

Study on the implementation  
of **Directive 2008/99/ec** on the  
**Protection** of the **Environment**  
Through Criminal Law



giving  
nature  
a home





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## Summary

Directive 2008/99/EC on the protection of the environment through criminal law lays down a list of environmental offences that must be considered criminal offences by all Member States, if committed intentionally or with serious negligence.

In order to achieve effective protection of the environment, the Directive underlines the particular need for more dissuasive penalties for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, soil, water, animals or plants, including to the conservation of species.

This report is aimed to evaluate the transposition of articles 3 and 5 of the Directive by Member States.

**Part I** provides a comparative analysis of the criminal penalties introduced by Member States in their national legislations as a result of the implementation of article 5 of the Directive. The analysis addresses both typology and severity of the penalties. **Chapter I** first addresses the **typology of the penalties** and focuses on imprisonment and fine, the most traditional penalties in EU Member States. When comparing the typology of penalties used in each Member State for each offence, the analysis takes particularly into account the possibility of establishing a single penalty for an offence or a combination of them. Six options have been identified in the national legislations:

- 1) Only imprisonment
- 2) Imprisonment and fine
- 3) Imprisonment or fine
- 4) Imprisonment and/or fine
- 5) Imprisonment with or without fine
- 6) Only (criminal) fine

**Chapter II** addresses the **severity of penalties**. Existing differences in the criminal systems of the Member States have determined that the study focuses exclusively on imprisonment penalties and that the comparison takes into account maximum imprisonment penalties.

Results of Part I show a high level of compliance with the main goal of the Directive: the use of criminal law to enforce legislation implementing environmental directives. Member States use criminal (or quasi-criminal) sanctions to punish the conducts described in article 3 of the Directive and only very few exceptions can be observed to this rule. However, since the Directive does not establish a framework of maximum and minimum penalties, significant disparities both in typology and severity of the sanctions have been detected.

**Part II** addresses a qualitative analysis based on the information gathered using a questionnaire specifically designed for this purpose and fulfilled by national experts from several Member States. Questionnaires were available from Bulgaria, Czech Republic, Germany, Greece, Hungary, Italy,

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Lithuania, Luxembourg, Malta, Portugal, Netherlands, Spain, Sweden and United Kingdom. The qualitative analysis aims to study more closely the criminalization of conducts foreseen in art. 3.f) and 3.h) referring to illegal killing and taking of birds, intentional poisoning and habitats destruction. In order to allow a better comparison of the implementation of the Directive among the Member States, the analysis also includes an overview of the impact of the Directive, a report on the existence of stakeholders responsible for the enforcement of the Directive, a report on intentional and negligent criminalisation of conducts and a chart reflecting the gaps identified by the national experts in the transposition of the Directive into national law.

Since the Directive has only recently been implemented in most Member States, there is still little Court practice and no sufficient case law to draw conclusions on the practical impact of the new regulation on environmental crimes. However, it can be stated that several elements have been detected, which show a change towards a greater public awareness on environmental issues and the prosecution of environmental crimes. Firstly, even in those Member states where offences against the environment were already available previous to the approval of the Directive 2008/99/EC, the Directive has boosted the national legislation towards a more complete approach. Secondly, many Member States have developed strategies to train staff for the prosecution of environmental crimes. Some Member States have indicated that, recently, training courses have been developed, professional networks have been set up and special agencies have been created to enhance the prosecution of environmental offences. Nevertheless, the questionnaires analysed show a lack of investigative tools and serious difficulties for police officers, inspectors, prosecutors and other agencies to collect the evidence required to prosecute these crimes.

The report finalizes with a set of conclusions which take into account the outcomes of the comparative analyses developed in Part I and Part II and suggests further steps to be taken to facilitate the evaluation of the implementation of the Directive. The authors take also the opportunity to show adherence to the broader recommendations drawn by international and European organizations relating environmental crimes.

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## Introduction

In 2008, the European Union passed the Directive 2008/99/EC on the protection of the environment through criminal law.

The Directive intended to be the response to two concerns relating environment protection: 1) the rise in environmental offences whose effects extend beyond the borders of the States in which the offences are committed; 2) the insufficiency of penalties in the existing national systems to achieve complete compliance with the laws for the protection of the environment.

In order to achieve effective protection of the environment, the Directive underlines the particular need for more dissuasive penalties for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, to soil, water, animals or plants, including to the conservation of species.

As a result, the Directive obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of European Union law on the protection of the environment. The Directive specifies this obligation by describing nine conducts that shall constitute criminal offences when unlawful and committed intentionally or with at least serious negligence:

- (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;
- (b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare 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;
- (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 and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
- (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;
- (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;

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(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;

(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;

(h) any conduct which causes the significant deterioration of a habitat within a protected site;

(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.

Additionally, the Directive obliges Member States to ensure that inciting, aiding and abetting those intentional conducts will also deserve a criminal sanction and that legal persons can be held liable for those same offences. In particular, legal persons must be able to be held liable where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; or (c) an authority to exercise control within the legal person. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.

Although the Directive does not specify the typology of criminal sanctions and does not establish a minimum or a maximum level, it underlines that penalties have to be effective, dissuasive and proportionate.

Due date for the transposition of the Directive was 26 December 2010.

This report is aimed to evaluate the transposition of articles 3 and 5 of the Directive by Member States.

Part I aims to provide with a comparative analysis of the criminal penalties introduced by Member States in their national legislations as a result of the implementation of article 5 of the Directive. The analysis addresses both typology and severity of the penalties. The sources and the methodology used as well as the limitations faced in this part are detailed below in Part I.

Part II addresses a qualitative analysis based on the information gathered using a questionnaire specifically designed for this purpose and fulfilled by national experts from a group of Member States. Specifically, the qualitative analysis aims to study more closely the criminalization of conducts foreseen in art. 3.f) and 3.h) referring to illegal killing and taking of birds, intentional poisoning and habitats destruction. In order to allow a better comparison of the implementation of the Directive in this group of Member States, the analysis also includes an overview of the impact of the Directive, a report on the existence of stakeholders responsible for the enforcement of the Directive, a report on intentional and negligent criminalisation of conducts and a chart reflecting the gaps identified by the national experts in the transposition of the Directive into national law.

The study finalizes with a set of conclusions which take into account the outcomes of the comparative analyses developed in Part I and Part II. Additionally, several suggestions are sketched to be considered in further studies or actions to be taken for the improvement of the implementation of the Directive.



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# Part I. Quantitative analysis

## 1. Introduction

This Part aims to provide with a comparative analysis of the criminal penalties introduced by Member States in their national legislations as a result of the implementation of Article 5 of the Directive 2008/99/EC.

The research was conducted between September 2015 and early December 2015. Data was obtained from:

- 30 **Evaluation Studies on the Implementation of Directive 2008/99/EC** (national reports sent to the European Commission –December 2012)
- 1 **National report for Croatia prepared by Milieu Ltd** (Belgium – Available in December 2015)
- 14 **Questionnaires on implementation of Directive 2008/99/EC** (Bulgaria, Czech Republic, Germany, Greece, Hungary, Lithuania, Luxembourg, Malta, Portugal, The Netherlands, Italy, United Kingdom, Spain and Sweden)

According to Article 5, Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties. The Directive does not specify the typology of sanctions, except for its criminal nature, and does not establish a minimum or a maximum level.

For this reason, **Chapter I** of this comparative analysis first addresses the **typology of the penalties**. It is important to stress that it is not intended to cover the full range of criminal sanctions available in each criminal justice system in the EU. The analysis focuses on imprisonment and fine, the most traditional penalties in EU Member States. Information on other penalties such as probation, community service, disqualification, etc. is mostly not contained in the national reports on the implementation of the Directive, in which this study relies, and therefore cannot be analysed and compared.

When comparing the typology of penalties used in each Member State for each offence, the analysis takes particularly into account the possibility of establishing a single penalty for an offence or a combination of them. Six options have been identified in the national legislations:

- 7) Only imprisonment
- 8) Imprisonment and fine
- 9) Imprisonment or fine
- 10) Imprisonment and/or fine
- 11) Imprisonment with or without fine
- 12) Only (criminal) fine

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Note that options 4) and 5), even though apparently similar, have a different meaning. Whereas option 4) includes three possibilities (only imprisonment; imprisonment and fine; only fine), option 5) implies only two of them (only imprisonment; imprisonment and fine).

The analysis refers to penalties described for offences committed intentionally. Therefore, Member States punishing intentional offences only by a term of imprisonment will be classified as option 1 (only imprisonment) although serious negligence might be punished by a fine.

In order to allow an immediate comparison, the outcomes of this analysis are shown in graphs and charts, providing with an overview as well as with a detailed analysis for each offence. The overview shows in a bar graph the number of Member States using each option for each offence. The detailed analysis also reflects, offence by offence, the information in terms of percentage and identifies the Member States using each option.

As result of the flexibility that Member States have in the implementation of Directives and the existence of previous legislation on environmental crimes in many of them, some European offences are split into different national offences. When this occurs and the typology of criminal sanction used is not the same in all of them, the graph refers to the typology most used by that Member State for that group of national offences related to that European offence. If it happens that two options are used the same number of times, the graph considers the most severe option. Special remarks have been added in the detailed analysis to stress this and other specific circumstances when considered relevant.

More importantly, the reader has to bear in mind that particular national sentencing rules that are not contained in the national reports could affect the outcomes of this study.

**Chapter II** addresses the **severity of penalties**. This part of the analysis does not intend to be conclusive as it faces important limitations.

Firstly, the focus must be exclusively in imprisonment due to lack of information in the national reports about the different systems used across the EU to calculate the criminal fine amount.

Secondly, not all Member States prescribed minimum imprisonment penalties. Only maximum imprisonment penalties can be compared and even in this case, such a comparison should consider the whole criminal system of each Member State. Specific aggravating factors and other national sentencing rules applying to these offences are not always reflected in the national reports and can severely affect the outcomes.

Like in Chapter I and for the same reasons, the outcomes of this analysis are shown in graphs and charts, providing with an overview as well as with a detailed analysis for each offence. As a single readable graph cannot be provided given the data involved, the overview has been split into three bar graphs using substantive-based criteria where possible:

Overview Graph 1: offences a), d), e) and i)

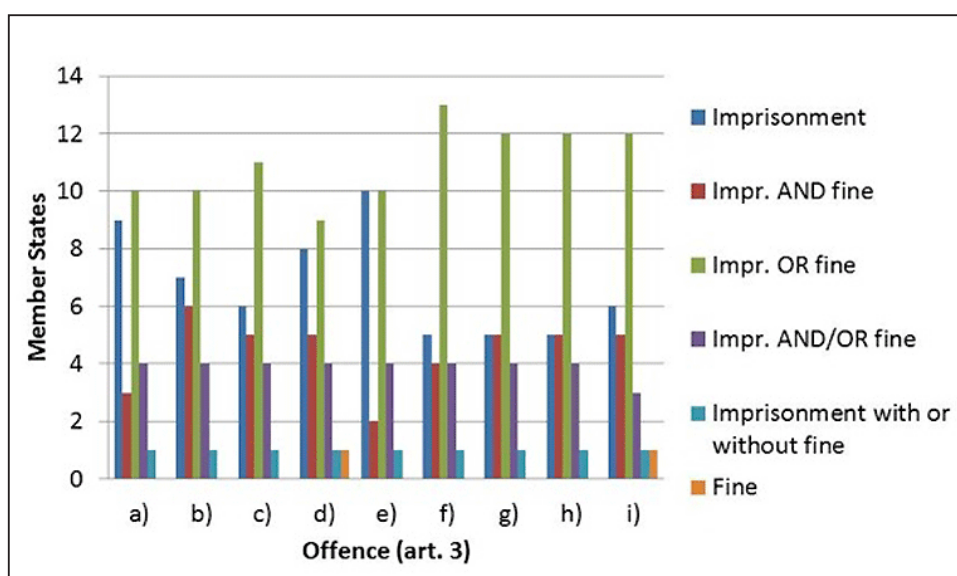
Overview Graph 2: offences b) and c) – Related to waste

Overview Graph 3: offences f), g) and h) – Related to fauna and flora

The offence-by-offence analysis shows the number and percentage of Member States using each maximum penalty. When Member States split the offences defined in the Directive into different national offences, the analysis takes into consideration only the maximum penalty within each group of national offences related to each European offence.

