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Proposal for a

COUNCIL DECISION

**on the signing, on behalf of the European Union, of the Council of Europe Convention
on the protection of the environment through criminal law**

EXPLANATORY MEMORANDUM

The present proposal concerns the signature, on behalf of the European Union, of the Council of Europe Convention on the protection of the environment through criminal law (hereafter “the Convention”).

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Environmental crime causes significant damage to the environment, to human health and to economies and has become a growing concern of the EU and world-wide. Environmental crime is the fourth largest organised criminal activity in the world after drugs trafficking, human trafficking and counterfeiting. It is growing at annual rates of between 5 and 7% ⁽¹⁾. Crimes like illegal deforestation, water, air and soil pollution, traffic in ozone-depleting substances, poaching and other offences heavily damage biodiversity, harm human health and destroy whole ecosystems. The global impact of the resulting damage and degradation, often involving organised crime on a transnational scale, requires decisive action, strong international cooperation based on a common understanding of environmental crime categories, sanctions, and cross-border cooperation.

Over the past decades the EU has gradually stepped up its efforts to regulate conduct that is harmful to the environment. Today, a significant number of EU legislative instruments, mainly directives, lay down relevant standards and limits for a variety of environmental sectors and related obligations for duty-holders. To further enhance the protection of the environment and strengthen the fight against environmental crime, the EU has adopted Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (hereafter “ECD”). The ECD establishes common minimum rules with regard to the definition of criminal offences and penalties in order to protect the environment more effectively as well as with regard to measures to prevent and combat environmental crime and to effectively enforce Union environmental law. The ECD entered into force on 20 May 2024 and requires Member States to adopt the necessary transposition measures by 20 May 2026.

The Council of Europe, being the institution which adopted the first international instrument to combat environmental crime in the 1998 Convention on the Protection of the Environment through Criminal Law ⁽²⁾ (hereafter “1998 Convention”) also acknowledges the need for an enhanced international approach to combat these crimes.

The 1998 Convention never entered into force as the necessary minimum number of ratifications or accessions was not attained.

Therefore, the Steering Committee of the Council of Europe for overseeing and coordinating activities in the field of crime prevention and crime control – the European Committee on Crime Problems (“CDPC”) – established a Working Group of Experts on the Protection of the Environment through Criminal Law (“CDPC-EC”) to consider in a Feasibility Study ⁽³⁾ the possible way forward, by assessing whether the elaboration of a new Convention to replace the existing 1998 Convention was feasible and appropriate, which in June 2022 decided that drafting a new Convention was feasible and appropriate.

⁽¹⁾ UNEP-INTERPOL Rapid Response Assessment: The Rise of Environmental Crime, June 2016.

⁽²⁾ Convention on the Protection of the Environment through Criminal Law, ETS No. 172, adopted on 4 November 1998.

⁽³⁾ Feasibility Study on the Protection of the Environment through Criminal Law ‘CDPC (2021)9-Fin’.

On 23 November 2022, the Committee of Ministers of the Council of Europe adopted the Terms of Reference for a new Committee of Experts on the Protection of the Environment through Criminal Law (“PC-ENV”) ⁽⁴⁾. The PC-ENV was set up and entrusted, under the authority of the Committee of Ministers and the CDPC, to elaborate a new Convention on the Protection of the Environment through Criminal Law.

The Union negotiated the Convention based on Article 216(1), fourth alternative, of the Treaty on the Functioning of the European Union (“TFEU”), according to which the Union may negotiate and conclude an international agreement, where that agreement “(...) is likely to affect common rules or alter their scope”.

The European Commission represented the Union in the negotiations of the Convention, in accordance with Article 218(3) and (4) TFEU in line with the Council Decision authorising the European Commission to participate⁽⁵⁾.

The Union has participated actively in the negotiations and pursued the goal of ensuring compatibility of the Convention with Union law, consistency with the ECD, as well as quality and added value of the Convention on international level.

After several negotiation rounds ⁽⁶⁾, the PC-ENV agreed on the text of the new Convention at its fourth meeting which took place from 4-7 June 2024.

The Committee of Ministers of the Council of Europe adopted the Convention on [...] and opened it for signature on [...] in [...].

