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From:	Presidency
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC - Revised text by the Presidency on Articles 5-29

Delegations will find attached a revised text by the Presidency on Articles 5 to 29 of the draft Directive. Please note that the text contains some questions, under Articles 5 and 7.

Modifications have been highlighted by underlining and **bold** (for new text), and by underlining, **bold** and ~~strike-through~~ (for deleted text).

The Presidency intends discussing this text at the COPEN meeting that is scheduled to take place on 28 September 2022.

**Presidency compromise suggestion and a revised text on the proposal for
a Directive on the protection of the environment through criminal law**

[...]

- (14) Sanctions for the offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. **The maximum terms of imprisonment provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences.** Accessory sanctions **or measures** are often seen as being more effective than financial sanctions especially for legal persons. Additional sanctions or measures should be therefore **available in the criminal proceedings**. These ~~may~~ **should** include the obligation to reinstate the environment, **temporary or permanent** exclusion from access to public funding, including tender procedures, grants and concessions and withdrawal of permits and authorisations. This is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.

- (15) Where national law provides for it, legal persons should also be held criminally liable for environmental criminal offences according to this Directive. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their administrative sanctioning systems provide for effective, dissuasive and proportionate sanctions types and levels as laid down in this Directive in order to achieve its objectives. **The seriousness of the conduct, and the individual, financial and other circumstances ~~economic and financial situation~~ of legal persons, should be taken into account to ensure the effectiveness, dissuasiveness and proportionality of the sanction imposed. With regard to maximum levels of fines in national law, Member States may either use a percentage of the total worldwide turnover of the legal person concerned, or they may determine the maximum level of fines in absolute amounts. The maximum level of fines determined in absolute amounts should be provided for in national law, which may decide on the method of their calculation, and should apply proportionally with regard to individual, financial and other circumstances ~~economic and financial situation~~ of the legal person at least to the most serious forms of offences provided for in this Directive.**

(15a) The definition of the maximum level of fines is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases. As this Directive does not set out any minimum levels of fines, the judges or courts should, in any case, impose appropriate sanction with respect to the individual, financial and other circumstances of the legal person concerned and the seriousness of the conduct. The amount of fine imposed in individual case is left to the discretion of the judge or court and while the maximum level of fine provided for the respective criminal offence by this Directive should be taken into account, the amount of fine imposed in individual case does not have to reach the maximum level of fine determined by this Directive. This Directive does not compel judges or courts to consider imposing disproportionate sanctions. Member States are invited to regularly review the levels limits of fines determined laid down in absolute amounts numbers with regard to inflation and other changes in the value of money, in line with procedures set out in their national law. Member States not using EUR as their national currency should provide for minimum maximum levels of fines in their national currency that corresponds to the levels determined in this Directive in EUR. These Member States are invited to regularly review the levels also with regard to development of the exchange rate.

- (16) A further approximation and effectiveness of sanction levels imposed in practice should be fostered through common aggravating circumstances that reflect the severity of the crime committed. **The notion of aggravating circumstances should be understood either as facts allowing the judge to pronounce a higher sentence for the same offence than the one normally incurred without these facts, or as the possibility of retaining several offences cumulatively in order to increase the level of sanction. Member States should provide for the possibility of at least one of these aggravating circumstances in accordance with the applicable rules established by their legal systems on aggravating circumstances. In any case, it remains within the discretion of the judge or the court to determine whether to increase the sentence, taking into account all the circumstances of the individual case.** When an environmental criminal offence causes **destruction or** irreversible damage to an entire ecosystem, this should be an aggravating circumstance because of its severity, including in cases comparable to ecocide.

