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## INFORMATION NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 26 to 29 February 2024)

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## I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Legal Affairs (JURI), Adrián VÁZQUEZ LÁZARA (Renew, ES), presented on behalf of JURI a compromise amendment (amendment number 161) to the abovementioned proposal for a Directive, for which Antonius MANDERS (EPP, NL) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

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<sup>1</sup> OJ C 145, 30.6.2007, p. 5.

## II. VOTE

When it voted on 27 February 2024, the plenary adopted the compromise amendment (amendment number 161) to the abovementioned proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

**P9\_TA(2024)0093**

**Protection of the environment through criminal law**

**European Parliament legislative resolution of 27 February 2024 on the 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 (COM(2021)0851 – C9-0466/2021 – 2021/0422(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0851),
- having regard to Article 294(2) and Article 83(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0466/2021),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 23 March 2022<sup>1</sup>,
- having regard to the provisional agreement approved by the responsible committee under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 6 December 2023 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the opinions of the Committee on Development, of the Committee on the Environment, Public Health and Food Safety, of the Committee on Civil Liberties, Justice and Home Affairs and of the Committee on Petitions,
- having regard to the report of the Committee on Legal Affairs (A9-0087/2023),

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<sup>1</sup> OJ C 290, 29.7.2022, p. 143.

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Position of the European Parliament adopted at first reading on 27 February 2024 with a view to the adoption of Directive (EU) 2024/... of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

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<sup>2</sup> OJ C 290, 29.7.2022, p. 143.

<sup>3</sup> Position of the European Parliament of 27 February 2024.

Whereas:

- (1) Pursuant to Article 3(3) of the Treaty on European Union (TEU) and Article 191 of the Treaty on the Functioning of the European Union (TFEU), the Union is committed to ensuring a high level of protection and improvement of the quality of the environment. The environment, in a wide sense, should be protected, as follows from Article 3(3) TEU and Article 191 TFEU, covering all natural resources, including air, water, soil, ecosystems, including ecosystem services and functions, and wild fauna and flora, including habitats, as well as services provided by natural resources.
- (2) *Pursuant to Article 191(2) TFEU, Union policy on the environment is to aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. That policy is to be based on the precautionary principle and on the principles that preventive action is to be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Considering that environmental crime also affects fundamental rights, the fight against environmental crime at Union level is crucial to ensuring that those rights are protected.*

- (3) The rise in environmental criminal offences and their effects, which undermine the effectiveness of Union environmental law, is a matter of continuing concern in the Union. Such offences increasingly extend beyond the borders of the Member States in which they are committed. Such offences pose a threat to the environment and therefore necessitate an appropriate and effective response, ***which often requires effective cross-border cooperation.***
- (4) The existing rules on penalties under Directive 2008/99/EC of the European Parliament and of the Council<sup>4</sup> and under Union environmental sectoral law have not been sufficient to achieve compliance with Union law concerning protection of the environment. Such compliance should be strengthened by the availability of ***effective, proportionate and dissuasive*** criminal penalties ***that correspond to the gravity of the offences*** and can convey more social disapproval than the use of administrative penalties. ***Complementarity of criminal and administrative law is crucial to prevent and deter unlawful conduct that damages the environment.***

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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).

- (5) The list of environmental criminal offences in Directive 2008/99/EC should be revised and additional criminal offences based on the most serious breaches of Union environmental law should be added. **Penalties** should be strengthened in order to enhance their deterrent effect, and the effectiveness of the **detection**, investigation, prosecution and adjudication of environmental criminal offences should be improved.
- (6) Member States should criminalise certain unlawful conduct, provide for greater precision with regard to the definition of relevant criminal offences and harmonise types and levels of penalties.



- (7) ***Failure to comply with a legal duty to act can have the same negative effect on the environment and human health as active conduct. Therefore, the definition of criminal offences in this Directive should cover both acts and omissions, where applicable.***
- (8) Member States should provide for criminal penalties in their national law in respect of serious infringements of Union law concerning protection of the environment. In the framework of the common fisheries policy, Union law provides for a comprehensive set of rules for control and enforcement under Council Regulations (EC) No 1224/2009<sup>5</sup> and (EC) No 1005/2008<sup>6</sup> in the event of serious infringements, including those that cause damage to the marine environment. Under that set of rules, Member States have the choice of using administrative or criminal penalties, or both. In line with the communications of the Commission of 11 December 2019 on ‘The European Green Deal’ and 20 May 2020 on ‘EU Biodiversity Strategy for 2030. Bringing nature back into our lives’, certain intentional unlawful conduct covered by Regulation (EC) No 1224/2009 and Regulation (EC) No 1005/2008 should be established as a criminal offence.

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<sup>5</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

<sup>6</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).

- (9) In order for conduct to constitute an environmental criminal offence under this Directive, it should be unlawful. In order for conduct to be unlawful, it should breach Union law which *contributes to pursuit of one of the objectives of the Union's policy on the environment as set out in Article 191(1) TFEU, irrespective of the legal basis of such Union law, which could include, for example, Article 91, 114, 168 or 192 TFEU, or should breach laws*, regulations or administrative provisions of a Member State, or decisions taken by a competent authority of a Member State, giving effect to such Union law. This Directive should specify which unlawful conduct is capable of constituting a criminal offence and, where appropriate, set a quantitative or qualitative threshold necessary for such conduct to constitute a criminal offence. Such conduct should constitute a criminal offence when it is intentional and, in certain cases, also when carried out with *at least* serious negligence. *In particular*, unlawful conduct that causes the death of, or serious injury to, persons, substantial damage or a considerable risk of substantial damage to the environment or is considered otherwise to be particularly harmful to the environment *should also constitute* a criminal offence when carried out with *at least* serious negligence. Member States can adopt or maintain more stringent rules in the area of criminal law.

- (10) Conduct should be unlawful even where it is carried out under an authorisation issued by a competent authority of a Member State if such authorisation was obtained fraudulently or by corruption, extortion or coercion. *Furthermore, holding such an authorisation should not preclude the holder from being held criminally liable, where the authorisation is in manifest breach of relevant substantive legal requirements. ‘In manifest breach of relevant substantive legal requirements’ should be interpreted as referring to an obvious and substantial breach of relevant substantive legal requirements, and is not intended to include breaches of procedural requirements or minor elements of the authorisation. This does not shift the duty to ensure that authorisations are lawful from competent authorities to operators. Moreover, where an authorisation is required, the fact that the authorisation is lawful does not preclude criminal proceedings against the holder of the authorisation where that holder does not comply with all obligations of the authorisation or with other relevant legal obligations not covered by the authorisation.*

(11) *Moreover, it is necessary that operators take the necessary steps to comply with legislative, regulatory and administrative provisions concerning the protection of the environment applicable when they carry out the respective activity, including by complying with their obligations, as laid down in applicable Union and national law, in relation to procedures for the amendment or updating of existing authorisations. This should also cover obligations of the holder of the authorisation to update and renew such authorisation.*

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(12) *With regard to offences and penalties defined in this Directive, the term ‘legal persons’ should be understood as not including States or public bodies exercising State authority or public international organisations. As this Directive establishes minimum rules, Member States can adopt more stringent rules, including rules on criminal liability for public bodies.*

- (13) *Some criminal offences defined in this Directive include a qualitative threshold for the conduct to constitute a criminal offence, namely that such conduct causes the death of, or serious injury to, a person or substantial damage to the quality of air, water or soil, or to an ecosystem, animals or plants. In order to protect the environment to the fullest extent possible, that qualitative threshold should be understood in a broad sense including, where relevant, substantial damage to fauna and flora, habitats, to services provided by natural resources and by ecosystems as well as to ecosystem functions. The term ‘ecosystem’ should be understood as a dynamic complex of plant, animal, fungi and microorganism communities and their non-living environment, interacting as a functional unit, and should include habitat types, habitats of species and species populations. An ecosystem should also include ecosystem services, through which an ecosystem contributes directly or indirectly to human wellbeing, and ecosystem functions, which refer to natural processes in an ecosystem. Smaller units such as a beehive, an anthill or a stump can be a part of an ecosystem but should not be considered to be an ecosystem in its own right for the purposes of this Directive.*

