the proceedings may continue even if the complaint is withdrawn.]

### **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.

### **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.

### **Article 37 – Information**

1 The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

2 A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in preventing offences established in accordance with this Convention or in initiating or carrying out investigations or proceedings concerning such offences or that it might lead to a request for co-operation by that Party under this chapter.

3 A Party receiving any information in accordance with paragraph 2 shall submit such information to its competent authorities in order that proceedings may be taken if they are considered appropriate, or that this information may be taken into account in relevant civil and criminal proceedings.

## **Chapter VI – Measures for protection**

### **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;
- 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.

### **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 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 a serious offence established in accordance with this Convention has been committed and further serious offences are to be expected.

#### **[Chapter VII – Monitoring mechanism]**

#### **[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 obtaining the unanimous consent of the Parties, within a period of six months following the entry into force of this Convention.

6 GREEN shall adopt its own rules of procedure.

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.]

#### **[Article 42 – Committee of the Parties]**

[1 The Committee of the Parties shall be composed of the representatives of the Parties to the Convention.

2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GREEN. It shall subsequently meet whenever one third of the Parties, the President of the Committee of the Parties or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.]

## **[Article 43 – Procedure]**

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.

2 GREEN shall consider the report submitted in accordance with paragraph 1 with the representatives of the Party concerned.

3 Subsequent evaluation procedures shall be divided into rounds, the length of which is determined by GREEN. At the beginning of each round GREEN shall select the specific provisions on which the evaluation procedure shall be based and send out a questionnaire.

4 GREEN shall define the appropriate means to carry out this monitoring procedure. It may in particular adopt a questionnaire for each evaluation round, which shall serve as a basis for the evaluation procedure of the implementation by the Parties. This questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GREEN.

5 GREEN may receive information on the implementation of the Convention from nongovernmental organisations and civil society, as well as from national institutions for the protection of human rights and the environment.

6 GREEN shall take due consideration of the existing information available from other regional and international instruments and bodies in areas falling within the scope of this Convention.

7 When adopting a questionnaire for each evaluation round, GREEN shall take due consideration of the existing data collection and research in the Parties as referred to in Article 10 of this Convention.

8 GREEN may receive information on the implementation of the Convention from the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly and relevant specialised bodies of the Council of Europe, as well as those established under other international instruments. Complaints presented to these bodies and their outcome will be made available to GREEN.

9 GREEN may subsidiarily organise, in co-operation with the national authorities and with the assistance of independent national experts, country visits, if the information gained is insufficient or in cases provided for in paragraph 14. During these visits, GREEN may be assisted by specialists in specific fields.

10 GREEN shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments shall be taken into account by GREEN when adopting its report.

11 On the basis of all the information received and the comments by the Parties, GREEN shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of this Convention. This report and the conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GREEN shall be made public as from their adoption, together with eventual comments by the Party concerned.

12 Without prejudice to the procedure of paragraphs 1 to 8, the Committee of the Parties may adopt, on the basis of the report and conclusions of GREEN, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GREEN, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of this Convention.

13 If GREEN receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention, it may request the urgent submission of a special report concerning measures taken to prevent a serious, massive or persistent pattern of environmental crime.

14 Taking into account the information submitted by the Party concerned, as well as any other reliable information available to it, GREEN may designate one or more of its members to conduct an inquiry and to report urgently to GREEN. Where warranted and with the consent of the Party, the inquiry may include a visit to its territory.

15 After examining the findings of the inquiry referred to in paragraph 14, GREEN shall transmit these findings to the Party concerned and, where appropriate, to the Committee of the Parties and the Committee of Ministers of the Council of Europe together with any comments and recommendations.]

#### **[Article 44 – General recommendations]**

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

#### **[Article 45 – Parliamentary involvement in monitoring]**

1 National parliaments shall be invited to participate in the monitoring of the measures taken for the implementation of this Convention.

2 Parties shall submit the reports of GREEN to their national parliaments.

3 The Parliamentary Assembly of the Council of Europe shall be invited to regularly take stock of the implementation of this Convention.]

### **Chapter VIII – Relationship with other international instruments**

#### **Article 46 – Relationship with other international instruments**

1 This Convention shall not affect obligations arising from other international instruments to which Parties to this Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention. However, where Parties establish their relations in respect of the matters dealt with in the present Convention other than as regulated therein, they shall do so in a manner that is not inconsistent with the Convention's objectives and principles.

2 The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

### **Chapter IX – Amendments to the Convention**

#### **Article 47 – Amendments**

1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by her or him to the member States of the Council of Europe, any signatory, any Party, the European Union, any State invited to sign this Convention in accordance with the provisions of Article 50, and any State invited to accede to this Convention in accordance with the provisions of Article 51.

2 The Committee of Ministers of the Council of Europe shall consider the proposed amendment and, after having consulted the Parties to this Convention that are not members of the Council of Europe, may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.

3 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 2 shall be forwarded to the Parties for acceptance.

4 Any amendment adopted in accordance with paragraph 2 shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General of their acceptance.

### **Chapter X – Final clauses**

#### **Article 48 – Effects of this Convention**

The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to persons in preventing and combating environmental crime.

#### **Article 49 – Dispute settlement**



1 The Parties to any dispute which may arise concerning the application or interpretation of the provisions of this Convention shall first seek to resolve it by means of negotiation, conciliation, arbitration or by any other methods of peaceful settlement accepted by mutual agreement between them.

2 The Committee of Ministers of the Council of Europe may establish procedures of settlement to be available for use by the Parties in dispute if they should so agree.

#### **Article 50 – Signature and entry into force**

1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 signatories, including at least eight member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.

4 In respect of any State referred to in paragraph 1 or the European Union, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

#### **Article 51 – Accession to the Convention**

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 52 – Territorial application**

1 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 53 – Reservations**

1 No reservation may be made in respect of any provision of this Convention, with the exceptions provided for in paragraphs 2 and 3.

2 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in: [...]

3 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred to in Articles [...].

4 Any Party may wholly or partly withdraw a reservation by means of a declaration addressed to the Secretary General of the Council of Europe. This declaration shall become effective as from its date of receipt by the Secretary General.

#### **Article 54 – Validity and review of reservations**

1 Reservations referred to in Article 53, paragraphs 2 and 3, shall be valid for a period of five years from the day of the entry into force of this Convention in respect of the Party concerned. However, such reservations may be renewed for periods of the same duration.

2 Eighteen months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Party concerned. No later than three months before the expiry, the Party shall notify the Secretary General that it is upholding, amending or withdrawing its reservation. In the absence of a notification by the Party concerned, the Secretariat General shall inform that Party that its reservation is considered to have been extended automatically for a period of six months. Failure by the Party concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.

[3 If a Party makes a reservation in conformity with Article 53, paragraphs 2 and 3, it shall provide, before its renewal or upon request, an explanation to GREEN, on the grounds justifying its continuance.]

#### **Article 55 – Denunciation**

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

#### **Article 56 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, any signatory, any Party, the European Union, and any State invited to accede to this Convention of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Convention in accordance with Articles 50 and 51;
- d. any amendment adopted in accordance with Article 47 and the date on which such an amendment enters into force;
- e. any reservation and withdrawal of reservation made in pursuance of Article 53;
- f. any denunciation made in pursuance of the provisions of Article 55;
- g. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at [...], this [...] day of [...] [...], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Union and to any State invited to accede to this Convention.

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