- (17) ~~(18)~~** This Directive should apply without prejudice to the general rules and principles of national criminal law on the sentencing or the application and execution of sentences in accordance with the specific circumstances in each individual case. **With regard to additional sanctions or measures the Member States should decide which kind of sanctions or measures should be seen as appropriate. In particular, concerning the obligation to reinstate the environment within a given period, provided that the damage is reversible, this Directive does not require that a judicial authority, if entitled to impose this obligation according to national law, should also be responsible for monitoring the execution of this obligation. Likewise, concerning the withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence, if such a sanction can be imposed under national law, Member States should ensure that national judicial authorities may either impose it themselves in their own proceedings, or that another competent authority is informed and can act according to its national procedural rules. Additionally, the publication of the decision imposing the sanctions or measures upon a legal person shall be applied in accordance with the right to privacy and without prejudice to the national rules governing the anonymization of court decisions or the duration of publication.**
- (18) ~~(20)~~** The obligations in this Directive to provide for criminal penalties should not exempt Member States from the obligation to provide for administrative sanctions and other measures in national law for breaches established in Union environmental legislation.
- (19) ~~(21)~~** Member States should define the scope of administrative and criminal law enforcement clearly with regard to environmental offences according to their national law. In the application of national law transposing this Directive, Member States should ensure that the imposition of criminal sanctions and of administrative sanctions respects the principles of the Charter of Fundamental Rights of the European Union, including the prohibition of *ne bis in idem*.

- (20) ~~(22)~~ Furthermore, judicial and administrative authorities in the Member States should have at their disposal a range of criminal sanctions and other measures to address different types of criminal behaviour in a tailored and effective manner.
- (21) ~~(17)~~ Where the crimes are of a continuing nature, they should be brought to an end as soon as possible. Where offenders have made financial gains, such gains should be confiscated.
- (22) ~~(19)~~ Member States should lay down rules concerning limitation periods necessary in order to enable them to counter environmental criminal offences effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement. **Where Member States are permitted to derogate from the limitation periods, provided that the period may be interrupted or suspended in the event of specified acts, such acts may be defined in accordance with the legal system of each Member State.**
- (23) Given, in particular, the mobility of perpetrators of illegal conduct covered by this Directive, together with the cross-border nature of offences and the possibility of cross-border investigations, Member States should establish jurisdiction in order to counter such conduct effectively. **Jurisdiction established over offences committed on board of a ship or an aircraft registered in it or flying its flag shall take account of related standards already existing under pertaining international conventions. This Directive does not oblige Member States to newly establish such jurisdiction over offences that, due to their nature, may not be committed on board of a ship or an aircraft. In accordance with national law, cases where the damage corresponding to the constituent elements of the offence occurred on Member State territory may be covered under jurisdiction established over offences committed in whole or in part on its territory.**

(24) (29) To ensure successful enforcement, Member States should make available effective investigative tools for environmental offences such as those which exist in their national law for combating organised crime or other serious crimes, **if and to the extent that the use of those tools is appropriate and proportionate to ~~commensurate with~~ the nature and gravity of the offences as defined in national law. Tools such as ~~These tools should include among others~~ the interception of communications, covert surveillance including electronic surveillance, controlled deliveries, the monitoring of bank accounts and other financial investigation tools could ~~should~~ be included. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. ~~In accordance with national law, the nature and gravity of the offences under investigation should justify the use of these investigative tools.~~** The right to the protection of personal data must be respected.

(25) (24) Environmental criminal offences harm nature and society. By reporting breaches of Union environmental law, people perform a service of public interest and play a key role in exposing and preventing such breaches, and thus safeguarding the welfare of society. Individuals in contact with an organisation in the context of their work-related activities are often the first to know about threats or harm to the public interest and the environment. Persons who report irregularities are known as whistleblowers. Potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. Such persons should benefit from balanced and effective whistleblowers protection set out under Directive (EU) 2019/1937 of the European Parliament and of the Council.

(26) (25) Other persons may also possess valuable information concerning potential environmental criminal offences. They may be members of the community affected or members of society at large taking an active part in protecting the environment. Such persons who report environmental crimes as well as persons who cooperate with the enforcement of such offences should, in accordance with their procedural standing in the national legal system, be provided the necessary support and assistance in the context of criminal proceedings, so that they are not disadvantaged for their cooperation but supported and assisted. The necessary support and assistance measures should be available to such persons in accordance with their procedural rights in the national legal system and shall include at least all support and assistance measures available to persons having corresponding procedural rights in criminal proceedings on other criminal offences. These persons should, in accordance with their procedural rights standing in the national legal system, also be protected from being harassed or unduly prosecuted for reporting such offences or their cooperation in the criminal proceedings.

