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COM(2021) 851 final

2021/0422 (COD)

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**

{SEC(2021) 428 final} - {SWD(2021) 465 final} - {SWD(2021) 466 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

The current EU legislation that provides common minimum rules to criminalise environmental crime is Directive 2008/99/EC on the protection of environment through criminal law.

The Commission evaluated the Directive in 2019/20 and published its findings in October 2020<sup>1</sup>. It found that the Directive did not have much effect on the ground: over the past 10 years the number of environmental crime cases successfully investigated and sentenced remained very low. Moreover, the sanction levels imposed were too low to be dissuasive and cross-border cooperation did not take place in a systematic manner.

The evaluation found considerable enforcement gaps in all Member States and at all levels of the enforcement chain (police, prosecution and criminal courts). It also identified deficiencies in the Member States in terms of resources, specialised knowledge, awareness, prioritisation, cooperation and information sharing, and found there were no overarching national strategies to combat environmental crime involving all levels of the enforcement chain and a multi-disciplinary approach<sup>2</sup>. Moreover, the lack of coordination between administrative and criminal law enforcement and sanctioning often hinders effectiveness.

It was also noted that the lack of reliable, accurate and complete statistical data on environmental crime proceedings in the Member States not only hampered the Commission's evaluation but also prevents national policy-makers and practitioners from monitoring the effectiveness of their measures.

Based on the evaluation findings, the Commission decided to revise the Directive. The 2021 Commission Work Programme schedules a legislative proposal for revision of the Directive<sup>3</sup> in December 2021.

It is proposed to replace Directive 2008/99/EC. This proposal is accompanied by a Communication<sup>4</sup> explaining its policy objectives. To address the problems identified, the proposal has six objectives.

1. Improve the effectiveness of investigations and prosecution by updating the scope of the Directive.
2. Improve the effectiveness of investigations and prosecutions by clarifying or eliminating vague terms used in the definitions of environmental crime.
3. Ensure effective, dissuasive and proportionate sanction types and levels for environmental crime.
4. Foster cross-border investigation and prosecution.

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<sup>1</sup> Commission staff working document, Evaluation of 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 (Environmental Crime Directive), SWD (2020) 259 final of 28 October 2020 ([part I](#), [part II](#), [executive summary](#)).

<sup>2</sup> Evaluation report, p. 32-33. See p. 33 of the Evaluation report for further details on sources.

<sup>3</sup> 2021 Commission Work Programme, [https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents\\_en](https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents_en).

<sup>4</sup> Communication to the European Parliament and the Council on stepping up the fight against environmental crime, COM(2021) 814 of 14 December 2021

5. Improve informed decision-making on environmental crime through improved collection and dissemination of statistical data.
6. Improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning.

- **Consistency with existing policy provisions in the policy area**

The objectives of this proposal are consistent with the following policy and legislative provisions:

- Council Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union
- Directive 2014/41/EU regarding the European Investigation Order in criminal matters
- Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties
- Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings
- Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States
- Regulation (EU) 2016/794 on Europol
- Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')
- Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)
- Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law
- Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.
- **Consistency with other EU policies**

Criminal law is one part of a comprehensive EU strategy to protect and improve the status of the environment, a priority for the European Commission. The Green Deal communication and the biodiversity strategy set out a whole range of environmental protection measures that reinforce and influence each other, bringing them together in a holistic approach. Criminal law measures come in as a last resort when other measures have not sufficed to ensure compliance. Thus, environmental indicators on e.g. the degree of air pollution or biodiversity would measure the effectiveness of the overall strategy to improve the environment, not just the effectiveness of the new approach towards environmental crime.

In addition, the EU Security Union Strategy and the EU Strategy to tackle Organised Crime 2021-2025 include the assessment and revision of the Directive as part of the key actions identified to fight environmental crime.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

The legal basis for the proposed Directive is Article 83(2) TFEU. Article 83(2) TFEU sets out the EU's competence to establish minimum rules with regard to the definition of criminal offences and sanctions in EU policy areas which have been subject to harmonisation measures, if this is necessary for effective enforcement:

‘If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76.’

### • Subsidiarity (for non-exclusive competence)

Criminal activities related to the environment often have a cross-border dimension, while some environmental crimes usually impact several countries (for example the illicit trafficking of waste, of protected species or of wildlife products, see Section 1 – Introduction) or have cross-border effects (e.g. in the case of cross-border pollution of air, water and soil)<sup>5</sup>. Cross-border cooperation between law enforcement and judicial authorities is therefore essential.

The existing Directive aimed to provide a harmonised legal framework of criminal offences to facilitate cross-border cooperation. However, as detailed in the evaluation report, despite the progress in creating an EU-wide common set of definitions of environmental crimes and requiring more dissuasive sanction levels, Member States on their own have not reconciled their respective understandings of environmental crime within the room for manoeuvre left by the Directive. Similarly, the insufficient sanction levels in a number of Member States prevent a level playing field across the EU and the application of mutual recognition instruments (such as the European Arrest Warrant and the European Investigation Order).

There is a growing gap between the criminal justice response to environmental crime and the criminological situation on the ground. Despite the current Directive, the number of cross-border investigations and convictions in the EU for environmental crime has not grown substantially. In the meantime, in contrast, environmental crime is growing at annual rates of 5% to 7% globally<sup>6</sup>, creating lasting damage for habitats, species, people's health, and the revenues of governments and businesses.

### • Proportionality

In accordance with the principle of proportionality, as set out in Article 5(4) TEU, the proposed revision of Directive 2008/99/EC is limited to what is necessary and proportionate to adapt existing legislation on offences in this area to new threats. Measures on the use of investigative tools and information exchange are included only to the extent needed for the proposed criminal law framework to function effectively.

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<sup>5</sup> [Report on Eurojust's Casework on Environmental Crime](#) - January 2021, p. 8. See a UNEP and Interpol Rapid Response Assessment, ‘The rise of environmental crime. A growing threat to natural resources, peace, development and security’, 2016, p. 7.

<sup>6</sup> UNEP and Interpol Rapid Response Assessment, ‘The rise of environmental crime. A growing threat to natural resources, peace, development and security’, 2016, p. 7.

The proposal defines the scope of the criminal offences to cover all relevant conduct while limiting it to what is necessary and proportionate. The new directive includes new environmental offence categories to the extent required by the underlying environmental legislation. Both the offences and sanctions are limited to serious breaches of environmental law and thus respect proportionality.

- **Choice of the instrument**

In accordance with Articles 83(2), minimum rules with regard to the definition of criminal offences and sanctions in EU policy areas which have been subject to harmonisation measures may only be established by means of a Directive of the European Parliament and the Council adopted in accordance with the ordinary legislative procedure.

There is still a need for criminal sanctions to ensure effective implementation in the areas covered by the 2008 Environmental Crime Directive. Therefore, the Commission proposes to carry over the list of offences included in Article 3 of the 2008 Directive, with the necessary precisions and modifications, that includes: serious pollution offences; illegal waste management and waste shipments; the operation of installations in which dangerous activities are carried out or dangerous substances are stored or used; offences related to manufacture, production, processing, handling, use, holding, storage, transport, import, export or disposal of radioactive material; wildlife crimes, including illegal killing, destruction, possession or taking of specimens of wild fauna and flora species, illegal wildlife trafficking and habitats deterioration; illegal production, placing on the market, import, export, use, emission or release of ozone depleting substances.

The need to combat these offence categories by criminal sanctions was confirmed by the Council conclusions setting the EU's priorities for the fight against serious and organised for the European multi-disciplinary platform against criminal threats (EMPACT) 2022-2025<sup>7</sup>.

As regards waste crime in particular, the 2021 European Union Serious and Organised Crime Threat Assessment report<sup>8</sup> states that *“waste management is a lucrative and fast-developing industry, which increasingly attracts criminals. The majority of the reported waste trafficking cases involved individuals working in or operating waste management companies as managers or staff, who violate national and international legislation and standards regulating the collection, treatment and disposal of waste to maximise profits. The most successful waste traffickers are those who control the entire processing cycle, from source to destination countries. Criminals trafficking waste between different countries primarily use legal business structures to orchestrate waste crimes. Often multiple companies are owned by the same individuals or by strawpersons. The legal business structures frequently change leadership and are often terminated after a short period of activity, as a new trading entity takes over the business. Companies operating different stages in the waste cycle are often located in different jurisdictions. Waste trafficking is strongly linked to other offences such as*

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<sup>7</sup> Council conclusions setting the EU's priorities for the fight against serious and organised crime for EMPACT 2022 – 2025, 8665/21, 12 May 2021. The aim of the priority on environmental crime is: “to disrupt criminal networks involved in all forms of environmental crime, with a specific focus on waste and wildlife trafficking, as well as on criminal networks and individual criminal entrepreneurs with a capability to infiltrate legal business structures at high level or to set up own companies in order to facilitate their crimes”.

<sup>8</sup> European Union Serious and Organised Crime Threat Assessment Threat Assessment (SOCTA), A corrupting influence: the infiltration and undermining of Europe's economy and society by organised crime, Europol 2021, p. 54. For wildlife crime see p. 55f.

*document fraud, economic fraud, tax evasion, corruption, money laundering, as well as theft and the dumping of waste from illegal drug production”.*

In addition, the Commission has identified a need for criminal sanctions to ensure the effective implementation of EU policies on protection of the environment, in relation to the following offence categories currently not covered by the Directive:

- placement on the market of products which, in breach of mandatory requirements, cause substantial damage to the environment because of product’s use on larger scale;
- serious breaches of EU chemicals legislation causing substantial damage to the environment or human health;
- illegal ship recycling;
- illegal water abstraction;
- source discharge of polluting substances from ships (it is proposed that this offence category is taken over from Directive 2005/35/EC<sup>9</sup>, to consolidate the legal framework);
- illegal trade in timber;
- serious breaches of rules on introduction and spread of invasive alien species with Union concern;
- serious circumvention of requirements to do an environmental impact assessment;
- illegal production, placing on the market, import, export, use, emission or release of fluorinated greenhouse gases.

These conducts have a potential high risk to human health and the environment and can lead to particularly serious negative impacts on the environment and the society. Despite the actually occurring and potentially possible detrimental consequences, currently the enforcement of the relevant rules is not sufficiently effective. The adoption of and reliance on administrative sanctions by Member States has, to date, proven to be insufficient to ensure compliance with the rules on protection of the environment which calls for stronger measures on preventing and fighting environmental crime.

For example, as regards the EU Timber Regulation<sup>10</sup>, while all Member States have included sanctions for offenders in national legislation, the types of sanctions and maximum levels vary across Member States significantly: administrative fines and seizures can be imposed in 23 Member States, criminal fines in 16, imprisonment in 17, suspension of trade in 15 and other types of penalties in 11. Fines applicable to infringements of the EU Timber Regulation range from EUR 50 to an unlimited amount<sup>11</sup>. These discrepancies between Member States’

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<sup>9</sup> Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11–21).

<sup>10</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23–34).

<sup>11</sup> Commission Staff Working Document Fitness Check on Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation) and on Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation) 17.11.2021 SWD(2021) 328 final, p. 14.

sanction regimes applicable to violation of the EU Timber Regulation and the fact that sanctions are deemed in many cases too low to truly have a deterrent effect on illegal behaviours, coupled with uneven enforcement across the EU, bear a risk of trade diversion. Moreover, the disparities in sanction regimes and the lack of uniform implementation across Member States undermine the level playing field by putting the operators who strictly comply with the requirements at a disadvantage. This can be addressed through harmonized criminalization and through an approximation of sanction levels across the EU in the Environmental Crime Directive.

It is clear that administrative sanctions are inadequate in circumstances such as those that resulted in the murders of two forest rangers in one Member State who had been investigating problems related to illegal timber harvesting. The underline pattern of timber-related infringements are of such a serious nature that authorities must have the means of criminal enforcement to tackle them. On timber related issues, the Commission had launched an infringement procedure against that Member State concerning the lack of effective checks on operators and failure to apply appropriate sanctions. In the meantime, that Member State introduced criminal penalties for specific misconducts which were previously subject to administrative sanctions only which were insufficient to ensure compliance.

The serious breaches of prohibitions on the use of defeat devices in motor vehicles uncovered since 2015 demonstrate that even large established companies may not be deterred from infringements if they perceive that the only enforcement will be of administrative nature.

Another example relates to illegal water abstraction which contributes to serious depletion of water resources, a problem set to worsen as a result of climate change. In its 2021 Special Report on “Sustainable water use in agriculture: CAP funds more likely to promote greater rather than more efficient water use”, the Court of Auditors documents the ineffectiveness of administrative measures to address over-abstraction of water and stresses that checks are infrequent and sanctions too low to ensure effective implementation and compliance with relevant obligations<sup>12</sup>. The report refers to shortcomings in sanctioning regimes in individual Member States.<sup>13</sup>

Furthermore, a limited number of Member States have introduced sanctions applicable to developers under the Environmental Impact Assessment Directive. For example, developers are not targeted in a systematic manner in cases where they fail to undertake an environmental impact assessment for a given project or execute projects prior to finalisation of respective procedures or without proper permits. Breaches of these obligations may lead to significant negative consequences to the environment, while the existing level of sanctions do not deter sufficiently such offences.

