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#### NOTE

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From:	The Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	9146/22
No. Cion doc.:	14459/21 + COR 1 + ADD 1 + ADD 2 REV 1 + ADD 3
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 - Partial general approach

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#### a) Introduction

On 15 December 2021 the Commission presented a proposal for a Directive on the protection of the environment through criminal law<sup>1</sup>. This text will replace, upon its adoption, Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the same subject<sup>2</sup>.

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<sup>1</sup> COM(2021) 851 final; 14459/21 + COR 1.

<sup>2</sup> 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. 28-37).

The aim of the proposal for a Directive is, in particular, to establish minimum rules for the definition of criminal offences by updating and quite extensively supplementing the list of offences set out in the abovementioned 2008 Directive and by harmonising the levels of penalties in this field for the first time.

This offences/penalties component is complemented by a procedural component which includes provisions on freezing and confiscation, limitation periods, jurisdiction, the protection of persons who report environmental crime or assist the investigation, and the right of the public concerned to participate in criminal proceedings. Finally, to ensure optimal application, the text contains articles on the financial resources to be allocated, on training, on coordination between the competent authorities concerned within the Member States, on the implementation of national strategies for combating the abovementioned criminal offences, and on the development of an efficient statistical tool.

To raise awareness of the challenges involved in protecting the environment through criminal law, the Presidency organised a conference in Marseille on 17 and 18 May 2022 bringing together judges, law enforcement, diplomats, practitioners, civil servants, academics and civil society from across the European Union.

At the Council, nine working party meetings, three of which were in JHA Counsellors format, have been organised by the Presidency since January 2022 to negotiate the text. The Presidency decided to focus debate on eight of the 29 articles: those on the definition of the offences and those on the determination of penalties.

In the last working party meetings, further to written consultation, it transpired that a qualified majority of Member States thought that the provisions on definition of the offences could be considered stable, but that Member States still needed to explore the issue of determining penalties further.

The Presidency therefore submits to the Council of Ministers the adoption of a partial general approach on the definition of the criminal offences, and some questions relating to the determination of penalties.

## **b) An ambitious partial general approach**

The partial general approach submitted to the justice ministers concerns Articles 2 (with the exception of the definitions of ‘victim’ and ‘public concerned’, which relate to provisions which have not yet been discussed), 3 and 4 of the Directive and the related recitals (see text in Annex).

They relate to the following points:

- the condition that the conduct must be unlawful, i.e. the need to identify the obligation or prohibition previously existing in environmental law; this condition is essential because it ensures that environmental criminal law does not constitute an autonomous body of law in the relevant sectoral rules and provisions;
- no automatic impunity for an agent who holds an administrative authorisation or permit;
- a better definition of the constituent elements of each offence, with:
  - special attention to offences involving the execution of certain illegal or unauthorised projects with regard to their environmental impact, or the recycling of ships, pollution caused by ships, protection of wild fauna or flora species, and special attention to the regulation of invasive alien species of concern;
  - guidance set out to assist investigating, prosecuting and adjudicating authorities in assessing whether the damage caused is substantial or the quantity concerned is negligible;
  - identification of those offences which cover not only conduct which is committed intentionally but also that committed with at least serious negligence.

Discussions were intense and required each delegation to coordinate closely between its ministries, particularly the ministries of justice, interior and environment. The number, variety and technical nature of the types of conduct to be criminalised led to rich debate.

This partial general approach builds more robust and more secure foundations for fighting environmental crime. Compared to the 2008 Directive, this partial agreement ensures:

- an increase in the number of offences to be criminalised, up from nine in the 2008 Directive to 20 in the agreed text. This broadens the range of crimes that can be dealt with, which will lead to more prosecutions where necessary;
- the inclusion of new kinds of environmental damage such as serious breaches of EU chemicals legislation, illegal water abstraction, illegal trade in timber and the illegal recycling of polluting ships. This responds to concerns often raised by environmental experts and adapts European legislation to new environmental challenges;
- the strict and detailed definition of the conduct to be criminalised in the enacting terms of the text instead of references to the annexes as in the old 2008 Directive. This will make it easier for practitioners to directly identify the conduct concerned and will facilitate application;
- making the attempt to commit some of these types of conduct a criminal offence, which was a dimension that the 2008 Directive lacked;
- the adoption of provisions clarifying cross-cutting concepts which are vital for practitioners to exercise law enforcement, such as that of ‘substantial damage’ to the environment.