(27) (26) Since nature cannot represent itself as a victim in criminal proceedings, for the purpose of effective enforcement members of the public concerned, as defined in this Directive ~~taking into account Articles 2(5) and 9(3) of the Aarhus Convention~~, should have the possibility to act on behalf of the environment as a public good, within the scope of the Member States' legal framework and subject to the relevant procedural rules. **This Directive should not require Member States to introduce any specific procedural rights standing for the members of the public concerned. However, when such procedural rights standing exists in a Member State in equivalent situations concerning other criminal offences, for example, where such persons may be called to act as a witness or an expert and provide evidence, or where they have the right to participate as a civil party, such procedural rights standing should also be granted to the members of the public concerned in the proceedings concerning environmental offences defined in this Directive.**

- (28) ~~(27)~~** Lack of resources and enforcement powers for national authorities which detect, investigate, prosecute or adjudicate environmental criminal offences creates obstacles for the effective prevention and punishment of environmental crimes. In particular, the shortage of resources is capable of preventing authorities from taking any action at all or limiting their enforcement actions, allowing offenders to escape liability or to receive punishment does not correspond to the gravity of the offence. Therefore, minimum criteria concerning resources and enforcement powers should be established.
- (29) ~~(28)~~** The effective functioning of the enforcement chain depends on a range of specialist skills. As the complexity of the challenges posed by environmental offences and the technical nature of such crime require a multidisciplinary approach, a high level of legal knowledge, technical expertise as well as a high level of training and specialisation within all relevant competent authorities are necessary. Member States should provide training appropriate to the function of those who detect, investigate, prosecute or adjudicate environmental crime. To maximise the professionalism and effectiveness of enforcement chain, Member States should also consider assigning specialised investigation units, prosecutors and criminal judges to deal with environmental criminal cases. General criminal courts could provide for specialised chambers of judges. Technical expertise should be made available to all relevant enforcement authorities.
- (30)** To ensure an effective, integrated and coherent enforcement system that includes administrative, civil and criminal law measures, Member States should organise internal cooperation and communication between all actors along the administrative and criminal enforcement chains and between punitive and remedial sanctioning actors. Following the applicable rules, Member States should also cooperate through EU agencies, in particular Eurojust and Europol, as well as with EU bodies, including the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF), in their respective areas of competence.

- (31) To ensure a coherent approach to combating environmental offences, Member States should adopt, publish, **implement** and periodically review a national strategy on combating environmental crime, establishing objectives, priorities and corresponding measures and resources needed. **The national strategy should among others address the objectives and priorities of national policy in this area of offence, the modes of coordination and cooperation between the competent authorities, the procedures and mechanisms for regular monitoring and evaluation of the results achieved, and the assistance of European networks working on matters directly relevant to combating environmental offences and related infringements.** Member States may decide on the form of such national strategy which may be either individual or a part of a broader strategic document.
- (32) To effectively tackle the criminal offences referred to in this Directive, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable data on the scale of and trends in environmental offences and the efforts to combat them and their results. These data should be used for preparing statistics to serve the operational and strategic planning of enforcement activities as well as for providing information to citizens. Member States should collect and report to the Commission relevant statistical data on environmental offences. The Commission should regularly assess and publish the results based on the data transmitted by the Member States.
- (33) The statistical data collected under this Directive on environmental offences should be comparable between the Member States and collected on the basis of common minimum standards. In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to define the standard format for statistical data transmission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

- (34) The obligations under this Directive are without prejudice to Union law on procedural rights in criminal proceedings. In implementing this Directive, Member States should ensure that the procedural rights of suspected or accused persons in criminal proceedings are fully respected.
- (35) Alternatives – please delete one option according to the IRL choice:
- [*non-participation:*] In accordance with Articles 1 and 2 and Article 4a(1) 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 TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application. OR
- [*participation:*] In accordance with Article 3 and Article 4a(1) 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 TEU and to the TFEU, Ireland has notified [, by letter of ...,] its wish to take part in the adoption and application of this Directive.
- (37) Directive 2005/35/EC of the European Parliament and of the Council was supplemented by Directive 2009/123/EC of the European Parliament and of the Council with provisions on criminal offences and penalties for ship-source discharges of polluting substances. Such offences and penalties should fall within the scope of this Directive. Therefore, for Member States participating in this Directive, Directive 2009/123/EC should be replaced accordingly. **However for reasons of consistency, and as [some] Member State[s] will remain bound by Directive 2009/123/EC, it is necessary to continue to refer to Directive 2005/35/EC and to Directive 2009/123/EC amending it, for the offences linked to ship-source discharges of polluting substances.**

- (38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.
- (39) Since the objectives of this Directive, namely to ensure common definitions of environmental criminal offences and the availability of effective, dissuasive and proportionate criminal sanctions for serious environmental offences, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (40) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice in criminal proceedings for the same offence. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly,

[...]

