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Objet:	Proposition de directive du Parlement européen et du Conseil relative à la protection de l'environnement par le droit pénal et remplaçant la directive 2008/99/CE - Orientation générale partielle

a) Introduction

Le 15 décembre 2021, la Commission européenne a présenté une proposition de directive relative à la protection de l'environnement par le droit pénal¹. Ce texte remplacera, à son adoption, la directive 2008/99/CE du Parlement européen et du Conseil du 19 novembre 2008 sur le même sujet².

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

² Directive 2008/99/CE du Parlement européen et du Conseil du 19 novembre 2008 relative à la protection de l'environnement par le droit pénal, JO L 328 du 6.12.2008, p. 28–37

La proposition de directive a notamment pour objet d'établir des règles minimales en matière de définition des infractions pénales, en actualisant et en complétant assez largement la liste des infractions prévue par la directive de 2008 précitée, mais aussi en harmonisant pour la première fois les niveaux de sanctions en cette matière.

Ce volet « infractions / sanctions » est complété par un volet procédural, qui comprend des dispositions en matière de gel et de confiscation, de prescription, d'application de la loi pénale dans l'espace, de protection des personnes qui signalent des infractions environnementales ou aident à l'enquête, ou encore de droits du public concerné de participer à la procédure pénale. Enfin, des articles relatifs aux ressources financières à allouer, à la formation professionnelle, à la coordination entre les autorités compétentes concernées au sein des États membres, à la mise en œuvre d'une stratégie nationale en matière de lutte contre les infractions précitées, ou encore au développement d'un outil statistique performant complètent le texte afin d'en assurer la meilleure application.

Pour souligner les enjeux de la protection pénale de l'environnement, une conférence a été organisée par la Présidence à Marseille les 17 et 18 mai, réunissant magistrats, forces de l'ordre, diplomates, praticiens, fonctionnaires, universitaires et société civile de toute l'Union européenne.

Au Conseil, neuf groupes de travail, dont trois en format Conseillers JAI, ont été organisés par la Présidence depuis le mois de janvier 2022 pour négocier ce texte. La Présidence avait choisi de concentrer les débats sur huit des vingt-neuf articles du texte : ceux portant sur la définition des infractions et ceux portant sur la détermination des sanctions.

Lors des derniers groupes de travail, et suite à une consultation écrite, il est apparu qu'une majorité qualifiée des États membres était d'avis que la définition des infractions pouvait être stabilisée, mais que les États membres avaient besoin d'explorer encore davantage la question de la détermination des sanctions.

Ainsi, la Présidence soumet au Conseil des ministres, d'une part, l'adoption d'une orientation générale partielle sur la définition des infractions pénales, et, d'autre part, des questions relatives à la détermination des sanctions.

b) Une orientation générale partielle ambitieuse

L'orientation générale partielle soumise aux ministres de la justice porte sur les articles 2 (à l'exception des définitions de victime et de public concerné, qui se rapportent à des dispositions non encore débattues), 3 et 4 de la directive et sur les considérants associés (voir texte en annexe). Ils sont relatifs aux points suivants :

- la condition d'illicéité du comportement, c'est-à-dire la nécessité d'identifier l'obligation ou l'interdiction existant préalablement dans le droit environnemental ; cette condition est essentielle car elle assure que le droit pénal de l'environnement n'est pas un droit autonome de la réglementation sectorielle pertinente ;
- l'absence d'impunité systématique de l'agent titulaire d'une autorisation ou d'un permis administratif ;
- une meilleure définition de l'élément matériel de chacune des infractions, avec notamment :
 - une attention particulière apportée aux infractions d'exécution de certains projets illégaux ou non-autorisés au regard de leurs incidences sur l'environnement, ou en matière de recyclage des navires, de pollution causée par les navires, de protection d'espèces de faune ou de flore sauvages, ou encore une attention apportée à la réglementation des espèces exotiques envahissantes préoccupantes ;
 - la fixation de lignes directrices destinées à aider les services d'enquête et les autorités de poursuite et de jugement lorsqu'ils doivent apprécier le caractère substantiel du dommage survenu ou le caractère négligeable d'une quantité ;
 - l'identification de celles de ces infractions qui couvrent non seulement l'acte intentionnel, mais aussi la commission par négligence au moins grave.