### c) **Determining penalties - still an active focus of discussions**

The Presidency has taken account of Member States' wish to continue debate on the issue of determining penalties. More than for any other instrument of substantive criminal law, this issue poses a special set of challenges, as each criminal offence must involve infringement of a specific sectoral rule. The interplay between criminal and administrative penalties is therefore a crucial element.

In addition, two questions emerged from discussions:

- on the one hand, given that certain offences damaging the environment often arise from serious negligence, the Commission has proposed the minimum harmonisation of prison sentences for natural persons for cases in which certain offences were committed with at least serious negligence and have caused or are likely to cause death or serious injury;
- on the other hand, given that offences damaging the environment are often committed by legal persons, the Commission has proposed a mechanism which would ultimately culminate in the exact harmonisation of the penalties – both criminal and non-criminal – applicable to such legal persons for offences they have committed intentionally. This would be the first time such a mechanism has been used in a European instrument of substantive criminal law. In instruments adopted until now, harmonisation has been confined to requiring Member States to provide for effective, proportionate and dissuasive penalties.

These questions have been the subject of intense debate during the discussions. Since the technical and legal aspects have already been addressed, the Presidency would like to put two policy questions to the justice ministers so that it can continue its work in the light of guidance given at the Council meeting.

**d) Conclusions**

In view of the above, the Permanent Representatives Committee is invited to:

1. confirm the partial general approach concerning Articles 2 (with the exception of the definitions of ‘victim’ and ‘public concerned’, which relate to provisions which have not yet been discussed), 3 and 4 of the Directive and the related recitals (see text in Annex);
2. recommend that the Council approve this partial general approach;
3. recommend that the Council answer the following questions:
  - a) Do you support, for natural persons, the minimum harmonisation of prison sentences where certain offences have been committed with at least serious negligence and have caused or are likely to cause death or serious injury?
  - b) Do you support the harmonisation of criminal and non-criminal fines incurred for intentional offences committed by legal persons? If so, do you think that it would be acceptable to index the amount of the fine incurred according to a percentage of the turnover of that legal person?

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[ 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**

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  
Articles 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 Committee<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

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.

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<sup>3</sup> OJ C, , p. .

- (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.
- (3) The existing systems of penalties under Directive 2008/99/EC of the European Parliament and of the Council<sup>4</sup> 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 criminal penalties, which demonstrate social disapproval of a qualitatively different nature compared to administrative penalties.
- (4) The effective 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 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.

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<sup>4</sup> 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 1224/2009<sup>5</sup> 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 Deal<sup>6</sup> and the EU Biodiversity Strategy for 2030<sup>7</sup>, certain intentional unlawful conduct covered under Regulation (EC) No 1224/2009 and Regulation (EC) 1005/2008<sup>8</sup> should be established as criminal offences. ]

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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: EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final).

<sup>8</sup> 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 aims to pursue one of the objectives of the Union's environmental policy, and that has been adopted, in particular, 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. 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 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 limit criminal liability to cases where the notion of at least serious negligence relates to certain elements of the offence, such 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. **Unless expressly defined in this Directive, the terms used in this Directive should be construed within the meaning of the legal acts respectively and specifically applicable to a particular conduct, when they are defined in those acts. This Directive shall 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*.**

- (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. **Indeed, being in possession of such an authorisation does not preclude the criminal liability of the holder of the authorisation, as long as the authorisation is unlawful and the holder had knowledge of this unlawfulness or could not be unaware of it. 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.**
- (8bis) 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.
- (9) 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, wild fauna and flora including habitats - as well as services provided by natural resources. **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 animals or plants. Since such damage may result in harm to biodiversity and ecosystem services the qualitative threshold should be understood in a wide sense including, where relevant, substantial damage to fauna and flora, habitats and services provided by natural resources.**