## 2. Criminal penalties by typology.

### 2.1. Overview



#### 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;

**(b)** the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare 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;

**(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 and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;

**(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;

**(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;

**(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;

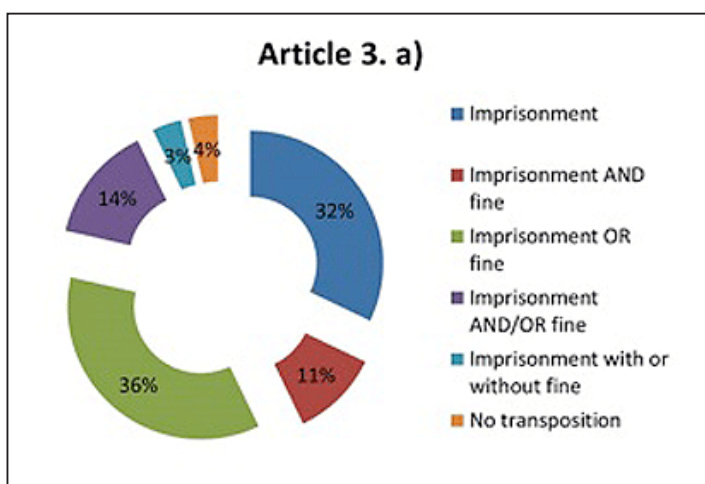
**(g)** trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;

**(h)** any conduct which causes the significant deterioration of a habitat within a protected site;

**(i)** the production, importation, exportation, placing on the market or use of ozone-depleting substances.

## 2.2. Offence- by-offence analysis

**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;



Imprisonment (9)	Imprisonment AND fine (3)	Imprisonment OR fine (10)	Imprisonment AND/OR fine (4)	Imprisonment with or without fine (1)
Austria	Bulgaria	Denmark	Belgium	Greece
Czech Republic	France	Estonia	Cyprus	
Hungary	Luxembourg	Finland	Ireland	
Poland		Germany	United Kingdom	
Portugal		Latvia		
Romania		Lithuania		
Slovakia		Malta		
Slovenia		Sweden		
Spain		Croatia		
		The Netherlands		



**Special remarks for art. 3.a):**

Austria: split into different offences. In one of them, imprisonment or fine.

Belgium: Flemish Region, imprisonment and fine.

Finland: when serious, only imprisonment.

Germany: split into different offences. In three of them, only imprisonment.

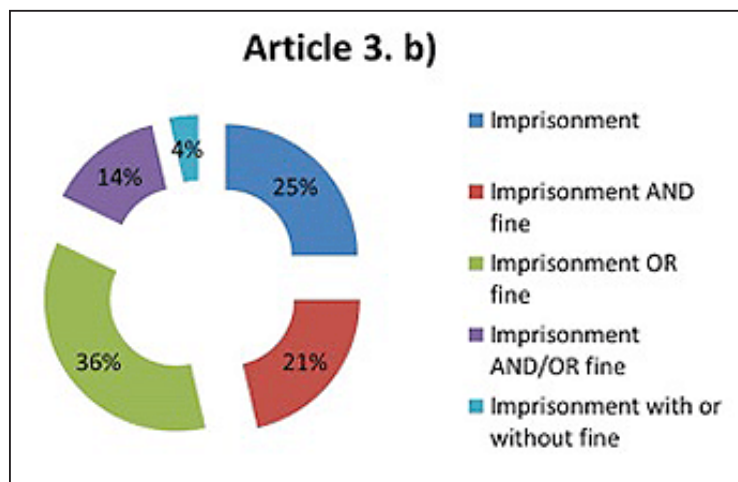
Malta: split into different offences. In one of them, imprisonment for life. In another, imprisonment and/or fine.

Romania: split into different offences. In two of them, imprisonment or fine.

Sweden: when serious, only imprisonment.

Italy: no transposition.

**3 (b)** the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare 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;



Imprisonment (7)	Imprisonment AND fine (6)	Imprisonment OR fine (10)	Imprisonment AND/OR fine (4)	Imprisonment with or without fine (1)
Czech Republic	Bulgaria	Austria	Belgium	Greece
Hungary	France	Croatia	Cyprus	
Poland	Italy	Denmark	Ireland	
Portugal	Luxembourg	Estonia	United Kingdom	
Romania	Spain	Finland		
Slovakia	The Netherlands	Germany		
Slovenia		Latvia		
		Lithuania		
		Malta		
		Sweden		

**Special remarks for art. 3.b):**

Bulgaria: split into different offences. In one of them, only imprisonment.

Czech Republic: split into different offences. In one of them, imprisonment or fine.

Finland: when serious only imprisonment.

Germany: split into different offences. In especially serious cases, only imprisonment.

Italia: split into different offences. In four of them, imprisonment or fine.

Malta: split into different offences. In one of them, imprisonment for life. In another, imprisonment and/or fine.

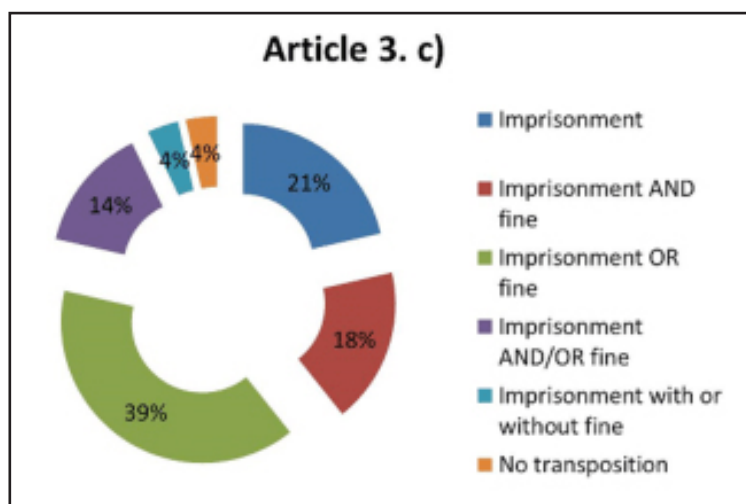
Poland: split into different offences. In one of them only imprisonment.

Romania: split into different offences. In two of them, imprisonment or fine.

Sweden: when serious only imprisonment.

Belgium: Flemish Region, imprisonment and fine.

**3 (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 and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;



Imprisonment (6)	Imprisonment AND fine (5)	Imprisonment OR fine (11)	Imprisonment AND/OR fine (4)	Imprisonment with or without fine (1)
Czech Republic	Bulgaria	Austria	Belgium	Greece
Hungary	France	Croatia	Cyprus	
Poland	Italy	Denmark	Ireland	
Romania	Spain	Estonia	United Kingdom	
Slovakia	The Netherlands	Finland		
Slovenia		Germany		
		Latvia		
		Lithuania		
		Malta		
		Portugal		
		Sweden		

**Special remarks for art. 3.c):**

Czech Republic: split into different offences. In one of them, imprisonment or fine.

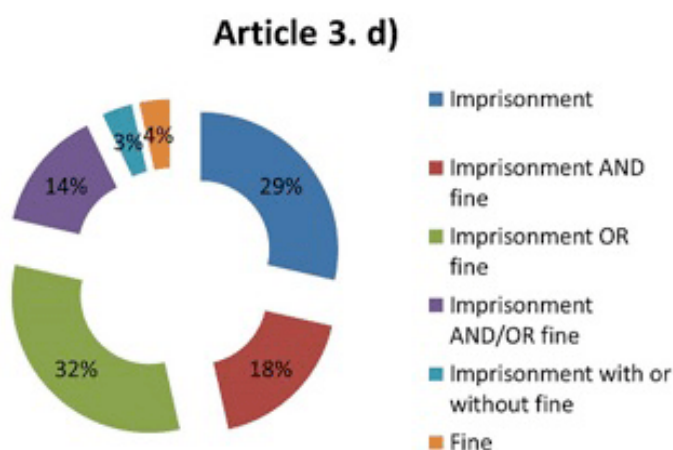
Italy: in case of organised crime, only imprisonment.

Luxembourg: not transposed.

Malta: split into different offences. In one of them, imprisonment for life. In another, imprisonment and/or fine.

Belgium: Flemish Region, imprisonment and fine.

**3 (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;



Imprisonment (8)	Imprisonment AND fine (5)	Imprisonment OR fine (9)	Imprisonment AND/OR fine (4)	Imprisonment with or without fine (1)	Fine (1)
Czech Republic	Bulgaria	Austria	Belgium	Greece	Latvia
Hungary	France	Croatia	Cyprus		
Italy	Luxembourg	Denmark	Ireland		
Poland	Spain	Estonia	United Kingdom		
Portugal	The Netherlands	Finland			
Romania		Germany			
Slovakia		Lithuania			
Slovenia		Malta			
		Sweden			

**Special remarks for art. 3.d):**

Finland: when serious only imprisonment.

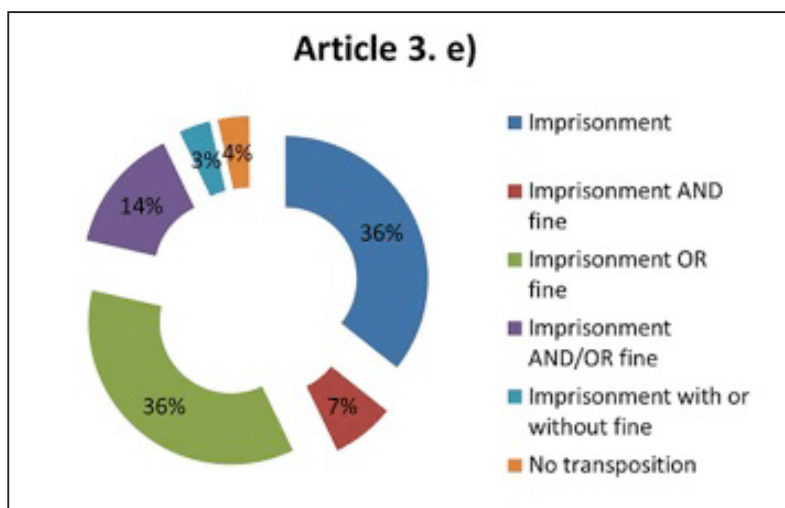
Italy: split into different offences. In one of them only fine.

Malta: split into different offences. In one of them imprisonment for life. In another, imprisonment and/or fine.

Romania: split into different offences. In a half of them, imprisonment or fine.

Belgium: Flemish region imprisonment and fine.

**3 (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;



Imprisonment (10)	Imprisonment AND fine (2)	Imprisonment OR fine (10)	Imprisonment AND/OR fine (4)	Imprisonment with or without fine (1)
Austria	France	Croatia	Belgium	Greece
Bulgaria	Spain	Estonia	Cyprus	
Czech Republic		Finland	Ireland	
Hungary		Germany	United Kingdom	
Lithuania		Italy		
Poland		Latvia		
Portugal		Luxembourg		
Romania		Malta		
Slovakia		Sweden		
		The Netherlands		

**Special remarks for art. 3.e):**

Austria: split into different offences. In one of them, imprisonment or fine.

Bulgaria: split into different offences. In one of them, imprisonment and fine.

Czech Republic: split into different offences. In one of them, imprisonment and fine.

Finland: split into different offences. In two of them, imprisonment or fine

Italy: split into different offences. In two of them, imprisonment and fine.

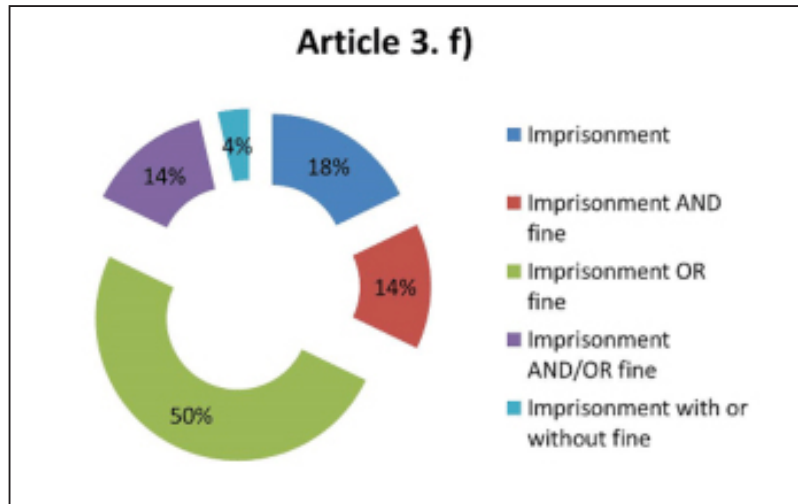
Latvia: split into different offences. In two of them, only imprisonment.