The purpose of the present proposal is launching the process for the signature by the Union of the Convention with the intention to subsequently conclude it by proposing to the Council to adopt a decision to authorise the Union to sign the Convention in accordance with Article 218(5) TFEU.

The Convention is fully compatible with Union law in general, and the ECD in particular, and will promote key concepts from the Union approach to environmental crime globally among other Council of Europe members and key international partners that can become Parties to the Convention.

• **Content of the Convention**

The objective of the Convention is to effectively prevent and combat environmental crime, to promote and enhance national and international co-operation and to establish minimum rules to guide states in their national legislation.

The Convention applies to the prevention, detection, investigation, prosecution and sanctioning of criminal offences and defines the terms “unlawful”, “water”, “ecosystem” and “waste”. These definitions are fully in line with relevant definitions and concepts under EU law.

The Convention commits its Parties to take the necessary measures to adopt the provisions laid out in the Convention. It covers measures to establish as criminal offences in domestic law unlawful conduct covered by the Convention and to provide for relevant sanctions as well

⁽⁴⁾ European Committee on Crime Problems (CDPC) - Terms of reference of the Committee of Experts on the protection of the environment through criminal law (PC-ENV), CM(2022)148-add2final.

⁽⁵⁾ Council Decision (EU) 2023/2170 of 28 September 2023 authorising the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172).

⁽⁶⁾ Negotiation rounds took place from 16-18 October 2023, 27-29 February 2024 and 4-7 June 2024.

as several measures to ensure the effective fight against environmental crime, including on resources, training, cooperation and strategic approaches.

The substantial criminal law chapter refers to unlawful and intentional offences related to pollution, placing on the market of products in breach of environmental requirements, offences related to chemical substances, radioactive material or substances, mercury, ozone depleting substances and fluorinated greenhouse gases, offences related to waste, installations, ships, as well as unlawful abstraction of surface water or groundwater, trade in unlawfully harvested timber, unlawful mining and killing, destruction, taking and possession of protected wild flora or fauna, trading in protected wild fauna or flora, unlawful deterioration of habitats within a protected site and offences related to invasive alien species.

The Convention also provides for the establishing as a particularly serious offence any of the offences covered by the Convention when committed intentionally and leading to particularly serious damage or destruction.

A dedicated section on general provisions of criminal law includes provisions on inciting, aiding and abetting and attempt, jurisdiction, liability of legal persons, sanctions and measures, aggravating circumstances and taking into account previous sentences passed by another Party. The sanctions for natural persons should include imprisonment and may also include monetary sanctions. Sanctions for legal persons should include criminal or non-criminal monetary sanctions and could include other measures, such as disqualification from exercising commercial activity, exclusion from entitlement to public benefit, aid or access to public funding and placing under judicial supervision. Parties should also enable the freezing, seizure and confiscation of instrumentalities and proceeds of crime derived from the offences established in accordance with this Convention.

The investigation and prosecution of offences should not be subordinate to a complaint. Persons having sufficient interest or maintaining the impairment of a right and non-governmental organisations promoting environmental protection should have the right to participate in criminal proceedings to the extent that such rights exist in the Party in proceedings for other criminal offences.

The Convention commits its Parties to co-operate and co-ordinate with each other in accordance with this Convention and through the application of relevant international and regional instruments on cooperation in criminal matters. It also enables information exchange between the Parties, while data protection rules need to be complied with.

Furthermore, the Convention provides for measures of protection of victims and witnesses or persons who report offences or otherwise co-operate with justice.

A Committee of the Parties, composed of representatives of the Parties will be established, which, through a monitoring mechanism, shall monitor the implementation of the Convention and facilitate the collection, analysis and exchange of information, experience and good practice between Parties.

The Convention also provides a basis for Parties to avail themselves of certain reservations, including the possibility of regional integration organisations to specify the scope of certain notions in the Convention based on their harmonised law.

- **Consistency with existing policy provisions in the policy area**

The Convention was negotiated taking into account the comprehensive negotiating directives adopted by the Council together with the authorisation to negotiate on 28 September 2023.

The Convention is fully aligned with the aim of the Union for a high level of protection and improvement of the quality of the environment as provided for in Article 3(3) TEU and Article 191 TFEU.

The Convention closely reflects the scope, structure and content of the ECD, covering matters falling within the Union's competence, as defined by the Treaties.

