



2021/0422(COD)

07.12.2022

OPINION

of the Committee on Development

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council
on the protection of the environment through criminal law and replacing
Directive 2008/99/EC
(COM(2021)0851 – C9-0466/2021 – 2021/0422(COD))

Rapporteur for opinion: Caroline Roose

PA_Legam

SHORT JUSTIFICATION

According to the UNEP and INTERPOL, environmental crime is rising and has become the fourth largest criminal sector in the world putting at risk the environment, the biodiversity and the climate. It deprives countries and populations from billions of euros of economic revenues annually, especially in developing countries, and threaten human rights.

The current 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 aims primarily at improving environmental protection by means of harmonised criminal legislation. However, many shortcomings and loopholes have been identified, i.e. limited scope, inadequacy of sanctions, low levels of fines; lack of implementation and cooperation between Member States; lack of statistical data, etc.

The rapporteur welcomes the proposal made by the European Commission, notably regarding the broadening of its scope; the strengthening of its provisions related to criminal sanctions and the provision of mechanisms to protect environmental defenders. However, Rapporteur believes that further changes are needed to tackle environmental crime effectively.

First of all, an external dimension to the Directive should be introduced so as to take into account the transboundary character of environmental crime and its impacts on developing countries. The European Union has a particular responsibility in preventing and combating environmental offences in developing countries on several grounds. In some cases, the perpetrator is a European person or a person linked to the EU; the EU is an import or export area, a transition area and a major market, the value chains of some economic sectors is affected by these illegal activities and their leading companies are often headquartered in the EU.

In light of this, and given that human rights violations are often linked to the commission of environmental offences, the rapporteur suggests to amend Article 1 to put a human rights approach at the core of the Directive.

The rapporteur proposes the inclusion of general and autonomous definitions of environmental offences. Despite the growing number of environmental crimes, a harmonised definition of environmental crimes does not yet exist either at the worldwide or at European and national level. Instead, the current system relies upon a list of secondary legislation, leaving out according large parts of EU environmental law. Therefore, criminalising autonomous crimes would enable criminal liability for serious cases of environmental harm and give rights to the nature. It is particularly relevant to tackle transnational organised environmental crime involving or taking place in developing countries.

The rapporteur is also in favour of introducing a crime of ecocide, in order to criminalise the most serious crimes to the environment. The EU should defend the jurisdiction of the International Criminal Court to cover criminal acts that amount to ecocide. In parallel, the EU and its Member States should take the lead for its recognition. The introduction of a crime of ecocide in the remit of this Directive is of particular importance to preventing and prosecuting the most serious transnational environmental crimes taking place in developing countries. The definition used is the one developed by the Independent Expert Panel for the Legal Definition of Ecocide published in June 2021, a group of international criminal lawyers, environmental lawyers and legal scholars. It is the most comprehensive and recent definitional work available

at the moment.

The rapporteur also proposes to enlarge the scope of the Directive, notably to fisheries crime and the exploitation and trade of illegal minerals. Serious breaches of the future Corporate Sustainable due diligence obligations and of the CSRD should be also considered criminal offences.

There is a significant amount of environmental crime linked to legal business and corporations and some corporations choose to be based in places with weak environmental regulations, as this is the case in many developing countries. Therefore, the rapporteur is of the opinion that Member States should have the obligation to establish their jurisdiction over offences committed for the benefit of a legal person established on their territory.

To reinforce cooperation with third countries, a new article is introduced, in line with SDG 17. It is estimated that billions of euros in revenues and taxes are annually stolen from developing countries, causing major economic losses. Hence, there is a need to step up development cooperation through increased financial and technical support to address environmental crime in developing countries.

To combat environmental crime effectively, the rapporteur suggests to introduce new provisions for assessing the damage to the environment as well as aggravating circumstances related i.e. to human rights violations, vulnerable groups and the rule of law systems. New sanctions shall equally be introduced, notably to compensate the damage made to the environment and to increase the maximum limits for penalties and sanctions to make them more dissuasive. Finally yet importantly, data collection and statistics must be improved.

AMENDMENTS

The Committee on Development calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recitals 1 a (new)

Text proposed by the Commission

Amendment

(1a) In accordance with Article 208 TFEU, the Union is to take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

Amendment 2

Proposal for a directive
Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) *In accordance with Article 3(5) TEU, in its relations with the wider world, the Union is to uphold and promote its values and contribute to the protection of all human rights, in particular, the rights of the child, as well as the strict observance and development of international law.*

Amendment 3

Proposal for a directive
Recital 1 c (new)

Text proposed by the Commission

Amendment

(1c) *The Charter of Fundamental Rights of the European Union recognises fundamental rights as they result from the constitutional traditions common to the Member States and affirms that it is not to be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised in their respective fields of application by Union law, international law and by international agreements to which the Union and all Member States are party, including the European Convention for the Protection of Human rights and Fundamental Freedoms and by the Member States' constitutions.*

Amendment 4

Proposal for a directive
Recital 1 d (new)

Text proposed by the Commission

Amendment

(1d) *The right to a clean, healthy and sustainable environment has been recognised as a human right by the*

United Nations General Assembly in its recent resolution of 26 July 2022 (A/RES/76/300) where it affirmed that the promotion of those human rights requires the full implementation of the multilateral environmental agreements under the principles of international environmental law and called upon international organisations, States, businesses and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity building and share good practices, in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.

Amendment 5

Proposal for a directive Recital 2

Text proposed by the Commission

(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.