Malta: split into different offences. In one of them imprisonment for life. In another, imprisonment and/or fine.

Denmark: no transposition.



**3 (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;



Imprisonment (5)	Imprisonment AND fine (4)	Imprisonment OR fine (14)	Imprisonment AND/OR fine (4)	Imprisonment with or without fine (1)
Czech Republic	Bulgaria	Austria	Belgium	Greece
Hungary	France	Croatia	Cyprus	
Portugal	Luxembourg	Denmark	Ireland	
Slovakia	The Netherlands	Estonia	United Kingdom	
Slovenia		Finland		
		Germany		
		Italy		
		Latvia		
		Lithuania		
		Malta		
		Poland		
		Romania		
		Spain		
		Sweden		

**Special remarks for art. 3.f):**

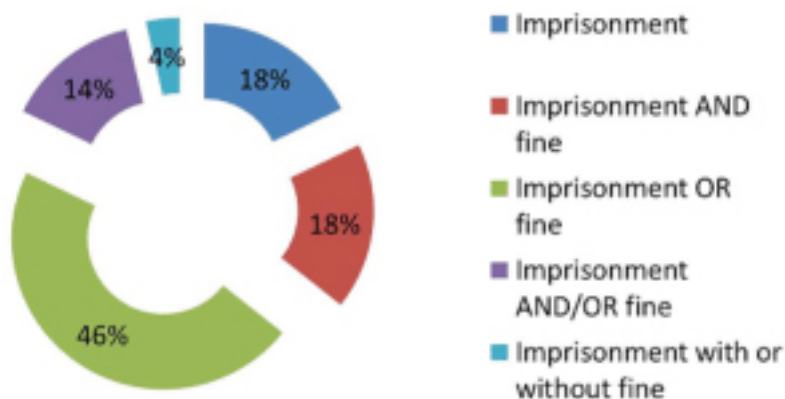
Germany and Poland: split into different offences. In one of them, only imprisonment.

Malta: split into different offences. In one of them, imprisonment for life. In another, imprisonment and fine.

Sweden: when serious only imprisonment.

**3 (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;

### Article 3. g)



Imprisonment (5)	Imprisonment AND fine (5)	Imprisonment OR fine (13)	Imprisonment AND/OR fine (4)	Imprisonment with or without fine (1)
Czech Republic	Bulgaria	Austria	Belgium	Greece
Hungary	France	Croatia	Cyprus	
Poland	Italy	Denmark	Ireland	
Slovakia	Luxembourg	Estonia	United Kingdom	
Slovenia	The Netherlands	Finland		
		Germany		
		Latvia		
		Lithuania		
		Malta		
		Portugal		
		Romania		
		Spain		
		Sweden		

#### Special remarks for art. 3.g):

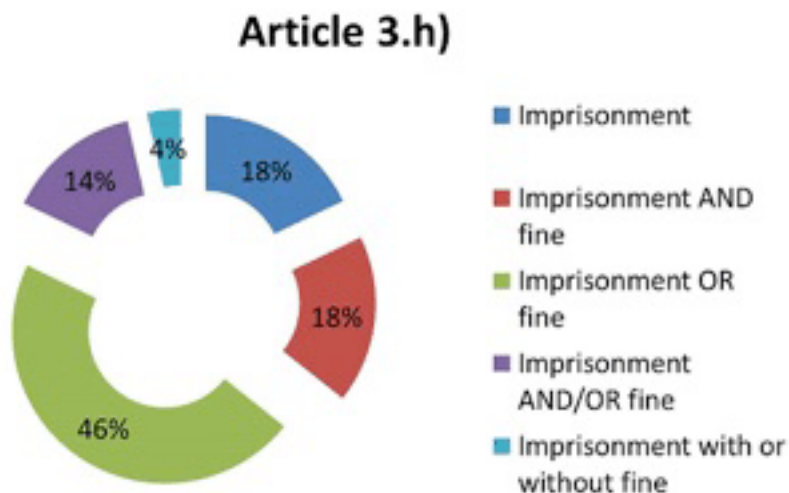
Austria and Germany: split into different offences. In one of them, only imprisonment.

Italy: split into different offences. In one of them, imprisonment or fine.

Malta: split into different offences. In one of them, imprisonment for life. In another, imprisonment and fine.

Sweden: when serious only imprisonment.

**3 (h)** any conduct which causes the significant deterioration of a habitat within a protected site;

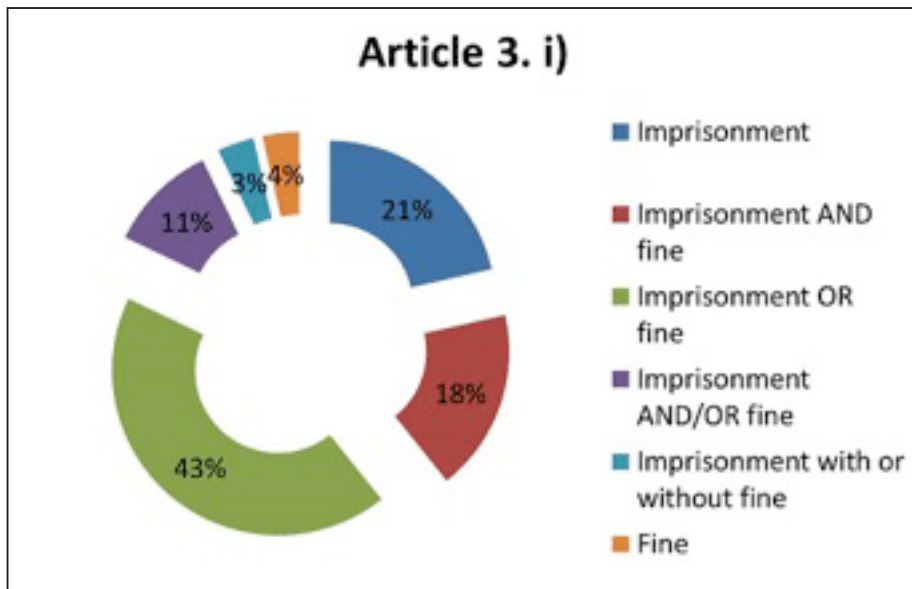


Imprisonment (5)	Imprisonment AND fine (5)	Imprisonment OR fine (13)	Imprisonment AND/OR fine (4)	Imprisonment with or without fine (1)
Czech Republic	Bulgaria	Austria	Belgium	Greece
Hungary	France	Croatia	Cyprus	
Portugal	Italy	Denmark	Ireland	
Slovakia	Luxembourg	Estonia	United Kingdom	
Slovenia	The Netherlands	Finland		
		Germany		
		Latvia		
		Lithuania		
		Malta		
		Poland		
		Romania		
		Spain		
		Sweden		

**Special remarks for art. 3.h):**

Malta: split into different offences. In one of them, imprisonment for life. In another, imprisonment and fine.

**3 (i)** the production, importation, exportation, placing on the market or use of ozone-depleting substances.



Imprisonment (6)	Imprisonment AND fine (5)	Imprisonment OR fine (12)	Imprisonment AND/OR fine (3)	Imprisonment with or without fine (1)	Fine (1)
Czech Republic	Bulgaria	Austria	Belgium	Greece	UK
Hungary	France	Croatia	Cyprus		
Poland	Italy	Denmark	Ireland		
Romania	Spain	Estonia			
Slovakia	The Netherlands	Finland			
Slovenia		Germany			
		Latvia			
		Lithuania			
		Luxembourg			
		Malta			
		Portugal			
		Sweden			

**Special remarks for art. 3.i):**

Malta: split into different offences. In one of them, imprisonment for life. In another, imprisonment and/or fine.

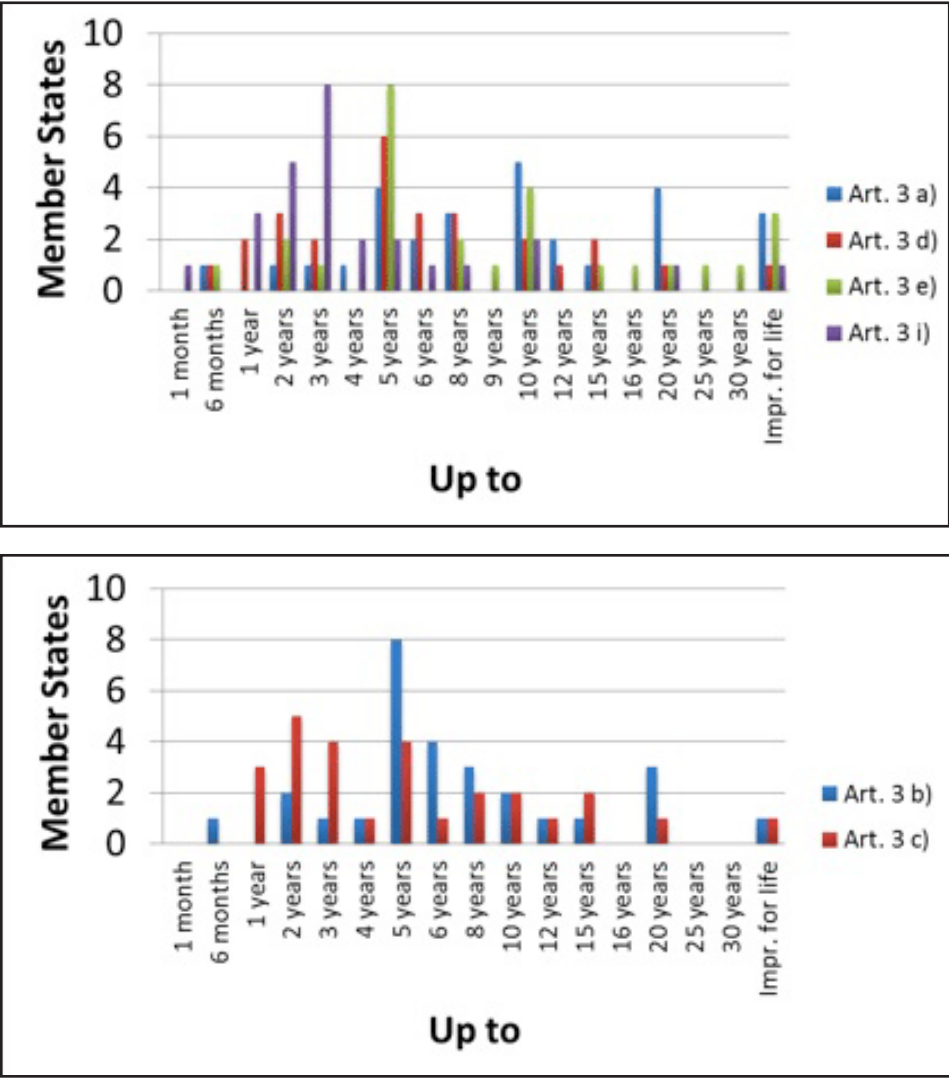
Belgium: Flemish Region, imprisonment and fine

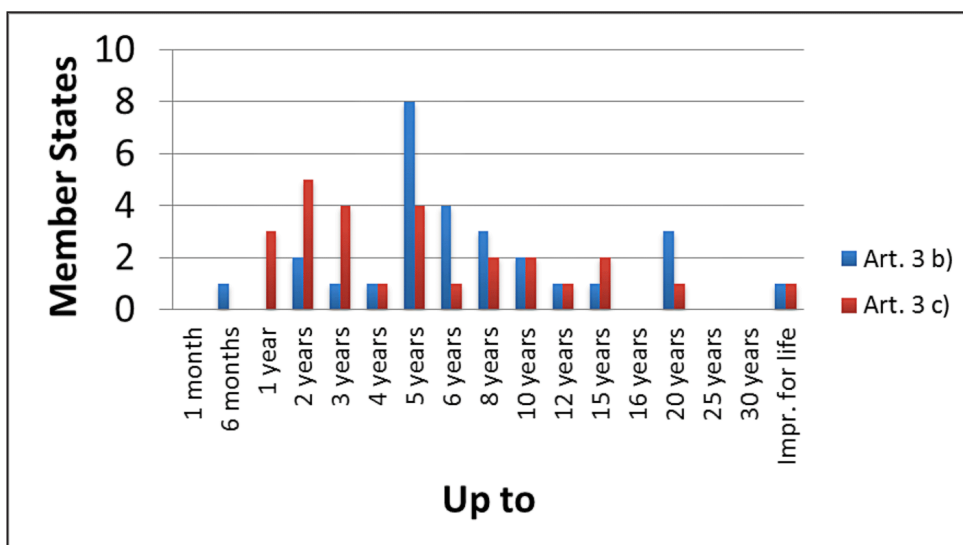


### 3. Criminal penalties by severity (maximum imprisonment penalties)

Graphs and charts in this chapter show maximum imprisonment penalties used by Member States in their national legislation. An overview and an offence-by-offence analysis are provided.

