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'I' ITEM NOTE

From:	Presidency/General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	14459/21 + COR 1
No. prev. doc.:	16026/23
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 - Confirmation of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 15 December 2021, the Commission submitted to the Council and the European Parliament a 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.¹

¹ 14459/21 + COR 1 + ADD 1 + ADD 2 REV 1 + ADD 3.

2. The proposal aims to improve the effectiveness of Directive 2008/99/EC on the protection of the environment through criminal law. It defines environmental crime more precisely, adds new environmental crime categories under its scope, and introduces various new provisions, including on minimum maximum sanctioning levels for natural and legal persons.
3. The draft Directive is based on Article 83(2) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).
4. On 9 December 2022, the Council reached a general approach² on the proposal, which constituted the mandate for negotiations with the European Parliament in the context of the ordinary legislative procedure.³
5. On 16 November 2023, a provisional agreement was reached between co-legislators, resulting in the final compromise text as set out in the Annex to this note.
6. After verification of this compromise text by the Commission, the Presidency and the European Parliament, it was submitted for verification to the COPEN Working Party (16026/23). In the light of the comments made by delegations, a few minor (editing) refinements were made in the text, marked by **bold** type.

² 16171/22.

³ The European Parliament defined its position in April 2023 (8318/23). Antonius Manders (NL, EPP) was appointed rapporteur of the lead committee (JURI). Four committees (LIBE, DEVE, ENVI, PETI) made advisory opinions.

II. CONCLUSION

7. The Permanent Representatives Committee is therefore invited to:

- (a) confirm agreement on the final compromise text as set out in the Annex to this note with a view to reaching an agreement at first reading with the European Parliament;
 - (b) authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chair of the European Parliament's JURI Committee that, should the European Parliament adopt its position at first reading on the text of the proposal in the exact form as set out in the annex to this note, and subject to revision of that text by the lawyer-linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.
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2021/0422 (COD)

Draft

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the protection of the environment through criminal law and replacing Directive
2008/99/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C, , p. .

Whereas:

- (1) According to Article 3(3) of the Treaty on European Union (TEU) and Article 191 of the Treaty on the Functioning of the European Union (TFEU), the Union is committed to ensuring a high level of protection and improvement of the quality of the environment. The environment should be protected in a wide sense, as set out under Article 3(3) TEU and Article 191 TFEU, covering all natural resources - air, water, soil, ecosystems, including ecosystem services and functions, wild fauna and flora including habitats, as well as services provided by natural resources.
- (1a) According to Article 191(2) of the Treaty on the Functioning of the European Union (TFEU), Union policy on the environment should aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It should be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Considering that the impact of environmental crime affects also fundamental rights, the fight against environmental crime at Union level is crucial to ensure the protection of these rights.
- (2) The Union continues to be concerned with the rise in environmental criminal offences and their effects, which undermine the effectiveness of Union environmental legislation. These offences are moreover increasingly extending beyond the borders of the Member States in which the offences are committed. Such offences pose a threat to the environment and therefore call for an appropriate and effective response, which often requires effective cross-border cooperation.

- (3) The existing systems of penalties under Directive 2008/99/EC of the European Parliament and of the Council² and environmental sectoral law have not been sufficient in all environmental policy area to achieve compliance with Union law for the protection of the environment. Compliance should be strengthened by the availability of effective, proportionate and dissuasive criminal penalties corresponding to the seriousness of the offences, which demonstrate social disapproval of a qualitatively different nature compared to administrative penalties. Complementarity of criminal and administrative law is crucial to prevent and deter unlawful conduct that damages the environment.
- (4) The effective detection, investigation, prosecution and adjudication of environmental criminal offences should be improved. The list of environmental criminal offences which were set out in Directive 2008/99/EC should be revised and additional categories of offences based on the most serious breaches of Union environmental law should be added. Provisions on sanctions and penalties should be strengthened in order to enhance their deterrent effect as well as the enforcement chain in charge of detecting, investigating, prosecuting and adjudicating environmental criminal offences.
- (5) Member States should criminalise offence categories and provide for greater precision on the definitions of the offence categories, and harmonisation concerning sanction types and levels.
- (5a) Failure to comply with a legal duty to act can have the same negative effect to the environment and human health as active behaviour. Therefore, the definition of offences in this Directive should cover both acts and omissions, where applicable.

² Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

- (6) Member States should provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Union law concerning protection of the environment. In the framework of the common fisheries policy, Union law provides for comprehensive set of rules for control and enforcement under Regulation (EC) No 1224/2009³ and Regulation (EC) No 1005/2008 in case of serious infringements, including those that cause damage to the marine environment. Under this system the Member States have the choice between administrative and/or criminal sanctioning systems. In line with the Communication from the Commission on the European Green Deal⁴ and the EU Biodiversity Strategy for 2030⁵, certain intentional unlawful conduct covered under Regulation (EC) No 1224/2009 and Regulation (EC) 1005/2008⁶ should be established as criminal offences.

³ Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 112, 30.4.2011, p. 1–153).

⁴ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS The European Green Deal, COM/2019/640 final.

⁵ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS EU Biodiversity Strategy for 2030 Bringing nature back into our lives, COM/2020/380 final

⁶ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, (OJ L 286, 29.10.2008, p. 1–32).

- (7) In order to constitute an environmental offence under this Directive, conduct should be unlawful under Union law which contributes to the pursuit of one of the objectives of the Union's policy on the environment as set out in Article 191 (1) TFEU, irrespective of its legal basis, for instance, acts adopted on the basis of Articles 91, 114, 168 or 192 TFEU, or under national laws, administrative regulations or decisions giving effect to that Union law. The conduct which constitutes each category of criminal offence should be defined and, where appropriate, a threshold which needs to be met for the conduct to be criminalised should be set. Such conduct should be considered a criminal offence when committed intentionally and, in certain cases, also when committed with at least serious negligence. In particular, illegal conduct that causes death or serious injury of persons, substantial damage or a considerable risk of substantial damage for the environment or is considered otherwise as particularly harmful to the environment should also constitute a criminal offence when committed with at least serious negligence. This Directive does not require the introduction of the notion of at least serious negligence for each constituent element of the offence, such as for possession, sale or offering for sale, placing on the market and similar elements. In these cases, Member States may decide that the notion of at least serious negligence relates to such elements of the offence as the protection status, negligible quantity, or the likelihood of the act to cause substantial damage. Member States remain free to adopt or maintain more stringent criminal law rules in that area.