Amendment

(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. ***In just a few decades, environmental crime has become the fourth largest criminal sector in the world, growing two to three times faster than the global economy, and it represents one to two times the size of global official development assistance (ODA) and is now as lucrative as drug trafficking.*** Such offences pose a threat to the environment ***and fundamental rights, entail habitat damage and biodiversity loss, amplify climate change, threaten the sustainable livelihood of vulnerable populations in developing countries, and create public health risks*** and therefore call for an appropriate and effective response. ***Environmental crime can also involve or take place in developing***

countries where shortcomings as regards the environmental rule of law have been identified, such as a lack of an adequate legal framework and governance structures, and a lack of information, implementation and enforcement. The Union has a particular responsibility in preventing and combating environmental offences in developing countries in cases in which the action can be linked to the Union. Such offences are not compatible with Union development policy and objectives or with the United Nations Sustainable Development Goals.

Amendment 6

Proposal for a directive Recital 3

Text proposed by the Commission

(3) The existing systems of penalties under Directive 2008/99/EC of the European Parliament and of the Council²⁰ 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.

²⁰ 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).

Amendment

(3) The existing systems of penalties under Directive 2008/99/EC of the European Parliament and of the Council²⁰ 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 ***and increase deterrence.***

²⁰ 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).

Amendment 7

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Despite the growing number of environmental crimes, a harmonised and accepted definition of environmental crimes does not yet exist either at the global, Union or national level. This Directive aims to provide a general framework by defining autonomous environmental crime, in addition to the Union-wide common set of definitions of specific environmental offences.

Justification

Despite the growing number of environmental crimes, an harmonised definition of environmental crimes does not yet exist either at the worldwide or at EU and national level. The Commission's proposal fails to propose a general definition of environmental crime, which is one of the greatest obstacle to the fight against such offences. The objective of this amendment is to provide a definition of environmental autonomous offences to overcome the weaknesses related to the Commission's sectoral approach and prevent any conduct that could create an immediate risk of substantial damage.

Amendment 8

Proposal for a directive

Recitals 6

Text proposed by the Commission

Amendment

(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 1224/2009²¹ 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

(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 1224/2009²¹ 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 Deal²² and the EU Biodiversity Strategy for 2030²³, ***certain intentional unlawful conduct covered under*** Regulation (EC) No 1224/2009 and Regulation (EC) 1005/2008²⁴ should be established as criminal offences.

²¹ 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).

²² 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.

²³ 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

²⁴ 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).

Amendment 9

the Communication from the Commission on the European Green Deal²² and the EU Biodiversity Strategy for 2030²³, ***all conduct deemed to be a serious infringement of*** Regulation (EC) No 1224/2009 and Regulation (EC) 1005/2008²⁴ should be established as criminal offences.

²¹ 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).

²² 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.

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²⁴ 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).

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Over recent years, the Union has taken a leading role in ensuring that international supply chains of minerals are transparent and responsible. The adoption in 2017 of Regulation (EU) 2017/ of the European Parliament and of the Council^{1a} sent a clear international message that companies are expected to assess risks in their supply chains, and take the necessary measures to mitigate them. That Regulation currently focuses on risks of conflict financing, serious abuses of human rights and serious economic crimes. It is based on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas which emphasizes the need for companies to identify and mitigate risks in their supply chains, to uphold human rights in producing countries and foster inclusion of legitimate small-scale miners and miners that use traditional methods.

^{1a} **Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (OJ L 130, 19.5.2017, p. 1).**

Amendment 10

Proposal for a directive
Recital 8

Text proposed by the Commission

Amendment

(8) A conduct should be considered unlawful also when it is carried out under

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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.

an authorisation by a competent authority in a Member State *or in a developing country* 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.

Amendment 11

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Environmental crimes can be perpetrated by a range of state and non-state actors, from individuals, small groups, companies, government individuals, to organised criminal networks, and often a combination thereof. Transnational companies can be the perpetrators due to inter alia, their exploitation of the environment and the damage they cause to the environment, in order to generate more profit or reduce their costs, in particular in developing countries where the legal and institutional frameworks are usually weaker. In relation to transnational companies, other actors can also be at fault and the responsibility should, therefore, be shared and accompanied by penalties as appropriate.

Amendment 12

Proposal for a directive Recital 12

Text proposed by the Commission

(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.

Amendment

(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. ***Given the importance of corporate environmental crime, improving transparency in corporate supply and value chains is necessary. Transparency with regard to beneficial ownership of companies, in particular, is key to prosecuting environmental crime, for example concerning illegal, unregulated and unreported fishing or illegal wildlife trafficking. Therefore, Member States should in parallel ensure full implementation of Directive (EU) 2018/843 of the European Parliament and of the Council^{1a}.*** 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 ***which can*** 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 ***or, especially in developing countries, promoting the prosecution of environmental defenders***

who act against environmental crime.

^{1a} Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

Amendment 13

Proposal for a directive Recital 14

Text proposed by the Commission

(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.

Amendment

(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, ***compensation for the damage caused***, exclusion from access to public funding, including tender procedures, grants and concessions and withdrawal of permits and authorisations. ***Sanctions that are designed to ensure that crimes are not repeated are very important. Effective remedies, including redress, mitigation and adaptation measures and injunctions should also be provided.*** This is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases.