#### 3.1. Overview





**(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;

**(b)** the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare 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;

**(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 and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;

**(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;

**(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;

**(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;

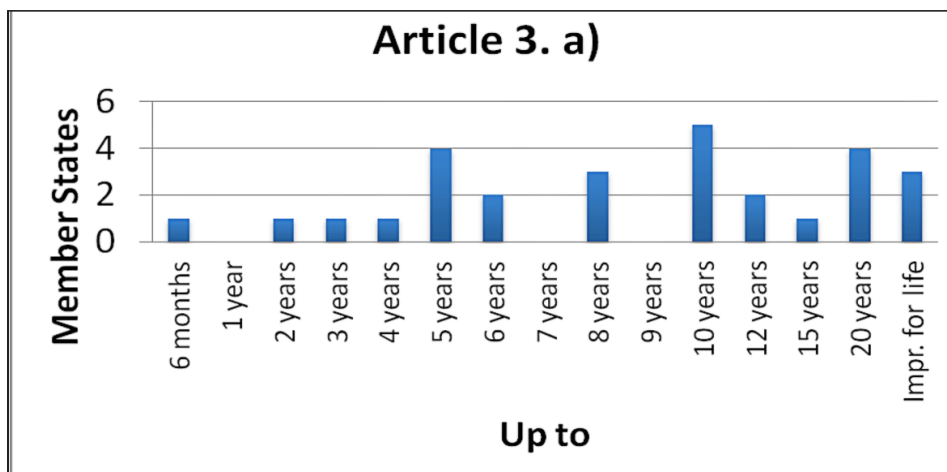
**(g)** trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;

**(h)** any conduct which causes the significant deterioration of a habitat within a protected site;

**(i)** the production, importation, exportation, placing on the market or use of ozone-depleting substances.

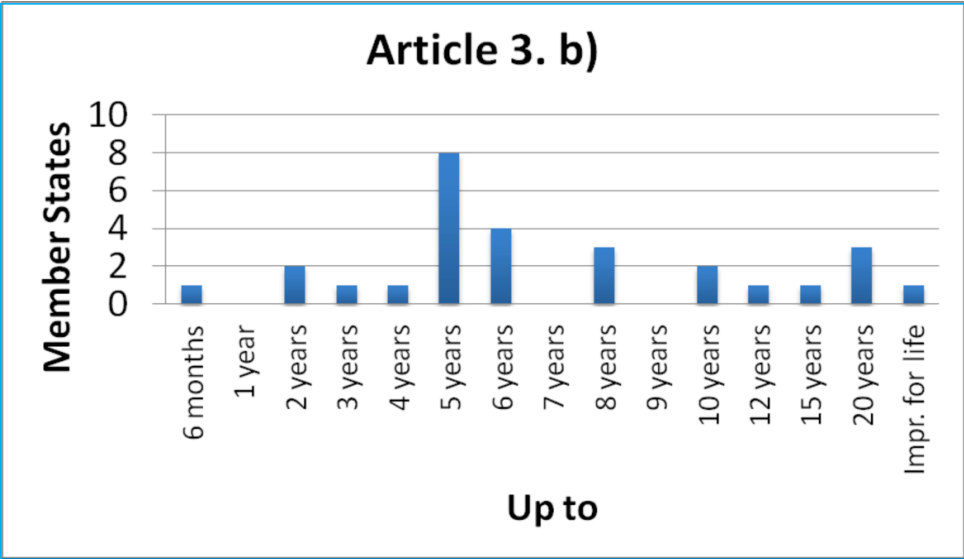
### 3.2. Offence- by-offence analysis

**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;



Up to	Member States		
6 months	3%	1	Luxembourg
2 years	3%	1	Denmark
3 years	4%	1	Estonia
4 years	4%	1	Latvia
5 years	14%	4	France, Ireland, Portugal, United Kingdom
6 years	7%	2	Lithuania, Sweden
8 years	11%	3	Czech Republic, Hungary, Poland
10 years	18%	5	Belgium, Cyprus, Finland, Germany, Slovakia
12 years	7%	2	Slovenia, Spain
15 years	4%	1	Croatia
20 years	14%	4	Bulgaria, Greece, Italy, Romania
Impr. for life	11%	3	Austria, Malta, The Netherlands

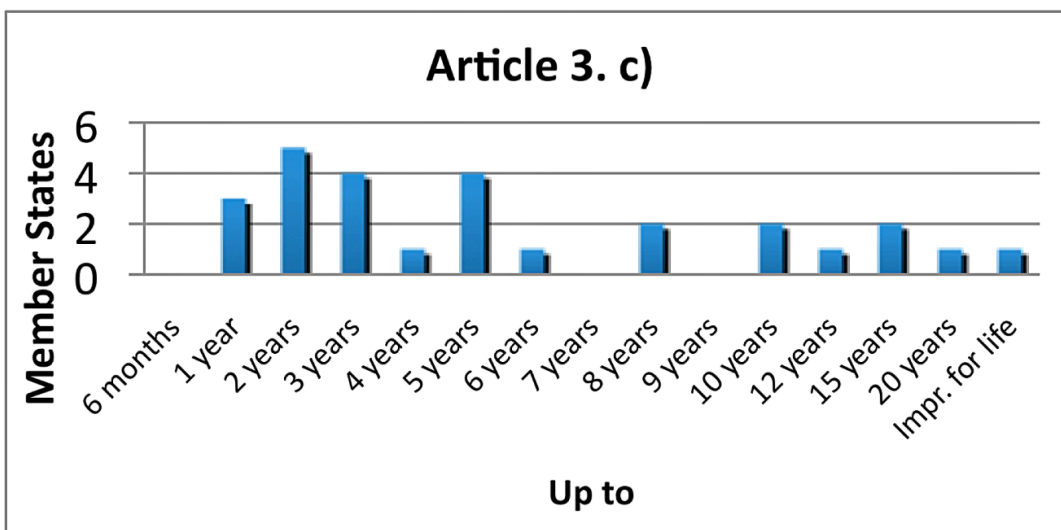
**3 (b)** the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;



Up to	Member States		
6 months	3%	1	Luxembourg
2 years	7%	2	Austria, Denmark
3 years	3%	1	Estonia
4 years	3%	1	Latvia
5 years	29%	8	Belgium, Czech Republic, France, Ireland, Poland, Portugal, Spain, UK
6 years	14%	4	Finland, Lithuania, Sweden, The Netherlands
8 years	11%	3	Hungary, Italy, Slovakia
10 years	7%	2	Cyprus, Germany
12 years	4%	1	Slovenia
15 years	4%	1	Croatia
20 years	11%	3	Bulgaria, Greece, Romania
Impr. for life	4%	1	Malta

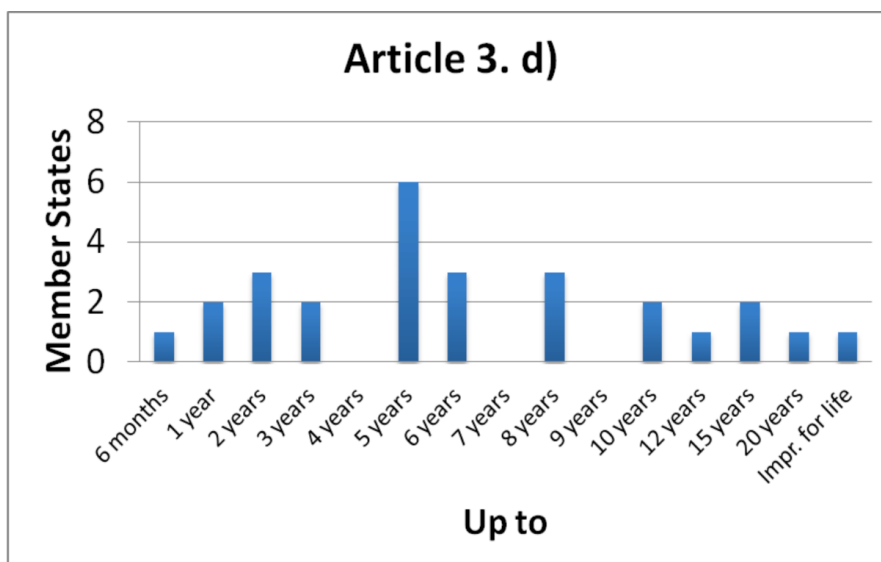


3 (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;



Up to	Member States		
1 year	11%	3	Austria, Estonia, Spain
2 years	18%	5	Denmark, Finland, Italy, Sweden, United Kingdom
3 years	14%	4	Hungary, Ireland, Lithuania, Portugal
4 years	4%	1	Bulgaria
5 years	14%	4	Belgium, Czech Republic, Germany, Latvia
6 years	4%	1	The Netherlands
8 years	7%	2	Poland, Slovakia
10 years	7%	2	Cyprus, France
12 years	4%	1	Slovenia
15 years	7%	2	Croatia, Romania
20 years	4%	1	Greece
Impr. for life	4%	1	Malta
No transposition	4%	1	Luxembourg

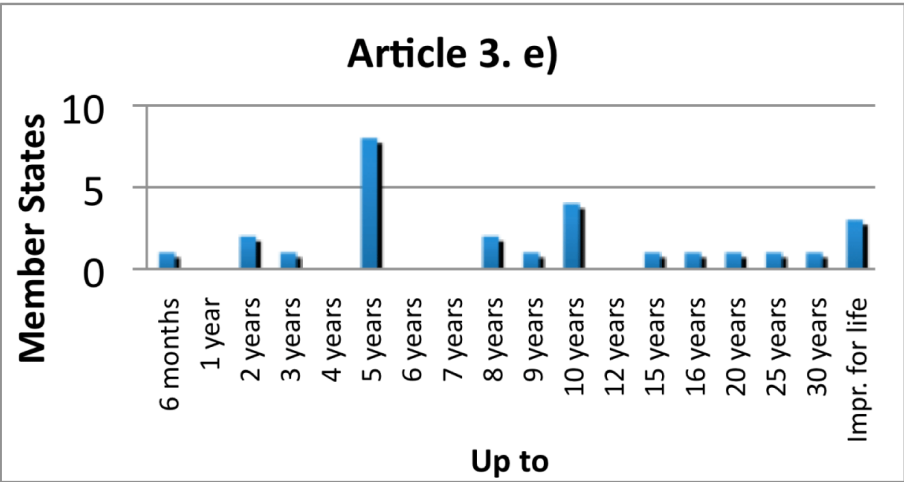
**3 (d)** the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;



Up to  
Only fine  
6 months  
1 year  
2 years  
3 years  
5 years  
6 years  
8 years  
10 years  
12 years  
15 years  
20 years  
Impr. for life