- (8) A conduct should be considered unlawful also when it is carried out under an authorisation by a competent authority in a Member State if such authorisation was obtained, inter alia, fraudulently, or by corruption, extortion or coercion. Further, being in possession of such an authorisation should not preclude the criminal liability of the holder of the authorisation, where the authorisation is manifestly contrary to substantive legal requirements. In this context, ‘in manifest breach of relevant substantive legal requirements’ should refer to an obvious and substantial contradiction with substantive legal requirements. This does not include breaches of procedural requirements or minor elements covered under the authorisation. This does not shift the duty to ensure legality of authorisations from competent authorities to operators. Moreover, where an authorisation is required, the fact that the authorisation is lawful does not preclude criminal proceedings against the holder of the authorisation who does not comply with all specific obligations of the authorisation or with other relevant legal obligations not covered by the authorisation.
- (8a) Moreover, operators should take the necessary steps to comply with the legislative, regulatory and administrative provisions concerning the protection of environment applicable when they carry out the respective activity, including by complying with their obligations, as laid down in applicable EU and national laws, in procedures governing amendments or updates to existing authorisations. This should also cover obligations of the duty-holder to update and renew such authorisations.
- (8c) With regard to offences and sanctions provided for in this Directive, legal persons should be understood as not including States or public bodies exercising State authority and public international organisations. As this Directive provides for minimum rules, Member States could adopt more stringent rules in national law, including rules on criminal liability for public bodies.

- (9) Some criminal offences in this Directive include a qualitative threshold requiring that the conduct causes death or serious injury to any person or substantial damage to air, water or soil quality, or to an ecosystem, animals or plants. In order to protect the environment to the fullest extent possible, this qualitative threshold should be understood in a wide sense including, where relevant, substantial damage to fauna and flora, habitats, to services provided by natural resources and by ecosystems as well as to ecosystem functions. An ecosystem should be understood as a dynamic complex of plant, animal, fungi and microorganism communities and their non-living environment, interacting as a functional unit, and should **include** habitat types, habitats of species and species populations. An ecosystem should also include ecosystem services, through which an ecosystem contributes directly or indirectly to human wellbeing, and ecosystem functions, which refer to natural processes in an ecosystem. Smaller units such as a beehive, an anthill or a stump can be a part of an ecosystem but should not be considered as an ecosystem on its own for the purposes of this Directive.
- (9a) The term injury used in the definition of certain offences in this Directive should be understood in a broad sense, covering any form of physical harm to a person, including a change in body function or cell structure, temporary, fatal or chronic disease, malfunction of the body, deterioration of human physical health, but excluding mental health.
- (9b) The introduction of different forms of energy, such as heat, sources of thermal energy, noise (including underwater noise) and other sources of sound energy, vibrations, electromagnetic fields, electricity or light, into the environment can cause substantial damage to the quality of air, water or soil or substantial damage to an ecosystem, animals or plants, or death or serious injury to persons. Various instruments of Union environmental law regulate on the introduction of energy into the environment, for example in the area of protection of water, the marine environment, noise control, waste management and industrial emissions. Therefore, in such cases, unlawful introduction of energy into the environment should constitute an offence under this Directive if it causes or is likely to cause substantial damage to the environment or human health.

- (9c) When offences defined in this Directive cover conduct such as making available or placing on the market, sale, offering for sale or trading, this should include conduct committed by means of information and communication technologies (online trade).
- (9d) This Directive defines as an offence the placing on the market, in breach of a prohibition or another requirement aimed at protecting the environment, of a product, the use of which results in the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water, which causes or is likely to cause substantial damage to the environment or human health as a result of the product's use on a larger scale. In this context, a prohibition or another requirement aimed at protecting the environment should refer to Union law which has, among its stated objectives or aims the protection of environment, including preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resource or combating the climate change, or promoting measures at international level to deal with regional or worldwide environmental problems. On the contrary, if the stated objective of Union law concerns only one or more other areas of Union law, for example protection of workers' health and safety, the conduct should not be covered under this offence. In this context, the use on a larger scale refers to the combined effect of the use of the product by several users, notwithstanding their number, as long as the offence causes or is likely to cause damage to the environment or human health.
- (9da) Unlawful collection, transport and treatment of waste, the lack of the supervision of such operations and the after-care of disposal sites, including action taken as a dealer or a broker (waste management) may cause devastating effects to the environment and human health. This includes situations when such unlawful conduct concerns harmful waste from pharmaceutical products or narcotics, including narcotic drugs, chemicals, waste containing acids or bases or waste containing toxins, heavy metals, oil, grease, electrical and electronic waste, end-of-life vehicles or plastic waste. Therefore, Member States should ensure that unlawful waste management constitutes a criminal offence when such conduct concerns hazardous waste in a non-negligible quantity or other waste, and in such latter case when it causes or is likely to cause substantial damage to the environment or human health.

- (9e) Concerning the offence on recycling of ships falling within the scope of Regulation (EU) 1257/2013 of the European Parliament and of the Council, it should be noted that in the current state of Union law, the obligations set out in that Regulation only lay on ship owners, as defined in Article 3(1), point 14, of that Regulation.
- (9f) With regard to the determination of whether the quantity of a relevant product or relevant commodity associated with deforestation or forest degradation is negligible or non-negligible, Member States could take into account for example the quantity in net mass, or, where applicable, volume or number of items or the negligible scale of the activity in question in terms of quantity. Such assessment could also take into account, where relevant, other criteria listed in this Directive, including the conservation status of the species concerned or the cost of restoration of environmental damage.
- (9fa) Criminal conduct defined under Article 3(2) of this Directive may lead to catastrophic results, such as widespread pollution, industrial accidents with severe effects to the environment or large-scale forest fires. Where such an environmental offence causes the destruction of, or widespread and substantial damage, which is either irreversible or long-lasting, to an ecosystem of considerable size or environmental value, or to a habitat within a protected site, or to the quality of air, the quality of soil, or the quality of water, the causation of this catastrophic result should be considered as a qualified offence and, consequently, punished with more severe penalties. This qualified offence includes cases comparable to ecocide, which is already covered by the legal systems of certain Member States and which is being discussed in international fora.
- (9g) Where, for the purpose of assessing whether a conduct concerns non-**negligible** quantity, this Directive refers to the extent to which the regulatory threshold, value or another mandatory parameter is exceeded, this should among other things cover assessment of hazardousness and toxicity. In particular, the more hazardous or toxic the material or substance is, the sooner this threshold would be reached, as for particularly hazardous and toxic substances or materials even a very small quantity can cause substantial damage to the environment or human health.