Amendment 14

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) In order for sanctions to be effective it is also necessary to introduce in this Directive the environmental restorative justice approach, which has long been called for by civil society and specialised organisations. The restorative model has a preventive approach, aimed at repairing the damage caused and creating the environmental awareness necessary to avoid such damage in the future. It can be done through, among other means, environmental recovery funds, environmental social projects or community services for the benefit of the environment. Environmental restorative justice also aims to allow the participation of victims in the process of the determination of the sanctions and, in the future, of the environmental management of the corporations that are sanctioned.

Amendment 15

Proposal for a directive Recital 15

Text proposed by the Commission

Amendment

(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

(15) Legal persons should also be held criminally liable for environmental criminal offences according to this Directive. ***Like natural persons, legal persons who are perpetrators, instigators or accomplices in offences should be held responsible and subject to criminal proceedings.*** 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

sanction imposed.

order to achieve its objectives. Financial situation of legal persons should be taken into account to ensure the dissuasiveness of the sanction imposed.

Amendment 16

Proposal for a directive

Recital 16

Text proposed by the Commission

(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.

Amendment

(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 ***and often fuel organised crime***, these should be taken into account when determining the appropriate level of sanctioning in the individual case. ***Finally, the severity of human rights impacts, the vulnerability of human victims, as well as any abuse of existing legal and institutional weaknesses of developing countries or the gross violation of due diligence obligations should also be considered to be aggravating circumstances.***

Amendment 17

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) While the recognition of the crime of ecocide is currently being discussed in several national parliaments around the world, the Union should seize the opportunity to remain a world leader in environmental protection legislation and to provide for a harmonised definition and maximum limits for sanctions. Member States should therefore introduce a crime of ecocide, which should be considered a criminal offence for the purposes of this Directive and be defined as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and widespread or long-term damage to the environment being caused. That specific crime would make it possible to identify the most serious damage to the environment and thus to provide for a graduation of sanctions according to the gravity of the harm to the environment

Justification

On several occasions, the European Parliament has called for the establishment of ecocide as a criminal offence to safeguard human rights and democracy, biodiversity, the climate and environmental defenders. The definition used is the one developed by the Independent Expert Panel for the Legal Definition of Ecocide published in June 2021, a group of international criminal lawyers, environmental lawyers and legal scholars. It is the most comprehensive and recent definitional work available at the moment.

Amendment 18

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

(19) Member States should lay down

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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.

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. ***For the investigation, prosecution, trial and adjudication of ecocide offences there should not be a limitation period.***

Amendment 19

Proposal for a directive Recital 20

Text proposed by the Commission

(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.

Amendment

(20) The obligations in this Directive to provide for criminal penalties should not exempt Member States from the obligation to provide for ***effective, proportionate and dissuasive*** administrative sanctions and other measures in national law for breaches established in Union environmental legislation.

Amendment 20

Proposal for a directive Recital 23

Text proposed by the Commission

(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.

Amendment

(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, ***including conduct carried out in developing countries***, Member States should establish jurisdiction in order to counter such conduct effectively. ***Member States should thus extend their jurisdiction where an offence creates a risk for the environment on their territories, where the offence is committed***

for the benefit of a legal person established in their territories, where it is committed against their residents, or where it is committed in third countries by a Union citizen or a legal person established in the Union.

Amendment 21

Proposal for a directive Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) Environmental defenders who directly protect ecosystems are also often on the frontline of the consequences of environmental crime worldwide, including in the Union. They could be directly threatened, intimidated, persecuted, harassed or even murdered by perpetrators, and as such should also benefit from balanced and effective protection. The establishment of an independent special rapporteur on environmental rights defenders under the Aarhus Convention, and consequently the establishment of protection measures, is also a way to better fight environmental crime.

Amendment 22

Proposal for a directive Recital 24 b (new)

Text proposed by the Commission

Amendment

(24b) In its resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society^{1a}, the European Parliament noted that environmental defenders could also be subject to abusive lawsuits and threats, and should be

protected from such abusive practices, also known as Strategic Lawsuits Against Public Participation.

^{1a} OJ C 205, 20.5.2022, p. 2.

Amendment 23

**Proposal for a directive
Recital 26 a (new)**

(26a) Nature can be considered the victim of the damage caused by environmental crimes. Some countries have already granted legal personality to ecosystems even at the constitutional level (as in Ecuador or Bolivia). In Colombia the Constitutional Court granted those rights in the Atrato River ruling T-622-16. Canada and New Zealand are two other countries where nature has been granted legal personality. In the Union, some Member States are in the process of constitutional reforms to incorporate the rights of nature at the highest level. Spain for instance recognised legal personality of the Mar Menor Lagoon and its basin by means of the recent law 19/2022, of 30 September 2022. The Union could take into account the existing legal frameworks in developing countries and in Member States as well as ongoing reform processes within the Union and provide sound legislation that would incorporate a long-term vision by taking into account future legal developments that have begun in the Union.

Amendment 24

**Proposal for a directive
Recital 31 a (new)**

Text proposed by the Commission

Amendment

(31a) Due to its global impact and cross-border nature, and in line with Sustainable Development Goal 17, cooperation with third countries and, in particular with developing countries should be intensified, in particular by adopting and supporting effective measures and mechanisms to increase coordination and cross-border cooperation in order to combat environmental transnational crime. It is estimated that billions of euros in revenues and taxes are annually stolen from developing countries, causing major economic losses. Member States should seek to step up development cooperation through increased financial and technical support to address environmental crime in developing countries.