- (14) For the purposes of this Directive, *the term ‘injury’ should be understood in a broad sense, that is as covering any form of physical harm to a person, including a change in body function or cell structure, a temporary, chronic or fatal disease, a malfunction of the body or other deterioration of physical health, but excluding mental health.*
- (15) *The introduction of different forms of energy, such as heat, sources of thermal energy, noise, including underwater noise, and other sources of acoustic energy, vibrations, electromagnetic fields, electricity or light, into the environment can cause substantial damage to the quality of air, water or soil or substantial damage to an ecosystem, animals or plants, or the death of, or serious injury to, persons. Various instruments of Union environmental law regulate the introduction of energy into the environment, for example in the areas of protection of water, the marine environment, noise control, waste management and industrial emissions. In light of those instruments, the unlawful introduction of energy into the environment should constitute a criminal offence under this Directive if it causes or is likely to cause substantial damage to the environment or human health.*
- (16) *Where criminal offences defined in this Directive relate to conduct such as making available or placing on the market, sale, offering for sale or trading, conduct carried out by means of information and communication technologies should be included.*

- (17) *This Directive introduces the criminal offence of 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 on a larger scale results in the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water, and causes or is likely to cause substantial damage to the environment or human health. In that context, a prohibition or another requirement aimed at protecting the environment should be one that is laid down in the area of Union law which has among its stated objectives, or has as an aim, the protection of the environment, including preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources or combatting climate change, or promoting measures at international level to deal with regional or worldwide environmental problems. Conversely, where such a prohibition or requirement is laid down in other areas of Union law which have other objectives, for example protection of workers' health and safety, the conduct should not be covered under that criminal offence. For the purpose of this Directive, 'use on a larger scale' refers to the combined effect of the use of the product by several users, regardless of their number, provided that the conduct causes or is likely to cause damage to the environment or human health.*

- (18) *Unlawful collection, transport and treatment of waste and the lack of supervision of such operations and of the after-care of disposal sites, including action taken as a dealer or a broker, can cause devastating effects on the environment and human health. Such effects can be caused by unlawful conduct which concerns harmful waste from pharmaceutical products, narcotic drugs, including components to produce narcotic drugs, chemicals, waste containing acids or bases or waste containing toxins, heavy metals, oil, grease, electrical and electronic waste, end-of-life vehicles or plastic waste. Member States should, therefore, ensure that unlawful waste management constitutes a criminal offence where such conduct concerns hazardous waste in a non-negligible quantity, or it concerns other waste and such other waste causes or is likely to cause substantial damage to the environment or human health.*
- (19) *For the purpose of the criminal offence introduced by this Directive in relation to recycling of ships falling within the scope of Regulation (EU) No 1257/2013 of the European Parliament and of the Council<sup>7</sup> it is to be noted that, currently under Union law, the obligations set out in that Regulation only apply to ship owners, as defined in that Regulation.*

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<sup>7</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).*



- (20) *With regard to the assessment of whether the quantity of a relevant product or relevant commodity associated with deforestation or forest degradation as referred to in Regulation (EU) 2023/1115 of the European Parliament and of the Council<sup>8</sup>, is negligible, Member States could take into account, for example, the quantity of the relevant commodity or product expressed in net mass, or, where applicable, in volume or as a number of items, or whether the scale of the activity in question is negligible in terms of quantity. For such assessment, Member States could also take into account, where relevant, other elements listed in this Directive for certain criminal offences, including the conservation status of the species concerned or the cost of restoration of the environment.*
- (21) *Criminal offences relating to intentional conduct listed in this Directive can lead to catastrophic results, such as widespread pollution, industrial accidents with severe effects on the environment or large-scale forest fires. Where such offences cause the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or cause widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil, or water, such offences, leading to such catastrophic results, should constitute qualified criminal offences and, consequently, be punished with more severe penalties than those applicable in the event of other criminal offences defined in this Directive. Those qualified criminal offences can encompass conduct comparable to ‘ecocide’, which is already covered by the law of certain Member States and which is being discussed in international fora.*

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<sup>8</sup> *Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (OJ L 150, 9.6.2023, p. 206).*

- (22) *Where, under this Directive, conduct constitutes a criminal offence only if it concerns a non-negligible quantity, corresponding to the exceeding of a regulatory threshold, value or other mandatory parameter, in assessing whether that threshold, value or other parameter has been exceeded, the hazardousness and toxicity, inter alia, of the material or substance should be taken into account because the more hazardous or toxic the material or substance is, the sooner that threshold, value or other parameter is reached and, in the case of particularly hazardous and toxic substances or materials, even a very small quantity can cause substantial damage to the environment or human health.*
- (23) 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. *Where this Directive, in order to define criminal offences, uses terms defined in Union environmental law to describe unlawful conduct, such terms should be understood within the meaning of the corresponding definitions laid down in the relevant Union legal acts covered by this Directive. This Directive should also cover any Union acts that amend provisions or requirements relevant to describing unlawful conduct which falls within the scope of criminal offences defined in this Directive. When drafting such amending Union acts, it would be appropriate to include a reference to this Directive.* However, where new *types of unlawful conduct, not yet covered by the scope of the offences defined in this Directive, are introduced in Union environmental law, this Directive should be amended to include such new types of unlawful conduct within its scope.*

- (24) *Without prejudice to that dynamic nature of this Directive, the Commission should regularly, and where necessary, consider if there is a need to amend the description in this Directive of conduct capable of constituting a criminal offence under this Directive. The Commission should also consider if there is a need to define other criminal offences when new types of unlawful conduct not yet covered by the scope of this Directive are introduced in Union environmental law.*
- (25) This Directive should provide a non-exhaustive list of elements which should be taken into account, *where relevant*, by the competent authorities, in assessing whether the qualitative and quantitative thresholds used to define environmental criminal offences have been reached. Providing such a list should facilitate the coherent application of this Directive and a more effective fight against environmental crime as well as provide for legal certainty. However, such assessment elements or their application should not make the *detection*, investigation, prosecution or adjudication of criminal offences excessively difficult.

- (26) *Where this Directive provides that an unlawful conduct only constitutes a criminal offence where it is carried out intentionally and causes the death of a person, the notion of ‘intention’ should be interpreted in accordance with national law, taking into account relevant case law of the Court of Justice of the European Union (the ‘Court of Justice’). Therefore, for the purposes of this Directive, ‘intention’ could be understood as the intention to cause the death of a person, or it could also cover a situation in which the offender, despite not wanting to cause the death of a person, nevertheless accepts the likelihood of causing it, and acts, or refrains from acting, voluntarily and in violation of a particular obligation, thereby causing the death of a person. The same understanding as regards the notion of ‘intention’ should apply where unlawful conduct described in this Directive, which is intentional, causes serious injury to any person, or the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or causes widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil, or water.*
- (27) *With regard to the criminal offences defined in this Directive, the notion of ‘serious negligence’ should be interpreted in accordance with national law, taking into account relevant case law of the Court of Justice. This Directive does not require the introduction in national law of the notion of ‘serious negligence’ for each constituent element of the criminal offence, such as possession, sale or offering for sale, placing on the market and similar elements. In such cases, it is possible for Member States to decide that the notion of ‘serious negligence’ is relevant for elements of the criminal offence such as the protection status, ‘negligible quantity’, or the ‘likelihood’ of the conduct to cause substantial damage.*

- (28) 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 for environmental offences 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. Such forms of crime are often interconnected with serious forms of environmental crime and should therefore not be dealt with in isolation. ***They are also prone, in particular, to causing substantial damage to the environment and human health, including devastating effects on nature and local communities. In addition,*** it is of particular concern that some environmental criminal offences are committed with the tolerance or active support of the competent administrations or officials performing their public duty. In certain cases, this can even take the form of corruption. Examples of such behaviour are turning a blind eye to, or remaining silent on, the infringement of environmental law following inspections, deliberately omitting inspections or controls such as with regard to whether the conditions of a permit are being respected by the permit-holder, supporting resolutions or voting in favour of granting illegal licences, or issuing falsified or untrue favourable reports.