- (10) The acceleration of climate change, biodiversity loss and environmental degradation, paired with tangible examples of their devastating effects, have led to the recognition of the green transition as the defining objective of our time and a matter of intergenerational equity. The references in this Directive to the relevant terms in Union environmental law used for the purpose of defining unlawful conducts should be construed, where applicable, in accordance with definitions provided in Union environmental law covered by this Directive. This Directive should therefore also cover any Union acts amending provisions or requirements relevant to defining unlawful conduct which falls within the scope of criminal offences defined under this Directive. When drafting such amending Union acts, the legislators are encouraged to include a reference to this Directive. However, when new categories of unlawful conduct not yet covered by the scope of this Directive are defined in Union environmental law, an amendment to this Directive should be required to include those new categories of unlawful conduct in its scope.
- (10a) Without prejudice to the dynamic nature of this Directive explained above, in the light of which this Directive should also cover any Union acts amending provisions or requirements relevant to defining unlawful conduct which falls within the scope of criminal offences defined in this Directive, the Commission should regularly and where necessary consider if there is a need to amend the definitions of offences set out in this Directive, in particular when new categories of unlawful conduct not yet covered by the scope of this Directive are defined in Union environmental law.
- (11) Qualitative and quantitative thresholds used to define environmental criminal offences should be clarified by providing a non-exhaustive list of circumstances which should be taken into account, where relevant, when assessing such thresholds by authorities which detect, investigate, prosecute and adjudicate offences. This should promote the coherent application of the Directive and a more effective fight against environmental crimes as well as provide for legal certainty. However, such thresholds or their application should not make the detection, investigation, prosecution or adjudication of criminal offences excessively difficult.

- (11a) Where an unlawful conduct provided for in this Directive, committed intentionally, causes the death to any person, the intention should be interpreted in accordance with national laws, taking into account relevant case law of the Court of Justice of the European Union. Therefore, it could be understood, for the purposes of this Directive, as the intention to cause death, or it could also cover the situation in which the perpetrator has acted, or refrained from acting, voluntarily and in violation of a particular obligation, but without wanting or accepting the death of any person that nevertheless occurred. The same logic applies where an unlawful conduct provided for in this Directive, committed intentionally, causes serious injury to any person, or the destruction of, or widespread and substantial damage, which is either irreversible or long-lasting, to an ecosystem of considerable size or environmental value, or to a habitat within a protected site, or to the quality of air, the quality of soil, or the quality of water.
- (11b) With regard to the criminal offences provided for in this Directive, the notion of at least serious negligence should be interpreted in accordance with national law, taking into account relevant case law of the Court of Justice of the European Union.

- (12) In criminal proceedings and trials, due account should be taken of the involvement of organised criminal groups operating in ways that negatively impact the environment. Criminal proceedings should address corruption, money laundering, cyber-crime and document fraud and – in relation to business activities – the intention of the offender to maximise profits or save expenses, where these occur in the context of environmental crime. These crime forms are often interconnected with serious environmental crime forms and should therefore not be dealt with in isolation. They are also in particular prone to causing substantial damage to the environment and human health, including causing devastating effects to the nature and local communities. Also, it is of particular concern that some environmental crimes are committed with the tolerance or active support of the competent administrations or officials performing his/her public duty. In certain cases, this can even take the form of corruption. Examples of such behaviours are turning a blind eye or remaining silent on the infringement of laws protecting the environment following inspections, deliberately omitting inspections or controls for example with regard to whether the conditions of a permit are being respected by the permit-holder, resolutions or votes in favour of granting illegal licences or issuing falsified or untrue favourable reports.
- (13) Inciting, and aiding and abetting the criminal offences committed intentionally should also be punishable. An attempt to commit a criminal offence that causes death or serious injury of a person, substantial damage to the environment or is likely to cause substantial damage to the environment or is otherwise considered particularly harmful should also constitute a criminal offence when committed intentionally. An attempt should be established in accordance with national law. For the purpose of offence defined in letter (d) of Article 3(2), the execution of a project without a development consent should be understood as comprising already the start of implementation of such project, including for example starting works to prepare the ground for construction or other intervention to the environment. Therefore, this Directive does not list this offence among offences for which attempt should be punishable as a criminal offence.

- (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. The criminal law systems of all Member States include provisions on homicide, either committed intentionally or with serious negligence. Member States should be able to have recourse to those general provisions, including provisions on aggravating circumstances, when transposing the provisions in this Directive relating to offences that cause death to any person, whether committed intentionally or with serious negligence.
- (14a) 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 relevant proceedings. Those sanctions or measures could 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.
- (14b) Accessory sanctions or measures could, without prejudice to the requirements of Directive 2004/35/EC, include a requirement to reinstate the environment where the damage is reversible and a requirement to provide compensation where the damage is irreversible or the perpetrator lacks the capacity to carry out a reinstatement.

- (15) Insofar as conduct constituting an environmental offence is attributable to legal persons, such legal persons should be liable for environmental criminal offences, as defined in this Directive. Member States whose national law provides for the criminal liability of legal persons should ensure that their national laws provide for criminal effective, dissuasive and proportionate sanction types and levels as laid down in this Directive in order to achieve its objectives. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their national laws provide for non-criminal effective, dissuasive and proportionate sanction types and levels as laid down in this Directive in order to achieve its objectives. The maximum levels of fines provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences. The seriousness of the conduct, as well as the individual, financial and other circumstances of the 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. Member States should decide which alternative they choose when transposing this Directive.
- (15a) Where, with regards to the determination of fines to be imposed on legal persons, Member States opt to implement the criterion of the total worldwide turnover of a legal person, they should decide whether to calculate the total worldwide turnover based on either the business year preceding the one in which the offence was committed, or the business year preceding the fining decision, when transposing this Directive. They should also consider providing for rules for cases where it is not possible to determine the amount of a fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision. In such cases, it should be possible to take into account other criteria, such as the total worldwide turnover in one of the other preceding business years. Where those rules include the setting of amounts of fines in absolute numbers, then the maximum levels of these should not have to reach the levels established in this Directive as the minimum requirement for the maximum level of fines determined in absolute amounts.