It is essential that compliance with the EU rules on activities with impact on the environment and on environmentally sensitive goods is strengthened by the availability of criminal sanctions which demonstrate a stronger form of social disapproval compared to administrative penalties. Establishing criminal offences for serious breaches of Union rules, which irrespective of their legal basis contribute to the Union policy of protecting the environment, sets clear boundaries for types of behaviour that are considered to be particularly unacceptable and sends a message to the public and to potential offenders that competent authorities take

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<sup>12</sup> European Court of Auditors, Special report 2021, Sustainable water use in agriculture: CAP funds more likely to promote greater rather than more efficient water use, Point 62f.

<sup>13</sup> European Court of Auditors, Special report 2021, Sustainable water use in agriculture: CAP funds more likely to promote greater rather than more efficient water use, see for example Point 32.

such behaviour very seriously. This seems particularly appropriate having regard to the explicit reliance on the preventive and precautionary principles in this policy area.

Common minimum rules on definition of environmental criminal offences and sanctions would also make it possible to use more effective methods of investigation and enable more effective cooperation within and between Member States. This has been recognised as particularly important as regards combating waste and wildlife trafficking (including illegal timber trade), given the relationship with the internal market and EU trade policy.

Given the possible devastating impacts of environmental crimes on the environment and human health, it is important that potential perpetrators do not perceive parts of the EU as operating a lighter and less effective regulatory regime. The imposition of criminal sanctions for the most serious environmental misconduct will have an increased deterrent effect on potential offenders. The introduction by all Member States of criminal sanctions is therefore essential to ensure the effective implementation of Union policy on environmental protection.

With regard to the inclusion of negligent conduct within the scope of offences, it is important to stress the extent of the reliance of EU environmental rules on preventive and precautionary measures. The Treaty explicitly (Article 191 (2) TFEU) provides that environmental policy is based on these principles. The importance of a high standard of care is necessary for the conduct of activities which are inherently dangerous because of the use of hazardous materials and/or processes. In such context, negligent conduct can have major and even catastrophic repercussions, making it necessary to underline society's position that negligent conduct should be treated as sufficiently grave to be criminalised. Criminal law is intended to have a deterrent effect, and inclusion of negligence should of itself disincentivise any inclination towards such conducts, for example in order to obtain a financial gain through underinvestment or corner cutting.

The environmental acquis includes an important number of instruments, such as the Industrial Emission Directive<sup>14</sup>, the Seveso Directive<sup>15</sup>, the REACH Regulation<sup>16</sup> and waste legislation which focus on ensuring that dangerous or high risk activities and substances are treated with a high level of technical safeguards.

With regard to the frequency of occurrence of certain offences, regrettably, organised crime is recognised as undermining the management of waste<sup>17</sup>. Problems of defiance of wildlife prohibitions are also a long recognised problem, as demonstrated by the focus of the Bern Convention<sup>18</sup> on work related to combating wildlife crime, for instance. Also against this

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<sup>14</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17–119).

<sup>15</sup> Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance (OJ L 197, 24.7.2012, p. 1–37).

<sup>16</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>17</sup> European Union Serious and Organised Crime Threat Assessment Threat Assessment (SOCTA), A corrupting influence: the infiltration and undermining of Europe's economy and society by organised crime, Europol 2021, p. 54f.

<sup>18</sup> Convention on the conservation of European wildlife and natural habitats.



background and due to the nature of the relevant conduct, it is necessary that also negligent behaviour is covered by this Directive.

### **3. RESULTS OF EX POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **• Ex post evaluations/fitness checks of existing legislation**

The Commission carried out an evaluation of the current Directive in 2019/2020 (published in October 2020), which concluded that the Directive did not have much effect on the ground. The *ex post* evaluation of the Directive was guided by four main assessment criteria: (a) effectiveness (evaluation of whether the objectives of the Directive have been achieved), (b) efficiency (evaluation of whether the benefits of having and implementing the Directive justify the costs), (c) coherence (with other relevant EU criminal and environmental legislation and policies, as well as with the EU's international obligations) and (d) relevance (relevance of the Directive's original objectives in the light of current and future needs). The evaluation also took into account social and economic impacts for different stakeholder groups.

The evaluation identified six main problems that have resulted in the Directive's lack of effectiveness in practice:

1. The Directive's scope is outdated and is defined in a complex way, hindering effective investigations, prosecutions and cross-border cooperation.
2. The Directive contains several unclear definitions used for the descriptions of environmental criminal offences, which may hinder effective investigations, prosecutions and cross-border cooperation.
3. Sanction levels are not sufficiently effective and dissuasive in all Member States under the current Directive.
4. Insufficient internal and cross-border cooperation and coordination on environmental crime among Member States hinder effective investigations and prosecutions.
5. The lack of reliable, accurate and complete statistical data on environmental crime proceedings in the Member States prevents national policy-makers and practitioners from monitoring the effectiveness of their measures.
6. Ineffective enforcement chain: environmental crime is not effectively prioritised, detected, investigated, prosecuted and sanctioned due to ineffective operation of the enforcement chain. Enforcement gaps in all Member States and at all levels of the enforcement chain (inspectors, police, prosecution and criminal courts) have been identified, including a lack of resources, insufficient training and lack of specialised knowledge, a lack of awareness and prioritisation, and weak cooperation and information sharing.

Based on the findings of the evaluation, the European Commission decided to revise the Directive and conducted an impact assessment. The various steps of the impact assessment, from the definition of problems and their drivers to the identification of objectives and possible policy options, relied on the findings of the evaluation report.

#### **• Stakeholder consultations**

The Commission conducted fruitful public and targeted stakeholder consultations to benefit from external expertise and understand the concerns of the wider public. Moreover, it aimed to ensure that the options considered for the review of the Directive represent the most appropriate ways to increase its effectiveness and support the work of practitioners on the

ground. The consultations were conducted as widely as possible to receive relevant input, evidence and explanation of the relevant and actual needs of different categories of stakeholders about the six main objectives:

- Clarify and update the scope of the Environmental Crime Directive;
- Clarify legal terms used to define environmental criminal offences;
- Improve availability of dissuasive and comparable sanction types and levels;
- Improve cross-border cooperation;
- Improve the collection and dissemination of information and statistical data; and
- Improve the functioning of the enforcement chain (training, coordination and cooperation, resources, strategic approach).

The consultations were conducted at an early stage and sought views from a wide range of stakeholders, such as members of the public, experts, practitioners (police services, inspectors, prosecutors and judges), networks of practitioners (IMPEL, ENPE, EUFJE, EnvirCrimeNet), public authorities from Member States (Ministries of Justice and Ministries of Environment), European agencies (Europol and Eurojust), environmental non-governmental organisations (NGOs), business organisations, individual companies and academics. All these were consulted on their expectations and concerns about the need for and content of a possible review of the Environmental Crime Directive.

During the consultation process, the Commission applied a variety of methods and forms of consultation. They included:

- The consultation on the inception impact assessment and a 12-week open public consultation, which sought views from all interested parties.
- A series of online targeted thematic workshops and expert group meetings, including meetings of the Environmental Compliance and Governance Forum and its Working Group on sanctioning of environmental offences. Dedicated questionnaires and discussion papers were sent out in advance to prepare for the meetings hosted by the Commission.
- A number of online conferences in which the Commission participated and presented its work in this area gathered feedback on the six main options from other conference participants and invited additional participants in the expert process and the public consultation.
- Bilateral online meetings with a wide range of stakeholders organised at the initiative of the Commission or stakeholders.
- Position papers and analytical papers from European agencies, practitioners, professional networks (e.g. the joint statement of IMPEL/ENPE/EUFJE and EnviCrimeNet adopted at a conference in May 2021 devoted to combating environmental crime and the revision of the ECD), industry representatives, public authorities from Member States, NGOs, civil society and academia.

In total, the dedicated consultation activities lasted more than 6 months, from February 2021 to July 2021.

The consultation was designed to follow the same logical sequence as the impact assessment, starting with the problem definition and allowing for gradual development of the possible options and their impacts:

- The majority of the respondents confirmed the need to update the scope of the Environmental Crime Directive and to clarify legal terms.
- Most of the contributions from NGOs and business associations identified environmental areas or specific legislation which are not covered by the current Environmental Crime Directive but whose inclusion should be considered.
- The majority of the respondents considered it appropriate to include provisions on minimal levels for maximum sanctions and for aggravating circumstances. The inclusion of a provision on confiscation along with legislation against legal persons are considered useful in some cases.
- Several parties advocated for better collection and transmission of information by Member States. Concerns were raised that this would mean complex IT adjustments, a difficult and lengthy process which puts a heavy administrative burden on law enforcement authorities, the Public Prosecution Office and the judiciary.
- The large majority of stakeholders confirmed the pressing need to improve the effectiveness of the enforcement chain in practice and the need for provisions on training, resources, cooperation and coordination, together with strategic approaches for combating environmental crime.

The Commission took all responses into consideration when deciding which options should be favoured. More information on the consultations can be found in the annexes to the impact assessment (Annexes 7 and 8).

- **Collection and use of expertise**

To ensure the availability of the necessary evidence for its impact assessment, the Commission drew on a wide spectrum of expertise. The expert opinions considered can be divided into two main categories: state of the art studies on the subject, and stakeholder consultations.

First, the Commission evaluated the current Directive in 2019/20 and published its findings in October 2020. The evaluation helped the Commission to understand the benefits and drawbacks of the current legislation. It paved the way for the review of the Directive, as the evaluation clearly underlined that the current legislation had only negligible effects on the ground. After the evaluation, the Commission contracted a study to support the impact assessment; the study was conducted between April 2021 and October 2021. It aimed to assess the impacts of different options, mainly their financial and economic impact.

Besides the two studies, the Commission conducted a comprehensive review of existing literature on the subject. This is reflected by the numerous references used in the impact assessment. In addition, a large number of written statements from stakeholders, e.g. Eurojust, Europol, professional networks, practitioners, Member States, NGOs and businesses were analysed. Desk research also covered the review of European Parliament positions, such as the report on the liability of companies for environmental damage (2020/2027(INI)) of the Committee on Legal Affairs. Findings from working groups, such as the country survey for the 2nd meeting of the Council of Europe's Working Group on the Environment and Criminal Law on 15 June 2021, were also taken into account.

Relevant work of the main European Environmental Enforcement Networks (IMPEL, EnviCrimeNet, ENPE, EUFJE) has also been carefully considered.

The outcomes of the eighth round of the Council's mutual evaluations on combating environmental crime have also been taken into account.

- **Impact assessment**

The legislative proposal is based on an impact assessment. The Regulatory Scrutiny Board (RSB) issued a positive opinion (with reservations) on 1 October 2021. Annex I to the impact assessment explains how the RSB comments were addressed.

An evaluation showed that the Directive, although establishing a common EU framework of key environmental crime, did not have much effect in practice;

It did not affect the number of convictions or the level of imposed sanctions in the Member States. In particular, the evaluation identified the following specific key problems:

1. The scope of the ECD (defined in two annexes to the ECD and a list of offenses in Article 3 of the ECD) is outdated and it is defined in a complex way, hindering effective investigations, prosecutions and cross-border cooperation.
2. Definitions of what constitutes 'environmental crime' are unclear and hinder effective investigation, prosecutions and cross border cooperation between and within Member States.
3. Sanction levels are not effective and dissuasive in all Member States.
4. Cross-border cooperation is too limited;
5. Policymakers and practitioners lack awareness of the nature and scale of environmental crime and the effectiveness of law enforcement measures due to limited collection, processing and sharing of statistical data.
6. The enforcement chain for combating environmental crime, inter alia, is ineffective owing to lack of training and specialisation, as well as insufficient coordination and cooperation between the different levels of environmental law enforcement.

The Commission has developed a number of legislative and non-legislative policy options. The options considered and discarded at an early stage were: to repeal the Directive; or to address the identified problems through non-binding measures only, such as EU guidance on the interpretation of definitions and levels of sanctions.

Based on the assessment, the only suitable option for achieving the specific objectives identified is to revise the Directive. This would not exclude supporting non-legislative measures (hereinafter: 'main option'). In the context of the main policy option, the following sub-options (hereinafter: 'Options') have been identified and assessed in full detail in the Impact Assessment to address each specific objective:

**Objective 1: Improve the effectiveness of investigations and prosecutions by updating the scope of the Directive and introducing a feasible mechanism to keep the Directive up-to-date in the light of the European Green Deal.**

- Option 1a: Update the existing list of legislation in the annexes, add new relevant crime categories to Article 3, and introduce the comitology procedure to keep the annexe updated.