- (29) Inciting, and aiding and abetting intentional commission of a criminal offence should also be punishable. An attempt to commit a criminal offence that causes or is likely to cause the death of, or serious injury to, any person or causes 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. *The notion of ‘attempt’ is interpreted in accordance with national law. With regard to the criminal offence defined in this Directive in relation to the execution of a project without a development consent, since the execution of a project is to be understood as including the start of the implementation of such a project, for example works to prepare the ground for construction or other intervention with effects on the environment, this Directive does not list that offence among criminal offences for which an attempt should be punishable as a criminal offence.* ■
- (30) Penalties for the criminal offences defined in this Directive should be effective, dissuasive and proportionate. To that end, minimum levels for the maximum term of imprisonment should be set for natural persons. *The maximum terms of imprisonment provided for in this Directive for the criminal offences committed by natural persons should apply at least to the most serious forms of such offences. The criminal law of all Member States includes provisions on homicide, either committed intentionally or with serious negligence. Member States should be able to have recourse to those general provisions, including provisions on aggravating circumstances, when transposing the provisions in this Directive that relate to criminal offences that cause the death of a person, whether committed intentionally or with serious negligence.*

- (31) Accessory penalties *or measures* are often seen as being more effective than financial penalties, especially for legal persons. Accessory penalties or measures should be therefore available in the *relevant* proceedings. *Those penalties or measures could* include the obligation to restore the environment, the exclusion from access to public funding, including tender procedures, grants and concessions, and the withdrawal of permits and authorisations. This is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate penalties in individual cases.
- (32) *Accessory penalties or measures could, without prejudice to the requirements of Directive 2004/35/EC of the European Parliament and of the Council<sup>9</sup>, include a requirement to restore the environment where the damage is reversible and a requirement to provide compensation where the damage is irreversible or the offender lacks the capacity to carry out such restoration.*

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<sup>9</sup> *Directive 2004/35/EC 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, 30.04.2004, p. 656).*

- (33) To the extent that *conduct constituting an environmental criminal offence as defined in this Directive is attributable to legal persons, such legal persons should be held liable for such an offence. In order to achieve the objectives of this Directive, Member States whose law provides for the criminal liability of legal persons should ensure that their law provides for effective, dissuasive and proportionate types and levels of criminal penalties as laid down in this Directive. In order to achieve the objectives of this Directive, Member States whose law does not provide for the criminal liability of legal persons should ensure that their law provides for effective, dissuasive and proportionate types and levels of non-criminal penalties as laid down in this Directive. The maximum levels of fines provided for in this Directive for the criminal offences defined in it should apply at least to the most serious forms of such offences. The gravity of the conduct, as well as the individual, financial and other circumstances of the legal persons concerned, should be taken into account to ensure that the penalty imposed is effective, dissuasive and proportionate. Member States should be able to set the maximum levels of fines either as a percentage of the total worldwide turnover of the legal person concerned, or in fixed amounts. Member States should decide which of those two options they will use, when transposing this Directive.*



- (34) *Where Member States, in the determination of fines to be imposed on legal persons, opt to implement the criterion of the total worldwide turnover of a legal person, they should decide whether to calculate that turnover based on the business year preceding that in which the criminal offence was committed, or on the business year preceding that of the decision to impose the fine. They should also consider providing for rules for cases where it is not possible to determine the amount of a fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the criminal offence was committed, or in the business year preceding that of the decision to impose the fine. In such cases, Member States should be able to take into account other criteria, such as total worldwide turnover in a different business year. Where those rules include the setting of fixed amounts of fines, it should not be necessary for the maximum levels of those amounts to reach the levels established in this Directive as the minimum requirement for the maximum level of fines set in fixed amounts.*

- (35) *Where Member States opt for a maximum level of fines set in fixed amounts, such levels should be laid down in national law. The highest levels of such fines should apply to the most serious forms of criminal offences defined in this Directive committed by legal persons of financial strength. Member States should be able to determine the method of calculation of those highest levels of fines, including specific conditions therefor. Member States are invited to regularly review the levels of fines set in fixed amounts having regard to rates of inflation and other fluctuations in monetary value, in accordance with procedures laid down in their national law. Member States that do not have the euro as their currency should provide for maximum levels of fines in their currency that correspond to the levels determined in this Directive in euro on the date of its entry into force. Those Member States are invited to regularly review the levels of fines also with regard to the development of the exchange rate.*

- (36) *The establishment of the maximum level of fines is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate penalties in individual cases. As this Directive does not establish any minimum levels of fines, the judges or courts should, in any case, impose appropriate penalties taking into account the individual, financial and other circumstances of the legal person concerned and the gravity of the conduct.*
- (37) *Member States should ensure that the criminal or non-criminal penalties or measures applicable to legal persons held liable for qualified criminal offences as defined in this Directive are more severe than those applicable in the event of other criminal offences defined in this Directive. To that end, Member States should, in accordance with their national law, provide for a higher level of criminal and non-criminal fines than the maximum level of fines established in this Directive or otherwise provide for more severe penalties or measures, including criminal or non-criminal penalties or measures, or a combination thereof.*

- (38) *The fact that legal persons are held liable under this Directive should not preclude criminal proceedings being taken against natural persons who commit, incite or are accessories to the criminal offences defined in this Directive. Where the conditions for criminal liability are met, such natural persons should be understood to include corporate board members.*
- (39) *It is necessary that Member States consider introducing penalties or measures that are an alternative to imprisonment in order to contribute to the restoration of the environment.*
- (40) Penalty levels imposed should be further approximated and the effectiveness of such levels should be fostered through introducing common aggravating circumstances that reflect the gravity of the criminal offence committed. *The notion of ‘aggravating circumstances’ should be understood either as facts enabling the judge to pronounce more severe sentences for the same criminal offence than the sentence normally imposed without such facts, or as the possibility to treat several criminal offences cumulatively in order to increase the level of penalty. Therefore, Member States are not obliged to provide for specific aggravating circumstances where national law already provides for separate criminal offences that can lead to more severe penalties.*

(41) *Member States should ensure that at least one of the aggravating and mitigating circumstances provided for in this Directive is provided for as a possible aggravating or mitigating circumstance in accordance with applicable rules in their legal system. In any case, it should remain within the discretion of the judge or the court to determine whether to increase or to decrease the sentence, taking into account the specific circumstances in each individual case.*

(42) This Directive should apply without prejudice to the general rules and principles of national criminal law on the sentencing or the execution of sentences in accordance with the specific circumstances in each individual case. *It should be possible for Member States to determine the most appropriate types of accessory penalties or measures. In particular, where national law provides for the possibility to impose an obligation to restore the environment within a given period, provided that the damage is reversible, this Directive does not require that a judge or a court also be responsible for monitoring the execution of such obligation. Similarly, if the withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence can be imposed as a penalty under national law, Member States should ensure that judges or courts are able to either impose such a penalty themselves or that another competent authority is informed and can act in accordance with national procedural rules.*

(43) *This Directive should not affect civil liability under national law or the obligation to compensate, in accordance with Union or national law, for harm or damage caused as a result of a given criminal offence defined in this Directive.*

- (44) *The publication of the personal data of convicted persons contained in judicial decisions should only be possible in duly justified exceptional cases following a case-by-case assessment, weighing the public interest against the rights to respect for private life and protection of the personal data of the convicted person provided for in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the ‘Charter’), respectively. The publication of those personal data should therefore only be possible in cases of serious criminal offences and where strong dissuasive effects are needed. The case-by-case assessment could take into account elements such as the gravity of the damage caused to the environment, the harm suffered by natural persons, or both, whether the criminal offence has been committed repeatedly in the same environmental sector, and whether the criminal offence was committed by or for the benefit of a large company active in several Member States or by an important market player in a specific environmental sector. Any processing of personal data in the context of this Directive should comply with the applicable Union and national data protection legislation, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>10</sup> and Directive (EU) 2016/680 of the European Parliament and of the Council<sup>11</sup>. That data protection legislation includes an obligation for Member States to provide for appropriate safeguards for the rights and freedoms of data subjects when publishing all or part of the judicial decision that relates to the criminal offence committed and the penalties or measures imposed. Additionally, the publication of the decision imposing the penalties or measures upon a legal person should be applied without prejudice to the national rules governing the anonymisation of judicial decisions or the duration of publication.*