**(9bis) Among other offences, this Directive defines an offence concerning 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 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 animals or plants as a result of the product's use on a larger scale. 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.**

[ (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. Therefore, when Union legislation covered by this Directive evolves, this Directive should also cover any updated or amended Union legislation falling within the scope of criminal offences defined under this Directive, when the obligations under Union law remain unchanged in substance. However, when new legal instruments prohibit new conduct harmful to the environment, this Directive should be amended in order to add to the categories of criminal offences also the new serious breaches of 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 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 investigation, prosecution or adjudication of criminal offences excessively difficult.
- (11bis) 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. 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.**
- (11ter) 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.**

- [ (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. In this respect, 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.
- [ (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. Accessory sanctions are often seen as being more effective than financial sanctions especially for legal persons. Additional sanctions or measures should be therefore available in criminal proceedings. These should include the obligation to reinstate the environment, exclusion from access to public funding, including tender procedures, grants and concessions and withdrawal of permits and authorisations. This is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.

- (15) Where national law provides for it, legal persons should also be held criminally liable for environmental criminal offences according to this Directive. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their administrative sanctioning systems provide for effective, dissuasive and proportionate sanctions types and levels as laid down in this Directive in order to achieve its objectives. Financial situation of legal persons should be taken into account to ensure the dissuasiveness of the sanction imposed.
- (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. Where the death of, or serious injury to, a person, have been caused and where these elements are not already constituent for the criminal offence, these could be considered as aggravating circumstances. Equally, when an environmental criminal offence causes substantial and irreversible or long-lasting damage to an entire ecosystem, this should be an aggravating circumstance because of its severity, including in cases comparable to ecocide. As the illegal profits or expenditure that can be generated or avoided through environmental crime are an important incentive for criminals, these should be taken into account when determining the appropriate level of sanctioning in the individual case.
- (17) Where the crimes are of a continuing nature, they should be brought to an end as soon as possible. Where offenders have made financial gains, such gains should be confiscated.

- (18) This Directive should apply without prejudice to the general rules and principles of national criminal law on the sentencing or the application and execution of sentences in accordance with the specific circumstances in each individual case.
- (19) Member States should lay down rules concerning limitation periods necessary in order to enable them to counter environmental criminal offences effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement.
- (20) The obligations in this Directive to provide for criminal penalties should not exempt Member States from the obligation to provide for administrative sanctions and other measures in national law for breaches established in Union environmental legislation.
- (21) Member States should define the scope of administrative and criminal law enforcement clearly with regard to environmental offences according to their national law. In the application of national law transposing this Directive, Member States should ensure that the imposition of criminal sanctions and of administrative sanctions respects the principles of the Charter of Fundamental Rights of the European Union, including the prohibition of *ne bis in idem*.



- (22) Furthermore, judicial and administrative authorities in the Member States should have at their disposal a range of criminal sanctions and other measures to address different types of criminal behaviour in a tailored and effective manner.
- (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.
- (24) Environmental criminal offences harm nature and society. By reporting breaches of Union environmental law, people perform a service of public interest and play a key role in exposing and preventing such breaches, and thus safeguarding the welfare of society. Individuals in contact with an organisation in the context of their work-related activities are often the first to know about threats or harm to the public interest and the environment. Persons who report irregularities are known as whistleblowers. Potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. Such persons should benefit from balanced and effective whistleblowers protection set out under Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>9</sup>.
- (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 the necessary support and assistance in the context of criminal proceedings, so that they are not disadvantaged for their cooperation but supported and assisted. These persons should also be protected from being harassed or unduly prosecuted for reporting such offences or their cooperation in the criminal proceedings.

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<sup>9</sup> 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).