- Option 1b: Refer to relevant sectoral legislation in general terms and remove the annexes; refine the definition of what constitutes environmental crime in the Article 3 offences, and add new relevant crime categories.
- Option 1c: Define environmental crime in the Directive without the requirement of a breach of relevant EU sectoral legislation.

The preferred option is 1b, as it adds more legal clarity concerning which breaches of sectoral legislation constitute environmental crime. In the future, the European legislator would have to, update the Directive (similarly to the current situation), as a simpler mechanism – namely the comitology procedure – is not applicable to essential components of the Directive. The definition of environmental crime is an essential component. The offences in Article 3 would be defined by reference to an expanded definition of what is ‘unlawful’ and would also contain an updated list of crime categories based on serious breaches of current environmental legislation.

**Objective 2: Improve the effectiveness of investigations and prosecutions by clarifying or eliminating vague terms used in the definitions of environmental crime.**

- Option 2a: Define unclear terms in the Directive (e.g. ‘substantial damage’) more precisely.
- Option 2b: Eliminate vague terms as for example ‘substantial damage’, including by criminalising risky behaviour (endangerment crime).
- Option 2c: A combination of options 2a and 2b.

The preferred option is 2c, because for the sake of clarity the legislator should clarify in the Directive itself (option 2a) the unclear definitions identified and should also add more offences based on the concept of risk, essential for cases entailing great harm that can be proved in environmental crime proceedings. Endangerment crimes would catch cases where the legislator has decided that the infringement of sectoral rules would put the environment at intolerable risk.

**Objective 3: Ensure effective, dissuasive and proportionate sanction types and levels for environmental crime.**

- Option 3a: Introduce minimum maximum sanction levels.
- Option 3b: Option 3a plus aggravating circumstances and accessory sanctions.
- Option 3c: Option 3b plus an obligation to link the level of fines to the financial situation of legal person and/or illegal profits.

The preferred option is 3c, as all measures address different aspects of effective sanctioning and reinforce each other.

**Objective 4: Foster cross-border investigation and prosecution.**

A package of provisions directly fostering cross-border cooperation, such as harmonised effective investigative tools, the obligation to cooperate through Europol, Eurojust and OLAF, and rules on jurisdiction.

**Objective 5: Improve informed decision-making on environmental crime through improved collection and communication of statistical data.**

- Option 5a: Oblige Member States to collect and regularly report to the Commission statistical data related to environmental crime.

- Option 5b: Option 5a plus an obligation on the Member States to collect and report statistical data according to harmonised common standards.

The preferred option is 5b.

**Objective 6: Improve the operational effectiveness of national enforcement chains to foster detection, investigation, prosecution and sanctioning.**

A package of obligations to foster practical implementation, such as the provision of targeted and regular training at all levels of the enforcement chain, overarching national environmental crime strategies and awareness-raising measures.

**Preferred package**

Under objective 1, removing the annexes and instead refining the definition of what constitutes environmental crime in Article 3 and adding new environmental crime categories under the same article is likely to improve the effectiveness of investigations and prosecutions of environmental crime, especially with regard to cross-border cooperation. However, in the future there would be also a need to regularly update the Directive through legislative procedure, if new environmental crime areas are to be added to the Directive's scope. There is no simpler way to do this, as the definitions of environmental crime categories are an essential component of the Directive and require a decision by the European legislator.

Under objective 2, both endangerment crime and crime that requires the manifestation of damage are necessary to respond adequately to environmental offences. The current Directive is built on a combination of these two types of crime definition. The proposal will have to add new endangerment crime categories and specify more exactly which behaviour is criminalised; it will also have to add information enabling it to be determined what can constitute environmental damage.

More precise definitions of unclear terms – such as ‘*substantial damage*’ and ‘*negligible or non-negligible quantity*’ – will improve the clarity of the Directive. The focus on endangerment crime and risky behaviour will allow effective sanctioning in cases where it is difficult to establish the actual damage or where no damage occurred. Hence, the combined application of both options may lead to the increased effectiveness of investigations and prosecutions of environmental crime.

Under objective 3, the package of measures on sanctions (option 3c – minimum maximum sanctions, aggravating circumstances, accessory sanctions, dependency of the level of fines on illegal profits and the financial situation of the offender) will lead to more effective, proportionate, dissuasive and uniform sanction levels across the EU and in practice across the EU. In addition, the minimum maximum levels of imprisonment sanctions will give law enforcement practitioners access to investigative tools, which are only available for crime punishable by a certain minimum maximum level of penalties. This will lead to more effective investigations and facilitate cross-border cooperation.

The measures under objective 4 (approximation of investigative tools, obligation to cooperate through EU-agencies, setting up of national contact points) will directly foster cross-border cooperation, complement and reinforce each other and lead to investigations that are more effective as many environmental crime cases can only be conducted successfully cross-border.

The preferred option under objective 5 will lead to a commonly defined minimum standard for the collection of data on environmental crime procedures and thus to statistical data that is comparable across the EU.

The package of measures proposed under objective 6 (training/specialisation, cooperation and coordination requirements, awareness raising, national strategies) will have a positive influence on the effectiveness on the ground at all levels of the enforcement chain (inspectors, police, prosecution, criminal judges).

As the Directive needs improvement in all six problem areas, the combination of the preferred options under each objective should result in the best overall package. In combination, the preferred options can reach cumulative impacts that go beyond what could be achieved by the individual preferred options.

Cross-border cooperation will be fostered not only by the measures under objective 4 but also through the Directive's broader scope allowing such cooperation in more environmental areas. More precise definitions of what constitutes environmental crime under objective 2 will reduce the different perceptions in the Member States that have so far hampered or even ended cooperation. The definition of maximum sanction levels not only ensures more dissuasive sanctioning, it also opens the door to effective cross-border investigative tools provided for in legislative instruments that can only apply as of a certain sanction level for a given crime category. Under objective 6, better training and specialisation according to comparable standards in the Member States will also directly facilitate cross-border cooperation.

The ability of law enforcement practitioners to better anticipate a case's chances of success, leading to more cases being prosecuted, is strengthened by more precise definitions of environmental crime (objective 2) and better training and specialisation under objective 6. Improved cross-border cooperation (objective 4) and the availability of more dissuasive sanction types and levels (objective 3) are further factors that could facilitate the decision to invest the resources needed to tackle environmental crime cases.

The effectiveness and dissuasiveness of environmental criminal investigations will be achieved not just through more appropriate sanctioning by means of the preferred option under objective 3. More effective investigations through the combined effects of the preferred options under objectives 1, 2, 4 and 6 as described above will also contribute to a criminal justice system that deters environmental crime.

In this way, the preferred options not only best serve the respective objectives but also strengthen the overall effectiveness of the Directive beyond each individual specific objective.

### **Who is impacted by the Directive?**

#### **Member States and public authorities**

Provisions on the implementation of the ECD are expected to strengthen the effectiveness of the enforcement chain and ensure comparability of efforts to combat environmental crime across the EU. They may create some costs for environmental, law enforcement and judicial authorities in the Member States, both one-off and ongoing. However, the mid and long-term benefits will greatly outweigh these. National authorities will need to provide additional human and material resources (mainly in the police and prosecution offices, as the institutions most often responsible for investigation and prosecution of environmental crime). Equally, an obligation for Member States to collect and report statistical data according to new and more harmonised standards could create an additional administrative burden: in terms of possibly adapting the systems in place to record cases, and in terms of elaborating those statistics at national level before transmitting them to the EU. All Member States would need to provide some degree of additional training to relevant professionals along the enforcement chain, taking into account the revised terms of the Directive and additional personnel. The resources required depend on the extent to which Member States already provide regular training on

environmental crime. Finally, there are some additional costs associated with the setting up of national focal points in various institutions and the development of national strategies to combat environmental crime.

### **EU businesses**

There are no direct costs for EU businesses associated with the Directive; their compliance costs stem from administrative environmental law. More effective law enforcement in the area of environmental crime would protect legally-operating businesses from unfair competition stemming from illegal business activity. Furthermore, reputational damage for an industry (e.g. waste management, chemical production) that is impacted by illegal activity would be reduced, providing additional benefits for compliant businesses. As environmental crime will continue to be linked to a breach of administrative laws, there is limited risk that businesses could be sanctioned for environmental activity that is permitted under administrative law, with the exception of specific and well-defined situations mentioned in the Directive.

### **SMEs**

SMEs may face somewhat higher pressure due to less capacity to pay fines and/or engage legal expertise and carry out due diligence activities. The option of linking fines to the financial situation of a company, in addition to other circumstantial aspects of the crime, could reduce the vulnerability of SMEs to such fines.

### **EU citizens**

More effective enforcement of environmental criminal legislation is expected to have a positive impact on society at large. In addition to the quality of life benefits associated with environmental protection, reduction in criminal activity supports better governance, reduced corruption and reduction of the risks posed by large organised criminal groups.

- **Regulatory fitness and simplification**

This impact assessment did not identify any potential to simplify the Directive or reduce unnecessary costs.

The Directive – being a criminal law instrument – does not produce any additional costs for citizens, businesses and SMEs. This was confirmed during the stakeholder consultations.

The proposal will contain a number of additional provisions aimed to add preciseness to the currently very generic Directive, clarify its scope, give more exact definitions of crimes, and ensure the effectiveness, proportionality and dissuasiveness of penalties. This will simplify and facilitate practical implementation by Member State authorities and thus ensure that the Directive will reach better its objectives.

The proposal also contains new provisions requiring Member States to take specific measures that will ensure the Directive is effectively implemented in practice (training measures, awareness-raising measures, measures to strengthen cross-border cooperation, measures to provide the necessary resources, etc.). Although these appear to be new obligations that produce costs for the Member States, the provisions in question actually only explicitly lay down what is in any event a Member State obligation. Member States are not only required to transpose the Directive into national law, they also have to take the necessary practical implementation measures. The evaluation showed that practical implementation is deficient in all Member States and along the whole enforcement chain. The obligations in the Directive are therefore necessary to ensure Member State compliance. The implementation measures required in the proposal are measures that practitioners have identified as most pertinent to enable them to enforce the national provisions transposing the Directive. Training in



particular has been referred to as an essential need to improve law enforcement with regard to environmental crime.

- **Fundamental rights**

The Directive is likely to have a positive impact on the level of environmental protection, the subject of Article 37 of the Charter of Fundamental Rights of the European Union. Improving the environment will help improve the physical well-being (health) of citizens– this is covered by human dignity. Therefore, it will also positively influence the right to life (Article 2 of the Charter), the right to physical integrity (Article 3), the care and well-being of children (Article 24), the right to healthy working conditions (Article 31) and the right to preventive and other health care (Article 35).

This Directive – being a criminal law instrument – will have to be transposed into national law respecting the fundamental rights and observing the principles in the Charter of Fundamental Rights of the European Union (‘the Charter’) as recognised in the TEU. Specifically, it should be transposed and applied with due respect for the right to protection of personal data (Article 8 of the Charter), the freedom to conduct a business (Article 16), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), and the right not to be tried or punished twice in criminal proceedings for the same offence (Article 50). In implementing this Directive, Member States should ensure that the procedural rights of suspected or accused persons in criminal proceedings are observed. The obligations under this Directive are without prejudice to Member State obligations under EU law on procedural rights in criminal proceedings.

#### **4. BUDGETARY IMPLICATIONS**

The current proposal has negligible budgetary implications for Member States and for the Commission. Specific information on the financial implications for the Commission can be found in the legislative financial statement attached to this legislative package.

The Commission has two kinds of costs: one-off, and recurring. The first financial implications for the Commission are linked to the fifth objective of the revision: improving statistical data collection and reporting on environmental crime. The Commission’s costs for this objective are EUR 155 000 in 2025. This overall cost is divided into three kinds of expenditure. First, the definition of minimum standards will cost EUR 110 000 and is a one-off cost which will occur only in 2025. The second cost is linked with the maintenance of standards and is an annual recurring cost of EUR 16 000. The last cost associated with this objective is the biennial report on Member States data from the Commission, which is also an annual recurring cost of EUR 25 000.

Besides those costs for the fifth objective of the revision, the Commission will also need to provide for another one-off cost for its reporting obligations. The legislative proposal states that the Commission will have to produce two reports. The first is about the Member States’ transposition of the Directive and will cost EUR 405 000 divided between the cost of hiring a contractor to produce the study, i.e. EUR 350 000, and the review of it by Commission staff, i.e. EUR 54 600. The second report that the Commission has to produce is a study that will analyse the effectiveness of the Directive with a certain series of indicators. This study, which will happen after the end of the current MFF, will cost EUR 420 000.