Article 5

Penalties for natural persons

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall take the necessary measures to ensure that offences referred to in Article 3(2) points (a), (b), (c) ~~(i), (ii), (iii), (iv), (v) and (vi)~~, (c)bis, (e) ~~(i) and (ii)~~, (i), (i)bis, (j), and (p) ~~(i) and (ii)~~ are punishable by a maximum term of imprisonment of at least ten years if they cause ~~or are likely to cause~~ death ~~or serious injury~~ to any person.
3. Member States shall take the necessary measures to ensure that offences referred to in Article 3(3), as it refers to Article 3(2) points (a), (b), (c) ~~(i), (ii), (iii), (iv), (v) and (vi)~~, (c)bis, (e) ~~(i) and (ii)~~, (i), (i)bis and (j), are punishable by a maximum term of imprisonment of at least five years if they cause death to any person.
4. ~~3.~~ Member States shall take the necessary measures to ensure that the offences referred to in Article 3(2) points (a) to ~~(e), (i), (i)bis, (h) to~~ (j), (n), (q), (r) are punishable by a maximum term of imprisonment of at least ~~six~~ five years.
5. ~~4.~~ Member States shall take the necessary measures to ensure that the offences referred to in Article 3(2) points ~~(f), (g), (h), (k), to, (l), (m), (o)~~, (p) are punishable by a maximum term of imprisonment of at least ~~four~~ three years.

6. ~~5.~~ Member States shall take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3 and 4 may be subject to additional **criminal or non-criminal** sanctions or measures which ~~shall~~ **may** include:

- (a) obligation to reinstate the environment within a given time period, **provided that the damage is reversible, or, where the damage is irreversible, the obligation to compensate costs linked to the damage to the environment;**
- (b) fines;
- (c) ~~temporary or permanent~~ exclusions from access to public funding, including tender procedures, grants and concessions;
- (d) disqualification from directing establishments of the type used for committing the offence;
- (e) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
- ~~(f) temporary bans on running for elected or public office;~~
- ~~(g) national or Union-wide publication of the judicial decision relating to the conviction or any sanctions or measures applied.~~

[At the CATS Committee meeting on 21 September 2022, it was confirmed by a majority of Member States that the thresholds for criminal penalties in paragraphs 4 and 5 should be five and three years, respectively.]

Now that the levels of thresholds have been agreed, Member States are invited to share their position on the inclusion of letters (f), (g), (h) and (n) in paragraph 4 in order to close the discussion on the division of offences between paragraphs 4 and 5.

Regarding the second question asked at the CATS meeting, unfortunately, there was no majority agreement on whether paragraphs 2 and 3 should be kept or deleted. In an effort to find a compromise, a midway solution could be considered, consisting of retaining paragraph 2 and deleting paragraph 3, which has been identified by Member States as the more problematic of the two. Member States are invited to share their position on this compromise suggestion.]

Article 6 [provisionally agreed]

Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the 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. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.

Article 7

Sanctions for legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(1) **or (2)** is punishable by effective, proportionate and dissuasive **criminal or non-criminal sanctions or measures**.
- ~~3.2.~~ **Member States shall take the necessary measures to ensure that, at least for legal persons held liable pursuant to Article 6(1) ~~or (2)~~, offences referred to in Article 3(2) are punishable by criminal or non-criminal fines, the amount of which shall be proportionate to the seriousness of the conduct and the individual, financial and other circumstances, ~~the economic and financial situation of the legal person concerned and the illegal profits or benefits generated or expected~~, and the maximum limit of which incurred shall be not less than:**
 - (a) **5% of the total worldwide turnover of the legal person in the business year preceding the fining decision for offences referred to in Article 3(2) points (a) to ~~(e), (i), (i)bis, (h) to~~ (j), (n), (q), (r), and 3% of the total worldwide turnover of the legal person in the business year preceding the fining decision for offences referred to in Article 3(2) points (k), (l), (m), (o), (p);**
or, alternatively
 - (b) **an amount corresponding to EUR 50 million for offences referred to in Article 3(2) points (a) to (j), (n), (q), (r), and EUR 30 million for offences referred to in Article 3(2) points (k), (l), (m), (o), (p). ~~3% of the total worldwide turnover of the legal person in the business year preceding the fining decision for offences referred to in Article 3(2) points (f), (g), (h), (k) to, (l), (m), (o), (p).~~**