- (15b) Where Member States opt for maximum level of fines determined in absolute amounts, such levels should be laid down in national law. The highest levels of such fines should apply to the most serious forms of offences provided for in this Directive, which are committed by financially strong legal persons. Member States may decide on the method of calculation of those levels of fines including specific conditions for the highest levels of those fines. Member States should be invited to regularly review the levels of fines determined in absolute amounts with regard to rates of inflation and other fluctuations in monetary value, in line with procedures set out in their national law. Member States that do not have the euro as their currency should provide for maximum levels of fines in their currency corresponding to the levels determined in this Directive in euro on the date of adoption of this Directive. Those Member States are invited to regularly review the levels also with regard to the development of the exchange rate.
- (15c) 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 sanctions taking into account the individual, financial and other circumstances of the legal person concerned and the seriousness of the conduct.
- (15ca) Member States should take the necessary measures to ensure that legal persons held liable for the qualified offence referred to in this Directive, are punishable by more severe criminal or non-criminal sanctions or measures. For the purpose of this provision, Member States should, in accordance with their national law, provide for a higher level of criminal and non-criminal fines than the maximum level of fines set out in this Directive or provide for more severe sanctions or measures otherwise, including criminal or non-criminal sanctions or measures, or a combination thereof.
- (15d) Liability of legal persons under this Directive should not exclude criminal proceedings against natural persons, who are perpetrators, inciters or accessories in the offences referred to in this Directive. Where the conditions for criminal liability are met, such persons should also include corporate board members.

- (15e) Member States should consider developing sanctions or measures alternative to imprisonment in order to contribute to the restoration of the environment.
- (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. Therefore, Member States should not be obliged to provide for specific aggravating circumstances where national law provides for separate criminal offences and this may lead to more severe sanctions.
- (16a) Member States should provide for the possibility of at least one of the aggravating and mitigating circumstances provided for in this Directive in accordance with applicable rules established by their legal system. In any case, it should remain within the discretion of the judge or the court to determine whether to increase or to decrease the sentence, taking into account all the circumstances of the individual case.
- (17) 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 type 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 should be able to either impose it themselves in their own proceedings, or that another competent authority is informed and can act according to its national procedural rules.

- (17a) This Directive should not affect civil liability in accordance with national law or the obligation to compensate for harm or damage caused as a result of a specific offence referred to in this Directive in accordance with Union or national law.
- (17b) The publication of personal data of convicted persons contained in judicial decisions should only occur in duly justified exceptional cases following a case-by-case assessment, weighing the public interest against the rights to privacy and protection of the personal data of the convicted person as provided for in Articles 7 and 8 of the Charter respectively. Therefore, the publication of personal data should only be considered in cases of serious offences and where strong dissuasive effects are needed. The case-by-case assessment could take into account elements such as the seriousness of the damage caused to the environment and/or the harm suffered by natural persons, whether the offence has been committed repeatedly in a specific environmental sector, whether the offence was committed by or for the benefit of a large corporation active in several Member States or an important market player in the specific sector. Any processing of personal data in the context of this Directive should comply with the applicable Union and Member States data protection legislation, in particular Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and Directive (EU) 2016/680 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. This includes an obligation for Member States to provide for appropriate safeguards for the rights and freedoms of data subjects when publishing all or part of the judicial decision that relates to the criminal offence committed and the sanctions or measures imposed. Additionally, the publication of the decision imposing the sanctions or measures upon a legal person should be applied without prejudice to the national rules governing the anonymization of court decisions or the duration of publication.
- (18) 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) 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) Furthermore, judicial and administrative authorities in the Member States should have at their disposal a range of criminal penalties and sanctions and other measures, including preventive measures, to address different types of criminal behaviour in a tailored, timely, proportionate and effective manner.
- (21) Where the crimes are of a continuing nature, they should be brought to an end as soon as possible. Member States are encouraged to enable the competent authorities to order the immediate cessation of unlawful conduct or to prevent the execution of such conduct.
- (21b) Where offenders have made financial gains, such gains should be confiscated. Member States should take the necessary measures to allow that frozen and confiscated proceeds and instrumentalities are appropriately managed, in line with their nature. Member States should consider taking measures allowing confiscated property to be used, where possible, to finance restoration of the environment or remediation of any damage caused, or to provide compensation for the environmental damage, in accordance with national law.
- (22) 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. As a general rule, the start of a limitation period should be the moment when the offence was committed. However, as this Directive sets minimum rules, Member States could provide in their national legislation that the limitation period starts later, at the moment when the offence was discovered, provided that such moment is clearly defined in accordance with national law. 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. Member States should also cooperate with Eurojust, in particular on the basis of Regulation (EU) 2018/1727 of the European Parliament and of the Council⁷, in cases where conflicts of competence may arise. Jurisdiction established over offences committed on board of a ship or an aircraft registered in it or flying its flag should 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.
- (23a) Member States are also obliged to establish jurisdiction over offences defined in this Directive when the damage forming part of the constituent elements of the offence occurred on their territory. In accordance with national law, this form of jurisdiction may be covered under jurisdiction established over offences committed in whole or in part on its territory, in line with the territoriality principle.
- (23b) 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 the nature and gravity of the offences as defined in national law. Tools such as the interception of communications, covert surveillance including electronic surveillance, controlled deliveries, the monitoring of bank accounts and other financial investigation tools could 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. The right to the protection of personal data must be respected.

⁷ 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 (OJ L 295, 21.11.2018, p. 138–183).

(24) Environmental criminal offences harm nature and society. Persons reporting breaches of Union environmental law perform a service of public interest and play a key role in exposing and preventing such breaches, and thus safeguarding the environment and 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 benefit from balanced and effective whistleblowers protection set out under Directive (EU) 2019/1937 of the European Parliament and of the Council⁸, which includes Directive 2008/99/EC and Directive 2009/123/EC within its scope. Following the replacement of Directives 2008/99/EC and 2009/123/EC by this Directive, whistleblowers should, by virtue of this Directive, continue to benefit from that protection from the Member States bound by it.

⁸ 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 (OJ L 305/17).

- (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 be provided with 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 should include at least all support and assistance measures available to persons having corresponding procedural rights in criminal proceedings concerning other criminal offences. Those persons should, in accordance with their procedural rights in the national legal system, also be protected from being persecuted for reporting such offences or their cooperation in the criminal proceedings. The content of the necessary support and assistance measures is not defined by this Directive and should be determined by Member States. Member States should not be required to make available the support and assistance measures to persons who are suspected or accused in the context of the criminal proceedings concerned.
- (25a) Member States should assess the need to enable persons to report environmental offences anonymously, where such possibility does not yet exist.
- (26) Since nature cannot represent itself as a victim in criminal proceedings, for the purpose of effective enforcement members of the public concerned, 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.

(26a) This Directive should not require Member States to introduce new specific procedural rights for the members of the public concerned. However, when such procedural rights for members of the public concerned exist in a Member State in equivalent situations concerning other criminal offences, for example where they have the right to participate as a civil party, such procedural rights should also be granted to the members of the public concerned in the proceedings concerning environmental offences defined in this Directive. Rights of the members of the public concerned are without prejudice to the rights of victims as defined in Directive 2012/29/EU of the European Parliament and of the Council⁹. This Directive acknowledges that members of the public concerned and victims remain two distinct concepts and does not require Member States to apply victims' rights to members of the public concerned. This Directive should not require Member States to grant to the public concerned the procedural rights in criminal proceedings that they grant to categories of persons other than the public concerned.