Hence, the costs for the Commission in 2025 all included would be EUR 560 000 and the recurring annual costs linked with the Directive would be EUR 45 000. This evaluation does

not include the costs of the report on the effectiveness of the Directive, which would happen after the current MFF.

The financial implications of the Directive for Member States are linked with three objectives of its revision: improving effective cooperation and coordination between Member States (objective 4), improving statistical data collection and reporting on environmental crime (objective 5), and improving effective operation of the enforcement chain (objective 6).

Regarding objective 4, there will be two sets of costs for all Member States: for investigative tools, and for setting up national contact points. On investigative tools, the data were not available to enable an initial assessment of the cost. However, for the setting up of national contact points, the cost for all Member States will vary between EUR 475 600 and EUR 792 700 depending on the option chosen by the Member States.

Regarding objective 5, several kinds of costs for Member States can be identified. Two of them are one-off costs: for the setting up of a national coordination procedure, which would cost EUR 146 200 for all Member States, and for defining minimum standards, which would cost EUR 280 000. Two costs linked with objective 5 are not one-off but recurring. First, Member States will have to maintain the standards, and for all Member States this should cost EUR 35 000. Coordination, collection and reporting will cost EUR 220 000 for all Member States. This means the overall amount of the costs for Member States for objective 5 is around EUR 683 000.

Regarding objective 6, Member States would again have several kinds of costs: for training, raising public awareness, defining and implementing national strategies and increasing staff. As training is one of the main support measures of the Directive, it has been estimated that for all Member States training will cost EUR 7 800 000. The cost related to national strategies should be divided into one-off and recurring costs. The definition and first implementation of national strategies will cost EUR 864 000 for all Member States. Once this first part is completed, Member States will have recurring costs which have been estimated at EUR 325 000 for all Member States. Finally, the increase in staff linked with this Directive has been estimated at EUR 4 million for all Member States. Hence, all the costs for objective 6 come to around EUR 13 million for all Member States.

Those costs should be assessed against how much loss environmental crimes account for. According to UNEP and Interpol estimates, published in June 2016, the annual loss caused by environmental crime is between USD 91 billion and USD 258 billion.

## **5. OTHER ELEMENTS**

### **• Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal seeks to correct the deficiencies of the current Directive and therefore sets out various measures for implementation, monitoring, evaluation and reporting.

First, after the entry into force of the Directive, minimum standards for the reporting and collection of statistical data on environmental crimes will need to be established through an implementing act. No later than one year after the Directive's entry into force, Member States will have to develop a national strategy to combat environmental crime and set up an action plan to transpose the Directive. This will enable the Commission to assess both the revised Directive's transposition by Member States, and their commitment to fighting environmental crime more efficiently.

The implementation plan and evaluation and reporting arrangements do not stop after the Directive's entry into force. Member States will have 18 months after the entry into force of

the Directive to transpose it into national legislation. Two years after the end of this transposition period, the Commission will have to produce a report on how Member States transposed the Directive. Five years after the end of the transposition period, the Commission must produce a study on the Directive's effectiveness to evaluate its added value. In addition to these monitoring procedures, every two years Member States must produce a report containing information relating to the Directive, such as their national strategy or their coordination and cooperation measures. On the basis on the data transmitted by Member States, the Commission will also produce statistical reports on environmental crime.

- **Detailed explanation of the specific provisions of the proposal**

#### **Article 1: Subject matter**

This provision sets out the purpose of the Directive, and in particular its aim of supporting the protection of the environment by laying down criminal offences and sanctions.

#### **Article 2: Definitions**

This provision contains definitions of terms used in the Directive, including a refined definition of 'unlawfulness' for the purpose of defining environmental criminal offences.

#### **Article 3: Offences**

This provision describes the criminal offences covered by this Directive. Some of the offences are from the current Directive, some are amended and clarified versions of existing ones, and some are new offences. Furthermore, terms used in the definition of offences are clarified in that they specify elements that need to be taken into account when investigating, prosecuting and adjudicating criminal offences: in particular, 'substantial damage', 'likely' to cause damage and 'negligible quantity'.

#### **Article 4: Inciting, aiding and abetting and attempt**

Article 4 criminalises inciting, and aiding and abetting the commission of criminal offences referred to in Article 3(1). Also, attempt to commit certain criminal offences, listed in Article 4, are criminalised.

#### **Article 5: Penalties for natural persons**

This article provides minimum standards to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties. In addition, the proposal requires that Member States introduce specific sanction levels and types for environmental criminal offences. The categorisation proposed reflects the seriousness of the offences. For instance, paragraph 2 states that offences referred to in Article 3 should be punishable by a maximum term of imprisonment of at least ten years if they cause or are likely to cause death or serious injury to any person.

Paragraph 5 aims at Member States taking measures to ensure that the offences referred to in Articles 3 and 4 can be subject to additional sanctions and measures to allow for a tailored response to different types of criminal behaviour.

#### **Article 6: Liability of legal persons**

This article contains obligations to ensure the liability of legal persons for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit. This article also provides that Member States should make sure that legal persons can be held accountable for a lack of supervision and control that has made possible the commission of an offence referred to in Article 3 and 4 for the benefit of the legal person. Furthermore, the liability of the legal person should not exclude criminal proceedings against natural persons.

### **Article 7: Sanctions for legal persons**

This article sets out sanctions applicable to legal persons involved in the criminal offences covered by this proposal.

### **Article 8: Aggravating circumstances**

This article sets out the aggravating circumstances to be taken into account when sanctions are applied to an offence referred to in Articles 3 and 4.

### **Article 9: Mitigating circumstances**

This article sets out mitigating circumstances to be considered when sanctions are applied to an offence referred to in Articles 3 and 4.

### **Article 10: Freezing and confiscation**

This provision makes sure that Member States give the opportunity to competent authorities to freeze and confiscate the proceeds derived from offences covered by this proposal.

### **Article 11: Limitation periods for criminal offences**

This article lays down provisions on limitation periods in order to allow the competent authorities to investigate, prosecute and adjudicate the criminal offences covered by this proposal during a certain time period.

### **Article 12: Jurisdiction**

This article lays down provisions on jurisdiction to make sure that Member States establish jurisdiction for offences covered by the proposal and that they inform the Commission if they decide to extend this jurisdiction in specific cases where the offence is committed outside their territory.

### **Article 13: Protection of persons who report environmental offences or assist the investigation**

This provision concerns the protection of persons such as whistleblowers, environmental defenders and others reporting information or providing evidence to an investigation relating to environmental criminal offences.

### **Article 14: Rights for the public concerned to participate in proceedings**

This provision concerns procedural rights to participate in criminal proceedings, which should be granted to the public concerned as set out in Article 2.

### **Article 15: Prevention**

This provision requires Member States to take preventive actions to reduce environmental offences.

### **Article 16: Resources**

This provision aims at ensuring that national authorities which detect, investigate, prosecute or adjudicate environmental offences have a sufficient number of qualified staff and sufficient financial, technical and technological resources necessary to perform their roles effectively.

### **Article 17: Training**

This provision aims at enhancing training activities along the enforcement chain to ensure that all parties involved have the necessary specialised skills and abilities to perform their roles effectively.

### **Article 18: Investigative tools**

This provision lays down that special investigative tools must be made available for the investigation of the offences referred to in Articles 3 and 4.

#### **Article 19: Coordination and cooperation between competent authorities within Member States**

This provision requires Member States to ensure coordination and cooperation at strategic and operational level among all their competent authorities involved in the prevention of and fight against environmental crime.

#### **Article 20: National Strategy on combating environmental crime**

This provision aims at ensuring a strategic approach to combating environmental crime and includes aspects to be addressed by a national strategy which will need to be established in each Member State.

#### **Article 21: Data collection and statistics**

This provision addresses the need to systematically collect information on efforts to combat environmental crime and to provide statistical data on environmental crime. It requires Member States to collect, publish and send relevant statistical data to the Commission. It also establishes an obligation for the Commission to regularly publish a report based on the statistical data provided by the Member States. This provision also aims to help address the current limited availability of environmental crime data which would assist in evaluating the effectiveness of national systems in fighting environmental criminal offences.

#### **Article 22: Implementing powers**

This provision complements Article 25 and aims at strengthening the obligation of Member States to send statistical data to the Commission, by requiring the Commission to adopt an implementing act defining minimum common standards for the reporting of statistical data.

#### **Article 23: Committee Procedure**

This provision addresses the need for the Commission to be assisted by a Committee in order to adopt the draft implementing act.

#### **Articles 24, 25, 26, 27, 28, 29**

These articles contain further provisions on transposition by Member States, reporting by Member States, evaluation and reporting by the Commission, entry into force and application of Directive 2005/35/EC and replacement of Directive 2008/99/EC by this Directive.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the protection of the environment through criminal law and replacing Directive 2008/99/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>19</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) According to Article 3(3) of the Treaty on European Union (TEU) and Article 191 of the Treaty on the Functioning of the European Union (TFEU), the Union is committed to ensuring a high level of protection and improvement of the quality of the environment.
- (2) The Union continues to be concerned with the rise in environmental criminal offences and their effects, which undermine the effectiveness of Union environmental legislation. These offences are moreover increasingly extending beyond the borders of the Member States in which the offences are committed. Such offences pose a threat to the environment and therefore call for an appropriate and effective response.
- (3) The existing systems of penalties under Directive 2008/99/EC of the European Parliament and of the Council<sup>20</sup> and environmental sectoral law have not been sufficient in all environmental policy area to achieve compliance with Union law for the protection of the environment. Compliance should be strengthened by the availability of criminal penalties, which demonstrate social disapproval of a qualitatively different nature compared to administrative penalties.
- (4) The effective investigation, prosecution and adjudication of environmental criminal offences should be improved. The list of environmental criminal offences which were set out in Directive 2008/99/EC should be revised and additional categories of offences based on the most serious breaches of Union environmental law should be added. Provisions on sanctions should be strengthened in order to enhance their deterrent effect as well as the enforcement chain in charge of detecting, investigating, prosecuting and adjudicating environmental criminal offences.

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<sup>19</sup> OJ C, , p. .

<sup>20</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) Member States should criminalise offence categories and provide for greater precision on the definitions of the offence categories, and harmonisation concerning sanction types and levels.
- (6) Member States should provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Union law concerning protection of the environment. In the framework of the common fisheries policy, Union law provides for comprehensive set of rules for control and enforcement under Regulation (EC) No 1224/2009<sup>21</sup> and Regulation (EC) No 1005/2008 in case of serious infringements, including those that cause damage to the marine environment. Under this system the Member States have the choice between administrative and/or criminal sanctioning systems. In line with the Communication from the Commission on the European Green Deal<sup>22</sup> and the EU Biodiversity Strategy for 2030<sup>23</sup>, certain intentional unlawful conduct covered under Regulation (EC) No 1224/2009 and Regulation (EC) 1005/2008<sup>24</sup> should be established as criminal offences.
- (7) In order to constitute an environmental offence under this Directive, conduct should be unlawful under Union law protecting the environment or national laws, administrative regulations or decisions giving effect to that Union law. The conduct which constitutes each category of criminal offence should be defined and, where appropriate, a threshold which needs to be met for the conduct to be criminalised should be set. Such conduct should be considered a criminal offence when committed intentionally and, in certain cases, also when committed with serious negligence. Illegal conduct that causes death or serious injury of persons, substantial damage or a considerable risk of substantial damage for the environment or is considered otherwise as particularly harmful to the environment constitutes a criminal offence when committed with serious negligence. Member States remain free to adopt or maintain more stringent criminal law rules in that area.
- (8) A conduct should be considered unlawful also when it is carried out under an authorisation by a competent authority in a Member State if such authorisation was obtained fraudulently, or by corruption, extortion or coercion. Moreover, operators should take the necessary steps to comply with the legislative, regulatory and administrative provisions concerning the protection of environment applicable when they carry out the respective activity, including by complying with their obligations, as laid down in applicable EU and national laws, in procedures governing amendments or updates to existing authorisations.

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<sup>21</sup> Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 112, 30.4.2011, p. 1–153).

<sup>22</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS The European Green Deal, COM/2019/640 final.

<sup>23</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS EU Biodiversity Strategy for 2030 Bringing nature back into our lives, COM/2020/380 final

<sup>24</sup> Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, (OJ L 286, 29.10.2008, p. 1–32).