2.4. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons liable pursuant to Article 6(1) **or (2)** for the offences referred to in Articles 3 and 4 shall include **criminal or non-criminal fines and may include other criminal or non-criminal sanctions or measures, such as:**

~~(a) criminal or non-criminal fines;~~

~~(a) (b)~~ the obligation to reinstate the environment within a given period, **provided that the damage is reversible, or, where the damage is irreversible, the obligation to compensate costs linked to the damage to the environment;**

~~(b) (e)~~ exclusion from entitlement to public benefits or aid;

~~(c) (d) temporary~~ exclusion from access to public funding, including tender procedures, grants and concessions;

~~(d) (e) temporary or permanent~~ disqualification from the practice of business activities;

~~(e) (f)~~ withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;

~~(f) (g)~~ placing under judicial supervision;

~~(g) (h)~~ judicial winding-up;

~~(h) (i) temporary or permanent~~ closure of establishments used for committing the offence;

~~(j) obligation of companies to install due diligence schemes for enhancing compliance with environmental standards;~~

~~(i) (k)~~ publication of **all or part of the judicial decision imposing the relating to the conviction or any sanctions or measures applied.**

- ~~3. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(2) is punishable by criminal or non-criminal sanctions or measures, which are effective, proportionate and dissuasive.~~
- ~~4. Member States shall take the necessary measures to ensure that offences referred to in Article 3(1) points (a) to (j), (n), (q), (r) are punishable by fines, the maximum limit of which shall be not less than 5% of the total worldwide turnover of the legal person [/undertaking] in the business year preceding the fining decision.~~
- ~~5. Member States shall take the necessary measures to ensure that offences referred to in Article 3(1) points (k), (l), (m), (o), (p) are punishable by fines, the maximum limit of which shall be not less than 3% of the total worldwide turnover of the legal person [/undertaking] in the business year preceding the fining decision.~~
- ~~6. Member States shall take measures to ensure that the illegal profits generated from the offence and the annual turnover of the legal person are taken into account when a decision is made on the appropriate level of a fine pursuant to paragraph 1.~~

[At the CATS Committee meeting on 21 September 2022, it was confirmed by several Member States that the concept of the annual worldwide turnover is a fair one. However, several Member States indicated that this concept poses substantial problems to them, which is why they wish to have also an alternative possibility of implementing Article 7. A number of Member States stated that they could accept the proposal of the Presidency to use fixed amounts as thresholds for minimum-maximum levels of sanctions for legal persons. Since no other similar alternative was proposed, apart from a very general clause, the Presidency suggests to use the concept of the fixed amounts as an alternative and continue the discussion in COPEN about the precise levels of the fixed amounts.]

Member States are invited to share their opinion on the proposed amounts and, if they are not agreeable, to indicate which amounts they would consider more appropriate.]

Article 8 [provisionally agreed]

Aggravating circumstances

In so far as the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Article 3, Member States shall take the necessary measures to ensure that, in relation to the relevant offences referred to in Articles 3 and 4, **one or several of the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances:**

- ~~(a) the offence caused the death of, or serious injury to, a person;~~
- (a) ~~(b)~~ the offence caused destruction or irreversible or long-lasting substantial damage to an ecosystem as defined under X Article 2(13) of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020;**
- (b) ~~(e)~~ the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA¹;**
- (c) ~~(d)~~ the offence involved the use of false or forged documents by the offender;**
- (d) ~~(e)~~ the offence was committed by a public official when performing his/her duties;**
- (e) ~~(f)~~ the offender committed has previously already been definitively convicted of offences of the same nature sentenced for a similar previous infringements of environmental law under Article 3 or 4 within a period that cannot exceed the limitation periods of Article 11.;**
- ~~(g) the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly;~~

¹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300/42.