- (26) Since nature cannot represent itself as a victim in criminal proceedings, for the purpose of effective enforcement members of the public concerned, as defined in this Directive taking into account Articles 2(5) and 9(3) of the Aarhus Convention<sup>10</sup>, 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.
- (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 as well as a high level of training and specialisation within all relevant competent authorities are necessary. Member States should provide training appropriate to the function of those who detect, investigate, prosecute or adjudicate environmental crime. To maximise the professionalism and effectiveness of enforcement chain, Member States should also consider assigning specialised investigation units, prosecutors and criminal judges to deal with environmental criminal cases. General criminal courts could provide for specialised chambers of judges. Technical expertise should be made available to all relevant enforcement authorities.

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<sup>10</sup> United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

- (29) To ensure successful enforcement, Member States should make available effective investigative tools for environmental offences such as those which exist in their national law for combating organised crime or other serious crimes. These tools should include among others the interception of communications, covert surveillance including electronic surveillance, controlled deliveries, the monitoring of bank accounts and other financial investigation tools. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. In accordance with national law, the nature and gravity of the offences under investigation should justify the use of these investigative tools. The right to the protection of personal data must be respected.
- (30) To ensure an effective, integrated and coherent enforcement system that includes administrative, civil and criminal law measures, Member States should organise internal cooperation and communication between all actors along the administrative and criminal enforcement chains and between punitive and remedial sanctioning actors. Following the applicable rules, Member States should also cooperate through EU agencies, in particular Eurojust and Europol, as well as with EU bodies, including the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF), in their respective areas of competence.
- (31) To ensure a coherent approach to combating environmental offences, Member States should adopt, publish and periodically review a national strategy on combating environmental crime, establishing objectives, priorities and corresponding measures and resources needed.

- (32) To effectively tackle the criminal offences referred to in this Directive, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable data on the scale of and trends in environmental offences and the efforts to combat them and their results. These data should be used for preparing statistics to serve the operational and strategic planning of enforcement activities as well as for providing information to citizens. Member States should collect and report to the Commission relevant statistical data on environmental offences. The Commission should regularly assess and publish the results based on the data transmitted by the Member States.
- (33) The statistical data collected under this Directive on environmental offences should be comparable between the Member States and collected on the basis of common minimum standards. In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to define the standard format for statistical data transmission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>11</sup>.
- (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.

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<sup>11</sup> 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).

(35) Alternatives – please delete one option according to the IRL choice:

[*non-participation:*] In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application. OR

[*participation:*] In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified [, by letter of ...,] its wish to take part in the adoption and application of this Directive. ]

(37) Directive 2005/35/EC of the European Parliament and of the Council<sup>12</sup> was supplemented by Directive 2009/123/EC of the European Parliament and of the Council<sup>13</sup> with provisions on criminal offences and penalties for ship-source discharges of polluting substances. Such offences and penalties should fall within the scope of this Directive. Therefore, for Member States participating in this Directive, Directive 2009/123/EC should be replaced accordingly. **However for reasons of consistency, and as [some] Member State[s] will remain bound by Directive 2009/123/EC, it is necessary to continue to refer to Directive 2005/35/EC and to Directive 2009/123/EC amending it, for the offences linked to ship-source discharges of polluting substances.**

[ (38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.

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<sup>12</sup> 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).

<sup>13</sup> 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).

- (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,

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. ]

*Article 2*  
*Definitions*

**1. 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).**

**2.** For the purpose of this Directive, the **other** following definitions apply:

(1) [...]

[...]

(2) [...] <sup>14</sup>[...] <sup>15</sup>[...]

(a) [...] ‘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;

[ (4) ‘public concerned’ means the persons affected or likely to be affected by the offences referred to in Articles 3 or 4. For the purposes of this definition, persons having a sufficient interest or maintaining the impairment of a right as well as non-governmental organisations promoting the protection of the environment and meeting any proportionate requirements under national law shall be deemed to have an interest;

(5) ‘victim’ has the meaning attributed to it in Article 2(1) point (a) of Directive 2012/29/EU of the European Parliament and of the Council<sup>16</sup>. ]

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<sup>14</sup> [...]

<sup>15</sup> [...]

<sup>16</sup> 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).



