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**'I/A' ITEM NOTE**

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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee/Council |
| Subject: | Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC **(first reading)**<br>- Adoption of the legislative act<br>= Statements |

**Statement by Bulgaria**

Bulgaria fully supports the objectives of the proposal for the Directive on the protection of the environment through criminal law.

However, with respect to the "qualified offence" under Art.3, paragraph 3 of the Directive that was introduced during the inter-institutional negotiations, we would like to express our concerns about the lack of clarity in the operative part as regards the *mens rea* element of the offence, i.e. whether it can be committed only intentionally or also by serious negligence. In addition, we are concerned about the lack of sufficient clarity in the operative part and the preamble as regards the correlation between the qualified offence and the aggravating circumstances under Art.8 and the level and type of sanctions or measures to be applied for the qualified offence (Art.7, paragraph 4). We are of the view that the above lack of clarity could lead to serious difficulties for the Member States in the transposition of the Directive and implementation of the respective national legislation.

We also regret that our concerns about the differentiated approach in sanctioning legal persons, depending on whether their liability is triggered under paragraph 1 or under paragraph 2 of Art.6, were not addressed during the negotiations (Art.7, paragraph 3). We have already pointed out that differentiated approach in sanctioning legal persons would have negative consequences, such as: conflict with the principle of unified sanctioning regime applied to legal persons which is established by the Council of Europe, UN and OECD conventions and further breach of the consistency and coherence of the EU legislation with respect to this issue; conceptual, legislative and practical confusion in the member states which have taken measures in conformity with the currently established international and European standards; message to the Member States that they could adopt less effective, proportionate and dissuasive corporate sanctions for environmental crimes committed by persons under authority, even if the crimes are committed for the benefit of the legal person and cause serious damages; possibility of misuse by the legal persons which could easily organize the commission of environmental crimes in a way to avoid effective sanctioning; and potential for forum shopping.

Finally, we express concerns that during the linguistic revision of the English text the term "sanctions" was replaced by the term "penalties" in the respective provisions and the preamble of the Directive without providing substantial linguistic or legal reasons for this important terminological change. With respect to this issue we mention that the term "sanctions" is consistently used in the criminal law directives and the international conventions adopted within the Council of Europe, UN and OECD, and until now has not caused misinterpretation or confusion at EU or national level. Moreover, the term "sanctions" is used in the provision of Art.83, paragraph 1 TFEU and therefore the above terminological change is inconsistent with the legal basis for the proposal for the Directive.

**Statement by Finland**

Finland is fully committed to striving for a high level of environmental protection and recognises criminal law as one of the means for pursuing this aim. Finland has, throughout the negotiations, fully supported the objectives of the proposal for the Directive on the protection of the environment through criminal law. However, Finland considers that the agreement on the new Directive includes obligations which do not adequately align with some of the basic principles of EU criminal law.

Firstly, Article 49 of the Charter of Fundamental Rights of the European Union lays down the principles of legality and proportionality of criminal offences and penalties. Under Article 49(3), the severity of penalties must not be disproportionate to the criminal offence. While Finland considers it important to include in the Directive solid provisions on criminal responsibility and penalties, Finland considers that the harmonization of penalties in the Directive goes partly beyond what is justified as regards the range and level of penalties and the existing systems of the Member States. When common sanctions levels are determined, due consideration should be given to the overall level of severity of the national sanctions regimes, as well as to the coherence of national systems as a whole.

In addition, the core of Article 83 of the Treaty on the Functioning of the European Union (TFEU) is establishing minimum rules concerning the definition of criminal offences and sanctions. The importance of safeguarding the legal traditions and fundamental aspects of national criminal justice systems is emphasised in Article 83 and in Article 67 of the TFEU. The new Directive includes some important points where the harmonization is not only very detailed but also horizontal in that it would significantly affect all other offence categories besides environmental offences. Finland considers it important to adhere to the nature of EU criminal law as minimum harmonization in the specific areas provided for in the TFEU.

For Finland, especially the provisions of the new Directive on penalties, and those on the penalties for legal persons and on the qualified offence in particular, do not seem to be fully consistent with the principle of proportionality and the premise of minimum harmonization.