Amendment 25

Proposal for a directive Recital 31 b (new)

Text proposed by the Commission

Amendment

(31b) The Union and its Member States should also make the fight against environmental crime a strategic political priority in international judicial cooperation and within the institutions and the Conference of the Parties to the United Nations Framework Convention on Climate Change, in particular by promoting compliance with multilateral environmental agreements through the adoption of criminal sanctions and the exchange of best practices and data on environmental crime. This international approach to environmental crime should also include extending the jurisdiction of the International Criminal Court to the crime of ecocide, and the Union and its Member States should have a key role and

responsibility in that regard.

Amendment 26

Proposal for a directive

Recital 32

Text proposed by the Commission

(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.

Amendment

(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. ***There are major gaps in knowledge both at international and Union level. Data remain limited, there is a lack of statistics on environmental-related offences, their impacts on local communities, offenders and sanctions given. Data concerning the number of transnational environmental crime cases disaggregated by countries where the environmental offense was committed, the value of proceeds seized, frozen or confiscated, information about whether the environmental offence constitutes a predicate offense for a money laundering crime, the number and characteristics of victims or groups of victims, including local communities affected, are important data that would allow the design of better policies and strategies to prevent and combat those crimes in developing countries.*** Member States should collect and report to the Commission relevant statistical data on environmental ***offences, in particular specifying the sanctions imposed on the perpetrators of*** offences. The Commission should regularly assess and publish the results based on the data

transmitted by the Member States.

Amendment 27

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

This Directive establishes minimum rules concerning the definition of ***environmental*** criminal offences and sanctions in order to protect the environment, ***prevent and combat environmental crime*** more effectively, ***and thereby prevent human rights violations and abuses resulting from environmental criminal offences.***

Amendment 28

Proposal for a directive Article 2

Text proposed by the Commission

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

Amendment

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;

by a competent authority in a Member State, *or in a third country where the conduct was carried out by a Union citizen or a legal person established in the Union*, when the authorisation was obtained fraudulently or by corruption, extortion or coercion;

(1a) ‘environment’ means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space, including the integrity of all the biotic and abiotic elements of an ecosystem, their functions, services and mutual interactions and the planetary boundaries;

(1b) ‘severe damage’ means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life, or natural, cultural or economic resources;

(1c) ‘widespread damage’ means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;

(1d) ‘long-term damage’ means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;

(1e) ‘wanton’ means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;

(1f) ‘planetary boundaries’ means the nine planetary life-support systems identified as part of the planetary boundaries framework: climate change, biosphere integrity (covering functional and genetic diversity), land system changes, freshwater use, biogeochemical flows (nitrogen and phosphorus), ocean acidification, atmospheric aerosol pollution, stratospheric ozone depletion

(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 Council³⁰, 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/EEC³¹;

(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 Council³².**

and novel entities;

(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 Council³⁰, 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/EEC³¹;

(3) ‘legal person’ means any legal entity having such status under the applicable national law, **including** States or public bodies exercising State authority and public international organisations;

(4) ‘public concerned’ means the persons **or groups of persons including local communities** 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 **of the human rights and** meeting any proportionate requirements under national law shall be deemed to have an interest;

(5) ‘victim’ **means:**

(i) **natural persons, including future generations, who, individually or collectively, have suffered or are likely to suffer harm, including physical, mental or emotional harm, economic loss, loss of culture, traditions, traditional knowledge associated with genetic resources, or substantial impairment or abuse of their human rights due to an environmental criminal offence;**

(ii) **relatives of a person whose death was directly caused by an environmental criminal offence and who have suffered**

harm as a result of that person's death;

(iii) legal persons who have suffered or are likely to suffer loss, including economic loss.

³⁰ 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).

³¹ 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).

³² ***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).***

³⁰ 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).

³¹ 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).

Amendment 29

Proposal for a directive Article 3

Text proposed by the Commission

Article 3
Offences

1. Member States shall ensure that the following conduct constitutes a criminal offence when it is unlawful and committed

Amendment

Article 3
Offences

-1. Member States shall ensure that, when committed intentionally or with at least serious negligence, directly or indirectly exposing the environment to an immediate risk of substantial damage constitutes a criminal offence.

-1a. Member States shall ensure that conduct which knowingly causes substantial damage to the environment constitutes a criminal offence.

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 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 Council³³; 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 Council³⁴; or

(iv) this activity is not in compliance with Regulation (EC) No 528/2012 of the European Parliament and of the Council³⁵; or

(v) this activity falls under Regulation (EC) No 1272/2008 of the European Parliament and of the Council³⁶; or

(vi) this activity is prohibited pursuant to Annex I to Regulation (EU) 2019/1021

intentionally, *or with serious negligence*:

(a) the discharge, emission or introduction of a quantity of materials or substances or ionising radiation into air, soil or water which causes or is likely to cause death or serious injury to any *natural person, group of persons, community or economic loss, including for legal persons*, 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 *biodiversity, ecosystems and their functions*, animals or plants as a result of the product's use on a larger scale;

(c) the manufacture, placing on the market, *export from the Union 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 Council³³; 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 Council³⁴; or

(iv) this activity is not in compliance with Regulation (EC) No 528/2012 of the European Parliament and of the Council³⁵; or

(v) this activity falls under Regulation (EC) No 1272/2008 of the European Parliament and of the Council³⁶; or