⁹ 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, (OJ L 315, 14.11.2012, p. 57–73).

- (26b) Member States should take appropriate action, such as information and awareness-raising campaigns targeting relevant stakeholders both from the public and private sector and research and education programmes, aimed at reducing overall environmental criminal offences, raising public awareness and reducing the risk of an environmental criminal offence. Where appropriate, Member States should act in cooperation with these stakeholders. In this context, actions aiming to improve prevention of environmental offences could include promoting compliance and due diligence schemes, encouraging operators to have compliance officers to help ensuring compliance with Union environmental law, and promoting transparency in order to strengthen compliance with environmental law. Also, accessory sanctions to legal persons under this Directive may include an obligation of companies to install due diligence schemes for enhancing compliance with environmental standards, which also contributes to prevention of further environmental offences. Moreover, Member States could consider establishing a fund to support prevention measures which effectively supports tackling environmental offences and devastating consequences caused by them.
- (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.

- (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 and financial support 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. Where appropriate, Member States should, taking into account the constitutional traditions and structure of their legal system, as well as other national circumstances, including the size of the Member State concerned, assess the need to strengthen specialisation of these authorities in the area of environmental offences, in accordance with national law. Where the Member State concerned is small and has only a limited number of competent authorities, the assessment could observe that in view of that limited number specialisation is not possible or advisable. In particular, 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.

- (30a) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, there is a need for appropriate provision to be made for cooperation to ensure effective action against the criminal offences defined in this Directive, including technical and operational assistance provided, where appropriate, by Eurojust to the competent national authorities as they may need to coordinate their investigations. The Commission could, where appropriate, provide assistance. Such assistance should not entail the participation of the Commission in the investigation or prosecution procedures of individual criminal cases conducted by the national authorities and should not be understood as including financial support or any other budgetary commitment by the Commission.
- (30b) Member States should ensure the exchange of information between national authorities on persons convicted for the offences referred to in this Directive in accordance with Council Framework Decision 2009/315/JHA.
- (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 address, among other areas, the objectives and priorities of national policy in this area of offence, the methods 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 appropriate format of such strategy which may take into account their constitutional traditions in terms of separation of powers and competences and may be either sectorial or a part of a broader strategical document. Without prejudice to whether the Member States provide for the adoption of one or more strategies, their overall content should encompass the territory of the entire Member State.

- (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 statistical data on environmental offences. Member States should therefore be obliged to ensure that an adequate system is in place for the recording, production and transmission of existing statistical data on the offences referred to in this Directive. Those statistics should be used to serve the operational and strategic planning of enforcement activities, to analyse the scale of and trends in environmental offences, as well as for providing information to citizens. Member States should transmit to the Commission relevant statistical data on environmental crime proceedings collected from such data that already exist at a centralised level or a decentralised level throughout the whole Member State. 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 Council¹⁰.
- (33a) Statistical data on types and levels of sanctions – including information on the related crime categories – that are transmitted to the Commission in accordance with Article 21 should be determined under the Committee procedure provided for in this Directive.

¹⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (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) 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.
- (36) Directive 2005/35/EC of the European Parliament and of the Council¹¹ was supplemented by Directive 2009/123/EC of the European Parliament and of the Council¹² 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 bound by this Directive, Directive 2009/123/EC should be replaced. That replacement should be without prejudice to the obligation of those Member States with regard to the date for transposition of that Directive into national law. Accordingly, with regard to the Member States bound by this Directive, references to those provisions of Directive 2005/35/EC which were added or replaced by Directive 2009/123/EC should be construed as references to this Directive. As regards Member States not bound by this Directive, they will remain bound by Directive 2005/35/EC as amended by Directive 2009/123/EC.

¹¹ Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11).

¹² Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

- (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.
- (40a) This Directive should not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the principle of *nullum crimen, nulla poena sine lege*,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in order to protect the environment more effectively, as well as measures to prevent and combat crime in the field of the environment and to effectively enforce the Union's environmental law.

Article 2

Definitions

The terms used in this Directive for the purpose of defining the offences listed in Article 3(2) and (3) shall be construed, where applicable, in accordance with definitions provided in legal acts referred to in Article 3(1) points (a) or (b).

For the purpose of this Directive 'legal person' means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations.

Article 3

Offences

1. Member States shall ensure that the conducts referred to in paragraphs 2 and 3 constitute criminal offences when they are unlawful.

For the purpose of this Directive the 'unlawful' conduct shall mean a conduct infringing one of the following:

- (a) Union law which contributes to the pursuit of one of the objectives of the Union's policy on the environment as set out in Article 191(1) TFEU;
- (b) a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the Union law referred to in point (a).

The conduct shall be deemed unlawful even if it is carried out under an authorisation by a competent authority in a Member State when the authorisation was obtained fraudulently or by corruption, extortion or coercion, or is in manifest breach of relevant substantive legal requirements.

2. Member States shall ensure that the following conduct constitutes a criminal offence when it is committed intentionally:
- (a) the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;
 - (b) the placing on the market, in breach of a prohibition or another requirement aimed at protecting the environment, of a product, the use of which results in the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to air, water or soil quality, or to an ecosystem, animals or plants as a result of the product's use on a larger scale;
 - (c) the manufacture, placing or making available on the market, export or use of substances, whether on their own, in mixtures or in articles, including their incorporation into articles, when:

- (i) this conduct is restricted pursuant to Title VIII and Annex XVII of Regulation (EC) No 1907/2006 of the European Parliament and of the Council¹³; or
- (ii) this conduct is prohibited pursuant to Title VII of Regulation (EC) No 1907/2006; or
- (iii) this conduct is not in compliance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council¹⁴; or
- (iv) this conduct is not in compliance with Regulation (EC) No 528/2012 of the European Parliament and of the Council¹⁵; or
- (v) this conduct falls under Regulation (EC) No 1272/2008 of the European Parliament and of the Council¹⁶; or
- (vi) this conduct is prohibited pursuant to Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council¹⁷,

¹³ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

¹⁴ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, (OJ L 309, 24.11.2009, p. 1–50).

¹⁵ Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1–123).