Les discussions ont été intenses, exigeant, pour chaque délégation, une coordination interministérielle très forte, notamment entre les ministères de la justice, de l'intérieur et de l'environnement. Les débats ont été riches du fait notamment du nombre, de la variété et de la technicité des comportements à incriminer.

Cette orientation générale partielle bâtit des fondations plus solides et plus sûres pour la lutte contre la criminalité environnementale. Par rapport à la directive de 2008, cet accord partiel permet de sécuriser :

- une extension du nombre d'infractions pénales à incriminer, de neuf dans la directive de 2008 à vingt dans le texte agréé. Cela étend le spectre de la répression de cette criminalité, ce qui permettra davantage de poursuites lorsque nécessaire ;
- une prise en compte de nouveaux types d'atteintes à l'environnement comme les infractions graves à la législation européenne sur les substances chimiques, le captage illégal d'eau, le commerce illégal de bois ou le recyclage illégal de bateaux polluants. Cela répond à des préoccupations souvent relayées par les spécialistes de l'environnement et rend la législation européenne adaptée aux nouveaux défis environnementaux qui apparaissent ;
- une définition rigoureuse et détaillée des comportements à incriminer dans le corps du texte, sans référence à des annexes comme dans l'ancienne directive de 2008. Cela permettra de favoriser l'appréhension immédiate de ces comportements par les praticiens et de faciliter leur application ;
- l'incrimination de la tentative de certains de ces comportements, notion absente de la directive de 2008 ;
- l'adoption de dispositions éclairant des notions transversales indispensables aux praticiens pour l'exercice de la répression, comme celle de « dommage substantiel à l'environnement ».

c) La question de la détermination des sanctions, un foyer toujours actif de discussions

La Présidence a pris en compte le souhait des États membres de poursuivre le débat sur la question de la détermination des sanctions. Plus que dans tout autre instrument de droit pénal matériel, cette question présente un enjeu particulier car toute infraction pénale nécessite ici la violation d'une réglementation sectorielle spécifique. L'articulation entre sanctions pénales et sanctions administratives est donc un enjeu important.

De surcroît, deux sujets ont cristallisé les discussions :

- d'une part, dans la mesure où certaines infractions portant atteinte à l'environnement procèdent souvent d'une négligence grave, la Commission européenne a proposé, pour les personnes physiques, une harmonisation minimale des peines d'emprisonnement lorsque certaines infractions ont été commises par négligence au moins grave et ont causé ou sont susceptibles de causer la mort ou des blessures graves ;
- d'autre part, dans la mesure où les infractions portant atteinte à l'environnement sont souvent commises par des personnes morales, la Commission européenne a proposé un mécanisme au terme duquel les amendes, pénales ou non pénales, applicables à ces personnes morales, pour les infractions intentionnelles qu'elles auraient commises, seraient harmonisées précisément. Un tel mécanisme serait utilisé pour la première fois dans un instrument européen de droit pénal matériel. Dans les instruments adoptés jusqu'ici, l'harmonisation se limite à exiger des États membres qu'ils prévoient des sanctions effectives, proportionnées et dissuasives.

Ces questions ont été intensément débattues lors des discussions. Les aspects techniques et juridiques ayant déjà été abordés, la Présidence souhaite soumettre aux ministres de la justice deux questions politiques à ce sujet afin de poursuivre son travail à la lumière des orientations recueillies lors de ce Conseil.

d) Conclusion

Vu ce qui précède, le Comité des Représentants permanents est invité à

1. **confirmer l'approche générale partielle portant sur les articles 2 (à l'exception des définitions de victime et de public concerné, qui se rapportent à des dispositions non encore débattues), 3 et 4 de la directive et sur les considérants associés (voir texte en annexe) ;**
2. **recommander au Conseil d'approuver cette orientation générale partielle ;**
3. **recommander au Conseil de répondre aux questions suivantes :**
 - a) **Êtes-vous favorables, pour les personnes physiques, à une harmonisation minimale des peines d'emprisonnement lorsque certaines infractions ont été commises par négligence au moins grave et ont causé ou sont susceptibles de causer la mort ou des blessures graves ?**
 - b) **Êtes-vous favorables, pour les personnes morales, à ce que les amendes, pénales ou non pénales, encourues pour les infractions intentionnelles qu'elles auraient commises soient harmonisées ? Si oui, une indexation du montant de l'amende encourue sur un pourcentage chiffré du chiffre d'affaires de cette personne morale vous semble-t-elle acceptable ?**

[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 Committee³,

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.

