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Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC - Comments by Member States on the amendments from the European Parliament

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At the COPEN meeting on 3 May 2023, delegations discussed the amendments from the European Parliament on the basis of 8321/23. Subsequently to the meeting, the Presidency invited Member States that so wished to submit comments in writing (CM 2804/23).

The input received has been set out in the [Annex](#).

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## BELGIUM

**File: 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**

*Written comments by Belgium.*

*Regarding: document 8321/23.*

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Dear Presidency,

Thank you for giving member states the opportunity to further develop and clarify their point of view in writing in the context of the commencing of the trilogues and following the COPEN of 3 May 2023.

Belgium continues to welcome and strongly supports the ambitious proposal by the European Commission to update and improve the efficiency of the European policy on the protection of the environment through criminal law. However, certain changes to the text necessitate certain remarks and/or questions.

Thank you for continuing to take our oral and written comments in this document into account.

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- **Art. 1 – 4 (scope & definition)**

**a. 'catch-all provision' in Article 3.1a, line 94c**

This question concerns the scope of the concept of "unlawful conduct" to which this directive intends to attach consequences in cases of damage to the environment. To our understanding the intention of this instrument should be to attach consequences to situations where there is a violation of a provision that "aims to contribute" to the protection of the environment without therefore having to be a violation of environmental regulations in the strict sense. More generally it should not be the aim to capture the situations where there is unlawful conduct simply involving the violation of a rule of law that in itself has no link to the protection of the environment but where in concreto there may sometimes be an effect on the environment

As a consequence, for Belgium it is not clear which acts the EP wishes to cover with this provision that are not already covered by the provided wording in the GA. Therefore, BE does not see any added value in this additional provision. Further clarifications as to why this is proposed by the EP could be of relevance.

In addition, BE wonders whether or not the legal basis, namely article 83 §2, of this instruments allows for such a 'catch all' provision. BE is therefore of the opinion that this should be verified by the CLS and, if necessary, explained to the EP that this instrument does not allow for this type of provision.

More specifically as regards our particular polity and legislation in this context, we are concerned that including this provision would result in possibly impacting our legislation and moreover the division of competences in this regards in Belgium, possibly causing more confusion than clarity seeing that environmental enforcement is a shared competence between the federal level and the defederated level. Thus, as regards the implementation, this proposal is cause for many concerns.

In conclusion, we are of the opinion that the wording in the GA suffices and should not be subject to change.

*BE written comments doc. 8321/23  
May 2023*

*b. Reference to **severity** in article 3.3, line 99*

This reference to 'severity' for the estimation of the 'substantial' damage is, according to BE, void. According to our practitioners, this reference has no added value, especially read together with the other parameters which do serve in a more concrete manner the goal of estimating the damage.

- c. In the second sentence the EP suggests that MS should ensure that **any conduct that cause significant environmental harm should be treated as an offence of particular gravity and be sanctioned as such in accordance with the legal system of the MS.***

This second part of the proposed added article by the EP is both redundant as confusing.

When there is no link to the violation of a particular explicit rule and the infliction of serious damage can be punished per se, the extent to which there should be an element of guilt becomes an important element for the scope of the provision. In our view, it is a principle of criminal law that an offender can only be effectively punished if the criminal act can be "imputed" to the offender by virtue of an element of guilt such as negligence or intent. In our opinion, the draft proposal does not meet this requirement.

- **Penalties private persons (art. 5, lines 114 – 126a)**

- a. Line 118a : EP suggests that Member States should take the necessary measures **to develop measures other than imprisonment** in order to contribute to the restoration of the environment.*

As stated during the COPEN of 3 May, this provision by the EP is cause for concern on different levels.

First and foremost, also here, BE questions the added value of this provision.

Furthermore, it should be underlined that this instrument provides for a legal framework in criminal matters. Including a provision on the possibility to take national 'measures' is not needed in this instrument and should be left to the member states.

In addition, this adjustment does not add to the objective of this instrument, namely, minimum harmonization of criminal penalties.

In conclusion, we are of the opinion that this addition by the EP falls outside of the scope of this instrument.

- b. Line 126a: **additional sanction/measure of paying the costs of the proceedings borne by the successful party, in accordance with conditions and exceptions provided for in national law applicable to court proceedings***

As with line 118a, we are of the opinion that the proposed changes by the EP fall outside the scope of this instrument and certainly outside the scope of this article as far as sanctions are concerned. This is a matter of national criminal procedural law.<sup>1</sup>

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<sup>1</sup> For your information: In Belgium, someone who is convicted is also ordered to pay the legal costs (being certain costs incurred in the prosecution of the case) as well as, if applicable, to pay a fixed procedural indemnity to the civil party being a fixed indemnity for the legal costs of the victim of the crime), and in certain cases to pay an administrative surcharge (attributable to the government) (see articles 162, 162bis and 162ter of the Code of Criminal Procedure).

*BE written comments doc. 8321/23*

*May 2023*

- **Liability & penalties legal persons (art. 6-7, lines 127-151)**

- a. *Line 131a : EP suggests that Member States should ensure that legal persons that commit an offence referred to in Articles 3 and 4 can be **held liable under civil law**, where relevant, for any harm or damage they cause as a result of that offence, and, in conformity with national law, can be required to compensate the persons who have suffered that harm or damage.*

This proposal deals with civil liability on the part of a legal person for damage caused by an environmental offence. Both from the wording, in particular the reference to "the damage suffered by persons", and from the comment in line 131a (in particular that this proposal is outside the scope of the directive), it can be inferred that the proposed text only deals with the compensation of a specific "personal and direct damage" and not with the compensation of environmental damage in general. In this regard, reference can be made to the general liability rules (article 1382 et seq. Civil Code) applying to both natural and legal persons. The commission of a crime is considered a fault causing for the liability of one for the damage caused by that fault.

Based on the above, BE considers it indeed very plausible that the proposal falls outside the scope of the directive seeing that no reference should be made in a criminal law instrument to obligations for member states regarding the liability under civil law.

- b. *Line 149 /150 : EP suggests that Member States should set the **penalties (fines) for legal persons at no less than 10% of the total average worldwide turnover** (Council had proposed 5-3%, with an alternative).*

As regards the penalties for legal persons, it should be remembered that the text in the GA is the result of a careful and lengthy debate towards a balanced approach, taking into account the specificities of all member states around the table.

Therefore, BE is still of the opinion that allowing member states the choice when implementing this instrument in the future, between a mechanism based on minimum maximum amounts or percentages based on the worldwide turnover is still the best way forward.

Only providing for a mechanism solely based on percentages, a system not all member states are accustomed to and therefore raising many practical questions on implementation, holds the danger that this important step forward towards more effectively targeting legal persons on a EU level, will result in a non-implementable provision effectively resulting in no change in practice.

As regards the proposed percentages, we would propose to hold on to the number as included in the text of the GA.