- ~~(h) the offender's conduct gives rise to liability for environmental damage but the offender does not fulfil their obligations to take remedial action under Article 6 of Directive 2004/35/EC²;~~
- ~~(i) the offender does not provide assistance to inspection and other enforcement authorities when legally required;~~
- ~~(j) the offender actively obstructs inspection, custom controls or investigation activities, or intimidates or interferes with witnesses or complainants.~~

Article 9 [provisionally agreed]

Mitigating circumstances

Member States shall take the necessary measures to ensure that, in relation to the relevant offences referred to in Articles 3 and 4, **one or several of** the following circumstances may, **in accordance with the relevant provisions of national law**, be regarded as mitigating circumstances:

- (a) the offender restores nature to its previous condition, **when this is not an obligation under Directive 2004/35/EC**;
- (b) the offender provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) identify or bring to justice the other offenders;
 - (ii) find evidence.

² Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56–75).

Article 10 [provisionally agreed]

Freezing and confiscation

Member States shall take the necessary measures to **enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Articles 3 and 4.** ~~Member States bound by ensure, as appropriate, that their competent authorities may freeze or confiscate, in accordance with~~ Directive 2014/42/EU of the European Parliament and of the Council³ **shall do so in accordance with that Directive., the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of the offences as referred to in this Directive.**

Article 11

Limitation periods for criminal offences

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial ~~decision adjudication~~ of criminal offences referred to in Articles 3 and 4 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.
2. Member State shall ~~the~~ take ~~the~~ necessary measures to enable the investigation, prosecution, trial and judicial decision:
 - (a) of offences referred to in Articles 3 and 4 which are punishable by a maximum sanction of at least ten years of imprisonment, for a period of at least ten years from the time when the offence was committed, ~~when offences are punishable;~~
 - (b) of offences referred to in Articles 3 and 4 which are punishable by a maximum sanction of at least **five six** years of imprisonment, for a period of at least **five six** years from the time when the offence was committed, ~~when offences are punishable;~~

³ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

- (c) of offences referred to in Articles 3 and 4 which are punishable by a maximum sanction of at least **three four** years of imprisonment, for a period of at least **three four** years from the time when the offence was committed, ~~when offences are punishable.~~

~~3. By way of derogation from paragraph 2, Member States may establish a limitation period that is shorter than ten years, but not shorter than four years, provided that the period may be interrupted or suspended in the event of specified acts.~~

3 4. Member States shall take the necessary measures to enable the enforcement of:

(a)

- (i) **a penalty of more than five years of imprisonment; or alternatively**
- (ii) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least ten years of imprisonment,

imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least ten years from the date of the final conviction;

(b)

- (i) **a penalty of more than one year of imprisonment; or alternatively**
- (ii) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least **five six** years of imprisonment,

imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least **five six** years from the date of the final conviction;

(c)

- (i) **a penalty of up to one year of imprisonment; or alternatively**
- (ii) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least **three four** years of imprisonment,

imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least ~~three~~ **four** years from the date of the final conviction.

~~**These periods may include extensions of the limitation period arising from interruption or suspension.**~~

- 4. By way of derogation from paragraphs 2 and 3, Member States may establish a limitation period that is shorter than ten years, but not shorter than five years, provided that the period may be interrupted or suspended in the event of specified acts.**

Article 12

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4 where:
 - (a) the offence was committed in whole or in part on its territory;
 - (b) the offence was committed on board a ship or an aircraft registered in it or flying its flag;
 - (c) the damage **corresponding to the constituent elements of the offence** occurred on its territory;
 - (d) the offender is one of its nationals ~~or habitual residents~~.

2. A Member State shall inform the Commission where it decides to extend its jurisdiction to **one or more** offences referred to in Articles 3 and 4 which have been committed outside its territory, where:

(a) the offender is one of its habitual residents;

(b)(a) the offence is committed for the benefit of a legal person established on its territory;

(c)(b) the offence is committed against one of its nationals or its habitual residents;

(d)(e) the offence has created a severe risk for the environment on its territory.

Where an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State, these Member States shall cooperate to determine which Member State shall conduct criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Council Framework Decision 2009/948/JHA⁴, be referred to Eurojust.

3. In cases referred to in paragraph 1, point (c) and (d), Member States shall take the necessary measures to ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a denunciation from the State of the place where the criminal offence was committed.