The legal definitions and terminology in the Convention are in line with the relevant legal definitions and concepts under EU law, for instance the definition of “ecosystem” in Article 2(2)(c) of the ECD and in Article 3(c) of the Convention. The offences categories in the Convention correspond to the offences established under the ECD as well as the provisions on persons’ liability and sanctions; procedural rights and cooperation; preventive measures and civil society participation.

Environmental offences in the Convention and their scope are clearly defined and are compatible with EU law, in particular with the list of criminal offences in Article 3(2) of the ECD. The list of criminal offences covered by the Convention addresses intentional and unlawful conduct and is fully in line with the offences established under the ECD. An offence on “unlawful fishing” which was in the initial Council of Europe draft is not included in the text agreed at expert level because of lack of agreement between the Parties. There was no agreement also on the scope and definition of the offence on “unlawful mining and trafficking in minerals and metals” as proposed in the initial Council of Europe draft. The relevant provision was re-drafted and covers now only mining activities undertaken without a legally required development consent, which is in line with the ECD. Furthermore, similar to the ECD, the Convention defines a “particularly serious offence” in case of destruction, or irreversible, widespread and substantial damage, or long-lasting, widespread and substantial damage to an ecosystem of considerable size or environmental value, or to a habitat within a protected site, or to the quality of air, soil or water.

Provisions from the initial Council of Europe draft Convention related to state obligations and due diligence, non-governmental organisations and civil society, education, participation of the private sector and the media, assessment of environmental claims were deleted and are not retained in the final text of the Convention.

Provisions on prevention and awareness raising, training of professionals and data collection in the Convention were amended and in substance aligned with corresponding provisions in the ECD (for example Article 16 and Article 18 of the ECD).

The general criminal law provisions, such as inciting, aiding and abetting and attempt, jurisdiction, liability of legal persons, sanction and measures, freezing and confiscation and aggravating circumstances, included in the Convention are largely aligned with the corresponding provisions in the ECD. Beyond that, these provisions are also reflected in other EU criminal law instruments such as Directive (EU) 2024/1226 (Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures) or Directive (EU) 2017/1371 (Directive on the fight against fraud to the Union’s financial interests by means of criminal law) as well as Directive (EU) 2024/1260 (Directive on asset recovery and confiscation).

The liability of legal persons in Article 34 of the Convention fully aligns with the provisions of Article 6 of the ECD, as both are subject to the same conditions and use the same wording. In addition, also Article 33 of the Convention on jurisdiction aligns with the provisions of Article 12 of the ECD, as both determine similar mandatory grounds for establishing jurisdiction and the provision on jurisdiction claims by more than one party of the Convention corresponds in content and nature to the provision in the ECD.

The Convention provisions related to sanctions for natural persons require Parties to ensure that offences under the Convention are punishable by imprisonment (without, however, setting specific minimum requirements for maximum terms of imprisonment as in the ECD). Parties may introduce also monetary sanctions. These provisions on penalties for natural persons are in line with the ECD and also present in other EU criminal law instruments, such as for example Directive (EU) 2024/1226. Both legal frameworks provide for monetary sanctions, for legal persons as well as accessory sanctions or measures, as disqualification of exercising commercial activity, exclusion from access to public funding, including tender procedures, grants, concessions and withdrawal of permits and authorisation. All types of penalties and measures in the Convention are also included in the ECD, as well as aligned with other EU criminal legal instruments such as Article 9 of Directive (EU) 2017/1371 and Article 7 of Directive (EU) 2024/1226.

The freezing and confiscation of instrumentalities and proceeds of environmental criminal offences established in the respective legal framework is included in Article 35(3) of the Convention as well as in Article 10 of the ECD. Moreover, the concept of freezing and confiscating instrumentalities and proceeds in Article 35(3) of the Convention aligns with Directive (EU) 2024/1260 on asset recovery and confiscation and Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders. Similar provisions on the freezing and confiscation of instrumentalities and proceeds can be also found in Article 10 of Directive (EU) 2024/1226 and Article 10 of Directive (EU) 2017/1371.

Both legal frameworks provide for aggravating circumstances, the Convention in Article 36 and the ECD in Article 8. Whereas the Convention includes the same aggravating circumstances as the ECD, the latter goes beyond by listing other aggravating circumstances, such as the destruction of evidence or intimidation of witnesses or complainants by the offender. In addition, the aggravating circumstances included in Article 8 of Directive (EU) 2024/1226 reflect the ones in the Convention almost fully.