(vi) this activity is prohibited pursuant to Annex I to Regulation (EU) 2019/1021

of the European Parliament and of the Council³⁷,

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 Council³⁸ without a development consent or an assessment with regard to their effects on the environment, which 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 Council³⁹ 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 Council⁴⁰ 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;

of the European Parliament and of the Council³⁷,

(vi a) that activity is not in compliance with Directive 2009/128/EC of the European Parliament and of the Council^{37a},

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 Council³⁸ without a development consent or an assessment with regard to their effects on the environment, which 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 Council³⁹ 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 Council⁴⁰ 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 Council⁴¹, 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 Council⁴² **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 Council⁴³, Directive 2010/75/EU of the European Parliament and of the Council⁴⁴ or Directive 2013/30/EU of the European Parliament and of the Council⁴⁵ 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/Euratom⁴⁶, Council Directive 2014/87/Euratom⁴⁷ or Council Directive

(g) the recycling of ships falling within the scope of Regulation (EU) No 1257/2013 of the European Parliament and of the Council⁴¹, 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 Council⁴², 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 **or pollution, as defined in Article 3, point 8, of Directive 2008/56/EC of the European Parliament and of the Council^{42a}**; this provision shall not apply to individual cases, where the ship-source discharge does not cause deterioration in the quality of water **and the marine environment**, 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 Council⁴³, Directive 2010/75/EU of the European Parliament and of the Council⁴⁴ or Directive 2013/30/EU of the European Parliament and of the Council⁴⁵ 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/Euratom⁴⁶, Council Directive 2014/87/Euratom⁴⁷ or Council Directive

2013/51/Euratom⁴⁸, 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/EEC⁴⁹ and the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council⁵⁰, 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 338/97⁵¹, 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

2013/51/Euratom⁴⁸, 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 **or contamination** 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;

(ka) the starting and causing the spread of fires that cause or may cause substantial damage to the quality of the air, soil, water, to animals or plants, or may seriously harm the balance of ecosystems or the environment or cause death or serious injury to people or cause other human rights violations including the displacement of populations and animals;

(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/EEC⁴⁹ and the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council⁵⁰, 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, **B and C** to Council Regulation (EC) No 338/97⁵¹, 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 Council⁵², except for cases where the conduct concerns a negligible quantity; [If a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 is adopted before this Directive, point (n) to be replaced with a criminal offence within the scope of Article 3 of that Regulation.]

(o) any conduct which causes the deterioration of a habitat 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 Council⁵³;

(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 Council⁵⁴ 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 Council⁵⁵ or of products and equipment containing or relying on such gases.

of the Council⁵², except for cases where the conduct concerns a negligible quantity; [If a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 is adopted before this Directive, point (n) to be replaced with a criminal offence within the scope of Article 3 of that Regulation.]

(o) any conduct which causes the deterioration of a habitat 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 Council⁵³;

(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 Council⁵⁴ 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 Council⁵⁵ or of products and equipment containing or relying on such gases;

(ra) serious infringements as defined in Article 42 of Regulation (EC) No 1005/2008 and serious infringements as referred to in Article 90(1) of Regulation (EC) No 1224/2009;

(rb) extraction, exploitation, exploration, use, transformation, transportation, trade or storage of mineral resources, in contravention of national or international law;

(r c) serious breaches of the due diligence obligations set out in Directive (EU) xxx/xxx of the European Parliament and of the Council [Corporate Sustainability Due Diligence Directive]^{55a} and non-compliance with the decisions of the competent authorities in that matter;

(r d) serious breaches of Directive (EU) xxx/xxx of the European Parliament and of the Council [Corporate Sustainability Reporting Directive]^{55b}.

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;

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 **or severe** 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;

(a a) conservation status of the species affected by the damage;

(b) whether the damage is long-lasting, medium term or short term;

(b a) latent character of the damage;

(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 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) severity of the damage *to the environment*;

(d) spread of the damage;

(d a) the commission of the offence by a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA^{55c};

(e) reversibility of the damage;

(e a) the number of persons and local communities who have suffered injuries or are or were exposed to danger or who have suffered human rights abuses as well as the severity of those human rights abuses associated with the environmental damage caused by the criminal offence;

(e b) the financial impacts of damage caused;

(e c) the financial benefits gained by the perpetrator of the environmental offence;

(e d) serious violation or negligent breach of due diligence obligations;

(e e) the severity of the impact on human rights of a person or persons, including local communities.

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 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.

(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.

³³ 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).

³⁴ 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).

³⁵ Regulation (EU) No 528/2012 of the

³³ 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).

³⁴ 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).

³⁵ 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).

³⁶ 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).

³⁷ 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).

³⁸ 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).

³⁹ 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).

⁴⁰ 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).

⁴¹ 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).

⁴² Directive 2005/35/EC of the European Parliament and of the Council of

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).

³⁶ 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).

³⁷ 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).

^{37a} ***Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (OJ L 309, 24.11.2009, p. 71).***

³⁸ 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).

³⁹ 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).

⁴⁰ 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).

⁴¹ 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).

⁴² 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).

⁴³ 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).

⁴⁴ 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).

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ Council Directive 2013/51/Euratom 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).

^{42a} Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

⁴³ 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).

⁴⁴ 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).

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ 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).

⁴⁹ 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).

⁵⁰ 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).

⁵¹ 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).

⁵² 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).

⁵³ 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).

⁵⁴ 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).

⁵⁵ 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).

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).

⁴⁹ 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).

⁵⁰ 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).

⁵¹ 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).

⁵² 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).

⁵³ 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).

⁵⁴ 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).

⁵⁵ 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).