<sup>10</sup> *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

<sup>11</sup> *Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).*

- (45) The obligation provided for in this Directive to provide for criminal penalties should not exempt Member States from the obligation to provide for administrative penalties and other measures in national law for breaches of Union environmental law.
- (46) Member States should define the scope of administrative and criminal law enforcement clearly with regard to environmental offences, in accordance with their national law. In the application of national law transposing this Directive, Member States should ensure that the imposition of criminal penalties and of administrative penalties respects the principles of the Charter, including the prohibition of proceedings that do not respect the principle of *ne bis in idem*.
- (47) Furthermore, judicial and administrative authorities in the Member States should have at their disposal a range of criminal and non-criminal **penalties** and other measures, **including preventive measures**, to address different types of criminal conduct in a tailored, **timely, proportionate** and effective manner.

- (48) Where criminal offences are of a continuing nature, they should be brought to an end as soon as possible. *Member States are encouraged to enable the competent authorities to order the immediate cessation of the unlawful conduct or to prevent such conduct.*
- (49) Where offenders have made financial gains, such gains should be confiscated. *Member States should take the necessary measures to allow frozen and confiscated proceeds and instrumentalities to be appropriately managed, in line with their nature. Member States should consider taking measures allowing confiscated property to be used, where possible, to finance restoration of the environment or remediation of any damage caused, or to provide compensation for the environmental damage, in accordance with national law.*



- (50) Member States should lay down rules concerning limitation periods necessary to combat environmental crime effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement. *As a general rule, a limitation period runs from the point in time the criminal offence was committed. However, as this Directive establishes minimum rules, Member States can provide for the limitation period to start later, namely from the point in time the criminal offence was detected, provided that such point in time of detection is clearly determined in accordance with national law. Member States are permitted under this Directive to establish limitation periods shorter than those laid down in this Directive, provided that in their legal systems it is possible to interrupt or suspend such shorter limitation periods in the event of acts which can be specified in accordance with national law.*

- (51) Given, in particular, the mobility of offenders, together with the cross-border nature of criminal offences defined in this Directive and the possibility of cross-border investigations being carried out, Member States should establish jurisdiction in order to combat such offences effectively. *Member States should cooperate with Eurojust, in particular on the basis of Regulation (EU) 2018/1727 of the European Parliament and of the Council<sup>12</sup>, in cases where conflicts of jurisdiction could arise. A given Member State should establish jurisdiction over criminal offences committed on board a ship or an aircraft registered in that Member State, or flying its flag, taking into account related standards under relevant international conventions. Member States should not be obliged under this Directive to establish for the first time such jurisdiction over criminal offences that, due to their nature, cannot be committed on board a ship or an aircraft.*
- (52) *Member States should establish jurisdiction over criminal offences defined in this Directive where the damage which is one of the constituent elements of the criminal offence occurred on their territory. In accordance with national law, and in line with the territoriality principle, a Member State could establish jurisdiction over criminal offences committed in whole or in part on its territory.*

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<sup>12</sup> *Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).*

- (53) To ensure successful enforcement of environmental criminal law, Member States should make available to competent authorities effective investigative tools for environmental criminal offences such as those available under their national law for combatting organised crime or other serious criminal offences, *if and to the extent that the use of those tools is appropriate and proportionate to the nature and gravity of the criminal offences as provided for in national law. Such tools could include* the interception of communications, covert surveillance, including electronic surveillance, controlled deliveries, the monitoring of bank accounts and other financial investigation tools. Those tools should be used in line with the principle of proportionality and in full respect of the Charter. ■ *It is imperative that* the right to the protection of personal data be respected.

- (54) Environmental criminal offences harm nature and society. **Persons** reporting breaches of Union environmental law ■ perform a service of public interest and play a key role in exposing and preventing such breaches, and thus in safeguarding the **environment and the** welfare of society. Individuals in contact with an organisation in the context of their work-related activities are often the first to know about threats or harm to the public interest and the environment. Persons who report irregularities are known as ‘whistleblowers’. Potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. Such reporting persons ■ benefit from balanced and effective protection under Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>13</sup>, *which includes Directives 2008/99/EC and 2009/123/EC<sup>14</sup> of the European Parliament and of the Council within its scope. Following the replacement of Directives 2008/99/EC and 2009/123/EC by this Directive, persons who report breaches of Union environmental law should, by virtue of this Directive, continue to benefit from that protection from the Member States bound by it.*

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<sup>13</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, 26.11.2019, p. 17).

<sup>14</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).*

- (55) Persons other than those who report breaches of Union law under Directive (EU) 2019/1937 could also possess valuable information concerning potential environmental criminal offences. They could be members of the community affected or members of society as a whole taking an active part in protecting the environment. Such persons who report environmental criminal offences as well as persons who cooperate with regard to the enforcement of such offences should be provided **with** the necessary support and assistance in the context of criminal proceedings, so that they are not disadvantaged as a result of their cooperation but supported and assisted. ***The necessary support and assistance measures should be available to such persons in accordance with their procedural rights in national law and should include, at least, all support and assistance measures available to persons having corresponding procedural rights in criminal proceedings concerning other criminal offences. Those persons should, in accordance with their procedural rights in national law, also be protected from being persecuted for reporting environmental criminal offences or for their cooperation in the criminal proceedings. The content of the necessary support and assistance measures is not established by this Directive and should be determined by Member States. Member States are not required to make available the support and assistance measures to persons who are suspected or accused in the context of the criminal proceedings concerned.***
- (56) ***Member States should assess the need to enable persons to report environmental criminal offences anonymously, where such possibility does not already exist.***

- █
- (57) Since the environment cannot represent itself as a victim in criminal proceedings, for the purpose of effective enforcement, members of the public concerned █ should have the possibility of acting on behalf of the environment as a public good, in accordance with national law and subject to the relevant procedural rules.
- (58) *This Directive does not require Member States to introduce new procedural rights for the members of the public concerned. However, when such procedural rights for members of the public concerned exist in a Member State in equivalent situations concerning criminal offences other than those provided for pursuant to this Directive, such as the right to participate in proceedings as a civil party, such procedural rights should also be granted to the members of the public concerned in proceedings concerning the environmental criminal offences defined in this Directive. The rights of the members of the public concerned are without prejudice to the rights of victims as set out in Directive 2012/29/EU of the European Parliament and of the Council<sup>15</sup>. The notion of ‘members of the public concerned’ and of ‘victims’ should remain distinct and Member States should not be required to apply victims’ rights to members of the public concerned. This Directive does not require Member States to grant to members of the public concerned the procedural rights in criminal proceedings that they grant to categories of persons other than members of the public concerned.*

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<sup>15</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).*

- (59) *Member States should take appropriate measures, such as information and awareness-raising campaigns targeting relevant stakeholders both from the public and private sector, as well as research and education programmes, that aim to reduce overall environmental criminal offences and the risk of environmental crime. Where appropriate, Member States should act in cooperation with such stakeholders. In that context, measures that aim to improve prevention of environmental criminal offences could include promoting compliance and due diligence schemes, encouraging operators to have compliance officers to help ensuring compliance with Union environmental law, and promoting transparency in order to strengthen compliance with environmental criminal law. In addition, accessory penalties imposed on legal persons under this Directive could include an obligation on companies to install due diligence schemes for enhancing compliance with environmental standards, which also contributes to prevention of further environmental criminal offences. Moreover, Member States could consider establishing a fund to support prevention measures in respect of environmental criminal offences and their devastating consequences.*

- (60) 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 sentencing of those offences. In particular, the shortage of resources is capable of preventing authorities from taking any action or limiting their enforcement actions, allowing offenders to escape liability or to receive a sentence that does not correspond to the gravity of the criminal offence. Therefore, minimum criteria concerning resources and enforcement powers should be established.