BE written comments doc. 8321/23  
May 2023

## CZECH REPUBLIC

### **Written comments following the COPEN meeting on 3 May 2023 by the Czech Republic**

At the beginning, it is worth stating in general terms that some of the amendments presented by the EP go far beyond the legal basis of the criminal law directive and their adoption would create a discrepancy in the system of EU criminal law instruments.

In view of the almost universal agreement on the general approach to the draft directive, the Czech Republic prefers to preserve as much as possible the text of the general approach, which was discussed in great detail throughout 2022 during FR PRES and CZ PRES and in which a compromise acceptable to all MS was reached.

Below are the comments on the individual questions posed in working document 8321/23:

#### **A: Articles 1-4 (scope and definition of offences)**

*Answer to the question Q1:* The Czech Republic does not agree with the introduction of autonomous criminal offences, i.e. with the introduction of an obligation to criminalise certain acts that are not regulated and punishable under non-criminal provisions. The offences should be linked to a breach of an existing rule, which is the standard practice in this area of criminal law. For this reason, the Czech Republic insists on the text agreed in the general approach in this matter.

*Answer to the question Q2:* The Czech Republic agrees with SE PRES that the meaning of the term “particular gravity” is not clear from the EP proposal and that it is not clear how such a provision would correlate with general aggravating circumstances. There is no explanation in the EP proposal as to why any conduct that cause severe and widespread, long-term or irreversible damage to the environment should be considered as an offence of "particularly gravity", but at the same time such conduct is listed in the group of offences with a lower minimum maximum limit for natural persons (4 years in the EC and EP proposal, 3 years in the general approach) and not listed at all in the case of sanctions for legal persons. The provision therefore does not function systematically, as it does not follow the general setting of the seriousness of offences by dividing them into groups according to the proposed maximum limit of the penalty rate. The EP should further explain the rationale and systematics of the proposed provision.

## **B1: Penalties for private persons (Article 5, lines 114-126a)**

*Answer to the question Q3:* It is not clear from the EP proposal what is meant by "developing measures other than imprisonment". The Czech Republic agrees with the suggestion of SE PRES to invite the EP to clarify the term in the new provision. In general, there is a need to be able to impose effective, proportionate, and dissuasive criminal sanctions, as provided for in Article 5(1). Examples of non-imprisonment sanctions (criminal or non-criminal) are then given in Article 5(5) (Article 5(6) in the general approach). If the purpose of this new provision proposed by EP is to encourage the MS to consider different types of sanctions for different situations, then it is a redundant clause, since provisions with this objective are already contained in Article 5.

*Answer to the question Q4:* In addition to the sanctions and measures other than imprisonment contained in the EC proposal and the general approach, the EP proposes a new measure consisting in the imposition of a requirement to pay the costs of the proceedings which would otherwise be borne by the successful party. Costs compensation is regulated in the Czech Republic under criminal procedural law, whereby in the event of a definitive conviction, the convicted person (i.e. the procedurally unsuccessful party) is generally obliged to reimburse the state for the costs of the criminal proceedings. However, this is not a measure of a punitive nature and as such is outside the scope of the legal basis of the proposal for a directive, which is Article 83(2) of the Treaty on the Functioning of the European Union (TFEU), on the basis of which minimum rules for the definition of offences and sanctions can be laid down for the effective implementation of an already harmonised Union policy. Therefore, the Czech Republic cannot agree to the introduction of a sanction for natural persons consisting in the requirement to pay the costs of the criminal proceedings.

## **B2: Liability and penalties for legal persons (Articles 6-7, lines 127-151)**

*Answer to the question Q5:* The legal order of the Czech Republic contains a regulation of referring the aggrieved party to civil proceedings in respect of their claim. However, the regulation of the civil liability of legal persons is completely outside the legal basis of the proposal for a directive, which is Article 83(2) of the Treaty on the Functioning of the European Union (TFEU), on the basis of which minimum rules for the definition of offences and penalties can be laid down for the effective implementation of an already harmonised Union policy. Therefore, the Czech Republic cannot agree to such a regulation in this criminal law directive.

*Answer to the question Q6:* The Czech Republic agrees with the statement of SE PRES that this issue has been discussed for a significant period of time at the COPEN working group (during FR PRES and CZ PRES) and the solution found in the general approach is a universally accepted compromise across all MS. Given that the harmonisation of the level of sanctions for legal persons is occurring for the first time in EU criminal law, and it would therefore be appropriate to find an acceptable solution for the vast majority of Member States, the Czech Republic supports the general approach and joins SE PRES in its suggestion to seek to convince the EP of the appropriateness of the sanctions system and the need for its broad support.

## **B3: Mitigating and aggravating circumstances (Articles 8-9, lines 152-171)**

*Answer to the question Q7:* The Czech Republic agrees with SE PRES that the meaning of the proposed provision is not entirely clear and that the EP should explain it further. The Czech Republic also shares the concern of SE PRES that this is a procedural provision which is outside the scope of the Directive, since the legal basis for the draft Directive is Article 83(2) of the Treaty on the Functioning of the European Union (TFEU), which allows for the establishment of minimum rules on the definition of offences and sanctions for the effective implementation of an already harmonised Union policy.

**B4: Freezing and confiscation, Limitation periods, Jurisdiction (Articles 10-12, lines 172-195b)**

*In regards to the periods of limitation:* The Czech Republic is of the opinion that the regulation of the limitation period starting from the moment of the discovery of the offence, is unsystematic and would cause the institute of limitation to lose its meaning. According to the Czech Republic, if a longer period of time has elapsed since the commission of the offence and if no prosecution has been initiated or duly continued, the interest in prosecuting and punishing the offender is being lost in view of the time elapsed. From the point of view of substantive law, the need for criminal sanctions in terms of general and individual prevention weakens and gradually ceases to exist, and from the point of view of procedural law, the strength of evidence weakens with the passage of time as it becomes less reliable and/or can no longer be obtained. Furthermore, the establishment of the start of the limitation period at the time of the commission of the offence or the end of the conduct is the norm applied in EU criminal law directives. Therefore, the Czech Republic cannot agree with this proposal of the EP and supports the suggestion of SE PRES to seek to convince the EP to accept the wording of the provisions in the general approach.

*In regards to the extension of jurisdiction:* From the point of view of the legal system of the Czech Republic, the extension of jurisdiction would be acceptable, since the criminality of an act committed in the territory of the Czech Republic by a legal entity is assessed under Czech law, if the legal person has its registered office, an enterprise or organisational unit located in the Czech Republic, or at least carries out its activities or has its assets there. In the case of extending jurisdiction also to crimes committed for the benefit of a legal person established in the territory of the Czech Republic, the Czech Republic refers to the general approach, which already includes this option in its Article 12(2)(b), and supports the suggestion of SE PRES to seek to convince EP to adopt this wording.