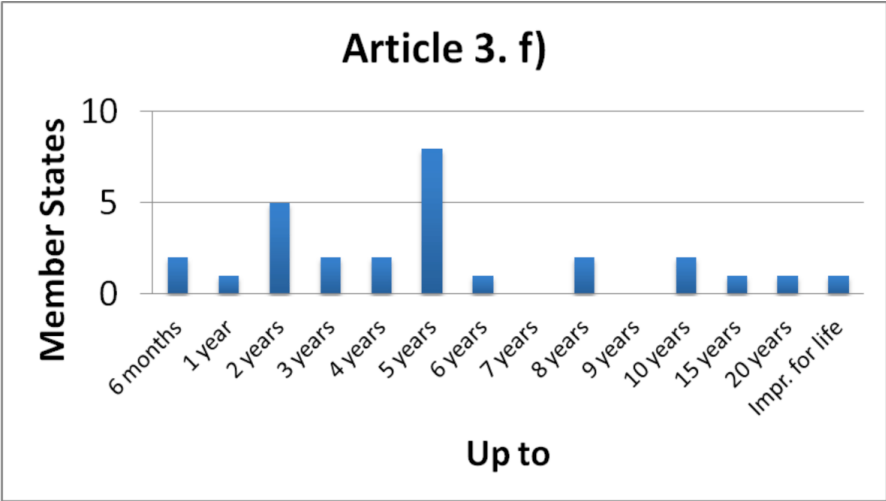
Member States			
4%	1	Latvia	
4%	1	Luxembourg	
7%	2	Estonia, Ireland	
11%	3	Denmark, Sweden, United Kingdom	
7%	2	Austria, Italy	
21%	6	Belgium, France, Germany, Portugal, Romania, Spain	
11%	3	Finland, Lithuania, The Netherlands	
11%	3	Czech Republic, Hungary, Poland	
7%	2	Cyprus, Slovakia	
4%	1	Slovenia	
7%	2	Bulgaria, Croatia	
4%	1	Greece	
4%	1	Malta	

**3 (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;



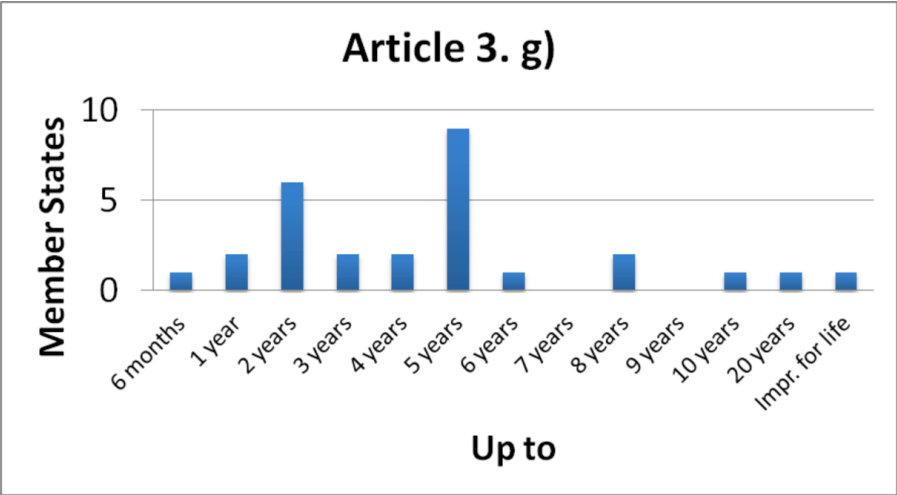
Up to	Member States		
6 months	4%	1	Luxembourg
2 years	7%	2	Belgium, Sweden
3 years	4%	1	Ireland
5 years	29%	8	Estonia, France, Germany, Latvia, Poland, Portugal, Spain, UK
8 years	7%	2	Hungary, Slovenia
9 years	4%	1	Italy
10 years	14%	4	Austria, Cyprus, Finland, Lithuania
15 years	4%	1	Croatia
16 years	4%	1	Czech Republic
20 years	4%	1	Greece
25 years	4%	1	Slovakia
30 years	4%	1	The Netherlands
Impr. for life	11%	3	Bulgaria, Malta, Romania
No transposition	4%	1	Denmark

**3 (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;



Up to	Member States		
6 months	7%	2	Luxembourg, United Kingdom
1 year	3%	1	Italy
2 years	18%	5	Austria, Denmark, Finland, Slovakia, Spain
3 years	7%	2	Ireland, Slovenia
4 years	4%	2	Lithuania, Sweden
5 years	29%	8	Belgium, Bulgaria, Estonia, Germany, Hungary, Latvia, Poland, Portugal
6 years	3%	1	The Netherlands
8 years	7%	2	Croatia, Czech Republic
10 years	7%	2	Cyprus, Romania
15 years	4%	1	France
20 years	4%	1	Greece
Impr. for life	4%	1	Malta

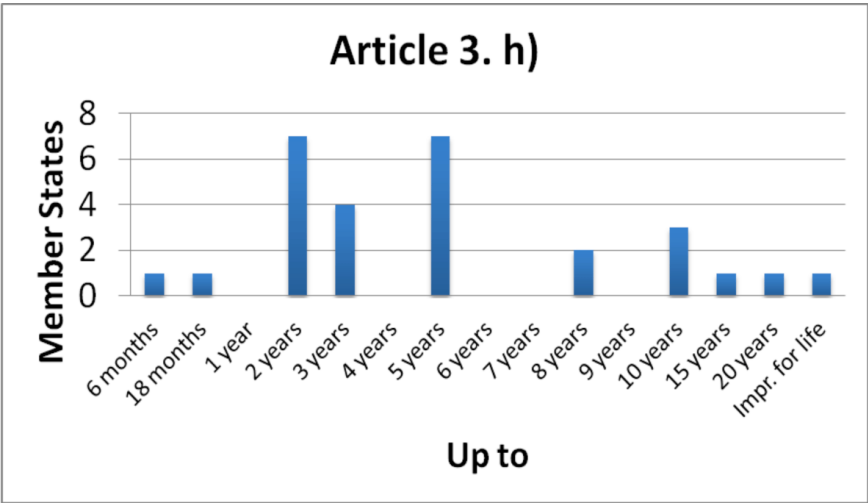
**3 (g)** trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;



Up to	Member States		
6 months	3%	1	Luxembourg
1 year	7%	2	France, Romania
2 years	21%	6	Denmark, Finland, Ireland, Latvia, Portugal, Spain
3 years	7%	2	Italy, Slovakia
4 years	7%	2	Lithuania, Sweden
5 years	32%	9	Austria, Belgium, Bulgaria, Estonia, Germany, Hungary, Poland, Slovenia, UK
6 years	4%	1	The Netherlands
8 years	7%	2	Croatia, Czech Republic
10 years	4%	1	Cyprus
20 years	4%	1	Greece
Impr. for life	4%	1	Malta

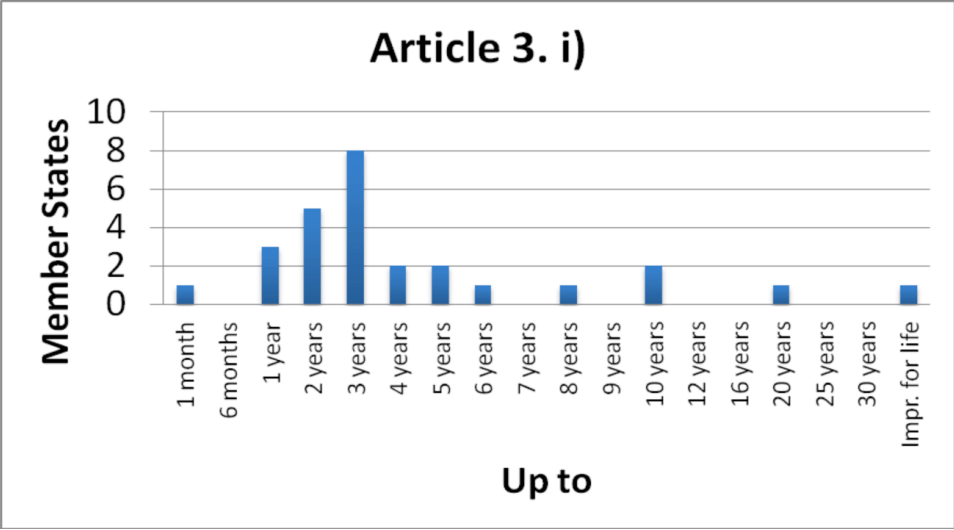


**3 (h)** any conduct which causes the significant deterioration of a habitat within a protected site;



Up to	Member States		
6 months	3%	1	Luxembourg
18 months	3%	1	Italy
2 years	25%	7	Austria, Denmark, Finland, Poland, Sweden, The Netherlands, UK
3 years	14%	4	Bulgaria, Czech Republic, Ireland, Spain
5 years	25%	7	Belgium, Estonia, Germany, Hungary, Latvia, Lithuania, Portugal
8 years	7%	2	Croatia, Slovenia
10 years	11%	3	Cyprus, Romania, Slovakia
15 years	4%	1	France
20 years	4%	1	Greece
Impr. for life	4%	1	Malta

**3 (i)** the production, importation, exportation, placing on the market or use of ozone-depleting substances;



Up to	Member States		
Only fine	4%	1	United Kingdom
1 month	4%	1	Luxembourg
1 year	11%	3	Austria, Estonia, Portugal
2 years	18%	5	Denmark, Finland, Lithuania, Poland, Sweden
3 years	29%	8	Belgium, Croatia, Czech Republic, Hungary, Italy, Ireland, Romania, Spain
4 years	7%	2	Bulgaria, Latvia
5 years	7%	2	Germany, Slovenia
6 years	4%	1	The Netherlands
8 years	4%	1	Slovakia
10 years	7%	2	Cyprus, France
20 years	4%	1	Greece
Impr. for life	4%	1	Malta



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## Part II. Qualitative Analysis

### 1. Introduction

Part II of the report is aimed at analyzing the implementation of the Directive 2008/99/EC into the inner legislation of Member States from a qualitative point of view. The objectives of this analysis are:

- To conduct a detailed study on the process of criminalization of conducts foreseen in the Directive in art. 3.f) and 3.h) referring to illegal killing and taking of birds, intentional poisoning and habitats destruction.
- To give an overview of the impact of the Directive in the different Member States according to the assessment provided by the national experts.
- To explore the existence of stakeholders who are responsible for the enforcement of the Directive and who are involved in the investigation of environmental crimes in the Member States.
- To identify relevant gaps in the transposition of the Directive in Member States.

Methodologically, in order to achieve these objectives, the researchers' team elaborated a questionnaire to be sent to national experts to collect information on the relevant legislation and the process of incrimination of the offences of article 3 of the Directive 2008/99/EC.

On the basis of the information contained in the questionnaires a comparative analysis was developed. Responses to the questionnaires have been the main source of information for Part II of the Report. Questionnaires were available from Bulgaria, Czech Republic, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, Portugal, Netherlands, Spain, Sweden and United Kingdom.

The most relevant information contained in the questionnaires has been summarised and recorded in specific charts with the aim of offering a comprehensive overview of the items analysed. Charts are provided on the offences related to Illegal killing and taking of birds, intentional poisoning and habitats destruction. An additional chart is provided with the gaps identified by national experts in the transposition of the Directive into their national legislation.

Finally, specific reports have been written on each topic assessed, including illegal killing and taking of birds, intentional poisoning, habitat destruction, general impact of the Directive and existing national stakeholders for the prosecution of the environmental crimes and the enforcement of measures.

It is important to note that the research faces several limitations. As mentioned above, the study relies on the questionnaires responded by national experts. In this regard, it must be stressed that the content of the reports was not always balanced and for some Member States only poor

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information was available. Therefore the conclusions reached must be administered with caution. More information and the chance to contact directly with national experts in order to have updated information on topics which are subjected to frequent reforms in an administrative level would have led to more conclusive findings.

This is particularly relevant in the case of the chart reflecting the gaps detected in the transposition of the Directive into national law. The lack of recorded information in the cells of the graphic can be interpreted both as correct transposition of the Directive but also as lack of proper information on the subject.

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## 2. Illegal killing or taking of birds

### 2.1. Report

Illegal killing of birds is an offence in article 3.f) of Directive 2008/99/EC of the European Parliament and of the Council, of 19 November 2008, on the protection of the environment through criminal law:

According to article 3, *Offences*, Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

*(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;*

The aim of this report is to analyse how Member states have adapted the content of the Directive to their inner legislation with particular mention to relevant issues. The Member States included in the research are: Bulgaria (BG), Czech Republic (CZ), Germany (DE), Greece (GR), Hungary (HU), Italy (IT), Lithuania (LI), Luxembourg (LX), Malta (MT), Portugal (PT), Netherlands (NE), Sweden (SE), Spain (ES) and United Kingdom (UK).

#### **a) Definition of illegal killing and illegal taking of birds.**

None of the Member states includes in its inner legislation a legal definition of illegal killing or illegal taking of birds.