- (61) The effective functioning of the enforcement chain depends on a range of specialist skills. As the complexity of the challenges posed by environmental criminal offences and the technical nature of such offences require a multidisciplinary approach, a high level of legal knowledge and technical expertise, ***financial support***, as well as a high level of training and specialisation within all relevant competent authorities, are necessary. Member States should provide training appropriate to the functions of those in charge of detecting, investigating, prosecuting or adjudicating environmental crime. ***Where appropriate, Member States should, taking into account their constitutional traditions and structure of their legal systems, as well as other circumstances, including the size of the Member State concerned, assess the need to increase the level of specialisation of such authorities in the area of environmental criminal offences, in accordance with national law. Where the Member State concerned is small and has only a limited number of competent authorities, the assessment might conclude that, in view of that limited number, specialisation is not possible or advisable. In particular,*** to maximise the professionalism and effectiveness of the enforcement chain, Member States should also consider assigning specialised investigation units, prosecutors and 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.

- (62) 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 their competent authorities involved in administrative and criminal enforcement, including all authorities exercising preventive, penal and remedial functions.
- (63) In accordance with applicable rules, Member States should also cooperate between them through Union agencies, in particular Eurojust and Europol, as well as with Union bodies, including the European Public Prosecutor's Office and the European Anti-Fraud Office, in their respective areas of competence. *Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, such cooperation should be provided to ensure effective action against the criminal offences defined in this Directive, and include technical and operational assistance provided, where appropriate, by Eurojust to the national competent authorities as needed by those authorities to coordinate their investigations. The Commission could, where appropriate, provide assistance. Such assistance should not entail the participation of the Commission in the investigation or prosecution procedures of individual criminal cases conducted by the national competent authorities and should not be understood as including financial support or any other budgetary commitment by the Commission.*

- (64) *Member States should ensure that information on persons convicted for the criminal offences defined in this Directive is exchanged between national competent authorities in accordance with Council Framework Decision 2009/315/JHA<sup>16</sup>.*

- (65) To ensure a coherent approach to combatting environmental crime, Member States should adopt, publish, **implement** and periodically review a national strategy on combatting environmental criminal offences, establishing objectives, priorities and the corresponding measures and resources needed. *That national strategy should address, in particular, the objectives and priorities of national policy in the area of environmental crime, the methods of coordination and cooperation between the competent authorities, the procedures and mechanisms for regular monitoring and evaluation of the results achieved, and the assistance of European networks working on matters directly relevant to combatting environmental criminal offences and related infringements. It should be possible for Member States to determine the appropriate form for that strategy which could take into account their constitutional traditions in terms of separation of powers and competences, and be either sectoral or a part of a broader strategic document. Irrespective of whether Member States provide for the adoption of one or more strategies, their overall content should encompass the territory of the entire Member State.*

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<sup>16</sup> *Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).*

- (66) To effectively tackle the environmental criminal offences defined in this Directive, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable *statistical* data on those *offences*. *Member States should therefore ensure that an adequate system is in place for the recording, production and transmission of existing statistical data on the offences defined in this Directive. Those statistical data should be used by Member States* to serve the strategic and operational planning of enforcement activities, *to analyse the scale of and trends in environmental criminal offences*, as well as for providing information to citizens. Member States should *transmit* to the Commission relevant statistical data on environmental *crime proceedings, extracted from data that already exist at a centralised or decentralised level within the whole Member State*. The Commission should regularly assess and publish in a report the results of its assessment based on the statistical data transmitted by the Member States.

- (67) The statistical data transmitted under this Directive on environmental criminal offences should be comparable between the Member States and extracted 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 establish the standard format for the transmission of statistical data. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>17</sup>.
- (68) *The standard format for the transmission to the Commission of statistical data on types and levels of penalties, including information on the related offence categories, in accordance with this Directive should be established in accordance with the committee procedure provided for in this Directive.*

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<sup>17</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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (69) 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.

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- (70) 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 not bound by it or subject to its application.

- (71) *This Directive aims to amend and expand the provisions of Directive 2008/99/EC. Since the amendments to be made are substantial in number and nature, Directive 2008/99/EC, should, in the interests of clarity, be replaced in its entirety in relation to the Member States bound by this Directive.*
- (72) Directive 2005/35/EC of the European Parliament and of the Council<sup>18</sup> was supplemented by Directive 2009/123/EC with provisions on criminal offences and penalties for ship-source discharges of polluting substances. Such offences and penalties should fall within the scope of this Directive. Therefore, for Member States **bound by** this Directive, Directive 2009/123/EC should be replaced. *That replacement should be without prejudice to the obligation of those Member States with regard to the date for transposition of that Directive into national law. Accordingly, with regard to the Member States bound by this Directive, references to those provisions of Directive 2005/35/EC added or replaced by Directive 2009/123/EC should be construed as references to this Directive. Member States not bound by this Directive should remain bound by Directive 2005/35/EC as amended by Directive 2009/123/EC.*

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<sup>18</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, including criminal penalties, for pollution offences (OJ L 255, 30.9.2005, p. 11).

(73) Since the objectives of this Directive, namely to provide common definitions of environmental criminal offences and the availability of effective, dissuasive and proportionate criminal penalties for serious offences, cannot be sufficiently achieved by the Member States but can rather, by reason, *inter alia*, of the cross-border damage which can be caused to the environment by the unlawful conduct concerned and by reason of scale and effects of the response needed, 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 those objectives.



- (74) The obligations under this Directive are without prejudice to Union law on procedural rights in criminal proceedings and Member States should ensure that the procedural rights of suspected or accused persons in criminal proceedings are fully respected.
- (75) This Directive respects the fundamental rights and observes the principles as recognised in particular by the Charter, 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 with regard to the definition of criminal offences and penalties in order to protect the environment more effectively, *as well as with regard to measures to prevent and combat environmental crime and to effectively enforce Union environmental law*.

## Article 2

### Definitions

1. *The terms used in this Directive for the purpose of describing conduct listed in Article 3(2) shall be construed, where applicable, in accordance with definitions provided for in Union law as referred to in Article 3(1), point (a).*
2. For the purposes of this Directive, the following definitions apply:
  - (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;
  - (b) *‘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, 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 Directive 92/43/EEC or for which a site is listed as a site of Community importance in accordance with Article 4(2) of Directive 92/43/EEC;*
  - (c) ‘ecosystem’ means a dynamic complex of plant, animal, fungi and microorganism communities and their non-living environment, interacting as a functional unit, and includes habitat types, habitats of species and species populations.

Article 3  
Criminal offences

1. *Member States shall ensure that conduct listed in paragraphs 2 and 3 of this Article, where it is intentional, and conduct referred to in paragraph 4 of this Article, where it is carried out with at least serious negligence, constitutes a criminal offence where that conduct is unlawful.*

*For the purpose of this Directive, conduct shall be unlawful where it breaches:*

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

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

2. Member States shall ensure that the following conduct constitutes a criminal offence where it is **■** unlawful and intentional:

- (a) the discharge, emission or introduction of a quantity of materials or substances, **energy** or ionising radiation, into air, soil or water which causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to **an ecosystem**, animals or plants;
- (b) the placing on the market, ***in breach of a prohibition or another requirement aimed at protecting the environment***, of a product ***the use of*** which ***on a larger scale, namely the use of the product by several users, regardless of their number, results in the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water and*** causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to **an ecosystem**, animals or plants;

- (c) the manufacture, placing *or making available* on the market, *export* or use of substances, whether on their own, in mixtures or in articles, including their incorporation into articles, where such *conduct causes or is likely to cause the death of, or serious injury to, any person, substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants and:*
- (i) is restricted pursuant to Title VIII of and Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>19</sup>;
- (ii) is prohibited pursuant to Title VII of Regulation (EC) No 1907/2006;
- (iii) is not in compliance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council<sup>20</sup>;

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<sup>19</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>20</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).