- (9) The environment should be protected in a wide sense, as set out under Article 3 (3) TEU and Article 191 TFEU, covering all natural resources - air, water, soil, wild fauna and flora including habitats - as well as services provided by natural resources.
- (10) The acceleration of climate change, biodiversity loss and environmental degradation, paired with tangible examples of their devastating effects, have led to the recognition of the green transition as the defining objective of our time and a matter of intergenerational equity. Therefore, when Union legislation covered by this Directive evolves, this Directive should also cover any updated or amended Union legislation falling within the scope of criminal offences defined under this Directive, when the obligations under Union law remain unchanged in substance. However, when new legal instruments prohibit new conduct harmful to the environment, this Directive should be amended in order to add to the categories of criminal offences also the new serious breaches of Union environmental law.
- (11) Qualitative and quantitative thresholds used to define environmental criminal offences should be clarified by providing a non-exhaustive list of circumstances which should be taken into account when assessing such thresholds by authorities which investigate, prosecute and adjudicate offences. This should promote the coherent application of the Directive and a more effective fight against environmental crimes as well as provide for legal certainty. However, such thresholds or their application should not make the investigation, prosecution or adjudication of criminal offences excessively difficult.
- (12) In criminal proceedings and trials, due account should be taken of the involvement of organised criminal groups operating in ways that negatively impact the environment. Criminal proceedings should address corruption, money laundering, cyber-crime and document fraud and – in relation to business activities – the intention of the offender to maximise profits or save expenses, where these occur in the context of environmental crime. These crime forms are often interconnected with serious environmental crime forms and should therefore not be dealt with in isolation. In this respect, it is of particular concern that some environmental crimes are committed with the tolerance or active support of the competent administrations or officials performing his/her public duty. In certain cases this can even take the form of corruption. Examples of such behaviours are turning a blind eye or remaining silent on the infringement of laws protecting the environment following inspections, deliberately omitting inspections or controls for example with regard to whether the conditions of a permit are being respected by the permit-holder, resolutions or votes in favour of granting illegal licences or issuing falsified or untrue favourable reports.
- (13) Inciting, and aiding and abetting the criminal offences committed intentionally should also be punishable. An attempt to commit a criminal offence that causes death or serious injury of a person, substantial damage to the environment or is likely to cause substantial damage to the environment or is otherwise considered particularly harmful should also constitute a criminal offence when committed intentionally.
- (14) Sanctions for the offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. Accessory sanctions are often seen as being more effective than financial sanctions especially for legal persons. Additional sanctions or measures should be therefore available in criminal proceedings. These should include the obligation to reinstate the environment, exclusion from access to public funding, including tender procedures, grants and concessions and withdrawal of permits and authorisations. This



is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.

- (15) Where national law provides for it, legal persons should also be held criminally liable for environmental criminal offences according to this Directive. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their administrative sanctioning systems provide for effective, dissuasive and proportionate sanctions types and levels as laid down in this Directive in order to achieve its objectives. Financial situation of legal persons should be taken into account to ensure the dissuasiveness of the sanction imposed.
- (16) A further approximation and effectiveness of sanction levels imposed in practice should be fostered through common aggravating circumstances that reflect the severity of the crime committed. Where the death of, or serious injury to, a person, have been caused and where these elements are not already constituent for the criminal offence, these could be considered as aggravating circumstances. Equally, when an environmental criminal offence causes substantial and irreversible or long-lasting damage to an entire ecosystem, this should be an aggravating circumstance because of its severity, including in cases comparable to ecocide. As the illegal profits or expenditure that can be generated or avoided through environmental crime are an important incentive for criminals, these should be taken into account when determining the appropriate level of sanctioning in the individual case.
- (17) Where the crimes are of a continuing nature, they should be brought to an end as soon as possible. Where offenders have made financial gains, such gains should be confiscated.
- (18) This Directive should apply without prejudice to the general rules and principles of national criminal law on the sentencing or the application and execution of sentences in accordance with the specific circumstances in each individual case.
- (19) Member States should lay down rules concerning limitation periods necessary in order to enable them to counter environmental criminal offences effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement.
- (20) The obligations in this Directive to provide for criminal penalties should not exempt Member States from the obligation to provide for administrative sanctions and other measures in national law for breaches established in Union environmental legislation.
- (21) Member States should define the scope of administrative and criminal law enforcement clearly with regard to environmental offences according to their national law. In the application of national law transposing this Directive, Member States should ensure that the imposition of criminal sanctions and of administrative sanctions respects the principles of the Charter of Fundamental Rights of the European Union, including the prohibition of *ne bis in idem*.
- (22) Furthermore, judicial and administrative authorities in the Member States should have at their disposal a range of criminal sanctions and other measures to address different types of criminal behaviour in a tailored and effective manner.
- (23) Given, in particular, the mobility of perpetrators of illegal conduct covered by this Directive, together with the cross-border nature of offences and the possibility of cross-border investigations, Member States should establish jurisdiction in order to counter such conduct effectively.

- (24) Environmental criminal offences harm nature and society. By reporting breaches of Union environmental law, people perform a service of public interest and play a key role in exposing and preventing such breaches, and thus safeguarding the welfare of society. Individuals in contact with an organisation in the context of their work-related activities are often the first to know about threats or harm to the public interest and the environment. Persons who report irregularities are known as whistleblowers. Potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. Such persons should benefit from balanced and effective whistleblowers protection set out under Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>25</sup>.
- (25) Other persons may also possess valuable information concerning potential environmental criminal offences. They may be members of the community affected or members of society at large taking an active part in protecting the environment. Such persons who report environmental crimes as well as persons who cooperate with the enforcement of such offences should be provided the necessary support and assistance in the context of criminal proceedings, so that they are not disadvantaged for their cooperation but supported and assisted. These persons should also be protected from being harassed or unduly prosecuted for reporting such offences or their cooperation in the criminal proceedings.
- (26) Since nature cannot represent itself as a victim in criminal proceedings, for the purpose of effective enforcement members of the public concerned, as defined in this Directive taking into account Articles 2(5) and 9(3) of the Aarhus Convention<sup>26</sup>, should have the possibility to act on behalf of the environment as a public good, within the scope of the Member States' legal framework and subject to the relevant procedural rules.
- (27) Lack of resources and enforcement powers for national authorities which detect, investigate, prosecute or adjudicate environmental criminal offences creates obstacles for the effective prevention and punishment of environmental crimes. In particular, the shortage of resources is capable of preventing authorities from taking any action at all or limiting their enforcement actions, allowing offenders to escape liability or to receive punishment does not correspond to the gravity of the offence. Therefore, minimum criteria concerning resources and enforcement powers should be established.
- (28) The effective functioning of the enforcement chain depends on a range of specialist skills. As the complexity of the challenges posed by environmental offences and the technical nature of such crime require a multidisciplinary approach, a high level of legal knowledge, technical expertise as well as a high level of training and specialisation within all relevant competent authorities are necessary. Member States should provide training appropriate to the function of those who detect, investigate, prosecute or adjudicate environmental crime. To maximise the professionalism and effectiveness of enforcement chain, Member States should also consider assigning specialised investigation units, prosecutors and criminal judges to deal with environmental criminal cases. General criminal courts could provide for specialised chambers of judges. Technical expertise should be made available to all relevant enforcement authorities.

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<sup>25</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305/17).

<sup>26</sup> United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

- (29) To ensure successful enforcement, Member States should make available effective investigative tools for environmental offences such as those which exist in their national law for combating organised crime or other serious crimes. These tools should include among others the interception of communications, covert surveillance including electronic surveillance, controlled deliveries, the monitoring of bank accounts and other financial investigation tools. These tools should be applied in line with the principle of proportionality and in full respect of the Charter of Fundamental Rights of the European Union. In accordance with national law, the nature and gravity of the offences under investigation should justify the use of these investigative tools. The right to the protection of personal data must be respected.
- (30) To ensure an effective, integrated and coherent enforcement system that includes administrative, civil and criminal law measures, Member States should organise internal cooperation and communication between all actors along the administrative and criminal enforcement chains and between punitive and remedial sanctioning actors. Following the applicable rules, Member States should also cooperate through EU agencies, in particular Eurojust and Europol, as well as with EU bodies, including the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF), in their respective areas of competence.
- (31) To ensure a coherent approach to combating environmental offences, Member States should adopt, publish and periodically review a national strategy on combating environmental crime, establishing objectives, priorities and corresponding measures and resources needed.
- (32) To effectively tackle the criminal offences referred to in this Directive, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable data on the scale of and trends in environmental offences and the efforts to combat them and their results. These data should be used for preparing statistics to serve the operational and strategic planning of enforcement activities as well as for providing information to citizens. Member States should collect and report to the Commission relevant statistical data on environmental offences. The Commission should regularly assess and publish the results based on the data transmitted by the Member States.
- (33) The statistical data collected under this Directive on environmental offences should be comparable between the Member States and collected on the basis of common minimum standards. In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to define the standard format for statistical data transmission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>27</sup>.
- (34) The obligations under this Directive are without prejudice to Union law on procedural rights in criminal proceedings. In implementing this Directive, Member States should ensure that the procedural rights of suspected or accused persons in criminal proceedings are fully respected.
- (35) Alternatives – please delete one option according to the IRL choice:

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<sup>27</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (36) [*non-participation:*] In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application. OR
- [*participation:*] In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Directive.
- (37) Directive 2005/35/EC of the European Parliament and of the Council<sup>28</sup> was supplemented by Directive 2009/123/EC of the European Parliament and of the Council<sup>29</sup> with provisions on criminal offences and penalties for ship-source discharges of polluting substances. Such offences and penalties should fall within the scope of this Directive. Therefore, for Member States participating in this Directive, Directive 2009/123/EC should be replaced accordingly.
- (38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.
- (39) Since the objectives of this Directive, namely to ensure common definitions of environmental criminal offences and the availability of effective, dissuasive and proportionate criminal sanctions for serious environmental offences, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (40) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice in criminal proceedings for the same offence. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### *Subject matter*

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in order to protect the environment more effectively.

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<sup>28</sup> Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11).

<sup>29</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).

## Article 2

### Definitions

For the purpose of this Directive, the following definitions apply:

- (1) 'unlawful' means a conduct infringing one of the following:
  - (a) Union legislation, which irrespective of its legal basis contributes to the pursuit of the objectives of Union policy of protecting the environment as set out in the Treaty on the Functioning of the European Union;
  - (b) a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the Union legislation referred to in point (a).

The conduct shall be deemed unlawful even if carried out under an authorisation by a competent authority in a Member State when the authorisation was obtained fraudulently or by corruption, extortion or coercion;

- (2) 'habitat within a protected site' means any habitat of species for which an area is classified as a special protection area pursuant to Article 4(1) or (2) of Directive 2009/147/EC of the European Parliament and of the Council<sup>30</sup>, or any natural habitat or a habitat of species for which a site is designated as a special area of conservation pursuant to Article 4(4) of Council Directive 92/43/EEC<sup>31</sup>;
- (3) 'legal person' means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations;
- (4) 'public concerned' means the persons affected or likely to be affected by the offences referred to in Articles 3 or 4. For the purposes of this definition, persons having a sufficient interest or maintaining the impairment of a right as well as non-governmental organisations promoting the protection of the environment and meeting any proportionate requirements under national law shall be deemed to have an interest;
- (5) 'victim' has the meaning attributed to it in Article 2(1) point (a) of Directive 2012/29/EU of the European Parliament and of the Council<sup>32</sup>.

## Article 3

### Offences

1. Member States shall ensure that the following conduct constitutes a criminal offence when it is unlawful and committed intentionally:
  - (a) the discharge, emission or introduction of a quantity of materials or substances or ionising radiation into air, soil or water which causes or is likely to cause

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<sup>30</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).

<sup>31</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>32</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, (OJ L 315, 14.11.2012, p. 57–73).

- death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (b) the placing on the market of a product which, in breach of a prohibition or another requirement, causes or is likely to cause death or serious injury to any person or substantial damage to air, water or soil quality, or to animals or plants as a result of the product's use on a larger scale;
  - (c) the manufacture, placing on the market or use of substances, whether on their own, in mixtures or in articles, including their incorporation into articles, when:
    - (i) this activity is restricted pursuant to Title VIII and Annex XVII of Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>33</sup>; or
    - (ii) this activity is prohibited pursuant to Title VII of Regulation (EC) No 1907/2006; or
    - (iii) this activity is not in compliance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council<sup>34</sup>; or
    - (iv) this activity is not in compliance with Regulation (EC) No 528/2012 of the European Parliament and of the Council<sup>35</sup>; or
    - (v) this activity falls under Regulation (EC) No 1272/2008 of the European Parliament and of the Council<sup>36</sup>; or
    - (vi) this activity is prohibited pursuant to Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council<sup>37</sup>,
 and it causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
  - (d) the execution of projects referred to in Article 1(2)(a) of Directive 2011/92/EU of the European Parliament and of the Council<sup>38</sup> without a development consent or an assessment with regard to their effects on the environment, which

<sup>33</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>34</sup> Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, (OJ L 309, 24.11.2009, p. 1–50).

<sup>35</sup> Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1–123).

