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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the environment through criminal law and replacing Directive 2008/99/EC [14459/21 - COM(2021) 851 final] - Opinion on the application of the Principles of Subsidiarity and Proportionality ¹

Delegations will find enclosed the opinion of the Irish Houses of Oireachtas on the above.

¹ The translation(s) of the opinion may be available on the Interparliamentary EU Information Exchange website (IPEX) at the following address: <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20210851.do>



Tithe an
Oireachtais
Houses of the
Oireachtas

An Comhchoiste um Chomhshaol agus Gníomhú ar son na hAeráide

An Cion Polaitiúil i ndáil leis an

TREOIR Ó PHARLAIMINT NA hEORPA AGUS ÓN gCOMHAIRLE maidir
leis an gcomhshaol a chosaint tríd an dlí coiriúil agus lena n-
ionadaítear Treoir 2008/99/CE

Márta 2021

Joint Committee on Environment and Climate Action

Political Contribution on

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

March 2021

33/JCECA/07

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1. Introduction

1. The Oireachtas Joint Committee on Environment and Climate Action (“the Committee”) considers *COM(2021)851 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* to be significantly important to Ireland and the EU.

2. Scrutiny by the Committee

2. The Committee first considered the proposal at its meeting on 15 February 2022. The Committee further considered the proposal on 22 February 2022.

3. Decision of the Committee

3. On 22 February 2022, the Committee agreed to draft a political contribution and to forward a copy to Eamon Ryan T.D. Minister for Environment, Climate and Communications, Ursula von der Leyen, President of the European Commission, Roberta Metsola MEP, President of the European Parliament, and Charles Michel, President of the European Council.
4. The Committee further agreed that, in the interests of inter-parliamentary cooperation on EU matters, a copy of this report be forwarded to the appropriate Committee in the National Parliament of each EU Member State and to Ireland’s MEPs.

4. Opinion of the Joint Committee

5. Having considered the proposal in detail, the Committee makes the following observations: -
- a. The Committee welcomes strengthened directives and legislation around environmental crime and crimes against biodiversity and habitat loss. The Committee also notes that the proposal intends to improve co-operation between Member States with regard to environmental crime by facilitating a more harmonised approach to crime and sanctions.
 - b. The Committee is concerned regarding that definitions within the proposal are too vague particularly around what is “deliberate” and what is “negligent” and that this could serve to reduce effective enforcement, particularly as ‘intent’ in terms of ‘deliberate’ can be hard to prove in law and Members also commented in relation to the precautionary principle. The Committee notes, however, that the proposal is at an early stage in the process. The Committee encourages further robust discussion to provide clarity around definitions to ensure a harmonised view is reached for all Members States and to ensure the proposal is workable in practice.
 - c. The Committee notes the provision to criminalise a failure to carry out proper environmental impact assessments in certain circumstances and acknowledges that additional public resources will be needed to support the application of this.
 - d. Given the complexity of the proposal, it is likely that a number of Government Departments and Agencies will be needed for the effective enforcement of such laws. The Committee agrees that a lead agency with primary responsibility for coordinating enforcement may be warranted in Member States.
 - e. The Committee also notes that given Ireland’s common law system it is possible for Ireland to not participate in this measure should it prove

impossible to reconcile with our common law criminal justice system and if the proposal is of lesser effect than our own national legislation.

Recommendations of the Joint Committee

6. The Committee recommends that: -

- a. It should be noted that legislation drafted for one jurisdiction may not have the same impact in another. Every effort should be made throughout negotiations to ensure clarity in the definitions within the proposal to ensure workable and cohesive practices across Member States and avoid any loopholes or ambiguities which could serve to limit effective prosecution.
- b. It is essential that Ireland's common law system be taken into account throughout negotiations to best ensure that the legislation is at least as strong and effective as national law and Ireland has the option to participate as intended.
- c. A discussion be encouraged regarding the potential for a lead agency responsible for coordinating the enforcement of environmental crime legislation across all Member States.



Brian Leddin, T.D.
Cathaoirleach
March 2022

APPENDIX 1 - Membership

Membership of the Joint Committee on Environment and Climate Action



Richard Bruton TD
Fine Gael



Réada Cronin
Sinn Féin



Cormac Devlin TD
Fianna Fáil



Alan Farrell TD
Fine Gael



Brian Leddin TD (Cathaoirleach)
Green Party



Darren O'Rourke TD
Sinn Féin



Christopher O'Sullivan TD



Brid Smith TD



Jennifer Whitmore TD

Fianna Fáil



Senator Lynn Boylan
Sinn Féin

Solidarity-People Before Profit



Senator Timmy Dooley
Fianna Fáil

Social Democrats



Senator Alice-Mary Higgins
Independent



Senator John McGahon
Fine Gael



Senator Pauline O'Reilly
Green Party

APPENDIX 2 – Terms of Reference of the Committee

Functions of the Committee – derived from Standing Orders [DSO 95; SSO 71]

- (1) The Select Committee shall consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—
 - (a) legislation, policy, governance, expenditure and administration of—
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
 - (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.
- (2) The Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—
 - (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
 - (b) shall be referred to the Committee by order of the Dáil.
- (3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—
 - (a) for the accountability of the relevant Minister or Minister of State, and
 - (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.
- (4) The Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—
 - (a) consents to such consideration, or
 - (b) has reported on such accounts or reports.
- (5) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—
 - (a) the Committee Stage of a Bill,
 - (b) Estimates for Public Services, or

- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.
- (6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.
- (7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.
- (8) Where the Select Committee proposes to consider—
 - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
 - (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.
- (9) The Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman

report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 94; SSO 70]

- (1) It shall be an instruction to each Select Committee that—
- (a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
 - (b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;
 - (c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)1; and
 - (d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (i) a member of the Government or a Minister of State, or
 - (ii) the principal office-holder of a State body within the responsibility of a Government Department or
 - (iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

- (2) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.