^{55a} Directive (EU) xxx/xxx of ... of the European Parliament and of the Council on Corporate Sustainability Due

Diligence and amending Directive (EU) 2019/1937 (OJ L ..., ..., p. ...).

^{55b} Directive (EU) xxx/xxx of ... of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (OJ L ..., ..., p. ...).

^{55c} Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

Amendment 30

Proposal for a directive Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a (new)

Ecocide

Member States shall introduce in their national law a crime of ecocide, which shall be considered a serious criminal offence for the purposes of this Directive and shall be defined as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and widespread or long-term damage to the environment being caused.

Amendment 31

Proposal for a directive Article 4

Text proposed by the Commission

Amendment

Article 4

Article 4

Inciting, aiding and abetting and attempt

Inciting, aiding and abetting and attempt

1. Member States shall ensure that inciting, and aiding and abetting the

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.

Amendment 32

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

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.

Amendment 33

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

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.

Amendment 34

commission of any of the criminal offences referred to in Article 3(-1), (-1a) and (1) or Article 3a 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), (-1a) and (1) or Article 3a when committed intentionally is punishable as a criminal offence.

Amendment

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3, 3a and 4 are punishable by effective, proportionate and dissuasive criminal penalties.

Amendment

2. Member States shall take the necessary measures to ensure that offences referred to in Article 3 and 3a 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 *or group of persons or other serious human rights violations*.

Proposal for a directive
Article 5 – paragraph 5

Text proposed by the Commission

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.

Amendment 35

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

2. Member States shall also ensure that legal persons can be held liable where

Amendment

5. Member States shall take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3, **3a** 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 ***which shall be proportional to the damage caused by the offence;***
- (c) temporary or permanent exclusions from access to public funding, including tender procedures, grants and concessions ***and licences;***
- (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;
(ea) bans on the pursuit of 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.

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.

the lack of supervision or control *of their supply chains* by a person referred to in paragraph 1 has made possible the commission of an offence referred to in Articles 3, **3a** and 4 for the benefit of the legal person by a person under its authority.

Amendment 36

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

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.

Amendment

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, **3a** and 4.

Amendment 37

Proposal for a directive Article 7

Text proposed by the Commission

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;

Amendment

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 **and to**

- (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

compensate for the damage caused;

- (c) exclusion from entitlement to public benefits or aid;
- (d) temporary exclusion from access to public funding, including tender procedures, grants and concessions ***and licenses;***
- (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 ***and human rights*** standards ***and obligations;***
- (k) publication of the judicial decision relating to the conviction or any sanctions or measures applied;

(ka) community services in favour of the environment;

(kb) financial contributions to environmental or human rights organisations, especially in developing countries;

(kc) presenting apologies to and making requests for forgiveness from the affected victims;

(kd) attribution of shares or social capital to the victims in the developing countries.

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.

dissuasive.

4. Member States shall take the necessary measures to ensure that offences referred to in Article 3(-1), (-1a) and (1) are punishable by fines, the maximum limit of which shall be not less than 15% 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.

6a. *Member States shall take the necessary measures to ensure that offences referred to in Article 3a are punishable by fines, paid by the legal person committing the environmental offence, the minimum amount of which shall be between 15 and 30 % of the total worldwide turnover of the legal person in the business year preceding the decision and the maximum being the total amount necessary for the restoration of the damage to the environment and for the payment of compensation and damages to affected legal and natural persons.*

Amendment 38

Proposal for a directive Article 8

Article 8

Article 8

Aggravating circumstances

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;

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 ***or groups of persons***;

(aa) the offence caused severe impacts on the human rights of the population or local communities of a developing country where the environmental damage has occurred or substantial economic loss or loss to the culture and tradition of such population or local communities;

(ab) the offence affected or is likely to affect vulnerable groups such as children, youth, women, people with disabilities, elderly or indigenous communities;

(ac) the offence has caused or will cause serious damage to future generations;

(a d) the offence was committed by abusing existing weaknesses in the rule of law and governance systems of developing countries and, in particular, by mediating corruption, intimidation or violence;

(a e) the offence was committed in gross violation of the existing due diligence systems or with non-compliance with the related decisions of the competent authorities;

(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 ;

(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/EC⁵⁷;

(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.

(ba) the offence damaged a legally protected area in a third country;

(c) the offence was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA ;

(d) the offence involved the use of false or forged documents ***or serious violation of Directive (EU) xxx/xxx [Corporate Sustainability Reporting Directive];***

(e) the offence was committed by a public official when performing his/her duties;

(ea) the offender holds a political position or has been entrusted with prominent public functions;

(f) the offender committed similar previous infringements of environmental law;

(fa) the offence was committed together with other crimes;

(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/E⁵⁷;

(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;

(ja) the offence has caused serious injuries to or the death of human rights or environmental defenders, journalists, members of NGOs or persons reporting criminal offences or it entails coercing or

attacking such persons.

⁵⁷ 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).

⁵⁷ 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).

Amendment 39

Proposal for a directive Article 9 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) the offender restores nature to its previous condition *or pays fair compensation to the victims*;

Amendment 40

Proposal for a directive Article 9 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the offender admits his or her guilt and pays compensation that is sufficient to deal with the damage caused to the environment and fair compensation to the victims;

Justification

It is important to allow the reduction of the penalty if the offender admits his guilt in order to reduce the time of the investigations, the cost of the procedures and to conclude the process as soon as possible providing in this way timely justice to the victims and avoiding further suffering. The reduction of the penalty should be conditioned to a fair compensation to the victims and the environment.