⁴ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

Article 13 ~~18~~

Investigative tools

Member States shall take the necessary measures to ensure that effective investigative tools, ~~such as those which are used in countering organised crime or other serious crime cases,~~ are effective, proportionate to the crime committed and also available for investigating or prosecuting offences referred to in Articles 3 and 4. Where these offences are serious, special investigative tools such as those which are used in countering organised crime shall be available.

Article ~~14~~ 13

Protection of persons who report environmental offences or assist the investigation

1. In addition to situations where Member States shall take the necessary measures to ensure that protection granted under Directive (EU) 2019/1937², is applicable to persons in accordance with Article 4 of Directive (EU) 2019/1937 that are reporting criminal offences referred to in Articles 3 and 4 of this Directive, Member States shall take the necessary measures to ensure that any persons reporting offences referred to in Articles 3 and 4 of this Directive and providing evidence or otherwise cooperating with the investigation, prosecution or adjudication of such offences may, in accordance with their procedural standing or other role in the national legal system, take advantage of the necessary support and assistance measures in the context of criminal proceedings.
2. ~~Member States shall take the necessary measures to ensure that all persons reporting offences referred to in Articles 3 and 4 of this Directive and providing evidence or otherwise cooperating with the investigation, prosecution or adjudication of such offences may, in accordance with their procedural standing in the national legal system, take advantage of are provided the necessary support and assistance measures in the context of criminal proceedings.~~

Article ~~15~~ 14

Rights for the public concerned to participate in proceedings

Member States shall ensure that, in accordance with their national legal system, **the persons affected or likely to be affected by the offences referred to in Articles 3 or 4 and non-governmental organisations promoting environmental protection and meeting ~~any~~ proportionate requirements under national law ~~members of the~~** (public concerned) have appropriate rights to participate in proceedings concerning offences referred to in Articles 3 and 4, **for instance as a civil party.**

Article 16 ~~15~~

Prevention

Member States shall take appropriate action, such as information and awareness-raising campaigns and research and education programmes, **aimed at reducing to reduce** overall environmental criminal offences, **raising raise** public awareness and **reducing reduce** the risk of population of becoming a victim of an environmental criminal offence. Where appropriate, Member States shall act in cooperation with the relevant stakeholders.

Article ~~17~~ 16 [provisionally agreed]

Resources

Member States shall ensure that national authorities which detect, investigate, prosecute or adjudicate environmental offences have a sufficient number of qualified staff and sufficient financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.

Article 18 ~~17~~ [provisionally agreed]

Training

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors, police, judicial staff and competent authorities' staff involved in criminal proceedings and investigations to provide ~~at~~ regular ~~intervals~~ specialised training with respect to the objectives of this Directive and appropriate to the functions of the involved staff and authorities.

Article 19 [provisionally agreed]

Coordination and cooperation between competent authorities within a Member State

Member States shall take the necessary measures to establish appropriate mechanisms for coordination and cooperation at strategic and operational levels among all their competent authorities involved in the prevention of and the fight against environmental criminal offences. Such mechanisms shall be aimed at least at:

- (a) ensuring common priorities and understanding of the relationship between criminal and administrative enforcement;
- (b) exchange of information for strategic and operational purposes;
- (c) consultation in individual investigations;
- (d) the exchange of best practices;
- (e) assistance to European networks of practitioners working on matters relevant to combating environmental offences and related infringements,

and may take the form of specialised coordination bodies, memoranda of understanding between competent authorities, national enforcement networks and joint training activities.]

Article 20

National strategy

1. By [OP – please insert the date – within one year after the transposition period is over entry into force of this Directive], Member States shall establish, publish and implement a national strategy on combating environmental criminal offences, which as a minimum shall address the following:
 - ~~(a) the objectives and priorities of national policy in this area of offence;~~
 - ~~(b) the roles and responsibilities of all the competent authorities involved in countering this type of offence;~~
 - ~~(c) the modes of coordination and cooperation between the competent authorities;~~
 - ~~(d) the use of administrative and civil law to address infringements related to the offences within the scope of this Directive;~~
 - ~~(e) the resources needed and how specialisation of enforcement professionals will be supported;~~
 - ~~(f) the procedures and mechanisms for regular monitoring and evaluation of the results achieved;~~
 - ~~(g) assistance of European networks working on matters directly relevant to combating environmental offences and related infringements.~~
2. Member States shall ensure that the strategy is reviewed and updated at regular intervals no longer than 5 years, on a risk-analysis-based-approach, in order to take account of relevant developments and trends and related threats regarding environmental crime.