## **B5: Access to justice, Resources and investigative tools, and the Role of the EPPO (Articles 14, 16 and 18, and 19a)**

*In regards to access to justice:* The proposed broadening of public access to information on criminal prosecutions appears to go beyond the legal basis of the proposed directive, which is Article 83(2) of the Treaty on the Functioning of the European Union (TFEU), which allows for the establishment of minimum rules on the definition of offences and sanctions for the effective implementation of an already harmonised Union policy. In the case of the aforementioned data that should be published under the new provision, it is not clear in what form the data should be in, e.g. whether it should be anonymised convictions, to what period of time the number of reported offences and prosecutions are related, and so on. Regarding the participation of the public concerned in criminal proceedings, the Czech Republic insists on the agreed wording in the general approach, which grants procedural rights to the public concerned to the extent that these rights are already granted by the national legislation of MS.

*In regards to the possibility of extending the competences of the EPPO:* The Czech Republic does not consider it appropriate to extend the EPPO's mandate to investigate environmental crimes at this time for several reasons. The EPPO has now been in operation for less than two years, so it is premature to assess whether prosecution at EU level is actually more effective than individual prosecution at state level. Moreover, it should not be forgotten that the EPPO operates only under the so-called enhanced cooperation regime, in which not all MS participate. There are also problems in the EPPO's international cooperation with non-Member States, in particular Switzerland, which is an important partner. In the event of an extension of the EPPO's mandate to the investigation of environmental crimes, it is also necessary to consider whether the European Prosecutor, who should supervise the European Public Prosecutors in the individual MS, is sufficiently qualified to supervise the investigation of PIF crimes and environmental crimes at the same time, especially in view of the fact that the EPPO Regulation allows the European Prosecutor to take on the case themselves instead of the European Public Prosecutor. A change in the structure of the Office might therefore be necessary, which the Czech Republic would not recommend now. In any case, an extension of the EPPO's mandate would require an increase in its budget and overall staff, and the EPPO already considers its budget to be insufficient.

## FINLAND

Finland thanks the Chair for the opportunity to provide written comments on the proposal. In addition to our previous comments during the COPEN meeting on the 3<sup>rd</sup> of May 2023, we would like the following aspects to be taken notice of. Please note that only some of the points that the Finnish delegation deems important are commented below.

### Line 88; Article 3(1), sub-point n

Finland would like to emphasize that article 3, paragraph 1, sub-point n needs to be analyzed thoroughly. One of the points that need deeper analysis is the one raised by the German delegation during the COPEN meeting on the 3<sup>rd</sup> of May 2023 (on the punishability of conduct having to do with art. 3(c) of the Deforestation Regulation).

### Line 94 b of document 8321/23; Article 3(1), sub-point (rb)

Our view towards adding the offence in sub-point rb to the proposal is critical and we suggest this sub-point is removed from the text. As a whole, the definition of the offence in this sub-point is very wide and unspecific and lacks the essential connection to the EU environmental legislation and is thus problematic from the point of view of the principle of legality. It is unclear what would be the added value of such a sub-point and why there would be need for such a criminalization.

The first part of the definition (“any conduct that causes a forest fire”) is vague and wide. This part of the sub-point does not take into consideration that the national legal systems of the Member States may allow for measures of forest and nature management which include controlled burning of a forest or a part of it (so called prescribed/controlled burning). These measures seek to promote biodiversity and are also connected to environmental restoration.

The second part of the definition (“any conduct that causes...a significant deterioration of more than one hectare of forest”) is also unclear and raises serious doubts. It is very unclear what is the meaning of “significant deterioration” in this context. It is not clear why this conduct should be criminalized. It is also difficult to understand what conduct would need to be criminalized, i.e. which action by a person could cause a significant deterioration of more than one hectare of forest, taking into account, for example, that the thinning out of forests is a lawful measure of forest management. In addition, the reference to one hectare of forest seems random. It is difficult to see why punishability would be appropriate to set according to this limit.

Line 94 c; Article 3(1a) (the so called catch-all clause)

We see the catch-all clause proposed by the European Parliament (EP) as problematic in many ways. The clause is problematic from the point of view of the principle of legality as the definition is very wide and covers a wide range of acts that are not specified. The definition lacks the connection to a specific piece of EU environmental legislation, not to mention to specific provisions. The clause would be clearly problematic from the point of view of predictability. The wideness of the clause leads to questions on the legal basis, as has been raised at the COPEN meeting by several delegations.

The list of offences in the text of the General Approach is wide and covers many conducts harmful to the environment. A pressing need for such a general clause is not recognized. The proposal by the Commission has been reviewed, supplemented and further specified by the Council. If other acts were to be recognized as clearly blameworthy and criminalization would be justified from the point of view of ultima ratio, they would need to be defined specifically and so that they would be clearly linked to a specific piece of legislation and to violating specified obligations in that legislation.

It is unclear how the first and second part of the paragraph should be read (separately or in connection to each other). The whole of the paragraph is not understandable. If the second part of the paragraph is meant to be read separately from the first, it lacks the connection to the unlawfulness of the act which is an essential part of environmental criminal law. This would be problematic from the point of view of the national constitution as regards the protection of trust and the protection of property.

There is a mention in recital 17 a by the EP on an autonomous offence. This would suggest that the catch-all clause would in fact mean the removal of the connection between environmental law and criminal law. This would, as stated above, be clearly problematic.

As has been brought up by the Chair and other delegations, also the logic as to the internal references between art. 3, paragraph 1 a and other articles in the proposal seems unclear and unjustified. The definitions linked to art. 3, paragraph 1 a on lines 59 a – 59 c are in general unnecessary and include vague terms.

Line 110 b; Article 3, paragraph 5 a

Our view towards article 3, paragraph 5 a is critical. It is difficult to perceive if the obligation has to do with administrative or criminal law or both. In any case, art. 3, paragraph 5 involves a general and horizontal question which has to do with other sectors than environmental offences and should thus not be regulated in a directive covering one offence category. The obligation seems very absolute and could lead to a provision which would be difficult to apply.

It seems unclear what is meant by “the moment” a conduct becomes unlawful. It may be read as referring to the moment a new piece of legislation comes into force. Situations described in the paragraph are covered by enacting provisions on transition periods in new pieces of environmental legislation, for example. Transition periods make it possible for the operators to make changes to their activities according to the requirements in the new legislation. An obligation for the operators to make changes to the activities from the moment a piece of legislation come into force would cause unproportioned and unreasonable demands on the operators. In order to manage the obligation, either the pieces of legislation would need to be enacted to come into force significantly later than currently so that the operators would have time to make changes to their activities, or the situation would become unreasonable for the operators. This could lead to an opposite result from the point of view of the protection of the environment than what are the objectives of the proposal as the coming into force of the legislation would need to be delayed.

Issues having to do with unlawfulness and authorizations are covered in the General Approach in recital 8 which is considered appropriate.

Line 120; Article 5, paragraph 5, point (a)

The text added by the EP may be read as referring to civil law compensation which is outside of the scope of the Directive and should thus be removed from the text.

The same comment applies to line 138 and is also linked to line 131 a.