Amendment 41

Proposal for a directive

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall adopt the necessary measures so that the confiscated assets are integrated into social funds dedicated to carrying out environmental repair projects in the affected environments and the affected local communities, especially in developing countries.

Justification

As some States already do with assets seized in drug crime, the profits and instruments of environmental crime can be linked to the rehabilitation of natural spaces or the improvement of actions to prosecute environmental crimes, through the creation of social or environmental funds for confiscated assets. In this way, in addition, the fight against environmental crime is projected to society in a more direct and visible way.

Amendment 42

Proposal for a directive

Article 10 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Member States shall take the necessary measures to ensure the return of confiscated funds or assets of environmental crime perpetrators to the developing countries where the offence was committed, while ensuring that they are used for appropriate purposes such as restoring the environmental damages, compensating the victims and local communities, improving the living conditions of the affected population or strengthening the rule of law systems of the developing country concerned.

Justification

Many environmental crimes committed in developing countries are linked to organised crime and money laundering. Target 16.4 of 2030 Agenda establishes the objective of “strengthening the recovery and return of stolen assets”. This directive represents an opportunity for the Union to contribute to achieving this goal by allowing the proceeds of

environmental crimes committed in developing countries but prosecuted and judged in Member States to be returned to these countries while ensuring they are used for appropriate purposes.

Amendment 43

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***or the date on which the environmental damage or human rights violation was known or revealed*** in order for those criminal offences to be tackled effectively, ***in particular, where the environmental crime has a transnational nature, has been committed in a developing country and involved organised crime. For the investigation, prosecution, trial and adjudication of criminal offences referred in Article 3a there shall not be a limitation period.***

Amendment 44

Proposal for a directive Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall take the necessary measures to ensure that the limitation period for criminal offences referred to in Articles 3 and 4 does not commence until the scope of the damage to the environment has been fully established by appropriate scientific means.

Amendment 45

Proposal for a directive Article 11 – paragraph 3

Text proposed by the Commission

Amendment

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.*

deleted

Amendment 46

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 , **3a** 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, **regardless of whether the offence takes place in a Member State or a third country;**
- (da) the offence was committed for the benefit of a legal person established on its territory.**

Amendment 47

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

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/JHA⁵⁹, be referred to Eurojust.

⁵⁹ 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).

Amendment 48

Proposal for a directive Article 12 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

2. A Member State shall ***take the necessary measures*** to extend its jurisdiction to offences referred to in Articles 3, ***3a*** 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 ***or for biodiversity*** 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/JHA⁵⁹, be referred to Eurojust.

⁵⁹ 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).

3b. Member States shall introduce universal jurisdiction for their courts for the prosecution and judgement of an offence referred to in Article 3a, in order to avoid the externalisation of environmental damage, where it was not committed on its territory, was committed

by a third-country national, involved a victim from a third country, and the environment of that Member State has not been affected or damaged.

Justification

Environmental crimes are very often cross-border in nature. To avoid the externalisation of environmental damage, it should be possible to prosecute a legal or natural person for crimes committed in a third country, in particular in the case of ecocide.

Amendment 49

**Proposal for a directive
Article 13 – paragraph 1**

Text proposed by the Commission

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.

Amendment

1. Member States shall take the necessary measures to ensure that protection granted under ***Article 4 of*** Directive (EU) 2019/1937 is applicable to ***natural and legal*** persons reporting criminal offences referred to in Articles 3 and 4 of this Directive.

Amendment 50

**Proposal for a directive
Article 13 – paragraph 2**

Text proposed by the Commission

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.

Amendment

2. Member States shall take the necessary measures to ensure that ***natural and legal*** 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.

Justification

Both natural and legal persons should be protected when they report environmental offences or assist the investigation. Civil Society Organisations (CSOs), which are often at the forefront of detecting environmental crime need to be protected as well.

Amendment 51

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***or as a private prosecutor.***

Amendment 52

Proposal for a directive Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that, the following information is considered to be in the public interest and made available to the public concerned:

- (a) any final judgement in a trial;***
- (b) information enabling the members of the public concerned to know about the state of the proceedings, unless in exceptional cases the proper handling of the case might be adversely affected by such disclosure of information.***

Justification

A minimum level of rights should be awarded to the general public in its capacity of exercising representation of nature as a victim of an environmental crime.

Amendment 53

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall take appropriate action, such as ***the improvement of the preventive law enforcement tools***, 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.

Amendment 54

Proposal for a directive Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall also ensure an effective implementation and enforcement of national and Union environmental due diligence obligations in the supply chains of their natural and legal persons operating in developing countries as set out in Directive (EU) xxx/xxx [Corporate Sustainability Due Diligence Directive].

Amendment 55

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

The reinforcement of the administrative inspections systems and the use of new technologies, such as the use of Earth

observation, shall be enhanced to prevent and detect environmental crimes, in particular those committed in developing countries.

Amendment 56

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall ensure that national authorities which **prevent**, 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.

Amendment 57

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

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.

Amendment

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, **including environmental experts**, to provide at regular intervals specialised training, **especially in the case of environmental crime committed within the framework of criminal organisations** with respect to the objectives of this Directive and appropriate to the functions of the involved staff and authorities. **Specialised training courses on the investigation and prosecution of transnational environmental crimes shall**

be given particular attention.