The importance of rights to participate in proceedings for persons having sufficient interest or maintaining the impairment of a right, as well as non-governmental organisations that promote environmental protection, is highlighted in Article 39 of the Convention as well as in Article 15 of the ECD.

While the ECD will apply to environmental criminal offences in the Union, the Convention has a broader geographic reach encompassing Council of Europe members and third states around the world that can become parties to the Convention. The Convention thus represents a unique opportunity to foster environmental protection beyond the Union in an international legally binding treaty.

According to the negotiating directives it should be achieved that the Convention is compatible with the Union acquis, which contributes to the pursuit of the objectives of the Union policy protecting the environment and reflects as much as possible the scope of the new ECD. A reservation specifying the meaning and the scope of the terms mentioned in Article 56(3) of the Convention is a tool to ensure that the Convention is in line with the Union acquis, including and in particular with the ECD.

- **Consistency with other Union policies**

The Convention is fully consistent with other EU policies and will not require the EU to amend its rules, regulations or standards in any regulated area.

The Convention also shares common objectives with other Union policies and legislation that aim to implement fundamental rights enshrined in the Charter of Fundamental Rights of the Union.

In particular, the principle of non-discrimination enshrined in the Convention is fully consistent with Union non-discrimination legislation and will promote the integration of equality consideration in the implementation of the Convention.

The Convention is also consistent with Title V of Part Three of the TFEU which confers upon the European Union competences in the area of freedom, security and justice. In addition to the ECD, the European Union has adopted a comprehensive set of legal instruments to fight environmental crime among other crimes. The following legal instruments form part of this legal framework:

- Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.
- 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.
- Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation,
- Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA.
- Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.
- 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.
- Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime.

The Convention is furthermore consistent with the Union data protection acquis, including the General Data Protection Regulation (GDPR)⁽⁷⁾ and the Data Protection Law Enforcement Directive⁽⁸⁾. Moreover, the Convention is consistent with the comprehensive body of Union environmental law in force or currently under revision that is covered by the new ECD as a horizontal instrument. Union environmental law and the ECD interact with each other, insofar as the definition of a criminal offence under the ECD requires unlawful conduct, i.e. a breach of obligations as defined in Union environmental law.

⁽⁷⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁽⁸⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal for a decision authorising the signature of the Convention on behalf of the Union is submitted to the Council pursuant to Article 218(5) TFEU.

Article 218(5) TFEU provides for decisions “authorising the signing of the agreement”. Since the proposal’s aim is to receive an authorisation to sign the Convention, the procedural legal basis is Article 218(5) TFEU.

The substantive legal basis depends primarily on the objective and content of the envisaged act. According to the case-law, if an examination of a Union measure reveals that it pursues two purposes or that it comprises two components and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component.

The Convention coincides largely with the ECD. Given that the main objective of the Convention is to establish minimum rules on the definition of relevant criminal offences, to set minimum standards for sanctions and to lay down minimum standards for other measures to combat environmental crime more effectively, the legal basis of the ECD, Article 83(2) TFEU, is also the substantive legal basis for the conclusion of the Convention.

• Union competence

The nature of international agreements (“EU-only” or “mixed”) is contingent upon the Union competences with regard to the specific subject matter.

Article 3(2) TFEU provides that the Union has exclusive competence “for the conclusion of an international agreement (...) in so far as its conclusion may affect common rules or alter their scope.” In particular, the European Court of Justice has clarified that a “finding that there is such a risk [of affectation or alteration of EU rules by international commitments] does not presuppose that the areas covered by the international commitments and those covered by the EU rules coincide fully” but that “the scope of common EU rules may be affected or altered by such commitments also where those commitments fall within an area which is already largely covered by such rules”⁽⁹⁾. The analysis of the nature of the Union competence must take into account the areas covered by the EU rules and by the provisions of the agreement envisaged, their foreseeable future development and the nature and content of those rules and those provisions, in order to determine whether the envisaged agreement is capable of undermining the uniform and consistent application of the EU rules and the proper functioning of the system which they establish⁽¹⁰⁾.