- (iv) is not in compliance with Regulation (EU) No 528/2012 of the European Parliament and of the Council<sup>21</sup>;
  - (v) is not in compliance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council<sup>22</sup>; or
  - (vi) is prohibited pursuant to Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council<sup>23</sup>; ■
- (d) *the manufacture, use, storage, import or export of mercury, mercury compounds, mixtures of mercury, and mercury-added products where such conduct is not in compliance with the requirements set out in Regulation (EU) 2017/852 of the European Parliament and of the Council<sup>24</sup> and causes or is likely to cause the death of, or serious injury to, any person, substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants;*
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<sup>21</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).

<sup>22</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>23</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>24</sup> **Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 (OJ L 137, 24.5.2017, p. 1).**

- (e) the execution of projects within the meaning of Article 1(2)(a), as referred to in Article **4(1) and (2)**, of Directive 2011/92/EU of the European Parliament and of the Council<sup>25</sup>, where such conduct is carried out without a development consent **and** causes or is likely to cause substantial damage to the ***quality of air or soil, or the quality or status of water, or substantial damage to an ecosystem, animals or plants***;
- (f) the collection, transport **or treatment** of waste, the supervision of such operations and the after-care of disposal sites, including action taken as a dealer or a broker, where **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>26</sup> and **it concerns** a non-negligible quantity of such waste; **or**
  - (ii) concerns waste other than that referred to in point (i) and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to ***an ecosystem***, animals or plants;

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<sup>25</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>26</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).

- (g) the shipment of waste, within the meaning of Article 2, point (26), of Regulation (EU) 2024/ ... of the European Parliament and of the Council<sup>27+</sup>, where such conduct **concerns** a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
- (h) the recycling of ships falling within the scope of Regulation (EU) No 1257/2013, where such conduct is not in compliance with the requirements **referred to in** Article 6(2), point (a), **of that Regulation**;

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<sup>27</sup> Regulation (EU) 2024/... of the European Parliament and of the Council of xx xxxx 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006 (OJ ...).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS No 84/23 (2021/0367(COD)), and insert the number, date and OJ reference of that Regulation in the footnote.



- (i) the ship-source **discharge** of polluting substances *falling within the scope of* Article 3 of Directive 2005/35/EC into any area referred to in Article 3(1) of that Directive, except where *such* ship-source **discharge** satisfies the conditions for exceptions set out in Article 5 of that Directive, *which causes or is likely to* cause deterioration in the quality of water *or damage to the marine environment*;
- (j) 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, *where such conduct and such dangerous activity, substance or mixture fall within the scope of* Directive 2012/18/EU of the European Parliament and of the Council<sup>28</sup> *or of* Directive 2010/75/EU of the European Parliament and of the Council<sup>29</sup>, *and such conduct* causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to *an ecosystem*, animals or plants;

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<sup>28</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 (OJ L 197, 24.7.2012, p. 1).

<sup>29</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).

- (k) *the construction, operation and dismantling of an installation, where such conduct and such an installation fall within the scope of Directive 2013/30/EU of the European Parliament and of the Council<sup>30</sup>, and such conduct causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants;*
- (l) *the manufacture, production, processing, handling, use, holding, storage, transport, import, export or disposal of radioactive material **or radioactive substances, where such conduct and such a material or substances fall** within the scope of Council Directives 2013/59/Euratom<sup>31</sup>, 2014/87/Euratom<sup>32</sup> or 2013/51/Euratom<sup>33</sup>, **and such conduct** causes or is likely to cause the death of, or serious injury, to any person or substantial damage to the quality of air, soil or water, or substantial damage to **an ecosystem**, animals or plants;*

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<sup>30</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).*

<sup>31</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).

<sup>32</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).

<sup>33</sup> 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).

- (m) the abstraction of surface water or groundwater *within the meaning of Directive 2000/60/EC of the European Parliament and of the Council*<sup>34</sup>, where such conduct causes or is likely to cause substantial damage to the ecological status or ecological potential of surface water bodies or to the quantitative status of groundwater bodies;
- (n) the killing, destruction, taking of, possession, sale or offering for sale of a specimen or specimens of a species of wild fauna or flora listed in Annex IV, *or* in Annex V where species in that Annex are subject to the same measures as those adopted for species in Annex IV, to Council Directive 92/43/EEC<sup>35</sup> and of a specimen or specimens of the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council<sup>36</sup>, except where such conduct concerns a negligible quantity of such specimens;

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<sup>34</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).*

<sup>35</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>36</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).

- (o) the trade of a specimen or specimens, or parts or derivatives thereof, of a species of wild fauna or flora, listed in Annexes A and B to Council Regulation (EC) No 338/97<sup>37</sup>, *and import of a specimen or specimens, or parts or derivatives thereof, of such species listed in Annex C to that Regulation*, except where such conduct concerns a negligible quantity of such specimens;
- (p) the placing or making available on the Union market *or the export from the Union market of relevant commodities or relevant products, in breach of the prohibition set out in Article 3* of Regulation (EU) 2023/1115, except where such conduct concerns a negligible quantity; ■

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<sup>37</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).

- (q) any conduct which causes the deterioration of a habitat within a protected site, *or the disturbance of animal species listed in Annex II, point (a), to Directive 92/43/EEC* within a protected site, within the meaning of Article 6(2) of *that* Directive ■ , where such deterioration *or disturbance* is significant;

- (r) *the bringing into the territory of the Union, placing on the market, keeping, breeding, transporting, using, exchanging, permitting to reproduce, growing or cultivating, releasing into the environment*, or the spreading of invasive alien species of Union concern, where such conduct breaches:
- (i) restrictions set out in Article 7(1) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council<sup>38</sup> *and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants*; or
- (ii) a condition of a permit issued under Article 8 of Regulation (EU) No 1143/2014 or of an authorisation granted under Article 9 of that Regulation and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to *an ecosystem*, animals or plants;

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<sup>38</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).

- (s) the production, placing on the market, import, export, use, **■** or release of ozone depleting substances, whether alone or as mixtures, as *referred to* in Article 2, *point (a)*, of Regulation 2024/... of the European Parliament and of the Council<sup>39+</sup>, or the production, placing on the market, import, export or use of products and equipment, and parts thereof, containing ozone-depleting substances or whose functioning relies upon those substances *as referred to in Article 2(b) of that Regulation*;
- (t) the production, placing on the market, import, export, use, **■** or release of fluorinated greenhouse gases, whether alone or as mixtures, as *referred to* in Article 2, *point (a)*, of Regulation 2024/... of the European Parliament and of the Council<sup>40++</sup> or the production, placing on the market, import, export or use of products and equipment, and parts thereof, containing fluorinated greenhouse gases or whose functioning relies upon those gases *as referred to in Article 2, point (b), of that Regulation, or the putting into operation of such products and equipment*.

**■**

<sup>39</sup> Regulation (EU) 2024/... of the European Parliament and of the Council of xx xxxx 2024 on substances that deplete the ozone layer, and repealing Regulation (EC) No 1005/2009 (OJ ...).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS No 61/23 (2022/0100(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

<sup>40</sup> Regulation (EU) 2024/... of the European Parliament and of the Council of xx xxxx 2024 on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014 (OJ ...).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS No 60/23 (2022/0099(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

3. *Member States shall ensure that criminal offences relating to conduct listed in paragraph 2 constitute qualified criminal offences if such conduct causes:*
- (a) *the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or*
  - (b) *widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water.*
4. Member States shall ensure that the conduct listed in paragraph 2, points (a) to (d), points (f) and (g), points (i) to (q), **point (r)**(ii), and points (s) and (t), constitutes a criminal offence where that conduct is unlawful and carried out with at least serious negligence.
5. *In addition to the criminal offences relating to conduct listed in paragraph 2, Member States may, in accordance with their national law, provide for additional criminal offences in order to protect the environment.*



6. Member States shall ensure that, *in assessing* whether the damage or likely damage is substantial, *as regards* conduct listed in paragraph 2, points (a) to (e), *point (f)(ii)*, points (j) to (m), and point (r), *one or more of the following elements is 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) the extent of the damage;
- (d) the reversibility of the damage.