³ 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 Council⁴ 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.

⁴ 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 1224/2009⁵ 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 Deal⁶ and the EU Biodiversity Strategy for 2030⁷, certain intentional unlawful conduct covered under Regulation (EC) No 1224/2009 and Regulation (EC) 1005/2008⁸ should be established as criminal offences.]

⁵ 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).

⁶ 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).

⁷ 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).

⁸ 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 Council⁹.
- (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.

⁹ 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 Convention¹⁰, 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.

¹⁰ 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 Council¹¹.
- (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.

¹¹ 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 Council¹² was supplemented by Directive 2009/123/EC of the European Parliament and of the Council¹³ 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.

¹² 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).

¹³ 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) ~~‘unlawful’ means a conduct infringing one of the following:~~

~~(a) Union legislation, which irrespective of its legal basis contributes to the pursuit of the objectives of Union policy of protecting the environment as set out in the Treaty on the Functioning of the European Union;~~

~~(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 legislation referred to in point (a).~~

~~The conduct shall be deemed unlawful even if 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;~~

~~(2) — ‘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 Council¹⁴, or any natural habitat or a habitat of species for which a site is designated as a special area of conservation pursuant to Article 4(4) of Council Directive 92/43/EEC¹⁵;~~

~~(a) (3) ‘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 Council¹⁶.]

¹⁴ 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).

¹⁵ 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).

¹⁶ 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 ~~unlawful and~~ 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, ~~in breach of a prohibition or another requirement,~~ 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 **activity conduct** is restricted pursuant to Title VIII and Annex XVII of Regulation (EC) No 1907/2006 of the European Parliament and of the Council¹⁷; or
 - (ii) this **activity conduct** is prohibited pursuant to Title VII of Regulation (EC) No 1907/2006; or
 - (iii) this **activity conduct** is not in compliance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council¹⁸; or
 - (iv) this **activity conduct** is not in compliance with Regulation (EC) No 528/2012 of the European Parliament and of the Council¹⁹; or

¹⁷ 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).

¹⁸ 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).

¹⁹ 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 ~~activity~~ **conduct** falls under Regulation (EC) No 1272/2008 of the European Parliament and of the Council²⁰; or
- (vi) this ~~activity~~ **conduct** is prohibited pursuant to Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council²¹,

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 Council²², 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 2011/92/EU of the European Parliament and of the Council²³, without a development consent or an assessment with regard to their effects on the environment, and which causes or is likely to cause substantial damage to the quality of air, the quality of soil or the ~~quality~~ status of water, or to animals or plants;

²⁰ 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).

²¹ 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).

²² **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).**

²³ ~~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).~~

- (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 ~~an unlawful~~ **such** conduct:
- (i) concerns hazardous waste as defined in Article 3(2) of Directive 2008/98/EC of the European Parliament and of the Council²⁴ 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 Council²⁵ when such shipment **concerns** ~~is undertaken in~~ 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 Council²⁶, of a ship falling within the scope of that Regulation,** the recycling of a ships ~~falling within the scope of Regulation (EU) No 1257/2013 of the European Parliament and of the Council²⁷~~; without complying with the requirements **referred to in** ~~of~~ 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;**

²⁴ 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).

²⁵ 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).

²⁶ **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).**

²⁷ ~~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).~~

- (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 Council²⁸ ~~on ship-source pollution and on the introduction of penalties, including criminal penalties,~~ 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** ~~, provided that the ship-source discharges do not satisfy the exceptions set in Article 5 of that Directive. The present paragraph ; this provision shall not apply~~ **either to minor cases, where the act committed ship-source discharge does not cause deterioration in the quality of water, unless the conjunction of repeated minor cases by the same offender, that do not individually do so, results in deterioration in the quality of water;**

²⁸ 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 ~~installation, operation or closure dismantling~~ of an installation in which a dangerous activity is carried out or in which dangerous substances, ~~preparations or pollutants mixtures~~ are stored or used, **when such a conduct and such a dangerous activity, substance or mixture fall** falling within the scope of Directive 2012/18/EU of the European Parliament and of the Council²⁹, **or of Directive 2010/75/EU** of the European Parliament and of the Council³⁰ ~~or Directive 2013/30/EU of the European Parliament and of the Council³¹~~, **and when such a conduct** 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; *[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 Council³², 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;

²⁹ 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).