However, most Member states do have specific rules on this subject. In some Member States the idea of illegal refers to the violation of rules which describe protection for birds or prohibits specific activities (ES, GR, IT, LI, MT, NE, SE, UK). In Malta, for instance, the national law generally equates illegal killing or taking of birds with any hunting or taking of wild birds that contravenes regulations stipulating any parameters of the open season, including spatio-temporal restrictions, permitted methods of hunting and, or taking, provisions related to licensing and species that may be hunted . However in addition to the above general prohibitions, Maltese law also refers specifically to the hunting or taking of birds belonging to species designated for the highest level of legal protection, which constitutes an offence subject to the highest order of penalties<sup>2</sup>.

In some Member States the illegality refers mainly to the methods used for the hunting of birds (BG)

2 Regulations 5, 7, 8, 13, 15, 16, 18 and 19, read in conjunction with Regulation 27 of the Conservation of Wild Birds Regulations (S.L.504.71)

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## b) Negligence

All Member States analysed have included negligence in the definition of criminal offences. This only applies to parts of the UK for parts of Article 3(f). There are proposals from the Law Commission to introduce a 'deliberate' offence, which is not guaranteed to become law and may be different from serious negligence. In Malta, in addition to providing for higher penalties in the case of recidivism, the law provides for a set of gravity factors which indirectly consider the deliberate nature of the offence, including, *inter alia*, the consideration of potential quantum of illegal gain, the impact of the offence on the general public by nature of the time, place, species affected or any other similar consideration inherent in the nature of the offence<sup>3</sup>. In some States, negligence needs to be considered serious for the offence to be sanctioned as a criminal offence (CS, DE, ES, NE). Other States do not distinguish between serious or not serious negligence or do not explicitly require serious negligence (GR, IT, PT, SE, UK). In HU negligence is accepted only in art. 242.2CP in aggravated cases of nature damaging.

## c) Types and Methods of illegal killing or taking described in the Law

Most Member States include in their inner legislation prohibition of methods or devices for the taking or killing of birds. The description of methods is not included in the criminal law but in other legislation.

In **Bulgaria**, there are two levels of protection of wild birds depending on the status of protection in Biodiversity Act and subsequently of prohibition of methods for illegal killing and taking. Firstly, the species (including birds) listed in Annex 3 are under strict protection and all forms of deliberate capture or killing of specimens by whatever devices, means, or methods are prohibited. Secondly, the species (including birds) listed in Annex 4 are under protection and regulated use in the wild. (Art 41, para.1 of BDA). Depending on the status of the populations and the biological requirements of the individual species listed in Annex 4 hereto, the regimes and conditions of use shall comprehend among others time periods, rules and methods of use (Art.41, para.2 of BDA). Art. 44, para.1BDA stipulates prohibition of the use of any indiscriminate devices, means and methods listed in Annex 5 for capturing or killing of specimens of any species listed in Annex 4. The prohibition under para.1 shall furthermore apply to any animal species listed in Annex 3 hereto and to any bird species referred to in Article 45 herein in the cases of exemption authorized according to the procedure established by Article 49 herein.

In **Czech Republic**, legal regulations cover all methods of killing and taking. It includes intentional damaging of nests or eggs, collection of eggs, disturbing and possession of birds not allowed for hunting or taking.

In **Greece**, Annex III of the Joint Ministerial Decision H.Π. 7338/1807/E.103/1-9-10 (Gazette v. 1495/ vol. B/06.09.2010) ("*Establishment of measures and procedures for the conservation of wild birds and habitats, in conformity with the provisions of Directive 79/409 / EEC "On the conservation of wild birds" of, the European Council of April 2nd 1979, as codified by the Directive 2009/147 / EC. "*"), which corresponds to Annex IV of Directive 79/409 / EEC, as codified by Directive 2009/147 / EC, provides the list of prohibited means, ways and methods during the hunting of the birds. These types of methods are:

3 Fourth proviso to Regulation 27(2) of the Conservation of Wild Birds Regulations (S.L.504.71)



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- Elastic catapults, nets, traps of any kind, snares of any material, hooks, effigies, live birds which are blind or mutilated, or dead birds, used as decoys, electronic devices for the attraction of the birds imitating bird-sound devices.
  - Artificial light sources, headlights, mirrors, devices for illuminating targets, sighting devices for night shooting comprising an electronic image magnifier or image converter.
  - Explosives.
  - Poisoned or anesthetic baits.
  - Semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
  - Boats in lakes, rivers, lagoons and swampy lands, and in sea areas as well within a radius of 300 meters off the coast.
  - Boats driven in the open sea, at a speed exceeding eighteen kilometres per hour.
  - Land motorized means of any category, by which hunting, capturing or killing of birds or transfer of shotguns that are assembled or stored in their cases may be practiced, and the use of their headlamps for purposes of tracing or capturing of birds.
  - Aircrafts and such media of transport.

The Joint Ministerial Decision does not provide any kind of derogation to the use of the methods mentioned above.

In **Germany**, the Federal Hunting Act (BJagdG) prohibits the use of adhesive, traps and nets.

In **Hungary**, the methods prohibited are regulated in paragraph (2) of Art. 9 of the Act LIII of 1996 on the Protection of nature which sets forth that it is prohibited to use such a tool and method for the collection, and destruction of wild organisms, and for the taking and killing of wild animals that would result to their indiscriminate and multitudinous destruction, damaging and torturing. The Act LV of 1996 on Hunting specifies certain illegal methods of killing and taking:

- In order to protect wild animals it is prohibited to disturb the wild animal's shelter, habitat and its place of nutrition, reproduction and nesting. (Paragraph (3) of Art. 28. of Act LV of 1996)
- If not specified otherwise it is forbidden to disturb, damage and destroy the nest, and nesting of bird species. (Point a) Paragraph (4) of Art. 28. of Act LV of 1996)
- If not specified otherwise it is forbidden to take from nature the eggs of the birds permitted to hunt, and the possession thereof even in when being empty. (Point b) Paragraph (4) of Art. 28. of Act LV of 1996)
- If not specified otherwise it is forbidden to gas and to disturb with smoke the shelter of mammals. (Point c) Paragraph (4) of Art. 28. of Act LV of 1996)
- It is forbidden to torture the wild animal. The killing and catching of the wild animal cannot result to its torture. (Paragraph (1) of Art. 29. of Act LV of 1996)
- The killing and catching of wild animals can be carried out only according to the methods prescribed in law. It is forbidden to catch or to kill the wild animal with trapping methods stipulated in the respective community regulation and with the use of poison. (Art. 30 of Act of LV of 1996)

In **Italy**, pursuant to Article 3 of Law 157/1992, hunting is forbidden when carried out with nets or bird call decoy (the so called "*uccellagione*") or with weapons that are not mentioned in Article 13. The Italian Criminal Code does not require any particular form in relation to the killing of animals, but Article 544-*bis* makes the killing relevant just if committed with cruelty (i.e., to inflict physical pain

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with brutality or savagery) or without any necessity (i.e., not in order to prevent an imminent danger or the worsening of damage inevitable differently).

Methods prohibited in **Lithuania** are: automatic weapons; electric means for killing or stunning animals; explosives; poison, poisoned or anesthetic baits or lures; live animals as decoys; smoke, gas or fire for driving animals from their hiding places; motor vehicles; aircraft; motor-boats; artificial light sources; sighting devices for night shooting, laser, thermovisual sighting devices; snares; semi-automatic weapons with a magazine capable of holding more than two rounds of ammunition; electrical, electronic or magnetic audio devices; limes; hooks; using mirrors or other devices for blinding animals; devices for illuminating targets; nets; traps; methods of non-selective capture; etc. No derogations for their use are established.

No information is available for **Luxembourg**.

In **Malta**, the Conservation of Wild Birds Regulations protects all species of avifauna naturally occurring in the wild state in the European territory of EU Member States, as well as all species of wild birds naturally occurring outside of such territory. Species listed in Schedule II of the Regulations may be hunted subject to the parameters and controls established in Regulations 5, 7, 8, 13, 15, 16, 18 and 19 and other subsidiary legislation that may also apply. Regulation 7 in particular provides for a number of methods that are prohibited, including the use of snares, limes including birdlime, poisonous or stupefying bait, hooks or any similar substances or methods, any electrocuting devices, any artificial light sources, mirrors, devices for illuminating targets or any sighting devices for night shooting comprising an electronic image magnifier or image converter, any gas, or any electric or electronic device, especially the use of pre-recorded bird calls, nets, including those known as ranja, mist-nets, and any type of vertical net, any kind of cage-trap, whether with a net or not, decoy live birds which are blind or mutilated, decoy live birds held by any means except those held by cotton string and swivel, decoys of protected birds, explosives and semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition. These prohibited methods are without prejudice to regulation 23, which provides an exception for bird ringers, as well as of regulation 9, which provides for other forms of derogations. Illegal use of these methods is subject to criminal liability under Regulation 27(2), with the exception of the use of small scale cage traps and electronic lures, which, subject to the parameters of regulation 27A and provided that the offence is not committed in conjunction with any other offence that incurs criminal liability, are subject to administrative liability under Schedule VIII<sup>4</sup>. Species listed in Schedule I and IX of the Regulations are subject to the highest order of legal protection, and any offence that involves the hunting or taking of such strictly protected species is subject to automatic, non-discretionary penalties of the highest order<sup>5</sup>.

In **Netherlands**, Dutch legislation (the Flora and Fauna Act) does specify which species are protected. Protection is afforded to certain general categories of species (all native birds, most native

4 Illegal use of small scale portable cage trap which does not exceed the length of 60cm on either side, and the use of electronic bird caller during open season is punishable with confiscation and destruction of corpus delicti and automatic fine of €250 that must be paid within 21 days from service of the notice. Failure to pay or appeal the fine within such period triggers criminal prosecution subject to penalties prescribed in regulation 27(2) and non-renewal of hunting license until any pending liabilities are settled.

5 On first conviction, offenders are automatically liable to a fine of €5,000, permanent revocation of hunting license, confiscation of corpus delicti and imprisonment for up to one year. On second or subsequent conviction, the fine is increased to €10,000 (or €15,000 if the offence was committed without a license that was previously revoked), whilst imprisonment is increased to up to two years.

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mammals, all native amphibians and reptiles), as well as species listed in decrees based on the Act. The requirements of article 3(f) of Directive 2008/99/EC are in the Netherlands applicable to all bird species (except the mentioned huntable species and those that have been lawfully killed or taken on the basis of a derogation), hence they are not limited to the bird species listed in Annex I of the Birds Directive and migratory birds.

In **Portugal**, it is not allowed to capture or kill under any method. But there are two exceptions for capturing or killing. On the first hand, the species described in Annex A-II of the law that transposed the Birds Directive (DL 140/99, 24-04), provided that the birds have been legally killed or captured or otherwise legally acquired: [*Lagopus lagopus scoticus* (e *hibernicus*). *Alectoris barbara*. *Perdix perdix*. On the other hand, after prior opinion of the portuguese government entity responsible for conservation- ICN, the species described in Annex A-III of the law that transposed the Birds Directive (DL 140/99, 24-04), provided that the birds have been legally killed or captured or otherwise legally acquired. [*Anser albifrons albifrons*. *Anser anser*. *Aythya marila*. *Somateria mollissima*. *Melanitta nigra*. *Lagopus mutus*. *Tetrao terix britannicus*. *Tetrao urogallus* ].

As for these two species (Annex A-II and A-III) are prohibited all “non-selective means” capable of causing the extinction or serious disturbance to, populations of such specimens, namely: Alive, blinded and mutilated animals used as decoys; Sound recorders; Electrical and electronic devices capable of killing or stunning; Ties, limes, hooks; Artificial light sources; Mirrors and other dazzling devices; Means for illumination of targets; Sighting devices for night shooting, including an image amplifier or a converter electronic image; explosives; Non-selective networks in their principle or their conditions of use; Non-selective traps on their principles or conditions of use; crossbows; Poisons and poisoned or anesthetic bait; Release of gases or fumes; Automatic or semi-automatic weapons capable of holding more than two cartridges. It is also prohibited any form of capture or death from aircraft or motor vehicles or the considered two species.