Considering that the scope of the Convention largely coincides with the ECD, the conclusion of the Convention may affect common Union rules or alter their scope within the meaning of Article 3(2) TFEU.

The new Convention closely reflects the structure, nature, content and scope of the ECD. Both contain aligning provisions on purpose and scope, terminology and definitions, criminal offences, liability of legal persons, jurisdiction, sanctions and other measures, aggravating circumstances, procedural rights and cooperation, preventive measures and civil society participation. Additionally, during the negotiations, several provisions from the initial draft Convention proposed by the PC-ENV were removed, leading to an even closer alignment of

⁽⁹⁾ Case C-114/12, *Commission v. Council*, ECLI:EU:C:2014:2151, paragraphs 69 and 70.

⁽¹⁰⁾ Opinion 1/13 of 14 October 2014, ECLI:EU:C:2014:2303, paragraph 74.

the Convention text with the ECD. By way of illustration, the provisions deleted concerned state obligations and due diligence, non-governmental organisations and civil society, education, participation of the private sector and the media, assessment of environmental claims, unlawful fishing, the establishment of a group of experts on the protection of the environment and action against environmental crime, the parliamentary involvement in monitoring, and the validity and review of reservations. Several provisions also underwent significant changes compared to the initial draft, for example the definition of “unlawful” and the particularly serious offence (previously called “ecocide”), which now closely reflect the content of the ECD.

Further, Union rules on environmental crime have been in place since 2008 and given the growing importance and impact of these crimes, they will continue to be a high priority and evolve at Union level.

Consequently, since the Convention falls within an area largely covered by EU common rules, the Union should have the exclusive external competence to sign the Convention for the Union as an “EU-only” agreement.

The Convention provides that it is open for signature to the European Union (Article 53(1)). The Convention also includes provisions on reservations which allow a declaration to specify the scope of the term “unlawful” and of the notions “domestic law”, “domestic provisions”, “protected” and “requirement” used in the definition of some offences under the Convention.

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

The Convention does not go beyond what is necessary to achieve the policy objectives to effectively combat environmental crime and, therefore, is in accordance with the principle of proportionality, as set out in Article 5(4) TEU. The Union has already exercised internal competence in this area through the adoption of the ECD.

The considerations that apply regarding the ECD also apply to the Convention, as the impact of environmental crimes and the significance of the protection of the environment goes across borders and calls for an international approach. The Convention defines the scope of the criminal offences to cover all relevant conduct while limiting it to what is necessary and proportionate. Both the offences and sanctions put down in the Convention are limited to serious breaches of environmental law and thus respect proportionality.

- **Choice of the instrument**

Article 218(5) TFEU provides that the Commission or the High Representative of the Union for Foreign Affairs and Security Policy shall submit proposals to the Council, which shall adopt a decision authorising the signing of an international agreement. Given the subject matter of the envisaged agreement, it is appropriate for the Commission to submit a proposal to that effect.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The European Commission has not carried out specific stakeholder consultation on this proposal.

The elaboration of the Convention was a collaborative effort of the Council of Europe Committee of Experts on the protection of the environment through criminal law, involving the member states of the Council of Europe, as well as observer states including the Holy See.

In accordance with the Council of Europe's commitment to engaging with diverse stakeholders, the development of the Convention also involved input from civil society representatives and other international organisations, including the United Nations environment program (UNEP), the United Nations office on drugs and crime (UNODC), the global initiative to end wildlife crime (EWC), Wild Legal and the Wildlife Justice Commission.

- **Collection and use of expertise**

The Union's negotiation positions for the Convention have been prepared in consultations with the Council Working Party on Judicial Cooperation in Criminal Matters (COPEN).

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The Convention aims to improve the environment as it is subject to Article 37 of the Charter of Fundamental Rights of the European Union ("the Charter") and therefore also the well-being of citizens, positively influencing the right to life (Article 2 of the Charter), the right to physical integrity (Article 3), the care and well-being of children (Article 24), the right to healthy working conditions (Article 31) and the right to access to preventive health care (Article 35).

The Convention ensures the necessity and proportionality of any interference with the protection of personal data by guaranteeing the application of adequate data protection safeguards to the personal data transferred in Article 42 of the Convention, in line with applicable legislation and international agreements.

