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## **Explanatory Note**

### **to the draft Law of Ukraine “On Amendments to the Criminal Code of Ukraine Regarding the Prohibition of Sale of Flora and Fauna Objects Protected in Europe”**

#### **1. Rationale for adopting the draft law**

The draft Law of Ukraine “On Amendments to Certain Laws Regarding the Prohibition of Sale of Flora and Fauna Objects Removed from the Natural Environment” proposes to transpose into Ukrainian legislation the requirements of the Bern Convention, the Habitats Directive and the Birds Directive concerning a strict protection regime for wild fauna and flora species, insofar as they establish a prohibition on the sale of flora and fauna objects removed from the natural environment, the species of which are specified in the appendices to the Bern Convention and in the list of wild flora and fauna species subject to special protection in Europe approved by the Cabinet of Ministers of Ukraine.

Article 3 of 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 obliges Member States to establish criminal liability for selling or offering for sale a specimen or specimens of wild fauna or flora species protected under the Birds Directive and the Habitats Directive. However, the Criminal Code of Ukraine does not contain such an offence.

Part 8 of Article 3 of that Directive also sets out criteria that Member States must use when assessing what quantity of fauna or flora objects may be considered “insignificant” for the purpose of determining the threshold for criminal liability for the relevant act. These criteria will be applied by the central executive authority responsible for forming state policy in the field of environmental protection when developing an act that will determine what quantity of fauna or flora objects is considered “insignificant” within the meaning of the relevant article of the Criminal Code of Ukraine.

## **2. Goals and objectives of the act**

To establish criminal liability for the sale of flora and fauna objects prohibited from sale.

## **3. General description and key provisions of the act**

The draft Law provides for supplementing the Criminal Code of Ukraine with a new Article 249-1 (“Sale of Flora and Fauna Objects Prohibited from Sale”), in particular by establishing criminal liability for the sale or exchange, transportation or keeping for sale, as well as making an unlawful offer for sale or exchange, of flora or fauna objects removed from the natural environment, from among wild flora and fauna species subject to protection in Europe.

As a qualified offence under part two of the proposed new Article 249-1, the draft provides for increased sanctions for the same acts where they are committed by an official through abuse of official position, or by a group of persons upon prior conspiracy, or by a person previously convicted of a criminal offence provided for in this Article.

The draft also provides for a Note to the Article, under which the central executive authority responsible for forming state policy in the field of environmental protection will determine what quantity of fauna or flora objects is considered “insignificant” within the meaning of this Article of the Criminal Code of Ukraine.

## **4. Status of the regulatory framework in this area**

The principal legal acts regulating this area of legal relations are the Constitution of Ukraine and the Criminal Code of Ukraine.

## **5. Financial and economic justification**

Implementation of the provisions of this draft law will not require additional expenditures from the State Budget.

## **6. Forecast of socio-economic and other consequences of adopting the regulatory act**

Adoption of the draft Law will contribute to strengthening the protection of flora and fauna species protected in Europe, and will have a positive effect on ecosystem stabilisation, restoration of species populations, public health, and other areas of social relations.

**People’s Deputy of Ukraine**

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