Line 121; Article 5, paragraph 5, point (b)

As regards fines, the text added by the EP is unnecessary as the Chair has indicated and should be removed from the point. The reference to financial benefits accrued by committing the offence is especially problematic. The removal of financial benefits gained by the offence from the perpetrator is dealt with through confiscation and should not be linked to fines.

The same comment applies to line 137.

Line 126 a; Article 5, paragraph 5, point (ga)

As the Chair has mentioned, paying the costs for proceedings should not be considered a sanction and is already regulated in national law. This point should be removed.

Line 131 a; Article 6, paragraph 1 a

We support the Presidency's view on that civil liability to compensate persons for damages is definitely outside the scope of this Directive. This paragraph should be removed.

Lines 149/150 and 148 a – 148 e; Article 7, paragraphs 3-5

The flexibility and the alternative in the text of the General Approach as regards the fines for legal persons (lines 148 a – 148 e) should be maintained. Finland opposes the idea of lifting the threshold to 10 % of the turnover of the legal person. The matter is highly important to Finland. The national parliament has also highlighted the importance of maintaining the flexibility included in the General Approach in the text. Even the text of the General Approach would lead to significant changes in the national system and to a substantial increase as to the minimum level of the maximum penalty for a legal person.

Lines 169 a and 169 b; Article 9 a (precautionary measures)

We support the view of the Chair in that article 9 a seems to be outside the scope of this Directive. The meaning of the text in article 9 a is not clear. The meaning of the phrase “judicial authorities” should be clarified. If it is supposed to refer only to courts, the rationale behind limiting the text as regards other authorities should be explained. It seems also unclear whether the point in article 9 a is to ensure the prevention of offences or the interruption of illegal activities. These tasks are nationally handled by different authorities.

## FRANCE

*(a courtesy translation has been set out at the end of this contribution)*

### **NOTE DES AUTORITÉS FRANÇAISES**

La présidence suédoise voudra bien trouver ci-dessous les commentaires écrits des autorités françaises concernant les amendements formulés par le Parlement européen concernant la proposition de directive relative à la protection de l'environnement par le droit pénal et remplaçant la directive 2008/99/CE, suite à la réunion du groupe COPEN criminalité environnementale du 3 mai 2023 :

**S'agissant de la volonté du Parlement européen d'étendre le champ des dispositions visées à l'article 2 paragraphe 1 (lignes 58 et 59) en substituant le terme de « law » à celui de « legislation » :**

Les autorités françaises comprennent l'objectif poursuivi par le Parlement européen en procédant à un élargissement du socle des normes visées par cette proposition de directive. Elles attirent toutefois l'attention du Parlement européen et de la présidence du Conseil quant au fait que les dispositions de cet instrument dérivé du droit de l'Union, une fois adopté, devront être lues à la lumière des dispositions du droit primaire et *a fortiori* des dispositions de la Charte des droits fondamentaux, et de l'interprétation qu'en fait la Cour de justice de l'Union européenne dans sa jurisprudence.

### **Sur l'article 3 (Infractions) :**

#### **Sur l'article 3 paragraphe 1 point cb) (ligne 75b) :**

Les autorités françaises sont réservées s'agissant de l'insertion dans cet instrument de l'infraction liée à la culture ou à la dissémination non autorisée dans l'environnement d'organismes génétiquement modifiés (OGM) qui relèvent de la directive 2001/18/CE, du règlement (CE) n°1829/2003 ou encore de la directive 2009/41/CE. Il semble disproportionné de sanctionner pénalement toute présence non autorisée d'OGM, sans tenir compte du caractère accidentel ou non de cette présence. Selon les autorités françaises, seule la mise en culture et la dissémination dans l'environnement d'OGM non autorisés de façon volontaire devraient être visées. Les autorités françaises soulignent par ailleurs que, selon l'OGM mis en évidence, il ne sera pas toujours possible d'établir que sa présence constitue un dommage substantiel pour l'environnement : 1) pour les OGM « inconnus » en Europe (culture ou mise sur le marché de graines), faute d'une demande d'autorisation, ils n'ont pas été évalués au regard du risque qu'ils pourraient représenter pour la biodiversité et les écosystèmes mais généralement ces OGM ont déjà été autorisés dans d'autres pays tiers qui peuvent avoir pris en compte de telles considérations ; 2) pour les OGM « connus » mais dont seulement certains usages sont autorisés en Europe (par exemple autorisation pour la mise sur le marché en tant que graines mais pas pour la culture), l'autorisation s'appuie notamment sur une évaluation des risques environnementaux et la présence d'un OGM non autorisé ne signifie pas systématiquement l'existence d'un dommage pour l'environnement.

#### **Sur l'article 3 paragraphe 1 point i) (ligne 86) :**

Les autorités françaises s'interrogent sur la pertinence et la cohérence de l'introduction de ce critère visant à exclure l'application de sanctions lorsque le fait de détruire la faune sauvage ou la flore « *n'affecte pas l'habitat naturel de ces espèces dans un degré considérable et ne contrarie pas les efforts effectués afin de stabiliser leurs populations* ».

**Sur le nouvel l'article 3 paragraphe 1 point ra) (ligne 94a) :**

Les autorités françaises s'opposent à l'introduction, proposée par le Parlement européen, des infractions graves relatives au contrôle des pêches et à la gestion durable des ressources halieutiques, qui relèvent d'une police administrative différente de celle de la police de l'environnement.

Les autorités françaises rappellent que l'ensemble des règlements relatifs au contrôle des pêches (dont le règlement 1224/2009 relatif au contrôle des pêches et le règlement 1005/2008 établissant un système communautaire destiné à prévenir, à décourager et à éradiquer la pêche illicite, non déclarée et non réglementée sur sa partie sanctions) font l'objet d'une révision depuis 2018 et sont actuellement en phase de trilogue en vue d'aboutir, si possible, à un accord pour la fin de la présidence suédoise.

Cette révision, lancée depuis plusieurs années, vise à mettre davantage en cohérence les outils de contrôle et de sanctions avec les objectifs poursuivis par la politique commune des pêches. Cette négociation est particulièrement technique et porte notamment sur la définition des infractions sous critère et la mise en place de sanctions suffisamment dissuasives et harmonisées au niveau européen notamment à travers un système à points.

A ce titre, il paraît contre-productif d'aborder parallèlement cette discussion dans le cadre de cette directive puisque cette inclusion pourrait impacter les échanges en cours sur la révision du règlement contrôle et la conclusion de la négociation.

**Sur le nouvel article 3 paragraphe 1a) (ligne 94c) :**

Les autorités françaises sont réservées s'agissant de la volonté du Parlement européen d'introduire une nouvelle infraction générale en cas d'atteinte ou de risque d'atteinte aux personnes ou à l'environnement. A cet égard, les contours d'une telle infraction lui paraissent excessivement larges et d'une part de nature à faire obstacle aux contraintes de nature constitutionnelle pour les Etats membres s'agissant de sa compatibilité avec le respect du principe de légalité, mais également d'autre part susceptibles de créer une importante insécurité juridique pour les justiciables.