<sup>36</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>37</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>38</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).

causes or is likely to cause substantial damage to the factors defined in Article 3(1) of Directive 2011/92/EU;

- (e) the collection, transport, recovery or disposal of waste, the supervision of such operations and the after-care of disposal sites, including action taken as a dealer or a broker (waste management), when an unlawful 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>39</sup> and is undertaken in a non-negligible quantity;
  - (ii) concerns other waste than referred to in point (i) and causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (f) the shipment of waste, within the meaning of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council<sup>40</sup> when such shipment is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
- (g) the recycling of ships falling within the scope of Regulation (EU) No 1257/2013 of the European Parliament and of the Council<sup>41</sup>, without complying with the requirements of Article 6(2), point (a) of that Regulation;
- (h) the ship-source discharges of polluting substances referred to in Article 4(1) of Directive 2005/35/EC of the European Parliament and of the Council<sup>42</sup> on ship-source pollution and on the introduction of penalties, including criminal penalties, into any of the areas referred to in Article 3(1) of that Directive, provided that the ship-source discharges do not satisfy the exceptions set in Article 5 of that Directive; this provision shall not apply to individual cases, where the ship-source discharge does not cause deterioration in the quality of water, unless repeated cases by the same offender in conjunction result in deterioration in the quality of water;
- (i) the installation, operation or dismantling of an installation in which a dangerous activity is carried out or in which dangerous substances, preparations or pollutants are stored or used falling within the scope of Directive 2012/18/EU of the European Parliament and of the Council<sup>43</sup>, Directive 2010/75/EU of the European Parliament and of the Council<sup>44</sup> or

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<sup>39</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3–30).

<sup>40</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

<sup>41</sup> Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1).

<sup>42</sup> Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11–21).

<sup>43</sup> Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance (OJ L 197, 24.7.2012, p. 1–37).

<sup>44</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17–119).

Directive 2013/30/EU of the European Parliament and of the Council<sup>45</sup> and which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;

- (j) the manufacture, production, processing, handling, use, holding, storage, transport, import, export or disposal of radioactive material falling within the scope of Council Directive 2013/59/Euratom<sup>46</sup>, Council Directive 2014/87/Euratom<sup>47</sup> or Council Directive 2013/51/Euratom<sup>48</sup>, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (k) the abstraction of surface water or groundwater which causes or is likely to cause substantial damage to the ecological status or potential of surface water bodies or to the quantitative status of groundwater bodies;
- (l) the killing, destruction, taking of, possession, sale or offering for sale of a specimen or specimens of wild fauna or flora species listed in Annexes IV and V (when species in Annex V are subject to the same measures as those adopted for species in Annex IV) to Council Directive 92/43/EEC<sup>49</sup> and the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council<sup>50</sup>, except for cases where the conduct concerns a negligible quantity of such specimens;
- (m) trading in specimens of wild fauna or flora species or parts or derivatives thereof listed in Annexes A and B to Council Regulation (EC) No 338/97<sup>51</sup>, except for cases where the conduct concerns a negligible quantity of such specimens;
- (n) the placing or making available on the Union market of illegally harvested timber or of timber products that were made of illegally harvested wood, falling within the scope of Regulation (EU) No 995/2010 of the European Parliament and of the Council<sup>52</sup>, except for cases where the conduct concerns a negligible quantity; [*If a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products*

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<sup>45</sup> Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178, 28.6.2013, p. 66–106).

<sup>46</sup> Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (OJ L 13, 17.1.2014, p. 1–73).

<sup>47</sup> Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 219, 25.7.2014, p. 42–52).

<sup>48</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. 12–21).

<sup>49</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7–50).

<sup>50</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7–25).

<sup>51</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).

<sup>52</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23–34).



*associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 is adopted before this Directive, point (n) to be replaced with a criminal offence within the scope of Article 3 of that Regulation.]*

- (o) any conduct which causes the deterioration of a habitat within a protected site, within the meaning of Article 6(2) of the Directive 92/43/EEC, when this deterioration is significant;
  - (p) introduction or spread of invasive alien species of Union concern when:
    - (i) the conduct breaches restrictions set out in Article 7(1) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council<sup>53</sup>;
    - (ii) the conduct breaches a condition of permit issued under Article 8 or of authorisation granted under Article 9 of Regulation (EU) No 1143/2014 and causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
  - (q) production, placing on the market, import, export, use, emission or release of ozone depleting substances as defined in Article 3 (4) of Regulation (EC) No 1005/2009 of the European Parliament and of the Council<sup>54</sup> or of products and equipment containing or relying on such substances;
  - (r) production, placing on the market, import, export, use, emission or release of fluorinated greenhouse gases as defined in Article 2 (1) of Regulation 517/2014 of the European Parliament and of the Council<sup>55</sup> or of products and equipment containing or relying on such gases.
2. Member States shall ensure that the conduct referred to in paragraph 1, points (a), (b), (c), (d), (e), (f), (h), (i), (j), (k), (m), (n), (p) (ii), (q), (r) also constitutes a criminal offence, when committed with at least serious negligence.
3. Member States shall ensure that their national legislation specifies that the following elements shall be taken into account, where relevant, when assessing whether the damage or likely damage is substantial for the purposes of the investigation, prosecution and adjudication of offences referred to in paragraph 1, points (a) to (e), (i), (j), (k) and (p):
- (a) the baseline condition of the affected environment;
  - (b) whether the damage is long-lasting, medium term or short term;
  - (c) severity of the damage;
  - (d) spread of the damage;
  - (e) reversibility of the damage.
4. Member States shall ensure that their national legislation specifies that the following elements shall be taken into account when assessing whether the activity is likely to

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<sup>53</sup> Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35).

<sup>54</sup> Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1–30)

<sup>55</sup> Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ L 150, 20.5.2014, p. 195–230).

cause damage to the quality of air, the quality of soil or the quality of water, or to animals or plants for the purposes of the investigation, prosecution and adjudication of offences referred to in paragraph 1, points (a) to (e), (i), (j), (k) and (p):

- (a) the conduct relates to an activity which is considered as risky or dangerous, requires an authorisation which was not obtained or complied with;
  - (b) the extent to which the values, parameters or limits set out in legal acts or in an authorisation issued for the activity are exceeded;
  - (c) whether the material or substance is classified as dangerous, hazardous or otherwise listed as harmful to the environment or human health.
5. Member States shall ensure that their national legislation specifies that the following elements shall be taken into account when assessing whether the quantity is negligible or non-negligible for the purposes of the investigation, prosecution and adjudication of offences referred to in paragraph 1, points (e), (f), (l), (m), (n):
- (a) the number of items subject to the offence;
  - (b) the extent to which the regulatory threshold, value or another mandatory parameter is exceeded;
  - (c) the conservation status of the fauna or flora species concerned;
  - (d) the cost of restoration of environmental damage.

#### *Article 4*

##### *Inciting, aiding and abetting and attempt*

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

#### *Article 5*

##### *Penalties for natural persons*

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall take the necessary measures to ensure that offences referred to in Article 3 are punishable by a maximum term of imprisonment of at least ten years if they cause or are likely to cause death or serious injury to any person.
3. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(1) points (a) to (j), (n), (q), (r) are punishable by a maximum term of imprisonment of at least six years.
4. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(1) points (k), (l), (m), (o), (p) are punishable by a maximum term of imprisonment of at least four years.

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

#### *Article 6*

##### *Liability of legal persons*

1. Member States shall ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on:
  - (a) a power of representation of the legal person;
  - (b) an authority to take decisions on behalf of the legal person;
  - (c) an authority to exercise control within the legal person.
2. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.

#### *Article 7*

##### *Sanctions for legal persons*

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(1) is punishable by effective, proportionate and dissuasive sanctions.
2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons liable pursuant to Article 6(1) for the offences referred to in Articles 3 and 4 shall include:
  - (a) criminal or non-criminal fines;
  - (b) the obligation to reinstate the environment within a given period;

- (c) exclusion from entitlement to public benefits or aid;
  - (d) temporary exclusion from access to public funding, including tender procedures, grants and concessions;
  - (e) temporary or permanent disqualification from the practice of business activities;
  - (f) withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence;
  - (g) placing under judicial supervision;
  - (h) judicial winding-up;
  - (i) temporary or permanent closure of establishments used for committing the offence;
  - (j) obligation of companies to install due diligence schemes for enhancing compliance with environmental standards;
  - (k) publication of the judicial decision relating to the conviction or any sanctions or measures applied.
3. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(2) is punishable by sanctions or measures, which are effective, proportionate and dissuasive.
  4. Member States shall take the necessary measures to ensure that offences referred to in Article 3(1) points (a) to (j), (n), (q), (r) are punishable by fines, the maximum limit of which shall be not less than 5% of the total worldwide turnover of the legal person [/undertaking] in the business year preceding the fining decision.
  5. Member States shall take the necessary measures to ensure that offences referred to in Article 3(1) points (k), (l), (m), (o), (p) are punishable by fines, the maximum limit of which shall be not less than 3% of the total worldwide turnover of the legal person [/undertaking] in the business year preceding the fining decision.
  6. Member States shall take measures to ensure that the illegal profits generated from the offence and the annual turnover of the legal person are taken into account when a decision is made on the appropriate level of a fine pursuant to paragraph 1.

## *Article 8*

### *Aggravating circumstances*

In so far as the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Article 3, Member States shall take the necessary measures to ensure that, in relation to the relevant offences referred to in Articles 3 and 4, the following circumstances may be regarded as aggravating circumstances:

- (a) the offence caused the death of, or serious injury to, a person;
- (b) the offence caused destruction or irreversible or long-lasting substantial damage to an ecosystem;

- (c) the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA<sup>56</sup>;
- (d) the offence involved the use of false or forged documents;
- (e) the offence was committed by a public official when performing his/her duties;
- (f) the offender committed similar previous infringements of environmental law;
- (g) the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly;
- (h) the offender's conduct gives rise to liability for environmental damage but the offender does not fulfil their obligations to take remedial action under Article 6 of Directive 2004/35/EC<sup>57</sup>;
- (i) the offender does not provide assistance to inspection and other enforcement authorities when legally required;
- (j) the offender actively obstructs inspection, custom controls or investigation activities, or intimidates or interferes with witnesses or complainants.

### *Article 9*

#### *Mitigating circumstances*

Member States shall take the necessary measures to ensure that, in relation to the relevant offences referred to in Articles 3 and 4, the following circumstances may be regarded as mitigating circumstances:

- (a) the offender restores nature to its previous condition;
- (b) the offender provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
  - (i) identify or bring to justice the other offenders;
  - (ii) find evidence.

### *Article 10*

#### *Freezing and confiscation*

Member States shall take the necessary measures to ensure, as appropriate, that their competent authorities may freeze or confiscate, in accordance with Directive 2014/42/EU of the European Parliament and of the Council<sup>58</sup>, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of the offences as referred to in this Directive.

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<sup>56</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300/42.

<sup>57</sup> Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56–75).

<sup>58</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).

## *Article 11*

### *Limitation periods for criminal offences*

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

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

## *Article 12*

### *Jurisdiction*

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 and 4 where:

- (a) the offence was committed in whole or in part on its territory;
  - (b) the offence was committed on board a ship or an aircraft registered in it or flying its flag;
  - (c) the damage occurred on its territory;
  - (d) the offender is one of its nationals or habitual residents.
2. A Member State shall inform the Commission where it decides to extend its jurisdiction to offences referred to in Articles 3 and 4 which have been committed outside its territory, where:
  - (a) the offence is committed for the benefit of a legal person established on its territory;
  - (b) the offence is committed against one of its nationals or its habitual residents;
  - (c) the offence has created a severe risk for the environment on its territory.

Where an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State, these Member States shall cooperate to determine which Member State shall conduct criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Council Framework Decision 2009/948/JHA<sup>59</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.

### *Article 13*

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

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

### *Article 14*

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

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

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<sup>59</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 15*

### *Prevention*

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

## *Article 16*

### *Resources*

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

## *Article 17*

### *Training*

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

## *Article 18*

### *Investigative tools*

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

## *Article 19*

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

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

- (a) ensuring common priorities and understanding of the relationship between criminal and administrative enforcement;
- (b) exchange of information for strategic and operational purposes;
- (c) consultation in individual investigations;



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

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

## *Article 20*

### *National strategy*

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

## *Article 21*

### *Data collection and statistics*

1. Member States shall collect statistical data to monitor the effectiveness of their systems to combat environmental criminal offences.
2. The statistical data referred to in paragraph 1 shall include at least the following:
  - (a) the number of environmental crime cases reported;
  - (b) the number of environmental crime cases investigated;
  - (c) the average length of the criminal investigations of environmental crimes;
  - (d) the number of convictions for environmental crime;

- (e) the number of natural persons convicted and sanctioned for environmental crime;
  - (f) the number of legal persons sanctioned for environmental crime or equivalent offences;
  - (g) the number of dismissed court cases for environmental crime;
  - (h) the types and levels of sanctions imposed for environmental crime, including per categories of environmental offences according to Article 3.
3. Member States shall ensure that a consolidated review of their statistics is regularly published.
  4. Member States shall annually transmit to the Commission the statistical data referred to in paragraph 2 in a standard format established in accordance with Article 22.
  5. The Commission shall regularly publish a report based on the statistical data transmitted by the Member States. The report shall be published for the first time three years after the standard format referred to in Article 22 has been determined.