In **Spain**, Act nº 47/2007 as modified by Act 33/2015 on Natural Heritage and Biodiversity forbids prejudicial activities on birds, in particular, deliberate killing, capture, disturbance and withholding of bird species during mating, nesting and breeding periods, and for migratory species, hunting during return to breeding sites. However, specific methods considered illegal are described in Act 1/1970 on Hunting activity. Among them:

- blind or mutilated animals used as live decoys
- tape recorders, electrocuting devices, electric and electronic devices that can kill or stun;
- artificial light sources, mirrors, devices for illuminating targets, sighting devices for night shooting, comprising an electronic image magnifier or image converter;
- semi-automatic or automatic weapons holding more than two rounds of ammunition;
- non-selective traps;
- nets, snares, traps, poisoned or anaesthetic bait
- suspenders;
- explosives;
- gas or smoke suffocation;
- crossbow;
- baits or hooks (unless fish hook)

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In **Sweden**, the acts criminalized in the Penal Code are killing, hurting, catching or disturbing, taking of eggs or nests. Destruction of breeding sites or resting places is also criminalized.

According to the Swedish Game Ordinance section 10, non-selective hunting methods and methods that can lead to a disappearance or serious disturbance of the local population of the species, is prohibited. Following methods and devices are explicitly prohibited for hunting birds according to the Swedish Game Ordinance section 10 and Annex 5:

- Use of snares, glue, hooks, tape recorders and electronic devices used to kill or stun;
- Use of blind or crippled living birds as callbirds.
- Use of artificial light sources, mirrors, devices for illumination of the point of aim and certain night vision sights.
- Use of explosives
- Use of airplane and motor vehicles
- Use of boats more than 5 km/h
- Use of nets or traps or use of baits containing poison or sedatives.
- Use of automatic or semi-automatic weapons with chambers with room for more than two bullets.

Derogations from some of the forbidden methods are regulated in the Game Ordinance:

- Snares are allowed for hunting of Rock and Willow ptarmigan north of 58 degrees latitude (Game Ordinance section 10)
- Swedish Environmental protection agency and the County Administration can in individual cases decide on exemptions from the prohibited hunting methods. The County Administrations can for example after application allow use of authorized pesticides to kill birds that cause serious damage or inconvenience for people's health. In some cases artificial light can be allowed. Certain night vision sights may be used for hunting wild boar. In these cases the derogations are only allowed if there is no other satisfactory alternative and must not be detrimental to the maintenance of the favourable conservation status (Game Ordinance section 15, 15a and 15b).

In the **United Kingdom**, methods of killing which are illegal are listed under Section 5 of the WCA 1981, including use of traps, snares, or any poisonous, poisoned, or stupefying substance, nets, bird-lime, explosives, certain weapons, etc. Article 6 of the Wildlife Order (Northern Ireland) 1985 similarly sets out offences.

Exceptions are included for authorised use of cage traps or nets under certain conditions and for certain huntable species. Specific Licences are issued by one of a number of United Kingdom authorities to permit an otherwise illegal act. The licence must specify precisely what action is permitted. E.g.:

- Scientific research or education
- Ringing (banding), marking or photography of Schedule 1 Species.
- Conserving wild birds (repopulating and area, reintroduction schemes or conservation of flora and fauna.
- Protecting any collection of wild birds

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- Falconry or aviculture
  - Preserving public health or public or air safety
  - Preventing spread of disease
  - Preventing serious damage to livestock/foodstuffs/crops etc
  - Taking gulls eggs for food.
  - The sale of dead birds or parts

Exceptions require the licensing authority to be satisfied that there is “no other satisfactory solution” and for falconry or aviculture, photography, taxidermy, public exhibition or competition, that licenses are issued “on a selective basis and in respect of a small number of birds”. General Licences are issued (usually) annually in England Scotland and Wales to permit authorised persons to carry out an otherwise illegal act. Such licences do not have to be applied for. These are routinely used by land managers for corvid and other predator control.

#### **d) List of protected species conformed to art. 2.b) Directive**

All Member states have a list of protected species in their inner legislations. Only in the Netherlands such a list does not exist, though it must be explained that Dutch legislation prohibits killing or taking of birds unless specifically excepted. In the Netherlands recreational hunting is allowed only for a very limited number of species (mallard, wood pigeon, pheasant, hare and rabbit) under the Flora and Fauna Act. In addition to that, killing or taking of birds is allowed for specific species of birds that either causes damage in the entire country or in certain provinces (listed in a Decree).

In **Sweden**, there is no such list. The general rule is that *all* birds are protected in the Game Law. All hunting seasons for birds are constructed as derogations from this general rule. This means that also migratory birds are protected. The same is true for non-hunting activities leading to killing or taking of birds according to the Species Protection Ordinance

In **Malta**, the law protects all species of avifauna naturally occurring in the wild state in the European territory of EU Member States, as well as all species of wild birds naturally occurring outside of such territory. Species listed in Schedule II of the Regulations may be hunted subject to the parameters and controls established in Regulations 5, 7, 8, 13, 15, 16, 18 and 19 and other subsidiary legislation that may also apply. Species listed in Schedule I and IX of the Regulations are subject to the highest order of legal protection, and any offence that involves the hunting or taking of such strictly protected species is subject to automatic, non-discretionary penalties of the highest order.

#### **e) Migratory species protected**

Regarding protection of migratory species, 6 Member States (BG, CZ, ES, LI, MT, NE, PT) have a specific reference contained in the inner legislation for the protection of such species. Three Member States (GR, SE, UK) admit not to have specific references for migratory species, even if they can also be afforded protection when belonging to protected species. Pursuant to Italian legislation, it is possible to hunt migratory species included in art. 18 Law 147/1992, but just in particular periods of the year.

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No information is available for Hungary and Luxembourg. Due to the specific bio-geographic circumstances of Malta, where no resident avifauna game species naturally occur, all game birds listed in Schedule II of the Conservation of Wild Birds Regulations are migratory birds.

## **f) Relevant case law**

Information on relevant case law is available only for 5 Member States (BG, CZ, LI, MT, IT). No information on relevant case law is available for GR, HU, LX, and PT. However, other Member states have given accurate information on the difficulties found to bring cases to justice and to make enforcement agents and judicial authorities involved in the prosecution of such offences.

In **Bulgaria** there seems to be a lack of proper implementation of the Biodiversity Act. Police and court are considering crime against nature as minor and therefore not often legal actions are taken in practice. Bird of prey are often killed by poachers. Protected species of geese are regularly shot during the legal hunting season (Bulgarian Society for Protection of Birds and Green Balkans Society). In the existing few court cases the perpetrator is usually released of criminal responsibility and administrative sanction imposed. For example, for keeping 3 specimens of world-wide endangered species -spur-thighed tortoise (*Testudo graeca*)- the perpetrator was sentenced to probation with the following probation measures: obligatory registration at present address for one year twice a week, obligatory periodical meetings with probation employee for one year and gratuitous work in favour of the society of 100 hour.

**Czech Republic** is considered a country where poisoning and illegal trapping is widespread and has at least a moderate conservation impact on bird species. The illegal practices in the Czech Republic are numerous: shooting of birds, poisoning of birds, trapping of birds, trade of birds, illegal period, illegal area, killing of species which are protected, capture of species which are protected, killing using illegal methods and, involuntary killing by use of illegal product. Among these practices, shooting and trapping for trophies as well as trapping and capturing for live sale and personal use impact the targeted species. Further, poisoning activities (intentional and unintentional) largely affect both target and by-catch species. Detailed studies revealing the impact to the populations of bird species are missing; however poisoning is supposed to be at least the limiting factor for population growth of the White-tailed Eagle population and its colonization of new localities. Poisoning of "pest" wild animals is common practice on the whole territory of the Czech Republic, despite it is forbidden by the law for more than 50 years. It is directed mainly against foxes and martens, less frequently against otters, ravens and birds of prey. Usually the forbidden carbamate insecticide carbofuran (sold until 2008 under commercial name Furadan) is abused.

The main reason why people illegally use poison for liquidating the "pest" species is the prevailing opinion that there are too many predators which need to be controlled. Although these activities are prohibited by the law, the state authorities are completely failing in its enforcement – there was not even one convicted and punished poisoner in the known history of the Czech Republic.

The Czech Society for Ornithology (CSO) introduced programme "Free Wings" -a long-term programme focused on all aspects of bird crime, including collecting data on illegal bird persecution, expert assistance to the State authorities, education of policemen and the wider public, workshops, education, and lobbying for improvement of legislative. Special website <http://www.karbofuran.cz/> deals with poisoning of animals. The database is unofficial and the collection of the data is not systematic. Nevertheless, it is currently the only information source for estimating illegal bird killing

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in the Czech Republic. In the last years, approximately 50 birds per year are known to be poisoned, meaning that the actual number could still be much higher. No case was successfully solved and no offender was found and punished.

Illegal activities related to birds are much hidden. Thus, it is difficult to find the victims, and footprints of the offenders vanish soon after the criminal activity is committed. Until recently, the key problem in poisoning was the unwillingness of the Police to be involved with the cases. There was a gap in the police enquiry procedure and the Police felt that it was not possible to investigate a suspicious case without a laboratory analysis to prove the use of poison (often carbofuran). However, the time necessary to analyse such evidence is often to remove the footprints. Thus national authorities and the Czech Society for Ornithology appeal to investigate suspicious cases immediately after finding the cadaver or still living poisoned animal. A last barrier mentioned by the Czech government is the lack of funds for the investigations, especially when laboratory analyses are required in case of poisoning.

In **Germany**, as to birds of prey, there are some examples of cases judged by courts, e.g.: (Amtsgericht = regional court, Landgericht = district court).

- Amtsgericht Minden, Az. 5 Cs 16 Js 187/08-625/08, criminal offence, fine of 2.700 Euro (90 daily rates of 30 Euro each) because of poisoning of 3 red kites
- Amtsgericht Münster, Az. 13 Ds 540 JS 1613/08-177/08, criminal offence, fine of 3.000 Euro (60 daily rates of 50 Euro each) because of trapping birds of prey and crows (12/03/2009)
- Landgericht Aachen, Az. 43 Ls 603 JS 112/07-207/08, criminal offence, fine of 2.400 Euro (80 daily rates of 30 Euro each) because of poisoning a buzzard and trapping birds (3/9/2009)
- Amtsgericht Siegen, Az. 420 Cs 26 Js 196/09-586/09, criminal offence, fine of 600 Euro (60 daily rates of 10 Euro each) because of the attempt of using a trap
- Amtsgericht Kleve, Az. 604 Js 38/10, criminal offence, fine of 2.000 Euro (50 daily rates of 40 Euro each) because of using a hawk trap with living bait (9/12/2009)
- Prosecutors office Münster, Az. 540 Js 1544/11, criminal offence, fine of 1.250 Euro (90 daily rates of 15 Euro each) because of trapping hawks (February 2012)
- Amtsgericht Düsseldorf, Az. Cs 10 Js 138/13, criminal offence, fine of 900 Euro (90 daily rates of 10 Euro each) because of killing one common buzzard (14/2/2014)
- Amtsgericht Berlin-Tiergarten, Az. 335 Cs 385/11, criminal offence, fine of 1.350 Euro because of the appeal on his homepage to kill birds of prey

In **Italy**, the Court applied art. 544-*bis* to convict a hunter for killing trapped wild animals, during illegal hunting (Tribunal of Florence, Judgment of 3 August 2009). Article 727-*bis* of Italian Criminal Code punishes the killing, the capture and the possession, when not expressly permitted, of protected species. This provision is subject to a merely residual application within the context of protection of animals in Italy; the Article 727-*bis* itself states that it should be applicable solely "*if the act does not constitute a more serious offence*". Consequently, when the application of a more serious offence is possible in consideration of facts, the more severe sanctions will be applied; that is what happened in the trial settled by the Court of Turin, which considered a theft had taken place and punished the accused person pursuant to Articles 624 and 625 of Italian Criminal Code, instead of Article 727-*bis* (Court of Turin, 24/11/2011, no. 4466).