*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 aims to pursue 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).**

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 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 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 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 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, **import, 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 Council<sup>17</sup>; 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 Council<sup>18</sup>; or
  - (iv) this [...] **conduct** is not in compliance with Regulation (EC) No 528/2012 of the European Parliament and of the Council<sup>19</sup>; or

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<sup>17</sup> 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).

<sup>18</sup> 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).

<sup>19</sup> 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).

(v) this [...] **conduct** falls under Regulation (EC) No 1272/2008 of the European Parliament and of the Council<sup>20</sup>; or

(vi) this [...] **conduct** is prohibited pursuant to Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council<sup>21</sup>,

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 animals or plants;

**(c)bis 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 animals or plants;**

**(d) for the project developer, as defined in Article 1(2)(b) of Directive 2011/92/EU of the European Parliament and of the Council<sup>22</sup>, the execution of projects referred to in Articles 1(2)(a) and 4(1) and (2) and listed in Annex I or II of that Directive [...]<sup>23</sup>, 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 animals or plants;**

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<sup>20</sup> 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).

<sup>21</sup> 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).

<sup>22</sup> **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).**

<sup>23</sup> [...]

- (e) the collection, transport, recovery or disposal 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 Council<sup>24</sup> 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 animals or plants;
- (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 Council<sup>25</sup> when such shipment **concerns** [...] a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
- (g) **for the owner, as defined in Article 3(1), point (14) of Regulation (EU) No 1257/2013 of the European Parliament and of the Council<sup>26</sup>, of a ship falling within the scope of that Regulation, the recycling of a ship[...]<sup>27</sup>[...] 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;**

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<sup>24</sup> 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. 3–30).

<sup>25</sup> 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).

<sup>26</sup> **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).**

<sup>27</sup> [...]

- (h) the ship-source discharges of polluting substances referred to in Article 4(1) of Directive 2005/35/EC of the European Parliament and of the Council<sup>28</sup> [...], into any of the areas referred to in Article 3(1) of that Directive **from a ship falling within the scope of Article 3(2) of that Directive. The present paragraph shall not apply to the situations described in [...]** Article 5 of that Directive. **The present paragraph [...]** shall not apply **either to minor cases, where the act committed [...]** does not cause deterioration in the quality of water, unless **the conjunction of repeated minor cases [...], that do not individually do so, results** in deterioration in the quality of water;

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<sup>28</sup> 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. 11–21).

(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 Council<sup>29</sup>[...] **or of** Directive 2010/75/EU of the European Parliament and of the Council<sup>30</sup>[...] <sup>31</sup>, **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 animals or plants; *[If a Directive amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste is adopted before this Directive, point (i) to be replaced with a criminal offence within the scope of that Directive.]*

**(i)bis 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 Council<sup>32</sup>, 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 animals or plants;**

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<sup>29</sup> 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).

<sup>30</sup> 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).

<sup>31</sup> [...]

<sup>32</sup> 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/Euratom<sup>33</sup>[...] **or** Council Directive 2014/87/Euratom<sup>34</sup> [...] <sup>35</sup>, **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 animals or plants;
- (k) the abstraction of surface water or groundwater **within the meaning of Directive 2000/60/EC**<sup>36</sup> 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;
- (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/EEC<sup>37</sup> and the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council<sup>38</sup>, 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 338/97<sup>39</sup>, except for cases where the conduct concerns a negligible quantity of such specimens;

<sup>33</sup> 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).

<sup>34</sup> 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).

<sup>35</sup> [...]

<sup>36</sup> **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. 1–73).**

<sup>37</sup> 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).

<sup>38</sup> 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).

<sup>39</sup> 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).

- (n) the placing [...] on the Union market of illegally harvested timber, or of timber products **derived from such timber, in breach of the prohibitions and obligations set out in Article 4(1) of [...]** Regulation (EU) No 995/2010 of the European Parliament and of the Council<sup>40</sup>, except for cases where the conduct concerns a negligible quantity; *[If a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 is adopted before this Directive, point (n) to be replaced with a criminal offence within the scope of Article 3 of that Regulation.]*
- (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/EEC<sup>41</sup>**, within a protected site, within the meaning of Article 6(2) of **that [...]** Directive [...]<sup>42</sup>, 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 Council<sup>43</sup>, 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;**

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<sup>40</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23–34).