³⁰ 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).

³¹ ~~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).~~

³² 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** falling within the scope of Council Directive 2013/59/Euratom³³, **or** Council Directive 2014/87/Euratom³⁴ ~~or Council Directive 2013/51/Euratom³⁵~~, **and when such a conduct** 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;
- (k) the abstraction of surface water or groundwater **within the meaning of Directive 2000/60/EC**³⁶ 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 ~~and~~ **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/EEC³⁷ and the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council³⁸, except for cases where the conduct concerns a negligible quantity of such specimens;

³³ 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).

³⁴ 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).

³⁵ ~~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).~~

³⁶ **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).**

³⁷ 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).

³⁸ 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).

- (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 338/97³⁹, except for cases where the conduct concerns a negligible quantity of such specimens;
- (n) the placing ~~or making available~~ 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 that** ~~were made of illegally harvested wood, falling within the scope of~~ Regulation (EU) No 995/2010 of the European Parliament and of the Council⁴⁰, 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/EEC⁴¹**, within a protected site, within the meaning of Article 6(2) of ~~that the~~ Directive 92/43/EEC⁴², 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 Council⁴³, 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;**

³⁹ 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).

⁴⁰ 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).

⁴¹ **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).**

⁴² ~~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).~~

⁴³ 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 Council⁴⁴ **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, emission or release~~ of ozone depleting substances as defined in Article 3 (4) of Regulation (EC) No 1005/2009 of the European Parliament and of the Council⁴⁵ 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.]*

⁴⁴ 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).

⁴⁵ 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) ~~production, placing on the market, import, export, use, emission or release of~~ fluorinated greenhouse gases as defined in Article 2 (1) of Regulation 517/2014 of the European Parliament and of the Council⁴⁶ 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. 2.~~ Member States shall ensure that the conduct referred to in paragraph 2 ~~4~~, points (a), (b), (c), **(c)bis**, ~~(d)~~, (e), (f), (h), (i), **(i)bis**, (j), (k), **(l)**, (m), (n), **(o)**, ~~(p)~~ ~~(ii)~~, (q), (r) also constitutes a criminal offence, when committed with at least serious negligence.

~~4. 3.~~ Member States shall ensure that their national legislation specifies that the following elements shall be taken into account, where relevant, when assessing **In order to assess** whether the damage or likely damage is substantial for the purposes of the investigation, prosecution and adjudication of offences referred to in **within the meaning of** paragraph 2 ~~4~~, 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)~~ severity of the damage;
- (c)** ~~(d)~~ spread of the damage;
- (d)** ~~(e)~~ reversibility of the damage.

⁴⁶ 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. 4. Member States shall ensure that their national legislation specifies that the following elements shall be taken into account when assessing~~ **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 ~~for the purposes of the investigation, prosecution and adjudication of offences referred to in~~ **within the meaning of** paragraph 2 ~~4~~, 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 ~~legal acts~~ **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. 5. Member States shall ensure that their national legislation specifies that the following elements shall be taken into account when assessing~~ **In order to assess** whether the quantity is negligible or non-negligible ~~for the purposes of the investigation, prosecution and adjudication of offences referred to in~~ **within the meaning of** paragraph 2 ~~4~~, 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 ~~the~~ **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)(1) 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)(1) points (a), (b), (c), **(c)bis, (d), (e), (f), (h), (i), (i)bis, (j), (k), (m), (n), (p) (i) and (ii), (q), (r) when committed intentionally** 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;

- (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/JHA⁴⁷;
- (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;

⁴⁷ 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/EC⁴⁸;
- (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.

⁴⁸ 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 Council⁴⁹, 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;

⁴⁹ 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/JHA⁵⁰, be referred to Eurojust.

⁵⁰ 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*⁵¹

Application of Directive 2005/35/EC

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

⁵¹ 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]