¹⁶ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

¹⁷ Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

and it causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;

- (ca) manufacture, use, storage, import or export of mercury, mercury compounds and mixtures of mercury and mercury-added products in breach of the requirements set out in Regulation (EU) 2017/852 of the European Parliament and of the Council which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;
- (d) the execution of projects referred to in Article 1(2)(a) and 4(1) and (2) and listed in Annex I or II of Directive 2011/92/EU of the European Parliament and of the Council¹⁸, without a development consent and which causes or is likely to cause substantial damage to the quality of air, the quality of soil or the status of water, or to an ecosystem, animals or plants;
- (e) the collection, transport or treatment of waste, the supervision of such operations and the after-care of disposal sites, including action taken as a dealer or a broker (waste management), when such conduct:
 - (i) concerns hazardous waste as defined in Article 3(2) of Directive 2008/98/EC of the European Parliament and of the Council¹⁹ and when it concerns a non-negligible quantity;
 - (ii) concerns other waste than referred to in point (i) and causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;

¹⁸ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).

¹⁹ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

- (f) the shipment of waste, within the meaning of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council²⁰ when such shipment concerns a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
- (g) the recycling of ships falling within the scope of Regulation (EU) No 1257/2013 of the European Parliament and of the Council²¹, without complying with the requirements referred to in Article 6(2), point (a) of that Regulation, which impose recycling at ship recycling facilities which are included in the European List established under Article 16 of that Regulation;
- (h) the ship-source discharge of polluting substances falling within the scope of Article 3 of Directive 2005/35/EC of the European Parliament and of the Council, into any of the areas referred to in Article 3(1) of that Directive, provided that such ship-source discharge does not satisfy the exceptions set in Article 5 of that Directive, and which causes or is likely to cause deterioration in the quality of water or damage to the marine environment.

²⁰ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

²¹ Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1).

- (i) the operation or closure of an installation in which a dangerous activity is carried out or in which dangerous substances or mixtures are stored or used, when such a conduct and such a dangerous activity, substance or mixture fall within the scope of Directive 2012/18/EU of the European Parliament and of the Council²² or of Directive 2010/75/EU of the European Parliament and of the Council²³, and when such a conduct causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;
- (ia) the construction, operation and dismantling of an installation, when such a conduct and such an installation fall within the scope of Directive 2013/30/EU of the European Parliament and of the Council²⁴, and when such a conduct causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;

²² Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance (OJ L 197, 24.7.2012, p. 1–37).

²³ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17–119).

²⁴ Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178, 28.6.2013, p. 66–106).

- (j) the manufacture, production, processing, handling, use, holding, storage, transport, import, export or disposal of radioactive material or substances, when such a conduct and such a material or substance fall within the scope of Council Directive 2013/59/Euratom²⁵, Council Directive 2014/87/Euratom²⁶ or Council Directive 2013/51/Euratom²⁷, and when such a conduct causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;
- (k) the abstraction of surface water or groundwater within the meaning of Directive 2000/60/EC²⁸ which causes or is likely to cause substantial damage to the ecological status or potential of surface water bodies or to the quantitative status of groundwater bodies;

²⁵ Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (OJ L 13, 17.1.2014, p. 1–73).

²⁶ Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 219, 25.7.2014, p. 42–52).

²⁷ Council Directive 2013/51/Euratom of 22 October 2013 laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (OJ L 296, 7.11.2013, p. 12–21).

²⁸ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

- (l) the killing, destruction, taking of, possession, sale or offering for sale of a specimen or specimens of wild fauna or flora species listed in Annexes IV or V (when species in Annex V are subject to the same measures as those adopted for species in Annex IV) to Council Directive 92/43/EEC²⁹ and the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council³⁰, except for cases where the conduct concerns a negligible quantity of such specimens;
- (m) trading in specimens of wild fauna or flora species or parts or derivatives thereof listed in Annexes A and B to Council Regulation (EC) No 338/97³¹, and imports of specimens of such species, parts or derivatives thereof listed in Annex C of that Regulation, except for cases where the conduct concerns a negligible quantity of such specimens;
- (n) the placing or making available on the Union market or the export from the Union market of relevant commodities and relevant products in breach of the prohibition set out in Article 3 of Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023, except for cases where the conduct concerns a negligible quantity;

²⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7–50).

³⁰ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7–25).

³¹ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

- (o) any conduct which causes the deterioration of a habitat, or the disturbance of animal species listed in Annex II (a) of Council Directive 92/43/EEC³², within a protected site, within the meaning of Article 6(2) of that Directive, when this deterioration or disturbance is significant. Habitat within a protected site means any habitat of species for which an area is classified as a special protection area pursuant to Article 4(1) or (2) of Directive 2009/147/EC of the European Parliament and of the Council³³, or any natural habitat or habitat of species for which a site is designated as a special area of conservation in accordance with Article 4(4) of Council Directive 92/43/EEC or for which a site is listed as site of Community importance in accordance with Article 4(2) of Council Directive 92/43/EEC;
- (p) bringing into the territory of the Union, placing on the market, keeping, breeding, transport, use, exchange, permitting to reproduce, grow or cultivate, releasing into the environment, or spread of invasive alien species of Union concern when:
- (i) the conduct breaches restrictions set out in Article 7(1) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council³⁴ and causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;

³² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

³³ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

³⁴ Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35).

- (ii) the conduct breaches a condition of permit issued under Article 8 or of authorisation granted under Article 9 of Regulation (EU) No 1143/2014 and causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to an ecosystem, animals or plants;
- (q) production, placing on the market, import, export, use, or release of ozone depleting substances as referred to in Article 2(1) of Regulation [No XX] of the European Parliament and of the Council on substances that deplete the ozone layer and repealing Regulation (EC) No 1005/2009 or of products and equipment containing or relying on such substances as referred to in Article 2(2) of that Regulation;
- (r) production, placing on the market, import, export, use, or release of fluorinated greenhouse gases as referred to in Article 2(1) of Regulation [No XX] of the European Parliament and of the Council on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation 517/2014³⁵ or of products and equipment containing or relying on such gases as referred to in Article 2(2) of that Regulation, or putting into operation of such products and equipment.
- 2a. Member States shall take the necessary measures to ensure that offences referred to in Article 3(2), are considered a qualified offence if they cause destruction of, or widespread and substantial damage, which is either irreversible or long-lasting, to an ecosystem of considerable size or environmental value, or to a habitat within a protected site, or to the quality of air, the quality of soil, or the quality of water.

³⁵ Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195–230).

For the purposes of this paragraph 2a, (i) a habitat within a protected site shall have the same meaning as defined in letter (o) of paragraph 2 of this Article; (ii) an ecosystem means a dynamic complex of plant, animal, fungi and microorganism communities and their non-living environment, interacting as a functional unit, and includes habitat types, habitats of species and species populations.

