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Explanatory Note

to 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”

1. Rationale for adopting the draft law

Annex XXX to the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (hereinafter referred to as the “Agreement”), in the “Nature Protection” sector, provides for measures to approximate national legislation to Directive 2009/147/EC on the conservation of wild birds (the “Birds Directive”) and Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”), in particular:

- adoption of national legislation and designation of the competent authority(ies) for transposition and implementation of the provisions of the Birds and Habitats Directives;
- introduction of protective conservation measures to protect migratory species (Article 4.2 of the Birds Directive);
- establishment of a general system of protection for all wild bird species, with a special subcategory of birds that may be hunted, and prohibition of certain methods of capture/killing of birds (Articles 5, 6, 7, 8, 9(1) and 9.2 of the Birds Directive);
- establishment of a strict protection regime for the species listed in Annex IV that concern Ukraine (Article 12 of the Habitats Directive).

Under part 1 of Article 6 of the Birds Directive, Member States shall prohibit, with respect to bird species covered by the Directive, the sale, transport for sale, keeping for sale, and offering for sale of live or dead birds and any readily recognizable parts or derivatives of such birds.

Under Part 2 of Article 12 of the Habitats Directive, Member States must prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens of protected animal species taken from the wild, except for specimens that were lawfully taken prior to implementation of the Directive. Under Part 3 of Article 12 of the Habitats Directive, such prohibition must also apply to all life stages of the animals to which that Article applies.

Under item (b) of part 1 of Article 13 of the Habitats Directive, Member States must take the necessary measures to establish a system of strict protection for the plant species, including a prohibition on the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens of such species taken from the wild, except for specimens that were lawfully collected prior to implementation of the Directive. Part 2 of the same Article provides that such prohibition must also apply to all stages of the biological cycle of the plants to which that Article applies.

Ukraine, as a Party to the Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention), must also fulfil its obligations regarding strict protection of wild flora and fauna species protected under the Convention.

The strict protection regime under the Bern Convention and EU acts includes a prohibition on the sale of protected species taken from the natural environment; however, the national legislation of Ukraine does not contain such a prohibition.

2. Goals and objectives of the act

The purpose of the act is to transpose the requirements of the Bern Convention, the Habitats Directive and the Birds Directive on the strict protection regime for species, in the part concerning the establishment of 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.

3. General description and key provisions of the act

The draft Law provides for amendments to:

- the Law of Ukraine “On the Plant World”;
- the Law of Ukraine “On the Animal World”;
- the Law of Ukraine “On the Protection of Animals from Cruelty”;
- the Law of Ukraine “On Fisheries, Industrial Fishing and Protection of Aquatic Bioresources”;

to introduce a statutory prohibition on sale and exchange (including via the Internet), transportation or keeping for sale, as well as offering for sale or exchange (including via the Internet) 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, except for those that were

grown/bred under artificially created conditions or acquired in another manner not prohibited by law, as evidenced by the relevant documents.

4. Status of the regulatory framework in this area

At the legislative level, relations in the field of protection of flora and fauna are governed by the Laws of Ukraine “On the Animal World”, “On the Plant World”, “On the Protection of Animals from Cruelty”, “On Fisheries, Industrial Fishing and Protection of Aquatic Bioresources”, as well as other regulatory legal acts. At the same time, the national legislation of Ukraine does not prohibit the sale of protected species taken from the natural environment.

5. Financial and economic justification

Financing measures for implementation and ensuring compliance with the prohibition on sale of protected flora and fauna objects removed from the natural environment will not require additional expenditures from the State or local budgets.

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

Expected impact of implementation of the act on:

the market environment:

formation of a legal market for protected flora and fauna species bred (grown) under artificial conditions;

raising production standards, in particular by promoting transparency, certification and control of product origin;

safeguarding the rights and interests of businesses and citizens;

the state:

reduction of poaching;

conservation and restoration of species populations through introduction of an element of strict protection, in particular the prohibition on sale of protected flora and fauna objects removed from the natural environment;

stabilization of ecosystems and reduction of pressure on natural resources;

fulfilment by Ukraine of its international obligations under the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, and under the Convention on the Conservation of European Wildlife and Natural Habitats;

regional development:

increasing the capacity of territorial communities and creating conditions for attracting international investment due to Ukraine's compliance with European and international nature protection standards.

Implementation of the draft law is expected to have a positive effect on ecosystem stabilisation, restoration of species populations, public health, and other areas of social relations.

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