Article 21

Data collection and statistics

1. Member States shall collect statistical data **measuring the reporting, investigative and judicial phases involving the offences referred to in Articles 3 and 4 in order** to monitor the effectiveness of their systems to combat environmental criminal offences.
2. The statistical data referred to in paragraph 1 shall, **as a minimum, cover existing data on**
 - (a) the number of offences referred to in Articles 3 and 4 registered by the Member States;**
 - (b) the number of natural and legal persons prosecuted for and convicted of the offences referred to in Articles 3 and 4;**
 - (c) the types and levels of sanctions imposed for offences referred to in Articles 3 and 4.**

include at least the following:

- ~~**(a) the number of environmental crime cases reported;**~~
- ~~**(b) the number of environmental crime cases investigated and/or submitted to judicial authority;**~~
- ~~**(c) the average length of the criminal investigations of environmental crimes;**~~
- ~~**(d) the number of convictions for environmental crime;**~~
- ~~**(e) the number of natural persons convicted and sanctioned for environmental crime;**~~
- ~~**(f) the number of legal persons sanctioned for environmental crime or equivalent offences;**~~

~~(g) the number of dismissed or discontinued court cases for environmental crime;~~

~~(h) the types and levels of sanctions imposed for environmental crime, including per categories of environmental offences according to Article 3.~~

3. Member States shall ensure that a consolidated review of their statistics is regularly published.
4. Member States shall annually transmit to the Commission the statistical data referred to in paragraph 2 in a standard format established in accordance with Article 22.
5. The Commission shall regularly publish a report based on the statistical data transmitted by the Member States. The report shall be published for the first time three years after the standard format referred to in Article 22 has been determined.

Article 22

Implementing powers

1. The Commission shall be empowered to adopt implementing acts establishing the standard format for data transmission referred to in Article 21(4). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 23(2).
2. For the purposes of the transmission of statistical data, the standard format shall contain the following elements:
 - (a) a common classification of environmental crimes;
 - (b) a common understanding of counting units;
 - ~~(c) a common understanding of procedural stages (investigation, prosecution, trial) in environmental crime proceedings;~~
 - ~~(c) (d) a common reporting format.~~

Article 23 [provisionally agreed]

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 24

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*OP – please insert the date – within 30 18 months after entry into force of the Directive*]. They shall immediately inform the Commission thereof. **The methods of making such reference shall be laid down by Member States.**
2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. **The methods of making such reference shall be laid down by Member States.** Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 25 [provisionally agreed]

Evaluation and reporting

1. The Commission shall by *[OP – please insert the date - two years after the transposition period is over]*, submit a report to the European Parliament and to the Council assessing the extent to which the Member States have taken the necessary measures to comply with this Directive. Member States shall provide the Commission with the necessary information for the preparation of that report.
- ~~2. Every two years as of [OP – please insert the date one year after the transposition period is over], Member States shall send the Commission a report within three months which includes a summary about implementation of and actions taken in accordance with Articles 15 to 17, 19 and 20.~~
2. 3. By *[OP – please insert the date - five years after the transposition period is over]*, the Commission shall carry out an evaluation of the impact of this Directive and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of that report, **including a summary about implementation of and actions taken in accordance with Articles 15 to 17, 19 and 20.**

Article 26 [provisionally agreed]

Replacement of Directive 2008/99/EC

Directive 2008/99/EC is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of that Directive into national law. With regard to the Member States bound by this Directive, references to Directive 2008/99/EC shall be construed as references to this Directive. As regards Member States not bound by this Directive, they shall remain bound by Directive **2008/99/EC** ~~2008/98/EC~~.

Article 27

Application of Directive 2005/35/EC

Directive 2009/123/EC, ~~amending Directive 2005/35/EC~~, shall ~~cease to apply~~ be replaced with regard to the Member States participating in bound by this Directive from the date of its transposition, without prejudice to the obligations of those Member States with regard to the date for transposition of that Directive into national law. With regard to the Member States bound by this Directive, references to Directive 2009/123/EC shall be construed as references to this Directive. As regards Member States not bound by this Directive, they shall remain bound by Directive 2009/123/EC amending Directive 2005/35/EC.

Article 28 [provisionally agreed]

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 29 [provisionally agreed]

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