The Convention regards the fundamental rights of

- the freedom to conduct a business by establishing the liability of legal persons in Article 34 and clearly determining in which cases a legal person will be held responsible for environmental crimes, as well as providing for sanctions against legal persons in Article 35(2), which must be effective, proportionate and dissuasive therefore ensuring the necessity and proportionality of any interference with the freedom to conduct a business,
- the principles of legality and proportionality of criminal offences and penalties (Article 49 of the Charter) in Article 35 by providing for effective, proportionate and dissuasive measures, which take into account the seriousness of the offence, as well as providing for instances of a particularly serious offence in Article 31 and aggravating circumstances in Article 36,

- the right not to be tried or punished twice in criminal proceedings for the same offence (Article 50 of the Charter – ne bis in idem) in Article 37 by providing for the possibility to take into account final sentences passed by another Party,
- and should be implemented and applied by its Parties with due respect for these rights.

4. BUDGETARY IMPLICATIONS

The Convention envisages financial contributions of non-member states to the activities of the Committee of the Parties. While all members of the Council of Europe will contribute through the ordinary budget of the Council of Europe in accordance with the Statute of the Council of Europe, Parties that are not members will make extrabudgetary contributions. The contribution of a non-member of the Council of Europe shall be established jointly by the Committee of Ministers and that non-member.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Convention provides for a monitoring mechanism whereby the Committee of Parties, composed of representatives of the Parties, will monitor the implementation of the Convention. It will also facilitate the collection, analysis and exchange of information, experience and good practice between parties, where appropriate it will also facilitate the effective use and implementation of the Convention and express an opinion on any question regarding its application.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 explains the purpose of the Convention.

Article 2 defines the scope of the Convention.

Article 3 includes the definitions of important terms of the Convention.

Article 4 states the application of the principle of non-discrimination for the Convention.

Article 5 provides for comprehensive and co-ordinated policies from the Parties of the Convention.

Article 6 provides for the establishing and publishing of a national strategy.

Article 7 provides that the Parties allocate financial and human resources.

Article 8 provides for the training of professionals by the Parties.

Article 9 sets out the scope of data collection and research.

Article 10 states the general obligations under the Convention to take necessary legislative or other measures to prevent offences established by the Convention.

Article 11 provides for measures of awareness-raising.

Article 12 establishes offences related to unlawful pollution.

Article 13 establishes offences related to the placing on the market of products in breach of environmental requirements.

Article 14 establishes offences related to chemical substances.

Article 15 establishes offences related to radioactive material or substances.

Article 16 establishes offences related to mercury.

Article 17 establishes offences related to ozone depleting substances.

Article 18 establishes offences related to fluorinated greenhouse gases.

Article 19 establishes offences related to the unlawful collection, treatment, transport, recovery, disposal or shipment of waste.

Article 20 establishes offences related to the unlawful operation or closure of an installation concerning a dangerous activity.

Article 21 establishes offences related to the unlawful operation or closure of an installation involving dangerous substances.

Article 22 establishes offences related to the unlawful recycling of ships.

Article 23 establishes offences related to the ship-source discharges of polluting substances.

Article 24 establishes offences related to the unlawful abstraction of surface water or groundwater.

Article 25 establishes offences related to trade in unlawfully harvested timber.

Article 26 establishes offences related to unlawful mining.

Article 27 establishes offences related to the unlawful killing, destruction, taking and possession of protected wild fauna or flora.

Article 28 establishes offences related to the unlawful trading in protected wild fauna or flora.

Article 29 establishes offences related to the unlawful deterioration of habitats within a protected site.

Article 30 establishes offences related to invasive alien species.

Article 31 establishes what is to be considered a particularly serious offence.

Article 32 provides for inciting, aiding and abetting and attempt.

Article 33 states in which cases Parties shall establish their jurisdiction regarding the Convention.

Article 34 provides for the liability of legal persons.

Article 35 provides for sanctions and measures.

Article 36 provides for aggravating circumstances.

Article 37 provides for the possibility to take into account previous sentences passed by another Party.

Article 38 provides for initiation and continuation of proceedings.

Article 39 lists instances in which the Parties should consider granting rights to persons and non-governmental organisations to participate in proceedings.

Article 40 provides for international co-operation in criminal matters.

Article 41 establishes the option to forward information between Parties without prior request.