## *Article 22*

### *Implementing powers*

1. The Commission shall be empowered to adopt implementing acts establishing the standard format for data transmission referred to in Article 21(4). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 23(2).
2. For the purposes of the transmission of statistical data, the standard format shall contain the following elements:
  - (a) a common classification of environmental crimes;
  - (b) a common understanding of counting units;
  - (c) a common understanding of procedural stages (investigation, prosecution, trial) in environmental crime proceedings;
  - (d) a common reporting format.

## *Article 23*

### *Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

## Article 24

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*OP – please insert the date – within 18 months after entry into force of the Directive*]. They shall immediately inform the Commission thereof. The methods of making such reference shall be laid down by Member States.
2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

## Article 25

### *Evaluation and reporting*

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

## Article 26

### *Replacement of Directive 2008/99/EC*

Directive 2008/99/EC is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of that Directive into national law. With regard to the Member States bound by this Directive, references to Directive 2008/99/EC shall be construed as references to this Directive. As regards Member States not bound by this Directive, they shall remain bound by Directive 2008/98/EC.

## Article 27

### *Application of Directive 2005/35/EC*

Directive 2009/123/EC shall cease to apply to the Member States participating in this Directive from the date of its transposition.

*Article 28*

*Entry into force*

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

*Article 29*

*Addressees*

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**LEGISLATIVE FINANCIAL STATEMENT**

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## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Directive on the protection of the environment through criminal law Amending Directive 99/2008/EC

#### 1.2. Policy area(s) concerned

Environmental Protection  
Criminal law

- Procedural criminal law
- Substantive criminal law

#### 1.3. The proposal/initiative relates to:

- a new action
- a new action following a pilot project/preparatory action<sup>60</sup>
- the extension of an existing action
- a merger or redirection of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

The policy ambition and main objective of the initiative is to ensure a better protection of the environment by means of criminal law and by improving detection, investigation, prosecution and sanctioning of environmental crime. The envisaged new Environmental Crime Directive will help achieving the goals set by Article 191 of the TFEU, the Green Deal and the Biodiversity Strategy.

As this proposal is a revision of a former Directive, one of the main goals of this proposal is to address the shortcomings and weaknesses of Directive 2008/99/EC identified during its evaluation in 2019-2020.(ndlr: “Specific objective).

##### 1.4.2. Specific objective(s)

###### Specific objective No

1. Improve the effectiveness of detection, investigation, prosecution and sanctioning of environmental crime by updating the scope of the Directive and refine the legal technique used for the scope definition
2. Improve the effectiveness of detection, investigation, prosecutions and sanctioning of environmental crime by clarifying or eliminating the undefined terms used in the current description of the environmental criminal offences.
3. Ensure effective, dissuasive and proportionate sanction types and levels for environmental crime.
4. Foster cross-border investigation and prosecution.

<sup>60</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.



5. Improve informed decision-making on environmental crime through improved collection and dissemination of information and statistical data on the scale of environmental crime and the efforts to combat it.

6. Improve the overall operational effectiveness of national enforcement chains to foster detection, investigation, prosecution and sanctioning of environmental crimes.

#### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The main expected result of the initiative is to improve the EU legal framework on tackling environmental crime and to strengthen enforcement at national level. It is acknowledged that criminal law is the last resort when other measures have not been sufficient to ensure compliance, which in this case proves essential for enforcing the Union's environmental law.

The Directive will help improving the effectiveness of national enforcement and sanctioning systems in relation to environmental crime and enhancing public confidence. Even if it is not possible to have a quantitative approach of the expected results of the Directive on the overall protection of the environment, it is possible to have a qualitative approach of the impacts of an improved environmental protection to which the revised Directive will contribute.

A more effective Directive which leads to better law enforcement by criminal law will contribute to an improved environment through its preventive and deterrent effects. Where there is an effective criminal law system in place, environmental crime does not pay off. It will also have immediate positive social impacts on human life, health and well-being. The revised Directive will improve the tools to fight against environmental crimes and will also have a positive economic impact. Hence, it will help reduce the estimated profits of between USD 91 and 259 billion globally from environmental crimes, which are losses to societies through losses of tax revenue, revenue loss for fair playing businesses and which undermine good governance.

#### 1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements*

The success of this proposal could not be measured against a clear baseline, as systematic information on the scale of environmental crime and efforts to combat it in individual Member States is insufficient. Trends in environmental crime depend on the development of global trade, on new opportunities through digitalisation and the interplay of criminal sanctioning systems with civil and administrative sanctioning systems in the Member States.

The following qualitative and quantitative indicators are proposed for monitoring the progress and the success of the initiative:

- overall improvement of enforcement and sanctioning of environmental crime mirrored in increased cooperation, specialisation, better training and exchange of information;
- the numbers of environmental law cases successfully investigated and prosecuted;
- the numbers of convictions;
- the type and levels of sanctions imposed that must become more effective,

dissuasive and proportionate in practice;

- number of officials trained on issues related to effective tackling of environmental crime;
- existence or development of national strategies on combating environmental crime.

The assessment through indicators of the efficiency of the Directive has to be done in context. Nowadays, within Member States, there are only few environmental crime cases completed successfully and sanction levels are too low. There have been no upward-trends in the past decade (see IA, section 1.2 – “evaluation of the Directive and the evaluation final report”). Hence, stable upwards trends in environmental cases in all Member States would point to the Directive’s effectiveness. As environmental crime is growing globally at percentage between 5 and 7 % globally, a matching growth rate of successful investigations and convictions would be considered a success. By contrast, if - at a later stage - environmental cases were to decrease, this might indicate that the Directive was successful in deterring criminals.

#### Indicators of Performance

The provisions below provide suggestions of monitoring indicators for each specific objective:

- Broadening the scope of the Directive
  - Indicator: Number of investigations, prosecutions, convictions and dismissed cases
  - Baseline: where information is available, there have been no upward trends in the Member States
  - Success: Stable upward trends in each Member State. Ideally an increase of between 5 and 7% which correspond to the rate at which environmental crime is estimated to grow every year
- Define more precisely environmental crime types under article 3 :
  - Indicator: as above
  - Baseline: as above
  - Success: as above
- Foster effective, dissuasive and proportionate types and levels of sanctions
  - Indicator: Levels of financial fines imposed on natural persons, levels of imprisonment sanctions, levels of financial fines imposed on legal persons and types and numbers of accessory sanctions imposed on natural persons
  - Baseline: there is currently no or only very few and scattered statistical data on sanctions imposed on environmental crime. The available data and interviews with practitioners show that sanctions are too low to be dissuasive
  - Success: Given the current situation, success implementation would show that sanctions imposed use the full range of available sanction types and levels. Accessory sanctions imposed should show that all sanctions types are used. We would like to see that restoration of damage and the removal of profits are applied systematically.

- More cross border cooperation
  - Indicators: number of environmental cases at Eurojust and OLAF, number of JITS at Eurojust, number of SIENA cases/messages a Europol and number of contacts with national contact points, to be installed
  - Baseline: current level of Eurojust, OLAF, SIENA, professional networks are generally low
  - Success: would be an increase of cross-border cooperation manifested in the figures at Eurojust, OLAF and Europol. Environmental crime is the fourth largest crime category globally and thus the number of environmental cases at Europol and Eurojust should account for higher portion of the total cases handled by these agencies.
- More effective enforcement chain
  - Indicators: same as the 1st objective with one addition: the number of Member States that have overarching strategies on combating environmental crime, number of Member States that have specialized investigation and prosecution units and court chambers, number of Member States that have increased their law enforcement personnel and number of police, prosecutors, judges, customs officers, administrative inspectors that have received training.
  - Baseline: same as the 1st objective
  - Success: same as for the 1st objective

## 1.5. Grounds for the proposal/initiative

### 1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

There are three types of requirements, which correspond to short, medium and long terms objectives.

Short term requirements:

1. Definition of minimum standards regarding the collection of statistical data
2. Member States shall transpose the directive within 18 months
3. Member States shall ensure that the conducts inscribed in article 3 of the proposal constitute a criminal offence, when unlawful and committed intentionally or with at least serious negligence
3. Member States shall take the necessary measures to make offences accessory to environmental crime are criminalised
4. Member States shall define penalties related to environmental crimes for natural and legal persons
5. Member States shall define aggravating and mitigating circumstances of environmental crimes
6. Member States shall define investigative tools
7. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in the proposal
8. Member States shall ensure coordination and cooperation at strategic and operational levels among all competent authorities involved in the

prevention of and the fight against environmental crime

9. Member States shall designate a national contact point for the purpose of exchanging information. Member States shall also ensure that these national contact points are connected to the [e-EDES system] and they have procedures in place so that urgent requests for assistance are promptly dealt with. Member States shall inform the Commission, Europol and Eurojust of their appointed point of contact. They shall update that information as necessary. The Commission shall forward that information to the other Member States.
10. Member States shall grant any recognized group, foundation or association which, according to its statutes, aims at the protection of the environment, the right to have access to the file of cases concerning offences referred to in the proposal
11. Member States shall take appropriate action, such as information and awareness-raising campaigns and research and education programs, aimed to reduce overall environmental crime, raise awareness and reduce the risk of becoming a victim of environmental crime. Where appropriate, Member States shall act in cooperation with stakeholders.

Medium term requirements:

- Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, the Member States, Eurojust, the European Public Prosecutor's Office, and the Commission (OLAF) shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in Articles 3, 3a and 4.
- Member States shall ensure that officials who detect, investigate, prosecute or adjudicate environmental offences, such as judges, prosecutors, police, judicial and those competent authorities' staff, receive regular specialist training appropriate to their functions.
- Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors, police, judicial and those competent authorities' staff involved in criminal proceedings and investigations to provide appropriate training with respect to the objectives of this Directive
- Within one year after the entering into force of this Directive, Member States shall establish and publish a national strategy on combating environmental crime and take measures to ensure its regular evaluation and update.
- Member States shall collect systematic, reliable and up-to date statistics on environmental crime by each competent authority with a view to making consistent and coherent comparison and analysis of relevant information possible.
- Member States shall transmit the data collected pursuant to paragraph 1 to the Commission on an annual basis.
- The Commission shall ensure that a consolidated review of the statistical reports and national strategies of implementation is published and submitted to the competent specialized Union agencies

and bodies.

Long term requirements:

- The Commission shall, by two years after transposition period is over, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive. Member States shall provide the Commission with the necessary information for the preparation of that report.
- The Commission shall, by five years after transposition period is over, carry out an evaluation of the impact of this Directive on the protection of environment through criminal law 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.

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

#### **Reasons for action at European level (ex-ante)**

The existing Directive aimed to provide a harmonised framework to address environmental crimes throughout the Union and facilitate cross-border cooperation. However, as detailed in the evaluation report, despite the progress in creating an EU-wide common set of definitions of environmental crimes and requiring more dissuasive sanction levels, Member States on their own have not been able to reconcile their respective understandings of environmental crime within the room for maneuver the Directive has left. Similarly, the insufficient sanction levels in a number of Member States prevent a level playing field across the EU and mutual recognition instruments from applying (such as the European Arrest Warrant and the European Investigation Order).

Despite the Directive, the number of cross-border investigations and convictions in the EU of environmental crime did not grow substantially. In the meantime, in contrast, environmental crime is growing at annual rates of 5 to 7% globally, creating lasting damage for habitats, species, health of citizens and revenues of governments and businesses.

#### **Expected generated Union added value (ex-post)**

With a more effective Directive, the EU can provide the harmonised framework for a common understanding of definitions of environmental crimes and for effective access to cross-border investigative tools. By providing more clarity on legal definitions and by approximating sanction levels, as well as by providing tools and obligations for cross-border cooperation among Member States, the revised Directive will create a more even level playing field with equivalent criminal law protection for the environment across the EU and facilitate cross-border cooperation on investigations and prosecutions. By facilitating cross-border investigations, prosecutions and convictions, EU action will provide for clear added value on

countering environmental crimes which typically have transnational dimensions compared to what Member States acting alone can achieve.

As environmental crime often undermines legal and tax paying businesses, which share an unknown but likely large share of the estimated annual global loss related to environmental crime of between USD 91 and 259 billion, an effective EU legislative framework on environmental crime will have an effect on the functioning of the EU single market as well. Without such EU wide legislation, companies operating in Member States with limited definitions of environmental crimes or lenient enforcement regimes can have a competitive advantage over the companies established in Member States with stricter legal frameworks.