- 2b. In addition to the offences defined in paragraph 2 of this Article, Member States may, in accordance with their national law, define additional criminal offences in order to protect the environment.
3. Member States shall ensure that the conduct referred to in paragraph 2, points (a), (b), (c), (ca), (e), (f), (h), (i), (ia), (j), (k), (l), (m), (n), (o), (p)(ii), (q), (r) also constitutes a criminal offence, when committed with at least serious negligence.
4. Member States shall ensure that in order to assess whether the damage or likely damage is substantial concerning the offences referred to in paragraph 2, points (a) to (d), (e) (ii), (i), (ia), (j), (k) and (p), one or more of the following elements shall be taken into account, where relevant:
 - (a) the baseline condition of the affected environment;
 - (b) whether the damage is long-lasting, medium term or short term;
 - (c) spread of the damage;
 - (d) reversibility of the damage.

5. Member States shall ensure that in order to assess whether the activity is likely to cause damage to the quality of air, the quality of soil or the quality or status of water, or to an ecosystem or to animals or plants, concerning the offences referred to in paragraph 2, points (a) to (d), (e) (ii), **(h)**, (i), (ia), (j), (k) and (p) one or more of the following elements shall be taken into account, where relevant:
- (a) the conduct relates to an activity which is considered as risky or dangerous for the environment or human health, and requires an authorisation which was not obtained or complied with;
 - (b) the extent to which the values, parameters or limits set out in one of the acts listed under paragraph 1, points (a) or (b), or in an authorisation issued for the activity are exceeded;
 - (c) whether the material or substance is classified as dangerous, hazardous or otherwise listed as harmful to the environment or human health.
6. Member States shall ensure that in order to assess whether the quantity is negligible or non-negligible within the meaning of paragraph 2, points (e) (i), (f), (l), (m), (n), one or more of the following elements shall be taken into account, where relevant:
- (a) the number of items subject to the offence;
 - (b) the extent to which a regulatory threshold, value or another mandatory parameter foreseen in one of the acts listed under paragraph 1, points (a) or (b), is exceeded;
 - (c) the conservation status of the fauna or flora species concerned;
 - (d) the cost of restoration of environmental damage, when feasible to assess.

Article 4

Inciting, aiding and abetting and attempt

1. Member States shall ensure that inciting, and aiding and abetting the commission of any of the criminal offences committed intentionally referred to in Article 3(2) are punishable as criminal offences.
2. Member States shall take the necessary measures to ensure that an attempt to commit intentionally any of the criminal offences referred to in Article 3 (2) points (a), (b), (c), (ca), (e), (f), (h), (i), (ia), (j), (k), (m), (n), (p), (q), (r) is punishable as a criminal offence.

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), (ca), (e), (i), (ia), (j), and (p) are punishable by a maximum term of imprisonment of at least ten years if they cause death to any person.
3. Member States shall take the necessary measures to ensure that offences referred to in Article 3(3), in so far as it refers to Article 3(2) points (a), (b), (c), (ca), (e), (i), (ia) and (j), are punishable by a maximum term of imprisonment of at least five years if they cause death to any person.
- 3a. Member States shall take the necessary measures to ensure that the offence referred to in Article 3(2a) is punishable by a maximum term of imprisonment of at least eight years.

4. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(2) points (a) to (j), (n), (q), and (r) are punishable by a maximum term of imprisonment of at least five years.
5. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(2) points (k), (l), (m), (o), and (p) are punishable by a maximum term of imprisonment of at least three years.
6. 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 may include:
 - (a) obligation to reinstate the environment within a given period, provided that the damage is reversible, or, the obligation to compensate for the damage to the environment if the damage is irreversible or if the perpetrator is not in a capacity to carry out such a reinstatement.
 - (b) fines, which shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the natural person concerned. Where relevant, due account shall also be taken of the gravity and duration of the damage caused to the environment and of the financial benefits generated from the offence;
 - (c) exclusions from access to public funding, including tender procedures, grants, concessions and licences;
 - (d) disqualification from exercising a leading position within a legal person 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 public office;

- (g) where there is a public interest, publication of all or part of the judicial decision that relates to the criminal offence committed and the sanctions or measures imposed following a case-by-case assessment. The personal data of convicted persons may be published only in duly justified exceptional cases.

Article 6

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, or
 - (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.
2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons held 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) obligation to reinstate the environment within a given period, provided that the damage is reversible, or, the obligation to compensate for the damage to the environment if the damage is irreversible or if the perpetrator is not in a capacity to carry out such a reinstatement;
 - (b) exclusion from entitlement to public benefits or aid;
 - (c) exclusion from access to public funding, including tender procedures, grants, concessions and licences
 - (d) temporary or permanent disqualification from the practice of business activities;
 - (e) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
 - (f) placing under judicial supervision;
 - (g) judicial winding-up;
 - (h) closure of establishments used for committing the offence;

- (i) obligation of companies to install due diligence schemes for enhancing compliance with environmental standards;
- (j) where there is a public interest, publication of all or part of the judicial decision that relates to the criminal offence committed and the sanctions or measures imposed, without prejudice to rules on privacy and the protection of personal data.

3. Member States shall take the necessary measures to ensure that, at least for legal persons held liable pursuant to Article 6(1), 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 to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of the fines is not less than:

- (a) 5% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision, for offences referred to in Article 3(2) points (a) to (j), (n), (q), and (r), and 3% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision, for offences referred to in Article 3(2) points (k), (l), (m), (o), and (p);

or, alternatively

- (b) an amount corresponding to EUR 40 million for offences referred to in Article 3(2) points (a) to (j), (n), (q), and (r), and EUR 24 million for offences referred to in Article 3(2) points (k), (l), (m), (o), and (p).

When providing for fines pursuant to Article 7(3) point (a), Member States may provide for rules for cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision.

- 5a. Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 6 for the offence referred to in Article 3(2a), are punishable by more severe criminal or non-criminal sanctions or measures.

Article 8

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 destruction or irreversible or long-lasting substantial damage to an ecosystem as defined in Article 3(2a), **second subparagraph** of this Directive;
- (b) the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA³⁶;
- (c) the offence involved the use by the offender of false or forged documents;
- (d) the offence was committed by a public official when performing his/her duties;
- (e) the offender has previously been definitively convicted of offences of the same nature under Article 3 or 4;
- (f) the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly, to the extent that they can be determined;

³⁶ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300/42.