<sup>41</sup> **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).**

<sup>42</sup> [...]

<sup>43</sup> 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).



- (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 Council<sup>44</sup> **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 animals or plants;**
  - (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 animals or plants;
- (q) production, placing on the market, import, export[...] or use[...] of ozone depleting substances as defined in Article 3 (4) of Regulation (EC) No 1005/2009 of the European Parliament and of the Council<sup>45</sup> or **production, placing on the market, import or export** of products and equipment containing or relying on such substances; *[If a Regulation on substances that deplete the ozone layer and repealing Regulation (EC) No 1005/2009 is adopted before this Directive, point (q) to be replaced with a criminal offence within the scope of that Regulation.]*

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<sup>44</sup> 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).

<sup>45</sup> Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1–30)

- (r) [...] placing on the market, import, [...] use[...] [...] or release of fluorinated greenhouse gases as defined in Article 2 (1) of Regulation 517/2014 of the European Parliament and of the Council<sup>46</sup> or **placing on the market or import** of products and equipment containing or relying on such gases. *[If a Regulation on fluorinated greenhouse gases amending Directive 2019/1937 and repealing Regulation 517/2014 is adopted before this Directive, point (r) to be replaced with a criminal offence within the scope of that Regulation.]*

3. [...] Member States shall ensure that the conduct referred to in paragraph 2 [...], points (a), (b), (c), **(c)bis**, [...] (e), (f), (h), (i), **(i)bis**, (j), (k), **(l)**, (m), (n), **(o)**, [...] (q), (r) also constitutes a criminal offence, when committed with at least serious negligence.

4. [...] **In order to assess** whether the damage or likely damage is substantial [...] **within the meaning of** paragraph 2 [...], points (a) to **(d)**, (e) **(ii)**, (i), **(i)bis**, (j), (k) and (p) **(i) and (ii), 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.

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<sup>46</sup> 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).

5. [...] **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 animals or plants [...] **within the meaning of paragraph 2 [...], points (a) to (d), (e) (ii), (i), (i)bis, (j), (k) and (p) (i) and (ii), 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. [...] **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 quantifiable.**

*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), **(c)bis**, [...] (e), (f), (h), (i), **(i)bis**, (j), (k), (m), (n), (p) **(i) and (ii)**, (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 are punishable by a maximum term of imprisonment of at least ten years if they cause or are likely to cause death or serious injury to any person.
3. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(1) points (a) to (j), (n), (q), (r) are punishable by a maximum term of imprisonment of at least six years.
4. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(1) points (k), (l), (m), (o), (p) are punishable by a maximum term of imprisonment of at least four years.

5. Member States shall take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3 and 4 may be subject to additional sanctions or measures which shall include:
- (a) obligation to reinstate the environment within a given time period;
  - (b) fines;
  - (c) temporary or permanent exclusions from access to public funding, including tender procedures, grants and concessions;
  - (d) disqualification from directing establishments of the type used for committing the offence;
  - (e) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
  - (f) temporary bans on running for elected or public office;
  - (g) national or Union-wide publication of the judicial decision relating to the conviction or any sanctions or measures applied.

#### *Article 6*

#### *Liability of legal persons*

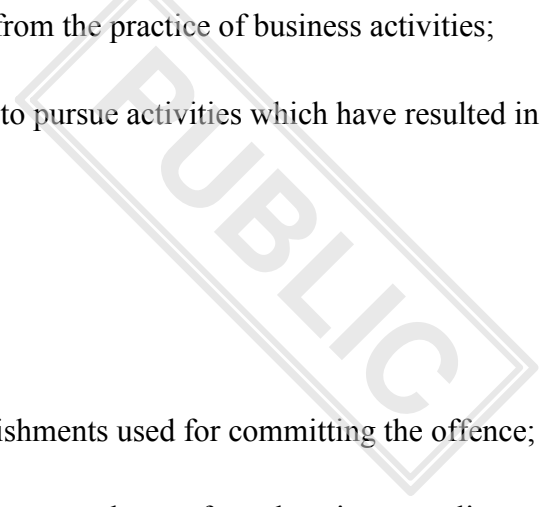
1. Member States shall ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on:
- (a) a power of representation of the legal person;