■

7. Member States shall ensure that, *in assessing* whether conduct listed in paragraph 2, points (a) to (e), *point (f)(ii)*, points (i) to (m), and point (r), is likely to cause damage to the quality of air or soil, or the quality *or status* of water, or to *an ecosystem, animals or plants, one or more of the following elements is taken into account, where relevant*:
- (a) the conduct relates to an activity which is considered to be 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 a regulatory threshold, value or another mandatory parameter set out in *Union or national law referred to in paragraph 1, second subparagraph*, points (a) and (b), or in an authorisation issued for the relevant activity is exceeded;
  - (c) whether the material or substance is classified as dangerous, hazardous or otherwise listed as harmful to the environment or human health.

8. Member States shall ensure that *in assessing* whether a quantity is negligible or non-negligible *for the purposes of* paragraph 2, point (f)(i), and points (g), (n), (o) and (p), *one or more of the following elements is taken into account, where relevant*:

- (a) the number of items concerned;
- (b) the extent to which *a* regulatory threshold, value or another mandatory parameter *set out in Union or national law referred to in paragraph 1, second subparagraph, points (a) and (b)*, is exceeded;
- (c) the conservation status of the fauna or flora species concerned;
- (d) the cost of restoration of the environment, *where it is feasible to assess that cost*.

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## Article 4

### Inciting, aiding and abetting, and attempt

1. Member States shall ensure that inciting, and aiding and abetting the commission of a criminal offence covered by Article 3(2) *and* (3) is punishable as a criminal offence.
2. Member States shall ensure that an attempt to commit a criminal offence covered by Article 3(2), points (a) to (*d*), points (f) and (g), points (i) to (m), and points (o), (p), (r), (s) and (t) ■ , is punishable as a criminal offence.

## Article 5

### Penalties for natural persons

1. Member States shall take the necessary measures to ensure that criminal 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:
  - (a) criminal offences covered by Article 3(2), *points (a) to (d), and points (f), (j), (k), (l) and (r)*, are punishable by a maximum term of imprisonment of at least ten years if they cause **■ the death ■** of any person;
  - (b) criminal *offences covered by Article 3(3) are punishable by a maximum term of imprisonment of at least eight years;*
  - (c) criminal *offences covered by Article 3(4), where that paragraph refers to Article 3(2), points (a) to (d), and points (f), (j), (k) and (l), are punishable by a maximum term of imprisonment of at least five years if they cause the death of any person;*

- (d) criminal offences covered by Article 3(2), points (a) to (l), and points (p), (s) **and** (t), are punishable by a maximum term of imprisonment of at least **five** years;
- (e) criminal offences covered by Article 3(2), points (m), (n), (o), (q) **and** (r), are punishable by a maximum term of imprisonment of at least **three** years.

3. Member States shall take the necessary measures to ensure that natural persons who have committed criminal offences referred to in Articles 3 and 4 may be subject to accessory *criminal or non-criminal* penalties or measures which *may* include the following:
- (a) an obligation to:
    - (i) restore the environment within a given *period, if the damage is reversible, or*
    - (ii) *pay compensation for the damage to the environment, if the damage is irreversible or the offender is not in a capacity to carry out such restoration;*
  - (b) fines *that are proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the natural person concerned and, where relevant, that are determined taking due account of the gravity and duration of the damage caused to the environment and of the financial benefits generated from the offence;*

- (c) ■ exclusion from access to public funding, including tender procedures, grants, *concessions and licences*;
- (d) disqualification from *holding, within a legal person, a leading position* of the same type used for committing the offence;
- (e) withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence;
- (f) temporary bans on running for ■ public office;
- (g) *where there is a public interest, following a case-by-case assessment, publication of all or part of the judicial decision that relates to the criminal offence committed and the penalties or measures imposed, which may include the personal data of convicted persons only in duly justified exceptional cases.*



## Article 6

### Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for criminal offences referred to in Articles 3 and 4 where such offences have been committed for the benefit of those legal persons by any person who has a leading position within the legal person concerned, acting either individually or as part of an organ of that legal person, based on:
  - (a) a power of representation of the legal person;
  - (b) an authority to take decisions on behalf of the legal person; *or*
  - (c) an authority to exercise control within the legal person.
2. Member States shall take the necessary measures to 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 a criminal 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 of this Article shall not preclude criminal proceedings against natural persons who commit, incite or are accessories to the criminal offences referred to in Articles 3 and 4.

## Article 7

### Penalties for legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(1) *or* (2) is punishable by effective, proportionate and dissuasive *criminal or non-criminal penalties or measures*.
2. Member States shall take the necessary measures to ensure that penalties or measures for legal persons *held* liable pursuant to Article 6(1) *or* (2) for the criminal offences referred to in Articles 3 and 4 shall include *criminal or non-criminal fines and may include other criminal or non-criminal penalties or measures, such as:*

■

(a) ■ an obligation to:

- (i) restore the environment within a given period, *if the damage is reversible, or*
- (ii) *pay compensation for the damage to the environment, if the damage is irreversible or the offender is not in a capacity to carry out such restoration;*

- (b) exclusion from entitlement to public benefits or aid;
- (c) ■ exclusion from access to public funding, including tender procedures, grants, *concessions and licences*;
- (d) temporary or permanent disqualification from the practice of business activities;
- (e) withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence;
- (f) placing under judicial supervision;
- (g) judicial winding-up;
- (h) ■ closure of establishments used for committing the offence;
- (i) an obligation to establish due diligence schemes for enhancing compliance with environmental standards;
- (j) *where there is a public interest*, publication of *all or part of* the judicial decision relating to the *criminal offence committed and the* penalties or measures *imposed*, *without prejudice to rules on privacy and the protection of personal data*.

■

3. *Member States shall take the necessary measures to ensure that, at least for legal persons held liable pursuant to Article 6(1), criminal offences covered by Article 3(2) are punishable by criminal or non-criminal fines, the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:*
- (a) *for criminal offences covered by Article 3(2), points (a) to (l), and points (p), (s) and (t):*
    - (i) *5% of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding that of the decision to impose the fine, or*
    - (ii) *an amount corresponding to EUR 40 000 000;*
  - (b) *for criminal offences covered by Article 3(2), points (m), (n), (o), (q) and (r):*
    - (i) *3% of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding that of the decision to impose the fine, or*
    - (ii) *an amount corresponding to EUR 24 000 000.*

*Member States may establish rules for cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the offence was committed, or in the business year preceding that of the decision to impose the fine.*

4. Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 6 *for the criminal offences covered by Article 3(3) are* punishable by *more severe criminal or non-criminal* penalties or measures than those applicable for the criminal offences covered by Article 3(2).

## Article 8

### Aggravating circumstances

To the extent that the following circumstances do not 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 criminal offences referred to in Articles 3 and 4, *one or more of* the following circumstances can, *in accordance with national law*, be regarded as an aggravating circumstance:

■

- (a) the offence caused the destruction of, or irreversible or long-lasting substantial damage to, an ecosystem;■
- (b) the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA<sup>41</sup>;

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<sup>41</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (c) the offence involved the use *by the offender* of false or forged documents;
- (d) the offence was committed by a public official when performing his or her duties;
- (e) the offender *has previously been convicted by a final judgment of offences of the same nature as those referred to in Article 3 or 4*;
- (f) the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly, *to the extent that such benefits or expenses can be determined*;

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

*The aggravating circumstance referred to in point (a) of this Article shall not apply to the criminal offences covered by Article 3(3).*



## Article 9

### Mitigating circumstances

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

- (a) the offender restores the environment to its previous condition, ***where such restoration is not an obligation under Directive 2004/35/EC, or, before the start of a criminal investigation, takes steps to minimise the impact and extent of the damage or remediates the damage;***
- (b) the offender provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
  - (i) identify or bring to justice other offenders;
  - (ii) find evidence.

