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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	14459/21 + COR 1
Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC - Comparative table of offences

Delegations will find attached a comparative table of offences, drawn up by the Commission services, which aims to compare the offences set out in Article 3 of the 2008 Environmental Crime Directive with the offences listed in Article 3 of the above mentioned proposal for a Directive.

COMPARATIVE TABLE OF OFFENCES

Environmental Crime Directive 2008/99/EC (ECD 2008) and the Commission Proposal of 15 December 2021 (14459/21)

Code:

~~word~~ deletion

word addition

2008 Directive – Article 2	Parts deleted	Proposal 2021 – Article 2
<p>For the purpose of this Directive:</p> <p>(a) ‘unlawful’ means infringing:</p> <p>(i) the legislation adopted pursuant to the EC Treaty and listed in Annex A; or</p> <p>(ii) with regard to activities covered by the Euratom Treaty, the legislation adopted pursuant to the Euratom Treaty and listed in Annex B; or</p> <p>(iii) 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 Community legislation referred to in (i) or (ii);</p>	<p>For the purpose of this Directive:</p> <p>(a) ‘unlawful’ means infringing:</p> <p>(i) the legislation adopted pursuant to the EC Treaty and listed in Annex A; or</p> <p>(ii) with regard to activities covered by the Euratom Treaty, the legislation adopted pursuant to the Euratom Treaty and listed in Annex B; or</p> <p>(iii) 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 Community legislation referred to in (i) or (ii);</p>	<p>For the purpose of this Directive, <u>the following definitions apply:</u></p> <p>(1) ‘unlawful’ means <u>a conduct</u> infringing <u>one of the following:</u></p> <p>(a) <u>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;</u></p> <p>(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 <u>to the Union legislation referred to in point (a).</u></p> <p><u>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;</u></p>

2008 Directive – Article 3	Parts deleted	Proposal 2021 – Article 3
(a) the discharge, emission or introduction of a quantity of materials 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;	none	(a) the discharge, emission or introduction of a quantity of materials <u>or substances</u> 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;
<i>New</i>	n/a	<u>(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;</u>
<p><i>New (some of the referred Regulations were adopted after the ECD 2008)</i></p> <p>NB: the old Directives on plant protection products and biocides and the 2004 Regulation on persistent organic pollutants are included in Annex A to the ECD 2008)</p>	n/a	<p><u>(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:</u></p> <p><u>(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 Council¹; or</u></p> <p><u>(ii) this activity is prohibited pursuant to</u></p>

¹ 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).

		<p><u>Title VII of Regulation (EC) No 1907/2006; or</u></p> <p><u>(iii) this activity is not in compliance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council²; or</u></p> <p><u>(iv) this activity is not in compliance with Regulation (EC) No 528/2012 of the European Parliament and of the Council³; or</u></p> <p><u>(v) this activity falls under Regulation (EC) No 1272/2008 of the European Parliament and of the Council⁴; or</u></p> <p><u>(vi) this activity is prohibited pursuant to Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council⁵, 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;</u></p>
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² 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).

³ 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).

⁴ 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).

⁵ 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).

<p><i>New (the referred Directive adopted in 2011, repealing Directive 85/337/EEC)</i></p>	<p>n/a</p>	<p><u>(d) the execution of projects referred to in Article 1(2)(a) of Directive 2011/92/EU of the European Parliament and of the Council⁶ 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;</u></p>
<p>(b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), 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;</p>	<p>(b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), 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;</p>	<p>(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), <u>when an unlawful conduct:</u></p> <p><u>(i) concerns hazardous waste as defined in Article 3(2) of Directive 2008/98/EC of the European Parliament and of the Council⁷ and is undertaken in a non-negligible quantity;</u></p> <p><u>(ii) concerns other waste than referred to in point (i) and</u> 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;</p>

⁶ 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).

⁷ 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).

<p>(c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ⁽⁸⁾ and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;</p>	<p>(c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste ⁽⁹⁾ and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;</p>	<p>(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 Council¹⁰ 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;</p>
<p><i>New (the referred regulation adopted in 2013, post the 2008 ECD)</i></p>	<p>n/a</p>	<p><u>(g) the recycling of ships falling within the scope of Regulation (EU) No 1257/2013 of the European Parliament and of the Council¹¹, without complying with the requirements of Article 6(2), point (a) of that Regulation;</u></p>
<p><i>New to the ECD, however offences are covered under Directive 2005/35/EC as amended by Directive 2009/123/EC:</i></p> <p>Article 4(1)</p> <p>Member States shall ensure that ship-source discharges of polluting substances, including minor cases of such discharges, into any of the areas referred to in Article 3(1) are regarded as infringements if committed with intent, recklessly or with serious negligence.</p>	<p>n/a</p>	<p><u>(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 Council¹² 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-</u></p>

⁸ OJ L 190, 12.7.2006, p. 1.

⁹ OJ L 190, 12.7.2006, p. 1.

¹⁰ 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).

¹¹ 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).

¹² Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11–21).

Article 5, Exceptions

1. A discharge of polluting substances into any of the areas referred to in Article 3(1) shall not be regarded as an infringement, if it satisfies the conditions set out in Annex I, Regulations 15, 34, 4,1 or 4,3 or in Annex II, Regulations 13, 3.1.1 or 3.1.3 of Marpol 73/78.