An effective EU wide policy on environmental crime may also benefit other EU policy objectives. Environmental crimes are often linked to other forms of crime such as money laundering, terrorism, tax fraud, forgery or other forms of organised crime against which the EU has adopted a range of legislation in recent years. A more effective EU legislation on environmental crime would contribute to effective criminal law enforcement strategies, at the EU and national level that address all relevant aspects of criminal interaction.

### 1.5.3. *Lessons learned from similar experiences in the past*

As this proposal consists in a revision of a former Directive, the lessons learned from similar experiences in the past mainly focus on the drawbacks and benefits from the last Directive. To that extent, the Commission has conducted an evaluation of the Directive in 2019/2020. This report found that the Directive had an added value as it defined for the first time a common legal framework for environmental criminal offences and required effective, dissuasive and proportionate sanctions.

However, the Directive did not have much effect on the ground, namely the number of environmental crime cases successfully investigated and sentenced stayed at a very low level and generally did not show any significant upward trends over the past 10 years.

Moreover, the sanction levels imposed were too low to be dissuasive and cross-border cooperation did not take place in a systematic manner.

The Directive's lack of effectiveness in practice is partly due to the generic nature of its provisions. This can be explained by the EC-legislator's limited competences in the field of criminal law under pre-Lisbon conditions, which did not allow going into more detail, especially on sanctions.

In addition, poor enforcement in the Member States contributes largely to the Directive not having much effect on the ground. The evaluation found considerable enforcement gaps in all Member States and at all levels of the enforcement chain (police, prosecution and criminal courts). Deficiencies in the Member States include a lack of resources, specialised knowledge, awareness and prioritisation, cooperation and information sharing and an absence of overarching national strategies to combat environmental crime involving all levels of the enforcement chain and a multi-disciplinary approach. Moreover, the lack of coordination between the administrative and criminal law enforcement and sanctioning tracks often hinders effectiveness.

It was also found that the lack of reliable, accurate and complete statistical data on environmental crime proceedings in the Member States did not only hamper the

Commission's evaluation but also prevents national policy-makers and practitioners from monitoring the effectiveness of their measures.

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

The proposed Directive on the protection of the environment through criminal law Amending Directive 99/2008/EC is consistent with the Green Deal Communication where it is clearly stated that “The Commission will also promote action by the EU, its Member States and the international community to step up efforts against environmental crime” and the Biodiversity Strategy where the possibility of reviewing and amending the former directive is stated in the Annex of the Communication. In July 2021, the Commission presented a package with concrete proposals for a Green New Deal, aimed at reducing emissions by 55% by 2030 and at making Europe climate neutral by 2050. Criminal law is only a part of this comprehensive EU strategy to protect and improve the status of the environment, which is a priority for the current Commission. The Green Deal Communication and the Biodiversity Strategy set out a whole range of measures of environmental protection that will pull together in a holistic approach, reinforce and influence each other. Criminal law measures will come in as a last resort when other measures have not been sufficient to ensure compliance.

The proposal is also consistent with:

- The EU Action Plan against Wildlife Trafficking to improve environmental compliance in the field of wildlife trafficking;
- The EU Serious and Organised Crime Threat Assessment (EU SOCTA) 2021, which has identified “environmental crime” amongst the key crime threats facing the EU and therefore it has included environmental crime in the EMPACT 2022-2025;
- The new EU Strategy to tackle Organised Crime covering the period 2021-2025 presented the Commission in April 2021, which named environmental crime as one of the future priorities of the EU's fight against organised crime.

The objectives of this proposal are supported by the Multiannual Financial Framework, which places an important emphasis on funding activities to protect the environment. Some synergies will exist with pre-existing programmes. An example would be the training activities derived from the proposal which most of them already exist and are provided by CEPOL, by Frontex training for law enforcement and by different professional networks such as EJTN and ERA for the judicial branch. Those organisations already benefit from EU budget through Life programme, ISF or the Police and Justice programme and already provide formation on environmental law.

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

In order to cope with the proposal new obligations such as monitoring the situation, increase trainings, provide some guidance and raising awareness, the Commission will have to do an extra effort. Those efforts will rely on DG JUST and DG ENV as most of the tasks listed below will required some time management and some extra costs.

## 1.6. Duration and financial impact of the proposal/initiative

### limited duration

- in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

### unlimited duration

- Implementation with a start-up period from 2022 to 2025,
- followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>61</sup>

### Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

### - Shared management with the Member States

### - Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 70 and 71 of the Financial Regulation;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

## Comments

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<sup>61</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>



## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

The present proposal identifies several monitoring and reporting rules. First, after the end of the transposition period, the Commission will need to produce a report on how Member States transposed the Directive. In addition, five years after the transposition of the Directive, it will need to produce another report on the efficiency of the revised Directive and to identify opportunities to strengthen it. These two reports are the basis of the monitoring and reporting rules lay down in the proposal.

Moreover, the Commission shall issue a biennial report on the data collected and transmitted by Member States.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

Considering that the proposal affects the Commission's work, and more precisely that of DG JUST and DG ENV, the EU budget will be implemented via direct management.

Pursuant to the principle of sound financial management, the budget shall be implemented in compliance with effective and efficient internal control.

Regarding controls, DG JUST and DG ENV are subject to:

- internal audit by the Internal Audit Service of the Commission;
- external independent audits from the European Court of Auditors (ECA).
- annual discharge granted by the European Parliament;
- possible administrative investigations conducted by OLAF;
- a further layer of control and accountability by the European Ombudsman.

#### 2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

No specific risks have been identified at this stage.

#### 2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

Following the Commission central services' guidance, the cost of the controls at Commission level is assessed by the cost of the different control stages. The overall assessment for each management mode is obtained from the ratio between all those costs and the total amount paid in the year for the related management mode.

The ratio of "control costs/payment of the related funds managed" is reported on by the Commission. The 2020 AAR of DG JUST reports 10,45% for this ratio in relation to Direct - Procurement. The 2020 AAR of DG ENV reports 1,55% for this ratio.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

The LFS concerns staff expenditure and procurement, and standard rules for this type of expenditures apply.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>62</sup>	from EFTA countries <sup>63</sup>	from candidate countries <sup>64</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
2	Cohesion, Resilience and Values	Non-diff.	NO	NO	NO	NO
7	European Public Administration	Non-diff	NO	NO	NO	NO

- New budget lines requested

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>62</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>63</sup> EFTA: European Free Trade Association.

<sup>64</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated financial impact of the proposal on appropriations

#### 3.2.1. Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	2	Cohesion, Resilience and Values
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DG Justice and Consumers			Year 2025 <sup>65</sup>	Year 2026	Year 2027	Year N+4	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
• Operational appropriations										
Promoting judicial cooperation	Commitments	(1a)	0,350 000							<b>0,350 000</b>
	Payments	(2a)	0,350 000							<b>0,350 000</b>
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>66</sup>										
Budget line		(3)								
<b>TOTAL appropriations for DG Justice and Consumers</b>	Commitments	=1a+1b +3	0,350 000							<b>0,350 000</b>
	Payments	=2a+2b	0,350 000							

<sup>65</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

<sup>66</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

		+3								
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• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations under HEADING &lt;...&gt; of the multiannual financial framework</b>	Commitments	=4+ 6								
	Payments	=5+ 6								

**If more than one operational heading is affected by the proposal / initiative, repeat the section above:**

• TOTAL operational appropriations (all operational headings)	Commitments	(4)								
	Payments	(5)								
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
<b>TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)</b>	Commitments	=4+ 6								
	Payments	=5+ 6								

<b>Heading of multiannual financial framework</b>	<b>7</b>	European Public Administration
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		Year <b>2025</b>	Year <b>2026</b>	Year <b>2027</b>	Year <b>N+3</b>	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>
DG Justice and Consumers									
• Human resources		0,105 048	0, 022 109	0, 022 109					<b>0,149 266</b>
• Other administrative expenditure									
<b>TOTAL DG Justice and Consumers</b>	Appropriations	0,105 048	0, 022 109	0, 022 109					<b>0,149 266</b>
DG Environment									
• Human resources		0,105 048	0, 022 109	0, 022 109					<b>0,149 266</b>
• Other administrative expenditure									
<b>TOTAL DG Environment</b>	Appropriations	0,105 048	0, 022 109	0, 022 109					<b>0,149 266</b>
<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>		(Total commitments = Total payments) 0,210 096	0,044 218	0,044 218					<b>0,298 532</b>

EUR million (to three decimal places)

		Year <b>2025</b>	Year <b>2026</b>	Year <b>2027</b>	Year <b>N+3</b>	Enter as many years as necessary to show the duration			<b>TOTAL</b>
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<b>TOTAL appropriations under HEADINGS 1 to 7</b> of the multiannual financial framework	Commitments	0,560 096	0,044 218	0,044 218															<b>0,648 532</b>
	Payments	0,560 096	0,044 218	0,044 218															

### 3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year 2025	Year 2026	Year 2027	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)										TOTAL			
	OUTPUTS																			
	Type <sup>67</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 5 <sup>68</sup> Improve informed decision-making on environmental crime through improved collection and dissemination of statistical data.																				
an expert in statistical data collecton to define minimum standards and present report format to MS			0,111 297																	0,111 297

<sup>67</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>68</sup> As described in point 1.4.2. 'Specific objective(s)...'

maintenance of standards				0,016 582		0,016 582		0,016 582										0,049 746
Biennial EU report on MS data				0,027 636		0,027 636		0,027 636										0,082 908
Subtotal for specific objective No 1				0,155 515		0,044 218		0,044 218										0,243 951
Monitoring the Directive																		
Contractor to produce the study on the transposition of the directive by Member States				0,350														
Commission staff to review and manage the Contractor study				0,054 581														
Subtotal for Monitoring the Directive				0,404 581														0,404 581
<b>TOTALS</b>				0,560 096		0,044 218		0,044 218										0,648 532



### 3.2.3. Summary of estimated impact on administrative appropriations

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2025	Year 2026	Year 2027	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)				<b>TOTAL</b>
--	--------------	--------------	--------------	-------------	--	--	--	--	--------------

<b>HEADING 7 of the multiannual financial framework</b>									
Human resources	0,210 096	0,044 218	0,044 218						<b>0,298 532</b>
Other administrative expenditure									
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	<b>0,210 096</b>	<b>0,044 218</b>	<b>0,044 218</b>						<b>0,298 532</b>

<b>Outside HEADING 7<sup>69</sup> of the multiannual financial framework</b>									
Human resources									
Other expenditure of an administrative nature									
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>									

<b>TOTAL</b>	<b>0,210 096</b>	<b>0,044 218</b>	<b>0,044 218</b>						<b>0,298 532</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>69</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.3.1. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	Year 2025	Year 2026	Year 2027	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
20 01 02 01 (Headquarters and Commission's Representation Offices)	2	1	1				
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>70</sup></b>							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
<b>XX</b> 01 xx yy zz <sup>71</sup>	- at Headquarters						
	- in Delegations						
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>2<sup>72</sup></b>	<b>1</b>	<b>1</b>				

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	<p>Year 2025:</p> <p>Specific objective number five:</p> <ul style="list-style-type: none"> <li>• One-off costs: a Commission official who would be an expert in statistical data collection, ideally crime statistics in order to define minimum standards and to draft report format for Member States allowing them to report statistical data in an harmonized way. This task shall be carried out in 162 days.</li> <li>• Recurring costs: a Commission official who would be an expert in statistical data collection, ideally crime statistics in order to maintain data and produce biennial report on data coming from Member States. Those task shall be carried out in 64 days each year starting in 2025.</li> </ul>
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<sup>70</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>71</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

<sup>72</sup> These figures of FTE apply not for the full year but only for 7 months per year.

	<p>Reporting on the transposition of the Directive</p> <ul style="list-style-type: none"> <li>• One-off costs: a Commission official who would manage and review the contractor's study, plus prepare the actual evaluation SWD report to be adopted. This task shall be carried out in 79 days in 2025.</li> </ul> <p>Starting in 2025 and occurring each year:</p> <p>Specific objective number five:</p> <ul style="list-style-type: none"> <li>• Recurring costs: a Commission official who would be an expert in statistical data collection, ideally crime statistics in order to maintain data and produce biennial report on data coming from Member States. Those task shall be carried out in 64 days each year starting in 2025</li> </ul>
External staff	

### 3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

- The proposal/initiative is compatible the current multiannual financial framework.
- requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

- requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

### 3.2.5. *Third-party contributions*

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N <sup>73</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>73</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue
  - please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>74</sup>							
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			
Article .....									

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

<sup>74</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.