**Sur l'article 3, paragraphe 5, point 1a) (ligne 110a) en lien avec l'article 3 paragraphe 5, sous-paragraphe premier (ligne 106) :**

Les autorités françaises s'interrogent sur l'introduction de nouveaux seuils de gravité au sein de cet instrument, parfois rédigés en des termes différents. Les autorités françaises rappellent que l'orientation générale du Conseil promeut un niveau élevé d'ambition, et attirent l'attention sur le fait que de tels seuils, parfois rédigés en des termes différents, sont susceptibles de compromettre ce niveau d'ambition.

**Sur l'article 6 (responsabilité des personnes morales) :**

Les autorités françaises rappellent que l'orientation générale du Conseil adoptée le 9 décembre 2022 constitue une refonte particulièrement ambitieuse, du précédent instrument, notamment en introduisant un volet relatif aux sanctions. En effet, le texte étend considérablement la liste des infractions pénales incriminées, tient compte de nouveaux types d'atteintes à l'environnement, procède à une définition rigoureuse et détaillée de ces infractions et prévoit une harmonisation des sanctions applicables aux personnes physiques et morales sur la base de niveaux exceptionnellement élevés.

Sur ce dernier point, les autorités françaises insistent sur le fait qu'une harmonisation des sanctions applicables aux personnes morales au sein d'un instrument de droit pénal de l'Union européenne était encore inédite, les instruments adoptés jusque lors se limitant à exiger des Etats membres qu'ils prévoient des sanctions effectives, proportionnées et dissuasives. A cet égard, les autorités françaises soutiennent la duplication de ce modèle au sein des instruments procédant à une harmonisation des règles de droit pénal de l'Union prévoyant l'engagement de la responsabilité des personnes morales.

Les autorités françaises rappellent en outre que l'harmonisation des sanctions applicables aux personnes physiques et morales a constitué le cœur des échanges au sein du Conseil, comme l'ont démontré les débats organisés sur cette question sous l'égide de la présidence française puis de la présidence tchèque.

Comme la présidence du Conseil, les autorités françaises entendent donc maintenir un haut niveau d'ambition, s'agissant de ce texte en raison des demandes des praticiens d'un cadre harmonisé et modernisé, et des fortes attentes des citoyens compte tenu du changement climatique observé par tous et de la nécessité de lutter contre la criminalité environnementale organisée. Si les autorités françaises comprennent et partagent les objectifs poursuivis par le Parlement européen en relevant encore davantage le niveau de peines encourues pour les personnes morales, il ne paraît pas envisageable d'établir un mécanisme de sanction décorrélé de ceux prévus par les systèmes juridiques des Etats membres. Une telle décision serait susceptible de conduire à ce que cet instrument ne puisse que difficilement être mis en œuvre par les autorités judiciaires nationales, à l'instar de la directive 2008/99/CE.

**Sur l'article 6 paragraphe 1 point c) (ligne 131a) :**

Les autorités françaises partagent la réserve formulée par la présidence suédoise et indiquent qu'en tout état de cause, le fait de prévoir l'engagement de la responsabilité civile des personnes morales ayant commis une infraction, en conformité avec les droits nationaux des Etats membres, ne lui semble pas s'inscrire dans le champ d'application de cette proposition de directive.

**Sur l'article 6 paragraphe 3 (ligne 133) :**

Les autorités françaises partagent l'interrogation formulée par la Présidence quant à l'utilité et l'opportunité d'introduire la formulation suivante « *including corporate board members* », dès lors que les dispositions de l'article 6 incriminent d'ores et déjà les infractions commises par une personne disposant du pouvoir de décision mais par une terminologie différente. Les autorités françaises souhaitent que l'attention du Parlement européen soit attirée sur l'existence d'un risque concernant la compatibilité de cet ajout avec les conditions d'engagement de la responsabilité des personnes morales prévues par le texte.

**Sur le nouvel article 9a relatif aux mesures préventives – ligne 169a et b) :**

Les autorités françaises partagent l'interrogation formulée par la Présidence et sollicitent des clarifications de la part du Parlement européen concernant les raisons justifiant l'introduction de cette disposition et la compatibilité des mesures préventives qu'elle prévoit avec le champ d'application de cette proposition de directive d'harmonisation minimale des règles de droit pénal de l'Union. Enfin, les autorités françaises s'interrogent sur la pertinence et l'opportunité d'insérer cette nouvelle disposition sous cet intitulé, compte tenu de l'existence de l'article 15 relatif à la prévention.

**Sur l'article 10 paragraphe 1 (Gel et confiscation) (ligne 171) :**

Les autorités françaises soutiennent la suggestion formulée par la Présidence en vue d'inciter le Parlement européen à accepter la formulation issue de l'orientation générale du Conseil. En outre, les autorités françaises souhaitent que le Parlement soit interrogé afin que ce dernier clarifie la nature des mesures dont il entend imposer l'adoption aux Etats membres afin de garantir que les avoirs gelés ou confisqués soient gérés de façon appropriée selon leur nature. Les autorités françaises sollicitent également des précisions quant à la façon dont le Parlement conçoit la mise en place d'un mécanisme permettant l'utilisation active des avoirs gelés et la réattribution du produit de la revente des avoirs confisqués aux fins de restauration de l'environnement, et les garanties qu'il envisage afin de permettre la traçabilité de ces fonds. Les autorités françaises souhaitent également que le Parlement soit interrogé afin de déterminer s'il entend que ces fonds soient transférés du budget des Etats membres vers le budget de l'Union européenne, et sous quelles modalités et, dans l'affirmative, de clarifier si les services budgétaires et financiers ont été consultés sur ce point. Enfin, le Parlement européen devrait être interrogé afin de déterminer la nature des destinataires de ces fonds (victimes, parties civiles, organisations non-gouvernementales etc). En tout état de cause, les autorités françaises sont réservées concernant un tel mécanisme dont elles perçoivent mal l'opportunité et la faisabilité.

**Sur l'article 11 paragraphe 2 point b) (Délais de prescription) (ligne 175) :**

Les autorités françaises soutiennent la suggestion formulée par la Présidence en vue d'inciter le Parlement européen à accepter la formulation issue de l'orientation générale. A cet égard, les autorités françaises soulignent qu'en droit français, comme dans plusieurs autres Etats membres, le point de départ du délai de prescription est en principe fixé au jour de la commission de l'infraction. Les autorités françaises demeureront donc attentives à l'évolution des échanges sur ce point.