2. A discharge of polluting substances into the areas referred to in Article 3(1)(c), (d) and (e) shall not be regarded as an infringement for the owner, the master or the crew, if it satisfies the conditions set out in Annex I, Regulation 4,2 or in Annex II, Regulation 3.1.2 of Marpol 73/78.

Article 5a, Criminal offences

1. Member States shall ensure that infringements within the meaning of Articles 4 and 5 are regarded as criminal offences.

2. Paragraph 1 shall not apply to minor cases, where the act committed does not cause deterioration in the quality of water.

3. Repeated minor cases that do not individually but in conjunction result in deterioration in the quality of water shall be regarded as a criminal offence, if committed with intent, recklessly or with serious negligence.

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;

<p>(d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, 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;</p>	<p>(d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, 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;</p>	<p>(i) the <u>installation</u>, 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 <u>falling within the scope of Directive 2012/18/EU of the European Parliament and of the Council</u>¹³, <u>Directive 2010/75/EU of the European Parliament and of the Council</u>¹⁴ or <u>Directive 2013/30/EU of the European Parliament and of the Council</u>¹⁵ 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;</p>
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¹³ 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).

¹⁴ 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).

¹⁵ 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).

<p>(e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances 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;</p>	<p>(e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances 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;</p>	<p>(j) the <u>manufacture</u>, production, processing, handling, use, holding, storage, transport, import, export or disposal of <u>radioactive</u> material <u>falling within the scope of Council Directive 2013/59/Euratom¹⁶, Council Directive 2014/87/Euratom¹⁷ or Council Directive 2013/51/Euratom¹⁸</u>, 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;</p>
<p>New</p>	<p>n/a</p>	<p><u>(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;</u></p>

¹⁶ 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).

¹⁷ 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).

¹⁸ 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).

<p>(f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;</p> <p>➤ NB: Article 2(b) defined ‘protected wild fauna and for a species’</p> <p>(b) ‘protected wild fauna and flora species’ are:</p> <p>(i) for the purposes of Article 3(f), those listed in: — Annex IV to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (1), — Annex I to, and referred to in Article 4(2) of, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (2);</p> <p>(ii) for the purposes of Article 3(g), those listed in Annex A or B to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (3);</p>	<p>(f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;</p> <p>➤ NB: Article 2(b)(i) has been deleted in the proposal, as references have been included in item (l).</p>	<p>(l) the killing, destruction, taking of, possession, <u>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/EEC¹⁹ and the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council²⁰</u>, except for cases where the conduct concerns a negligible quantity of such specimens;</p>
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¹⁹ 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).

²⁰ 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).

<p>(g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;</p> <p>➤ NB: see above – Article 2(b)</p>	<p>(g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;</p> <p>➤ NB: Article 2(b)(ii) has been deleted in the proposal, as references have been included in item (m).</p>	<p>(m) trading in specimens of wild fauna or flora species or parts or derivatives thereof <u>listed in Annexes A and B to Council Regulation (EC) No 338/97²¹</u>, except for cases where the conduct concerns a negligible quantity of such specimens;</p>
<p><i>New (the regulation adopted in 2010, post the 2008 ECD)</i></p>	<p>n/a</p>	<p><u>(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 Council²², except for cases where the conduct concerns a negligible quantity;</u></p> <p><i>[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.]</i></p>

²¹ 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).

²² 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).

<p>(h) any conduct which causes the significant deterioration of a habitat within a protected site;</p> <p>Article 2(c) definition: (c) ‘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 79/409/EEC, 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 Directive 92/43/EEC;</p>	<p>(h) any conduct which causes the significant deterioration of a habitat within a protected site;</p> <ul style="list-style-type: none"> ➤ Article 2(c) of the ECD 2008 is Article 2(2) in the proposal, with an updated reference. ➤ NB: the word <i>significant</i> is integrated in letter (o) later in the text. 	<p>(o) any conduct which causes the deterioration of a habitat within a protected site, <u>within the meaning of Article 6(2) of the Directive 92/43/EEC, when this deterioration is significant;</u></p> <p>Article 2(2) definition: ‘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 <u>Directive 2009/147/EC of the European Parliament and of the Council</u>³⁰, 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;</p>
<p><i>New (the relevant regulation adopted in 2014, post the 2008 ECD)</i></p>	<p>n/a</p>	<p><u>(p) introduction or spread of invasive alien species of Union concern when:</u></p> <p><u>(i) the conduct breaches restrictions set out in Article 7(1) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council</u>²³;</p> <p><u>(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;</u></p>

²³ 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).

(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.	(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.	(q) production, placing on the market, import, export, use, <u>emission or release</u> of ozone depleting substances <u>as defined in Article 3 (4) of Regulation (EC) No 1005/2009 of the European Parliament and of the Council²⁴ or of products and equipment containing or relying on such substances;</u>
<i>New (the regulation adopted in 2014)</i> NB: the old Regulation on certain fluorinated greenhouse gases is among the instruments listed in Annex A to the 2008 ECD	n/a	<u>(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 Council²⁵ or of products and equipment containing or relying on such gases.</u>

²⁴ 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).

²⁵ 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).