Article 42 states that the data protection rules in applicable legislation and international agreements governing the protection of personal data are to be complied with.

Article 43 provides for the standing of victims in criminal investigations and proceedings.

Article 44 provides for the protection of witnesses under the Convention.

Article 45 provides for the protection of persons who report offences or co-operate with justice under the Convention.

Article 46 provides for the composition of the Committee of the Parties and its internal procedures.

Article 47 lists which other representatives shall or may get appointed to the Committee of the Parties.

Article 48 lists the functions of the Committee of the Parties.

Article 49 concerns the relationship with other sources of international law.

Article 50 concerns amendments to the Convention.

Article 51 states the effects of the Convention.

Article 52 regulates the mechanism for dispute settlements concerning the Convention.

Article 53 provides for the signature and entry into force of the Convention.

Article 54 provides for the accession to the Convention.

Article 55 relates to the territorial application of the Convention.

Article 56 provides for the option of reservations to certain provisions of the Convention, in particular the possibility of regional integration organisations to specify the scope of certain notions in the Convention based on their harmonised law.

Article 57 provides for the denunciation of the Convention.

Article 58 provides for the cases in which notification from the Secretary General of the Council of Europe are to be made.

- **Signing and the text of the Convention**

The text of the Convention is submitted to the Council together with this proposal.

The text of the reservation is submitted together with this proposal.

In accordance with the Treaties, it is for the Commission to ensure the signing of the Convention, subject to its conclusion at a later date.

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Council of Europe Convention on the protection of the environment through criminal law

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(2), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 28 September 2023, the Council authorised the Commission to participate, on behalf of the Union, in the negotiations on a Council of Europe Convention on the protection of the environment through criminal law (“the Convention”)⁽¹⁾.
- (2) The Convention was adopted by the Committee of Ministers of the Council of Europe on [...] and is envisaged to be opened for signature on [...].
- (3) Article 53 of the Convention provides that the Convention shall be open for signature by the European Union.
- (4) The Convention lays down provisions on its purpose and scope, legal definitions and terminology, criminal offences, the liability of legal persons, sanctions and other measures, aggravating and mitigating circumstances, procedural rights and cooperation, preventive measures and civil society participation regarding environmental crime.
- (5) On 11 April 2024, the European Parliament and the Council adopted, on the basis of Article 83(2) of the Treaty on the Functioning of the European Union, Directive (EU) 2024/1203 of the European Parliament and of the Council⁽²⁾, which widely aligns with the Convention.
- (6) Considering that the scope and the substantive provisions of the Convention coincide to a large extent with Directive (EU) 2024/1203, the conclusion of the Convention may affect common Union rules or alter their scope within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union. The Union therefore enjoys exclusive external competence to sign the Convention.
- (7) In order to ensure compatibility between the Convention and Directive (EU) 2024/1203, the Union should avail itself of the possibility provided in Article 56(3) of

⁽¹⁾ Council Decision (EU) 2023/2170 of 28 September 2023 authorising the European Commission to participate, on behalf of the European Union, in negotiations on a Council of Europe Convention superseding and replacing the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172), OJ L, 2023/2170, 16.10.2023, ELI: <http://data.europa.eu/eli/dec/2023/2170/oj>.

⁽²⁾ Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC, OJ L, 2024/1203, 30.4.2024, ELI: <http://data.europa.eu/eli/dir/2024/1203/oj>.

the Convention to specify the scope of the term “unlawful” and other notions used for the purpose of defining criminal offences under the Convention by means of a reservation.

- (8) Therefore, the Convention should be signed on behalf of the Union and the reservation be approved .
- (9) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish [, by letter of ...] to take part in the adoption and application of this Decision.] or [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]
- (10) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,
- (11) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council³ and delivered an opinion on XXXX⁴,

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Council of Europe Convention on the protection of the environment through criminal law is hereby authorised, subject to the conclusion of the said Convention⁽⁵⁾.

Article 2

The reservation is hereby approved⁽⁶⁾.

⁽³⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>).

⁽⁴⁾ OJ C [...], [...], p. [...].

⁽⁵⁾ The text of the Convention will be published together with the decision on its conclusion.

⁽⁶⁾ The reservation is published in OJ, L, [...].

Article 3

This Decision shall enter into force on [...].

Done at Brussels,

*For the Council
The President*