- (b) an authority to take decisions on behalf of the legal person;
  - (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) is punishable by effective, proportionate and dissuasive sanctions.
- 2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons liable pursuant to Article 6(1) for the offences referred to in Articles 3 and 4 shall include:
  - (a) criminal or non-criminal fines;
  - (b) the obligation to reinstate the environment within a given period;
  - (c) exclusion from entitlement to public benefits or aid;
  - (d) temporary exclusion from access to public funding, including tender procedures, grants and concessions;

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- (e) temporary or permanent disqualification from the practice of business activities;
  - (f) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
  - (g) placing under judicial supervision;
  - (h) judicial winding-up;
  - (i) temporary or permanent closure of establishments used for committing the offence;
  - (j) obligation of companies to install due diligence schemes for enhancing compliance with environmental standards;
  - (k) publication of the judicial decision relating to the conviction or any sanctions or measures applied.

3. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(2) is punishable by sanctions or measures, which are effective, proportionate and dissuasive.

4. Member States shall take the necessary measures to ensure that offences referred to in Article 3(1) points (a) to (j), (n), (q), (r) are punishable by fines, the maximum limit of which shall be not less than 5% of the total worldwide turnover of the legal person [/undertaking] in the business year preceding the fining decision.

5. Member States shall take the necessary measures to ensure that offences referred to in Article 3(1) points (k), (l), (m), (o), (p) are punishable by fines, the maximum limit of which shall be not less than 3% of the total worldwide turnover of the legal person [/undertaking] in the business year preceding the fining decision.

6. Member States shall take measures to ensure that the illegal profits generated from the offence and the annual turnover of the legal person are taken into account when a decision is made on the appropriate level of a fine pursuant to paragraph 1.

## *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, the following circumstances may be regarded as aggravating circumstances:

- (a) the offence caused the death of, or serious injury to, a person;
- (b) the offence caused destruction or irreversible or long-lasting substantial damage to an ecosystem;
- (c) the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA<sup>47</sup>;
- (d) the offence involved the use of false or forged documents;
- (e) the offence was committed by a public official when performing his/her duties;
- (f) the offender committed similar previous infringements of environmental law;
- (g) the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly;

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<sup>47</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300/42.



- (h) the offender's conduct gives rise to liability for environmental damage but the offender does not fulfil their obligations to take remedial action under Article 6 of Directive 2004/35/EC<sup>48</sup>;
- (i) the offender does not provide assistance to inspection and other enforcement authorities when legally required;
- (j) the offender actively obstructs inspection, custom controls or investigation activities, or intimidates or interferes with witnesses or complainants.

### *Article 9*

#### *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, the following circumstances may be regarded as mitigating circumstances:

- (a) the offender restores nature to its previous condition;
- (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.

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<sup>48</sup> 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 ensure, as appropriate, that their competent authorities may freeze or confiscate, in accordance with Directive 2014/42/EU of the European Parliament and of the Council<sup>49</sup>, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of the offences as referred to in this Directive.

*Article 11*  
*Limitation periods for criminal offences*

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

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<sup>49</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

- (c) of offences referred to in Articles 3 and 4 which are punishable by a maximum sanction of at least four years of imprisonment, for a period of at least four years from the time when the offence was committed, when offences are punishable.
3. By way of derogation from paragraph 2, Member States may establish a limitation period that is shorter than ten years, but not shorter than four years, provided that the period may be interrupted or suspended in the event of specified acts.
4. Member States shall take the necessary measures to enable the enforcement of:
- (a) 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) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least six years of imprisonment, imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least six years from the date of the final conviction;
  - (c) a penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least four years of imprisonment, imposed following a final conviction for a criminal offence referred to in Articles 3 and 4, for at least four years from the date of the final conviction.