**Sur l'article 14 paragraphe 1 (Droit des personnes concernées de participer à la procédure) (ligne 200a) et b) :**

Les autorités françaises comprennent l'objectif poursuivi par le Parlement en sollicitant que certaines informations soient rendues publiques. Les autorités françaises sollicitent toutefois que l'attention du Parlement soit attirée sur les difficultés opérationnelles que sont susceptibles de rencontrer les autorités nationales compétentes s'agissant d'informations de ce niveau dans de telles quantités. Les autorités françaises souhaitent également que le Parlement soit interrogé sur le point de savoir s'il entend que l'ensemble des informations visées par ces dispositions soient rendues publiques.

**Sur l'article 15 paragraphe 1 (Prévention) (ligne 202) :**

Les autorités françaises sollicitent des clarifications de la part du Parlement européen s'agissant des conséquences de l'insertion du terme « *seriously* » sur la portée de l'obligation semblant faite aux Etats membres de réduire le risque de commission de tout acte pénalement répréhensible qui porte atteinte à l'environnement.

### **Sur l'article 16 (Ressources) (lignes 204 et 204a) :**

Les autorités françaises comprennent l'objectif poursuivi par le Parlement de s'assurer que les Etats membres allouent les ressources nécessaires pour prévenir et lutter efficacement contre la criminalité environnementale. Elles souhaitent néanmoins que le Parlement européen soit interrogé concernant les raisons justifiant l'insertion d'une obligation faite aux Etats membres de procéder à une évaluation du besoin de renforcer leurs systèmes judiciaires (autorités judiciaires et services d'enquête) en matière de criminalité environnementale, conformément à leur droit national. Les autorités françaises émettent une réserve s'agissant en particulier des moyens mis en œuvre par les Etats membres pour renforcer les capacités humaines mobilisées pour lutter contre cette forme de criminalité. En effet, ces éléments qui ont trait à l'organisation interne des Etats membres devraient être laissés à leur appréciation en fonction de leurs besoins propres. Au surplus, ces éléments apparaissent redondants avec d'autres dispositions de la directive qui traitent notamment de la formation (article 17) et de la coordination et la coopération entre les autorités compétentes d'un Etat membre (article 19).

Les autorités françaises s'interrogent également sur l'obligation faite aux Etats membres d'informer les agences Eurojust et Europol mais également le Parquet européen et l'Office européen de lutte antifraude (OLAF) s'agissant des infractions transfrontalières visées par cette directive. En tout état de cause, les dispositions de l'article 16 devraient se limiter à envisager des mesures devant être transposées par les Etats membres exclusivement dans le cadre national. S'agissant plus particulièrement des références faites à la coopération des Etats membres avec le Parquet européen, les autorités françaises renvoient à leurs observations s'agissant du nouvel article 19a.

### **Sur l'article 18 (actes d'enquête) (lignes 208 à 208a) :**

En cohérence avec sa position exprimée s'agissant de l'article 16, les autorités françaises émettent également une réserve concernant les obligations ayant trait à l'organisation interne des Etats. Au surplus, cette proposition d'ajout du Parlement semble sans lien avec l'objet de cette disposition qui porte sur les actes d'investigation que doivent exécuter les autorités compétences aux fins de la lutte contre la criminalité environnementale.

En outre, le Parlement européen devrait expliquer les raisons justifiant l'insertion des mentions relatives aux outils d'enquête pour lutter contre les infractions financières et la cybercriminalité. Le renvoi à d'autres formes de criminalité ne semble pas opportun aux autorités françaises, compte tenu de la nature et des enjeux propres liés à la criminalité environnementale. En tout état de cause, l'article 18 énumère de manière non exhaustive les actes d'investigation utilisés en application de cette directive, l'objectif étant de laisser aux Etats membres le choix des outils qui leur semblent le plus idoines et appropriés pour lutter contre cette forme de criminalité.

Enfin, les autorités françaises indiquent vouloir maintenir la structure qui a été adoptée conformément à l'orientation générale du Conseil et privilégient l'insertion de la disposition relative aux outils d'enquête à l'article 13, plutôt qu'à l'article 18.

**Sur l'article 19 (Coordination et coopération entre les autorités compétentes au sein des Etats membres) (ligne 209) :**

Les autorités françaises s'interrogent sur la modification du titre de l'article 19 initialement limité à la coordination et à la coopération entre autorités compétentes au sein des Etats membres. Par souci de cohérence et de lisibilité, le champ de cette disposition devrait en tout état de cause se limiter à un cadre de coopération strictement national et la dimension transfrontalière de la coopération judiciaire en matière de lutte contre la criminalité environnementale devrait faire l'objet d'une disposition spécifique.

**Sur le nouvel article 19a paragraphes 1 et 2 relatif à la coopération entre les Etats membres, la Commission européenne et les autres institutions, entités et agences de l'Union européenne (lignes 216b et 216c) :**

Les autorités françaises solliciteront que le Parlement européen soit interrogé sur les raisons justifiant l'insertion d'une référence à la coopération entre les Etats membres et le Parquet européen s'agissant des infractions visées par la présente directive et son articulation avec le projet de rapport de la Commission européenne visé à l'article 19a paragraphe 2 dont l'objectif sera de procéder dans les douze mois après l'entrée en vigueur de la directive à l'évaluation de la possibilité d'étendre les compétences du Parquet européen à ce domaine de criminalité.

Les autorités françaises sollicitent que le Parlement européen soit interrogé sur les raisons justifiant l'absence de référence à l'agence Europol au titre de la fourniture d'une assistance technique et opérationnelle aux Etats membres en matière de lutte contre la criminalité environnementale. Conformément à son mandat, elle indiquera qu'Europol devrait également jouer un rôle dans ce domaine.

**Courtesy translation :**

**With regard to the European Parliament's wish to extend the scope of the provisions referred to in Article 2(1) (lines 58 and 59) by substituting the term "law" for "legislation":**

The French authorities understand the objective pursued by the European Parliament in broadening the base of standards referred to by this proposal for a directive. However, they draw the attention of the European Parliament to the fact that the provisions of this secondary instrument of Union law, once adopted, will have to be read in the light of the provisions of primary law and a fortiori of the provisions of the Charter of Fundamental Rights, and of the interpretation of the Court of Justice of the European Union in its case law.

**With regard to Article 3 (Offences):**

**On Article 3 (1) (cb) (line 75b):**

The French authorities have reservations regarding the inclusion in this instrument of the offence relating to the unauthorised cultivation or release into the environment of genetically modified organisms (GMOs) which come under Directive 2001/18/EC, Regulation (EC) No 1829/2003 or Directive 2009/41/EC. It seems disproportionate to penalise any unauthorised presence of GMOs, without taking into account the accidental or non-accidental nature of this presence. According to the French authorities, only the deliberate cultivation and release into the environment of unauthorised GMOs should be targeted. The French authorities also stress that, depending on the GMO identified, it will not always be possible to establish that its presence constitutes substantial damage to the environment: 1) for GMOs "unknown" in Europe (cultivation or placing on the market of seeds), in the absence of an application for authorisation, they have not been assessed with regard to the risk they could represent for biodiversity and ecosystems but generally these GMOs have already been authorised in other third countries which may have taken such considerations into account; 2) for "known" GMOs but for which only certain uses are authorised in Europe (e.g. authorisation for marketing as seeds but not for cultivation), the authorisation is based in particular on an environmental risk assessment and the presence of an unauthorised GMO does not systematically mean that there is damage to the environment.