- (g) the offender destroys evidence, or intimidates witnesses or complainants;
- (h) the offence was committed within an area classified as a special protection area pursuant to Article 4(1) or (2) of Directive 2009/147/EC of the European Parliament and of the Council, or a site designated as a special area of conservation in accordance with Article 4(4) of Council Directive 92/43/EEC or a site listed as site of Community importance in accordance with Article 4(2) of Council Directive 92/43/EEC.

The aggravating circumstance referred to in letter (a) of this Article does not apply to the criminal conduct referred to in Article 3(2a).

Article 9

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/EC³⁷, or, before the start of a criminal investigation, takes steps to minimize the impact and extend of the damage or remediates the damage;
- (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.

³⁷ 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

Freezing and confiscation

Member States shall take the necessary measures to enable the tracing, identifying, freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Articles 3 and 4.

Member States bound by Directive 2014/42/EU of the European Parliament and of the Council³⁸ shall do so in accordance with that 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 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 States shall 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;

³⁸ 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).

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

3. 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 years of imprisonment, imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least five years from the date of the final conviction and
- (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 years of imprisonment, imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least three years from the date of the final conviction.

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 forming part of the constituent elements of the offence occurred on its territory;
 - (d) the offender is one of its nationals.
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;
 - (aa) the offence is committed for the benefit of a legal person established on its territory;
 - (b) the offence is committed against one of its nationals or its habitual residents;
 - (c) 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/JHA³⁹, be referred to Eurojust.

3. In cases referred to in paragraph 1, points (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.

Article 13

Investigative tools

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

³⁹ 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 14

Protection of persons who report environmental offences or assist the investigation

Without prejudice to Directive (EU) 2019/1937, Member States shall take the necessary measures to ensure that any persons reporting offences referred to in Articles 3 or 4 of this Directive, providing evidence or otherwise cooperating with competent authorities, have access to support and assistance measures in the context of criminal proceedings, in accordance with national law.

Article 15

Publication of information in the public interest and access to justice for the public concerned

Member States shall ensure that the persons affected or likely to be affected by the offences referred to in Articles 3 or 4 of this Directive, persons having sufficient interest or maintaining the impairment of a right, as well as non-governmental organisations promoting environmental protection and meeting requirements under national law have appropriate procedural rights in proceedings concerning offences referred to in Articles 3 and 4 of this Directive, where such procedural rights for the public concerned exist in the Member State in proceedings concerning other criminal offences, for instance as a civil party. In such cases, Member States shall also ensure, in accordance with their national laws, that the information on the progress of the proceedings is shared with the public concerned, where this is also done in proceedings concerning other criminal offences.

Article 16

Prevention

Member States shall take appropriate action, such as information and awareness-raising campaigns targeting relevant stakeholders both from the public and private sector and research and education programmes, aimed at reducing overall environmental criminal offences, raising public awareness and reducing the risk of an environmental criminal offence. Where appropriate, Member States shall act in cooperation with these stakeholders.

Article 17

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. Member States shall, taking into account the constitutional traditions and structure of their legal system, as well as other national circumstances, assess the need to strengthen specialisation of these authorities in the area of environmental criminal law, in accordance with national law.

Article 18

Training

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall take necessary measures to ensure that specialised regular training is provided to judges, prosecutors, police, judicial staff and competent authorities' staff involved in criminal proceedings and investigations with respect to the objectives of this Directive and appropriate to the functions of the involved staff and authorities.

Article 19

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, within the limits set out in applicable rules;
- (c) consultation in individual investigations, within the limits set out in applicable rules;
- (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 19a

Cooperation between the Member States and the Commission, and other Union institutions, bodies, offices or agencies

Where the environmental offences are suspected to be of a cross-border nature, the competent authorities of the Member States shall consider referring the information related to these cases to appropriate competent bodies. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, the Member States, Eurojust, Europol, the European Public Prosecutor's Office, the European Anti-Fraud Office (OLAF) and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3 and 4. To that end Eurojust shall, where appropriate, provide such technical and operational assistance as the competent national authorities need to facilitate coordination of their investigations. The Commission may, where appropriate, provide assistance.

Article 20

National strategy

1. Member States shall establish and publish a national strategy on combating environmental criminal offences by [one year after the transposition period of this Directive is over] Member States shall take measures to implement such strategy without undue delay. The national strategy shall as a minimum address the following:
 - (a) the objectives and priorities of national policy in this area of offences, including in cross-border cases, and arrangements for regular evaluation of their attainment;

- (b) the roles and responsibilities of all the competent authorities involved in countering this type of offence, including in terms of coordination and cooperation between the competent authorities and competent EU bodies and in terms of assistance of European networks working on matters directly relevant to combating environmental offences, including in cross-border cases;
 - (c) how specialisation of enforcement professionals will be supported, and an estimation of resources allocated and an evaluation of future needs in this regard.
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 ensure that a system is in place for the recording, production and provision of anonymised statistical data measuring the reporting, investigative and judicial phases concerning 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, include existing data on:
- (a) the number of offences registered and adjudicated by the Member States;
 - (aa) the number of dismissed court cases, including due to the expiry of the limitation period;
 - (b) the number of natural persons that are
 - (i) prosecuted,
 - (ii) convicted;

- (c) the number of legal persons that are
 - (i) prosecuted,
 - (ii) convicted or fined;
 - (d) the types and levels of sanctions imposed.
3. Member States shall ensure that a consolidated review of their statistics is published at least every three years.
 4. Member States shall annually transmit to the Commission the statistical data referred to in paragraph 2 in a standard, easily accessible and comparable format established in accordance with Article 22 within 36 months of the entry into force of this Directive.
 5. The Commission shall at least every three years 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 reporting format.

Article 23

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 [*24 months after the date of entry into force of the Directive*]. They shall immediately inform the Commission thereof.
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

Evaluation, reporting and review

1. The Commission shall by [*two years after the transposition period of this Directive 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. By [*five years after the transposition period of this Directive is over*], the Commission shall carry out an evaluation of the impact of this Directive addressing the need to update the list of environmental criminal offences 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 the implementation and actions taken in accordance with Articles 16 to 20 and statistical data, with particular attention to cross-border cooperation. The report shall be accompanied by a legislative proposal, if necessary.
3. The Commission shall regularly consider if there is a need to amend the offences defined in Article 3(2) of this Directive.

Article 26

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.

Article 27

Replacement of Directive 2009/123/EC

Directive 2009/123/EC, amending Directive 2005/35/EC, shall be 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 those provisions of Directive 2005/35/EC which were added or replaced by Directive 2009/123/EC shall be construed as references to this Directive.

Member States not bound by this Directive shall remain bound by Directive 2005/35/EC as amended by Directive 2009/123/EC.

Article 28

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

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