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

*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 occurred on its territory;
  - (d) the offender is one of its nationals or habitual residents.
  
2. A Member State shall inform the Commission where it decides to extend its jurisdiction to offences referred to in Articles 3 and 4 which have been committed outside its territory, where:
  - (a) 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/JHA<sup>50</sup>, be referred to Eurojust.

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<sup>50</sup> 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).

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*

##### *Protection of persons who report environmental offences or assist the investigation*

1. Member States shall take the necessary measures to ensure that protection granted under Directive (EU) 2019/1937, is applicable to persons reporting criminal offences referred to in Articles 3 and 4 of this Directive.
2. Member States shall take the necessary measures to ensure that persons reporting offences referred to in Articles 3 and 4 of this Directive and providing evidence or otherwise cooperating with the investigation, prosecution or adjudication of such offences are provided the necessary support and assistance in the context of criminal proceedings.

#### *Article 14*

##### *Rights for the public concerned to participate in proceedings*

Member States shall ensure that, in accordance with their national legal system, members of the public concerned have appropriate rights to participate in proceedings concerning offences referred to in Articles 3 and 4, for instance as a civil party.

*Article 15*  
*Prevention*

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

*Article 16*  
*Resources*

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

*Article 17*  
*Training*

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

*Article 18*

*Investigative tools*

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

*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;
- (c) consultation in individual investigations;
- (d) the exchange of best practices;
- (e) assistance to European networks of practitioners working on matters relevant to combating environmental offences and related infringements,

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

*Article 20*  
*National strategy*

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



*Article 21*

*Data collection and statistics*

1. Member States shall collect statistical data to monitor the effectiveness of their systems to combat environmental criminal offences.
2. The statistical data referred to in paragraph 1 shall include at least the following:
  - (a) the number of environmental crime cases reported;
  - (b) the number of environmental crime cases investigated;
  - (c) the average length of the criminal investigations of environmental crimes;
  - (d) the number of convictions for environmental crime;
  - (e) the number of natural persons convicted and sanctioned for environmental crime;
  - (f) the number of legal persons sanctioned for environmental crime or equivalent offences;
  - (g) the number of dismissed court cases for environmental crime;
  - (h) the types and levels of sanctions imposed for environmental crime, including per categories of environmental offences according to Article 3.
3. Member States shall ensure that a consolidated review of their statistics is regularly published.
4. Member States shall annually transmit to the Commission the statistical data referred to in paragraph 2 in a standard format established in accordance with Article 22.
5. The Commission shall regularly publish a report based on the statistical data transmitted by the Member States. The report shall be published for the first time three years after the standard format referred to in Article 22 has been determined.

## *Article 22*

### *Implementing powers*

1. The Commission shall be empowered to adopt implementing acts establishing the standard format for data transmission referred to in Article 21(4). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 23(2).
2. For the purposes of the transmission of statistical data, the standard format shall contain the following elements:
  - (a) a common classification of environmental crimes;
  - (b) a common understanding of counting units;
  - (c) a common understanding of procedural stages (investigation, prosecution, trial) in environmental crime proceedings;
  - (d) 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 [*OP – please insert the date – within 18 months after entry into force of the Directive*]. They shall immediately inform the Commission thereof. The methods of making such reference shall be laid down by Member States.
2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. 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 and reporting*

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

3. By [*OP – please insert the date - five years after the transposition period is over*], the Commission shall carry out an evaluation of the impact of this Directive and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of that report.

*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 2008/98/EC.

*Article 27<sup>51</sup>*

*Application of Directive 2005/35/EC*

Directive 2009/123/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 Directive 2009/123/EC shall be construed as references to this Directive. As regards Member States not bound by this Directive, they shall remain bound by Directive 2009/123/EC amending Directive 2005/35/EC.**

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<sup>51</sup> This revised text of Article 27 is proposed by the Presidency in liaison with the Council Legal Service. It does not form part of the partial general approach.

*Article 28*

*Entry into force*

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

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