**On Article 3(1)(i) (line 86):**

The French authorities question the relevance and coherence of the introduction of this criterion aimed at excluding the application of penalties when the destruction of wild fauna or flora "does not affect the natural habitat of these species to a considerable degree and does not counteract the efforts made to stabilise their populations".

**On the new Article 3(1)(ra) (line 94a):**

The French authorities are opposed to the introduction of serious infringements relating to fisheries control and the sustainable management of fisheries resources, as proposed by the European Parliament, which fall within the scope of an administrative police force different from that of the environmental police. The French authorities point out that all the regulations relating to fisheries control (including Regulation 1224/2009 on fisheries control and Regulation 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing in its sanctions section) have been under review since 2018 and are currently in the trilogue phase with a view to reaching an agreement, if possible, by the end of the Swedish Presidency. This revision, which has been underway for several years, aims to make the control and sanction tools more consistent with the objectives of the Common Fisheries Policy. These negotiations are particularly technical and concern in particular the definition of infringements under the criteria and the introduction of sufficiently dissuasive and harmonised sanctions at European level, in particular through a points system. In this respect, it seems counterproductive to address this discussion in parallel within the framework of this directive, since its inclusion could have an impact on the ongoing discussions on the revision of the control regulation and the conclusion of the negotiation.

**On the new Article 3(1a) (line 94c):**

The French authorities have reservations about the European Parliament's intention to introduce a new general offence in the event of damage or risk of damage to persons or to the environment. In this respect, the contours of such an offence appear to be excessively broad and likely to impede the constraints of a constitutional nature for the Member States with regard to its compatibility with respect for the principle of legality, but also to create significant legal uncertainty for those subject to legal proceedings.

**On Article 3(5)(1a) (line 110a) in conjunction with Article 3(5), first subparagraph (line 106):**

The French authorities question the introduction of new thresholds within this instrument, sometimes drafted in different terms. The French authorities recall that the general orientation of the Council promotes a high level of ambition, and draw attention to the fact that such thresholds, sometimes drafted in different terms, are likely to compromise this level of ambition.

**With regard to Article 6 (liability of legal persons):**

The French authorities point out that the Council's general approach adopted on 9 December 2022 is a particularly ambitious overhaul of the previous instrument, in particular by introducing a section on penalties. The text considerably extends the list of criminal offences, takes into account new types of environmental damage, provides a rigorous and detailed definition of these offences and provides for the harmonisation of penalties applicable to natural and legal persons on the basis of exceptionally high standards. On this last point, the French authorities emphasise that a harmonisation of the penalties applicable to legal persons in a European Union criminal law instrument was still unprecedented, as the instruments adopted until then were limited to requiring Member States to provide for effective, proportionate and dissuasive penalties. In this respect, the French authorities support the duplication of this model within the instruments harmonising the rules of EU criminal law providing for the liability of legal persons.

The French authorities also point out that the harmonisation of penalties applicable to legal persons has been at the heart of the discussions within the Council, as demonstrated by the debates organised on this issue under the aegis of the French Presidency and then the Czech Presidency.

As the Council, the French authorities therefore intend to maintain a high level of ambition with regard to this text because of the demands of practitioners for a harmonised and modernised framework, and the strong expectations of citizens in view of the climate change observed by all and the need to combat organised environmental crime. While the French authorities understand and therefore share the objectives pursued by the European Parliament in further raising the level of penalties incurred by legal persons, it does not seem feasible to establish a penalty mechanism that is different from those provided for by the legal systems of the Member States. Such a decision would be likely to make it difficult for this instrument to be implemented by the national judicial authorities, as is the case with Directive 2008/99/EC.

**On Article 6(1)(c) (line 131a):**

The French authorities share the reservation expressed by the Swedish Presidency and indicate that, in any case, providing for the civil liability of legal persons who have committed an offence, in accordance with the national laws of the Member States, does not seem to them to fall within the scope of this proposal for a directive.

**On Article 6(3) (line 133):**

The French authorities share the Presidency's question as to the usefulness and appropriateness of introducing the following wording "including corporate board members", given that the provisions of Article 6 already criminalise offences committed by a person with decision-making powers, in a slightly different language. The French authorities wish the European Parliament's attention to be drawn to the existence of a risk concerning the compatibility of this addition with the conditions for the liability of legal persons provided for in the text.

**With regard to new Article 9a on preventive measures - line 169a and b):**

The French authorities share the Presidency's questioning and request clarification from the European Parliament on the reasons justifying the introduction of this provision and the compatibility of the preventive measures it provides for with the scope of this proposal for a Directive on the minimum harmonisation of the rules of criminal law of the Union. Finally, the French authorities question the relevance and appropriateness of inserting this new provision under this heading, given the existence of Article 15 on prevention.

**On Article 10(1) (Freezing and confiscation) (line 171):**

The French authorities support the suggestion made by the Presidency to encourage the European Parliament to accept the wording resulting from the Council's general approach. In addition, the French authorities would like the Parliament to clarify the nature of the measures it intends to require Member States to adopt in order to ensure that frozen or confiscated assets are managed appropriately according to their nature. The French authorities also request clarification as to how the Parliament envisages the establishment of a mechanism for the active use of frozen assets and the reallocation of the proceeds of the resale of confiscated assets for environmental restoration purposes, and the guarantees it envisages to allow the traceability of these funds. The French authorities also wish the Parliament to be asked whether it intends these funds to be transferred from the Member States' budget to the European Union's budget, and under what terms and conditions and, if so, to clarify whether the budgetary and financial services have been consulted on this point. Finally, the European Parliament should be asked to determine the nature of the recipients of these funds (victims, civil parties, non-governmental organisations, etc.). In any case, they express their reservations concerning such a mechanism, its appropriateness and feasibility being difficult to understand.

**On Article 11(2)(b) (limitation periods) (line 175):**

The French authorities support the suggestion made by the Presidency with a view to encouraging the European Parliament to accept the wording resulting from the general approach. In this respect, the French authorities stress that under French law, as in other national laws, the starting point of the limitation period is in principle the day on which the offence was committed. The French authorities will therefore remain attentive to developments in the exchanges on this point.

**With regard to Article 14(1) (Right of persons concerned to participate in proceedings) (line 200(a) and (b)):**

The French authorities understand the objective pursued by Parliament in requesting that certain information be made public. However, the French authorities request that the Parliament's attention be drawn to the operational difficulties that the competent national authorities are likely to encounter with regard to information of this level in such quantities. The French authorities would also like Parliament to be asked whether it intends all the information covered by these provisions to be made public.