Amendment 58

Proposal for a directive Article 18 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 59

Proposal for a directive Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Cooperation among Member States, with the Union bodies, offices and agencies and with developing countries

- 1. Member States shall ensure effective coordination and cross-border cooperation with other Member States and with the Union, including its specialized bodies, offices and agencies, such as the European Union Agency for Criminal Justice Cooperation (Eurojust), the European Union Agency for Law Enforcement Cooperation (Europol), the European Public Prosecutor's Office, European Union Agency for Law Enforcement Training (CEPOL) and the European Union Agency for Fundamental Rights.***
- 2. Member States shall intensify international judicial cooperation and, in***

particular, cooperation with developing countries in order to strengthen their rule of law and governance systems with a view to implementing effective mechanisms to prevent and combat environmental crime.

3. The Commission shall make more efforts to improve international and development cooperation and supporting developing countries, by taking effective measures to improve capacity building, in particular the establishment of technical assistance programmes, to enable them to improve their administrative, judicial and legal systems, with the aim of preventing and combating environmental crime more effectively.

Amendment 60

Proposal for a directive Article 20 – paragraph 1 – point a

Text proposed by the Commission

(a) the objectives and priorities of national policy in this area of offence;

Amendment

(a) the objectives and priorities of national policy in this area of offence *including the prevention and combatting of transnational environmental organised crime, as well as corruption and money-laundering linked to such crimes when affecting developing countries;*

Amendment 61

Proposal for a directive Article 20 – paragraph 1 – point b

Text proposed by the Commission

(b) the roles and responsibilities of all the competent authorities involved in countering this type of offence;

Amendment

(b) the roles and responsibilities of all the competent authorities involved in countering this type of offence, *as well as other actors, such as civil society and the private sector;*

Amendment 62

Proposal for a directive Article 20 – paragraph 1 – point c

Text proposed by the Commission

(c) the modes of coordination and cooperation between the competent authorities;

Amendment

(c) the modes of coordination and cooperation between the competent authorities ***and with other actors such as civil society***;

Amendment 63

Proposal for a directive Article 20 – paragraph 1 – point e

Text proposed by the Commission

(e) the resources needed and how specialisation of enforcement professionals will be supported;

Amendment

(e) the resources needed ***and allocated*** and how specialisation of enforcement professionals will be supported, ***and how multidisciplinary approaches will be included in training programmes***;

Amendment 64

Proposal for a directive Article 20 – paragraph 1 – point f

Text proposed by the Commission

(f) the procedures and mechanisms for regular monitoring and evaluation of the results achieved;

Amendment

(f) the procedures and mechanisms for regular monitoring and evaluation of the results achieved ***including the baseline and the indicators used***;

Amendment 65

Proposal for a directive Article 20 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) assistance to, and protection of, victims in developing countries, in

particular those in vulnerable situations, including environmental defenders;

Amendment 66

Proposal for a directive Article 21 – paragraph 2

Text proposed by the Commission

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.

Amendment

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 *court proceedings from the beginning of* the criminal investigations of environmental crimes *to the issuance of the judicial sentence and its execution*;
 - (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 *and whether the perpetrator was an organised crime group or acted within such a group*;
 - (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;
 - (ha) *the number of transnational environmental crime cases disaggregated by countries where the environmental offence was committed*;
 - (hb) *figures on proceeds from*

environmental crimes that were provisionally seized or frozen and finally confiscated;

(hc) information on whether the environmental crime constitutes a predicate offence for money laundering;

(hd) the number of victims, including groups of victims or local communities, disaggregated, inter alia, by sex, age, ethnicity, country of origin;

(he) type of impact on the environment and on people and local communities.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Protection of the environment through criminal law and replacing Directive 2008/99/EC
References	COM(2021)0851 – C9-0466/2021 – 2021/0422(COD)
Committee responsible Date announced in plenary	JURI 27.1.2022
Opinion by Date announced in plenary	DEVE 24.3.2022
Rapporteur for the opinion Date appointed	Caroline Roose 14.3.2022
Discussed in committee	30.8.2022
Date adopted	30.11.2022
Result of final vote	+: 12 –: 10 0: 0
Members present for the final vote	Barry Andrews, Eric Andrieu, Hildegard Bentele, Udo Bullmann, Antoni Comín i Oliveres, Charles Goerens, Mónica Silvana González, Pierrette Herzberger-Fofana, Karsten Lucke, Pierfrancesco Majorino, Janina Ochojska, Michèle Rivasi, Christian Sagartz, Eleni Stavrou, Tomas Tobé, Miguel Urbán Crespo
Substitutes present for the final vote	Alessandra Basso, Marlene Mortler, Caroline Roose
Substitutes under Rule 209(7) present for the final vote	Virginie Joron, Joachim Kuhs, Aušra Maldeikienė

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

12	+
NI	Antoni Comín i Oliveres
Renew	Barry Andrews, Charles Goerens
S&D	Eric Andrieu, Udo Bullmann, Mónica Silvana González, Karsten Lucke, Pierfrancesco Majorino
The Left	Miguel Urbán Crespo
Verts/ALE	Pierrette Herzberger-Fofana, Michèle Rivasi, Caroline Roose
10	-
ID	Alessandra Basso, Virginie Joron, Joachim Kuhs
PPE	Hildegard Bentele, Aušra Maldeikienė, Marlene Mortler, Janina Ochojska, Christian Sagartz, Eleni Stavrou, Tomas Tobé
0	0

Key to symbols:

+ : in favour

- : against

0 : abstention