## Article 10

### Freezing and confiscation

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

*Member States bound by Directive 2014/42/EU of the European Parliament and of the Council<sup>42</sup> shall take the measures referred to in the first paragraph in accordance with that Directive.*

## Article 11

### Limitation periods

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and *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.

Member States shall take the necessary measures to provide for a limitation period that enables the enforcement of penalties imposed following a final conviction for criminal offences referred to in Articles 3 and 4 for a sufficient period of time after that conviction.

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<sup>42</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).

2. The limitation period referred to in paragraph 1, first subparagraph, shall be as follows:

- (a) at least ten years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least ten years ■ ;
- (b) at least *five* years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least five years ■ ;
- (c) at least *three* years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least three years.

■

3. The limitation period referred to in paragraph 1, second subparagraph, shall be as follows:
- (a) at least ten years from the date of the final conviction in the following cases:
    - (i) *a penalty of imprisonment of more than five years, or alternatively*
    - (ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of imprisonment of at least ten years;
  - (b) at least five years from the date of the final conviction in the following cases:
    - (i) *a penalty of imprisonment of more than one year, or alternatively*
    - (ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of imprisonment of at least *five* years; *and*

(c) at least three years from the date of the final conviction in the following cases:

(i) *a penalty of imprisonment of up to one year, or alternatively*

(ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of imprisonment of at least *three* years.

■

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

Article 12  
Jurisdiction

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

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

- (a) *the offender is a habitual resident in its territory;*
- (b) the offence is committed for the benefit of a legal person established in its territory;
- (c) the offence is committed against one of its nationals or its habitual residents;
- (d) the offence has created a severe risk for the environment on its territory.

Where a criminal offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State, those Member States shall cooperate to determine which Member State is to conduct the criminal proceedings. The matter shall, where appropriate and in accordance with Article 12(2) of Council Framework Decision 2009/948/JHA<sup>43</sup>, be referred to Eurojust.

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

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<sup>43</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).

### Article 13

#### Investigative tools

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

### Article 14

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

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

**■**



## Article 15

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

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

## Article 16

### Prevention

Member States shall take appropriate measures, such as information and awareness-raising campaigns *targeting relevant stakeholders from the public and private sector, as well as* research and education programmes, which *aim to reduce* environmental criminal offences and the risk of environmental crime. Where appropriate, Member States shall act in cooperation with *such* stakeholders.

## Article 17

### Resources

Member States shall ensure that national authorities which detect, investigate, prosecute or adjudicate environmental criminal offences have a sufficient number of qualified staff and sufficient financial, technical and technological resources for the effective performance of their functions related to the implementation of this Directive. *Member States shall, taking into account the constitutional traditions and structure of their legal system, as well as other national circumstances, assess the need to increase the level of specialisation of those authorities in the area of environmental criminal law, in accordance with national law.*

## Article 18

### Training

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

## Article 19

### Coordination and cooperation between competent authorities within a Member State

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

Such mechanisms shall be aimed at least at:

- (a) ensuring common priorities and understanding of the relationship between criminal and administrative enforcement;
- (b) exchange of information for strategic and operational purposes, ***within the limits set out in applicable Union and national law***;
- (c) consultation in individual investigations, ***within the limits set out in applicable Union and national law***;
- (d) the exchange of best practices;
- (e) providing assistance to European networks of practitioners working on matters relevant to combatting environmental criminal offences and related infringements.

The mechanisms referred to in the first paragraph may take the form of specialised coordination bodies, memoranda of understanding between competent authorities, national enforcement networks and joint training activities.

## *Article 20*

### *Cooperation between Member States and the Commission, and Union bodies, offices or agencies*

*Where environmental criminal offences are suspected to be of a cross-border nature, the competent authorities of the Member States concerned shall consider referring the information related to those offences to appropriate competent bodies.*

*Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, the Member States, Eurojust, Europol, the European Public Prosecutor's Office, the European Anti-Fraud Office and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3 and 4. To that end, Eurojust shall, where appropriate, provide the technical and operational assistance needed by the competent national authorities to facilitate coordination of their investigations. The Commission may, where appropriate, provide assistance.*

## Article 21

### National strategy

1. *Member States shall establish and publish a national strategy on combatting environmental criminal offences by ... [three years from the date of entry into force ■ of this Directive] ■*

Member States shall *take measures to* implement *their* national strategy *without undue delay. The national strategy shall ■* address at least the following:

- (a) the objectives and priorities of national policy in the area of environmental criminal offences, *including in cross-border cases, and arrangements for regular evaluation of whether they are being attained;*

- (b) the roles and responsibilities of all the competent authorities involved in combatting environmental criminal offences, *including as regards coordination and cooperation between the national competent authorities as well as with the competent Union bodies and as regards providing assistance to European networks working on matters directly relevant to combatting those offences, including in cross-border cases;*

■

- (c) ■ how specialisation of enforcement professionals will be supported, *an estimation of the resources allocated to combat environmental crime and an evaluation of future needs in that regard.*

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2. Member States shall ensure that their national strategy is reviewed and updated at regular intervals which are no longer than five years, on the basis of a risk-analysis-based approach, in order to take account of relevant developments and trends and related threats regarding environmental crime.

Article 22  
Statistical data

1. Member States shall *ensure that a system is in place for the recording, production and provision of anonymised* statistical data *on the reporting, investigative and judicial stages in relation to the criminal offences referred to in Articles 3 and 4 in order* to monitor the effectiveness of their measures to combat environmental criminal offences.
2. The statistical data referred to in paragraph 1 shall, *as a minimum, include existing data on:*
  - (a) *the number of criminal offences registered and adjudicated by the Member States;*
  - (b) *the number of dismissed court cases, including on the grounds of expiry of the limitation period for the criminal offence concerned;*
  - (c) *the number of natural persons that are:*
    - (i) *prosecuted,*
    - (ii) *convicted;*
  - (d) *the number of legal persons that are:*
    - (i) *prosecuted,*
    - (ii) *convicted or fined;*
  - (e) *the types and levels of penalties imposed.*

■



3. Member States shall ensure that a consolidated review of their statistics is *published at least every three years*.
4. Member States shall annually transmit to the Commission the statistical data referred to in paragraph 2 of this Article in the standard format referred to in Article 23.
5. The Commission shall, *at least every three years*, publish a report based on the statistical data transmitted by the Member States. The report shall be published for the first time three years after the standard format referred to in Article 23 has been established.

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## Article 23

### Implementing powers

1. By ... [three years from the date of the entry into force of this Directive], the Commission shall establish, by means of implementing acts, a standard, easily accessible and comparable format for the transmission of statistical data referred to in Article 22(4). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).
2. The standard format for the transmission of statistical data shall comprise the following elements:
  - (a) a classification of environmental criminal offences;
  - (b) counting units;
  - I**
  - (c) a reporting format.

A common understanding of the elements referred to in the first subparagraph shall be ensured.

## Article 24

### 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 25

### Evaluation, reporting *and review*

1. By ... [ **I** four years from the date of entry into force *of this Directive*], the Commission shall 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.

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2. By ... [ ■ seven years from the date of the entry into force *of this Directive*], the Commission shall carry out an evaluation of the impact of this Directive *addressing the need to update the list of environmental criminal offences referred to in Articles 3 and 4* and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of that report, *including a summary of the implementation of this Directive and actions taken in accordance with Articles 16 to 21, and statistical data, with particular attention given to cross-border cooperation. Where necessary, that report shall be accompanied by a legislative proposal.*
3. *The Commission shall regularly consider if there is a need to amend the criminal offences covered by Article 3(2).*

## Article 26

### Replacement of Directive 2008/99/EC

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

## Article 27

### **Replacement** of Directive 2009/123/EC

Directive 2009/123/EC 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*.

*With regard to the Member States bound by this Directive, references to those provisions of Directive 2005/35/EC added or replaced by Directive 2009/123/EC shall be construed as references to this Directive.*

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

## Article 28

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [two years *from the date of entry into force of this Directive*]. They shall immediately inform the Commission thereof. ■

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication.  
***The methods of making such reference shall be laid down by Member States.***

2. 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 29

### Entry into force

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

## Article 30

### Addressees

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

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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