**On Article 15 paragraph 1 (Prevention) (line 202):**

The French authorities request clarification from the European Parliament on the consequences of the insertion of the word "seriously" in the definition of the scope of the obligation apparently placed on Member States to reduce the risk of committing any criminally reprehensible act that damages the environment.

**With regard to Article 16 (Resources) (lines 204 and 204a):**

The French authorities understand the objective pursued by the Parliament to ensure that Member States allocate the necessary resources to prevent and combat environmental crime effectively. However, they would like the European Parliament to be questioned on the reasons justifying the insertion of an obligation for Member States to carry out an assessment of the need to strengthen their judicial systems (judicial authorities and investigative services) in relation to environmental crime, in accordance with their national law.

The French authorities have a reservation concerning in particular the means implemented by the Member States to strengthen the human capacities mobilised to combat this form of crime. These elements, which relate to the internal organisation of the Member States, should be left to their own discretion, depending on their own needs. Moreover, these elements appear to be redundant with other provisions of the Directive which deal in particular with training (Article 17) and coordination and cooperation between the competent authorities of a Member State (Article 19).

The French authorities also question the obligation for Member States to inform Eurojust and Europol, but also the European Public Prosecutor's Office and the Anti-Fraud Office (OLAF), of the cross-border offences covered by this Directive. In any case, the provisions of Article 16 should be limited to measures to be transposed by the Member States exclusively in the national framework. With regard more specifically to the references made to the cooperation of Member States with the European Public Prosecutor's Office, the French authorities refer to their observations on the new Article 19a.

**On Article 18 (investigative acts) (lines 208 to 208a):**

In line with its position on Article 16, the French authorities also have a reservation concerning the obligations relating to the internal organisation of States. Moreover, this proposed addition by the Parliament is unrelated to the purpose of this provision, which concerns the investigative acts to be carried out by the competent authorities for the purpose of combating environmental crime. In addition, the European Parliament should explain the reasons justifying the insertion of references to investigative tools for combating financial and cybercrime. The reference to other forms of crime does not seem appropriate to the French authorities, given the nature and the specific issues related to environmental crime. In any event, Article 18 lists the investigative acts used in application of this Directive in a non-exhaustive manner, the aim being to leave Member States the choice of the tools they consider most appropriate and suitable for combating this form of crime. Finally, the French authorities indicate that they wish to maintain the structure that has been adopted in accordance with the general orientation of the Council and prefer the insertion of the provision on investigative tools in Article 13, rather than in Article 18.

**With regard to Article 19 (Coordination and cooperation between competent authorities within the Member States) (line 209):**

The French authorities question the modification of the title of Article 19 initially limited to coordination and cooperation between competent authorities within the Member States. For the sake of consistency and readability, the scope of this provision should in any case be limited to a strictly national cooperation framework and the cross-border dimension of judicial cooperation in the fight against environmental crime should be the subject of a specific provision.

**Finally, on the new Article 19a (1) and (2) on cooperation between the Member States, the European Commission and the other institutions, bodies and agencies of the European Union (lines 216b and 216c):**

The French authorities will request that the European Parliament be asked about the reasons for inserting a reference to cooperation between the Member States and the European Public Prosecutor's Office with regard to the offences referred to in this Directive and how this relates to the draft report by the European Commission referred to in Article 19a(2), the aim of which will be to assess the possibility of extending the powers of the European Public Prosecutor's Office to this area of criminality within twelve months of the Directive's entry into force.

The French authorities request that the European Parliament be questioned on the reasons justifying the absence of a reference to the Europol agency for the provision of technical and operational assistance to Member States in the fight against environmental crime. In accordance with its mandate, it will indicate that Europol should also play a role in this area.

## SLOVENIA

Following the invitation of the Presidency in the COPEN Working Party on 3 May 2023 Slovenia would like to provide the following provisional comments on the amendments of the European Parliament in doc. 8321/23. Our comments are focused on questions raised by the Presidency and relate to lines 52 - 151. Please note that we retain our general scrutiny reservation.

Line 53: The amendment of the EP seems reasonable. We could accept the wording proposed by the Presidency.

Line 61: We would like to follow the standard definition of “legal person” in order to have a coherent approach in the EU criminal acts. Therefore, the proposal of the EP does not have our support.

Line 66: As other delegations have commented in the COPEN WP – we would need to have a clear understanding of the notions “*energy, biodiversity, ecosystem services and functions.*” EP could be invited to explain the scope of these terms and reasons behind the proposal.

Lines 67, 68 and 86: Explicit referral to the “online” dimension does not seem to be necessary as it is already implicitly included in the text. We would therefore avoid this inclusion in points b, c and l.

Line 75b: The broadening of the scope to genetically modified organisms is still under scrutiny. We do not have a position yet.

Line 88: It would be reasonable to refer to the new Deforestation Regulation however all the aspects of Article 3 of the Regulation should be carefully examined as some delegations have already indicated at the COPEN WP.

Line 94a: As we have heard from the Commission, the current fisheries legal framework is being revised so prudence would be advised. Furthermore, we also find EP’s proposal too broad with no clear division between administrative and criminal law.

Line 94b: We agree with the Presidency that additional explanation would be needed to better understand this amendment proposed by the EP.

Line 94c: We do not understand how to fit the EP's proposal into paragraph 1 of Article 3. If the intention is to introduce a new criminal offence of general nature into the Directive, we have some concerns. Namely, the provision is too general. Furthermore, it does seem not refer to the infringement of sectoral legislation. Last sentence also partially overlaps with point a in Article 8 regulating aggravating circumstances. More clarity is needed with regards to the scope and the rationale behind the EP's proposal.

Line 101a and 101b: We do not support the proposal of the EP as it is not clear how *financial benefits* could be relevant when assessing whether an environmental damage is substantial or not. The same goes for line 101b relating to the duration of the infringement – such factor is not necessarily relevant. In addition, as Presidency has put it, point b is already of relevance in this regard.

Line 101c: The proposal is not clear, additional information would be needed.

Line 101d: It is not clear why these factors (ex: offence committed in the framework of organised crime) should be relevant when assessing the environmental damage. The proposal of the EP does not have our support.

Line 118a: We do not see how the proposal of the EP fits into Article 5(4). Additional sanctions are already covered in Article 5(6). Furthermore, the wording is not clear. We would be keen to know what measures does the EP have in mind here.

Line 126a: Proposal of the EP is not acceptable as cost of proceeding are a matter of national procedural law. Furthermore, this directive is of criminal nature whereas the proposal has the elements of civil proceedings.

Line 131a: Support to the proposal of the Presidency. Civil liability is outside the scope of this Directive.

Line 133: We support Article 6(3) in its current form as this is a standard provision found also in other instruments of criminal law. We would not be in favor of changing this settled formulation.

Line 148a – 149: Article 7 proved to be one of the most challenging parts of directive when discussed in the Council. For some delegations, including Slovenia, harmonisation of the level of fines for legal persons was a particularly difficult issue. We agree with the approach proposed by the Presidency and do not support amendments in line 149.