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In **Malta**, statistics pertaining to disclosed cases related to breaches of Conservation of Wild Birds Regulations is regularly compiled and published on the website of the Wild Birds Regulation Unit<sup>6</sup>. The following recent convictions of major bird-related offences may be of note:

On 18th March 2015 one person was convicted for illegal importation of protected birds and sentenced to **one year imprisonment** and a fine of **€2,600**. On 15th April 2015 one person was charged under arrest for shooting a common cuckoo (*Cuculus canorus*), convicted and sentenced to **€2,500 fine, a 3.5 year suspension of hunting licence and confiscation of shotgun and ammunition**. On 16th April 2015 one person was charged under arrest for shooting a Lapwing (*Vanellus vanellus*), convicted and sentenced to a **3 month effective jail term, a 3 year suspension of hunting licence**, confiscation of shotgun and ammunition and a €200 fine for breaching bail conditions on an unrelated charge. On 28th April 2015 one person was apprehended shortly after shooting a Kestrel (*Falco tinnunculus*) on 27 April 2015. The suspect was arraigned under arrest on the same day, tried, convicted and sentenced to a **one year effective jail term, permanent revocation of hunting licence**, confiscation of weapon and ammunition and a fine of **€5,000**. On 24th June 2015 one person was charged with illegal trapping, convicted and sentenced to a **€2,000 fine and 2 years suspension of all licences** issued under Conservation of Wild Birds Regulations. On 16th September 2015 a person who attempted to target white storks (*Ciconia ciconia*) in 2014 and was also found in possession of live and dead protected birds was **fined €8,000 and had his hunting licence permanently withdrawn**. On 13th October 2015, a bird trapper from Gozo has been found guilty of illegal finch trapping in spring 2015. He was sentenced to pay **€8,000 and has his trapping permit and hunting licence revoked for life**. On 14th October 2015 a bird trapper was fined **€2,400 and lost his hunting and trapping licence for 3 years**, after having been found guilty by the court of illegally trapping finches inside the Majistral nature & history park in spring 2015. On the same day another person was also sentenced to a **€1,200 fine and had his licences suspended for 2 years** for illegal finch trapping in spring 2014. On the 13th of January 2016 one person was charged with illegal importation of protected birds, convicted and sentenced to a fine of **€2,500 and revocation of all licences** issued under Conservation of Wild Birds Regulations. On the same day (13/01/16), two persons were found guilty of shooting Greater Flamingo (*P. roseus*) (incident occurred in 2013) and were sentenced to **2 years in jail, lifetime ban on hunting license and €9,000 fine each**

In **Spain**, the following cases are included among the most remarkable on illegal killing:

- Judgment of the Supreme Court, of June 22<sup>nd</sup>. The judgment confirms the illegality of the “parany” method stating that its use is not a selective method and therefore, it is prohibited by Directive 79/409, of the European Union for Conservation of Wild Birds, and Article 28.2.f) of Law 4/1989, of 27 March, Conservation of Natural Areas and Flora and Wildlife, as amended by Law 40/1997, of November 5th.
- Judgment N° 136/2014 of the Provincial Court of Ávila, of September 26<sup>th</sup>. The judgment defines the content corresponding to articles 334 and 335 of Spanish Criminal Code, showing that the former punishes certain behavior against endangered species, while the latter refers to the hunting and fishing of species which do not constitute threatened species on public or private

6 Detailed reports containing overview of enforcement, including supervision in the field, detected incidence of bird-related crime and summary of legal action taken are available from <http://environment.gov.mt/en/Pages/WBRU/Reports-and-Statistics.aspx>

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spaces under special regime hunting, without requiring that hunting is expressly prohibited -which itself is required in the offence under the first paragraph of article 335.1. Finally, the Provincial Court of Ávila sentenced to six months' fine and disqualification from the exercise of the right to hunt for two years to a man who hunted in an area that was subject to special kinetic system.

- Judgment N° 82/2013 of the Provincial Court of Barcelona, of January 24<sup>th</sup>. It is important to highlight that the Provincial Court of Barcelona seems to imply that not only hunting or fishing species through prohibited methods are subsumed in the article 335.4 of Spanish Criminal Code, which punishes the misconduct of the perpetrator with a penalty in its upper half, but also those that involve additional suffering for the affected specie.
- Judgment N° 37/2015 of the Provincial Court of Madrid, of January 22<sup>nd</sup>. The judgment states that the conduct referred to in article 335.2 of Spanish Criminal Code attends merely carrying out of this act of hunting, without the need to be reached collect a piece. Consequently, the accused is convicted of a crime of poaching and sentenced to three months and a day game fine and disqualification from the exercise of the right to hunt for time of one year and a day because they released the dogs behind hare, although they failed to catch any part, even if it has not been established that the hare hunting was prohibited at that time.

In **Sweden**, WWF Sweden presented in 2012 a most worrying report showing that 14 per cent of 111 golden eagles analysed between 2002 and 2011 had metal fragments from ammunition in their bodies, which according to WWF shows a measure of how widespread the illegal killing is in Sweden. However, convictions are uncommon.

Two recent cases related to illegal killing of birds that led to conviction are the following:

- Supreme Court judgement no. NJA 2012 s. 281 (stuffed goshawk, perpetrator was fined). Link: <https://lagen.nu/dom/nja/2012s281>
- Court of Appeal for Southern Norrland judgement no. B 276-14 (taking of wild bird eggs, imprisonment 1 year). Link: <http://databas.infosoc.se/rattsfall/29096/fulltext>

For examples of Case Law on Illegal killing and taking of birds, **UK** national report refers to the RSPB, Bird Crime and Legal Eagle databases<sup>7</sup>.

7 <http://www.rspb.org.uk/search/index.aspx?q=bird%20c>

## 2.2. Charts

### Illegal killing or taking of birds (I)

	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
<b>Legal definition of illegal killing</b>	No But the law provides with a prohibition of specific methods.	No But the legal regulation covers all kinds of behaviour or treating animals	No	No However 'illegal' means any breach of the various legislation listen in Annexes A and B of the Law	No	No The killing is illegal when it is a consequence of activities prohibited by Law 157/1992 or by the Criminal Code	No However there are detailed rules for hunting of birds and taking from their natural environment. All activities in violation of these rules must be considered as illegal
<b>Legal definition of illegal taking</b>	No But a prohibition of specific methods	No. Idem supra	No	No Idem supra	No	No Idem supra	No However there are detailed rules for hunting of birds and taking from their natural environment. All activities in violation of these rules must be considered as illegal
<b>Negligence as an offence</b>	Yes. Penalty: corrective labour and a fine	Yes. Serious negligencze is sufficient for criminal offences	Yes	Yes. Negligence does not need to be serious.	Only in one case: art. 242.2CP: aggravated case of nature damaging	Yes	Yes

	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
<b>Types/ Methods of illegal killing and taking described in the law</b>	Yes. Two levels of protection of wild birds Prohibition of indiscriminate devices, means and methods	Yes. Legal regulation covers all methods of killing and taking. It includes intentional damaging of nests or eggs, collection of eggs, disturbing and possession of birds not allowed for hunting or taking	Yes. In the Federal hunting Law (BJagdG): Adhesive, traps and nets	Yes. - Elastic catapults, nets, traps of any kind, snares of any material, hooks, effigies, live birds which are blind or mutilated, or dead birds, used as decoys, electronic devices for the attraction of the birds imitating bird-sound devices. - Artificial light sources, headlights, mirrors, devices for illuminating targets, sighting devices for night shooting comprising an electronic image magnifier or image converter. - Explosives. - Poisoned or anesthetic baits. - Semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition. - Boats in lakes, rivers, lagoons and swampy lands, and in sea areas as well within a radius of 300 meters off the coast. -etc.	Not specified in the CP apart from cruelty and poaching. But there are methods described in other legislation: - indiscriminate and multitudinous destruction, damaging and torturing -The Act LV of 1996 on Hunting specifies certain illegal methods of killing and taking	Yes. (Law 157/1992): nets and bird call decoy or with weapons not mentioned in art.13.	Yes It is forbidden to use: automatic weapons; electric means for killing or stunning animals; explosives; poison, poisoned or anesthetic baits or lures; live animals as decoys; smoke, gas or fire for driving animals from their hiding places; motor vehicles; aircraft; motor-boats; artificial light sources; sighting devices for night shooting, laser, thermovisual sighting devices; snares; semi-automatic weapons with a magazine capable of holding more than two rounds of ammunition; electrical, electronic or magnetic audio devices; limes; hooks; using mirrors or other devices for blinding animals; devices for illuminating targets; nets; traps; methods of non-selective capture; etc. No derogations for their use are established.
<b>List of protected species Conformed to art. 2.b) Directive</b>	Yes There is an Annex in the Law which lists birds with full prohibition according to Annex 3 of the Directive	Yes. Species are divided into three categories according to their vulnerability.		Yes Contained in arts. 2.2a and 2.2b Law 4042/2012	Yes. In Law 13/2001	Yes. In art. 2 of Law 157/1992	Yes. The list is approved by the order of the Minister of Environment.
<b>Migratory species protected</b>		Yes		Law does not refer especially to migratory species but to protected species		Migratory species can be hunted but only in particular periods of the year.	Yes

## Illegal killing or taking of birds (II)

	LUXEMBOURG	MALTA	PORTUGAL	NETHERLANDS	SPAIN	SWEDEN	UK
Definition of illegal killing		The national law generally equates illegal killing or taking of birds with any hunting or taking of wild birds that contravenes regulations stipulating any parameters of the open season, including spatio-temporal restrictions, permitted methods of hunting and, or taking, provisions related to licensing and species that may be hunted <sup>8</sup> . However in addition to the above general prohibitions, Maltese law also refers specifically to the hunting or taking of birds belonging to species designated for the highest level of legal protection, which constitutes an offence subject to the highest order of penalties <sup>9</sup> .	No	No. But any killing of protected species is illegal –intentional or not	No. But legislation is clear on the protection against Killing of protected bird species.	No. The crime is named <i>species protection crime</i> in the Swedish Penal Code and has a wider scope than illegal taking and killing. Hunting off season or hunting of species not allowed is criminalised in the Game Law.	Intentionally killing or taking any wild bird or taking or destroying an egg of any wild bird. The Wildlife and Countryside Act describes exceptions when killing or taking of birds shall not be punished (ex: mercy killing, disease control, etc.)
Legal definition of illegal taking	No	Maltese law treats illegal killing and taking on the same footing.	No	No. Idem supra	No. Idem	No. Idem.	No. Idem supra
Negligence as an offence	Yes	Yes. Yes. Although the legislation does not explicitly distinguish whether the crime was committed intentionally or not, it does provide for a set of gravity factors which indirectly consider the deliberate nature of the offence, including, <i>inter alia</i> , the consideration of potential quantum of illegal gain, the impact of the offence on the general public by nature of the time, place, species affected or any other similar consideration inherent in the nature of the offence <sup>10</sup> .	Yes. Negligence does not need to be serious	Yes. The future Nature Conservation Act, that will replace the Flora and Fauna Act in 2016, punishes intentional and serious negligence	Yes. Serious negligence.	Yes. Negligence does not need to be serious, at least not in the writing of the norm.	Yes

<sup>8</sup> Regulations 5, 7, 8, 13, 15, 16, 18 and 19, read in conjunction with Regulation 27 of the Conservation of Wild Birds Regulations (S.L.504.71)

<sup>9</sup> Third proviso to Regulation 27(2) of the Conservation of Wild Birds Regulations (S.L.504.71)

<sup>10</sup> Fourth proviso to Regulation 27(2) of the Conservation of Wild Birds Regulations (S.L.504.71)

	LUXEMBOURG	MALTA	PORTUGAL	NETHERLANDS	SPAIN	SWEDEN	UK
Types/ Methods of illegal killing and taking described in the law	Not described	Although the legislation does not explicitly distinguish whether the crime was committed intentionally or not, it does provide for a set of gravity factors which indirectly consider the deliberate nature of the offence, including, inter alia, the consideration of potential quantum of illegal gain, the impact of the offence on the general public by nature of the time, place, species affected or any other similar consideration inherent in the nature of the offence .	Yes It is not allowed to capture or kill under any method. But there are two exceptions. Even for these two exceptions all non-selective means are prohibited if capable of causing the extinction or serious disturbance to, populations of such specimens, namely: Alive, blinded and mutilated animals used as decoys; Sound recorders; Electrical and electronic devices capable of killing or stunning; Ties, limes, hooks; Artificial light sources; Mirrors and other dazzling devices; Means for illumination of targets; Sighting devices for night shooting, including an image amplifier or a converter electronic image; explosives; Non-selective networks in their principle or their conditions of use; Non-selective traps on their principles or conditions of use; crossbows; Poisons and poisoned or anesthetic bait; Release of gases or fumes; Automatic or semi-automatic weapons capable of holding more than two cartridges; It is also prohibited any form of capture or death from aircraft or motor vehicles or the considered two species.	Yes All methods of killing and taking are covered by the law. Also possession, use or trade of prohibited means and methods	Yes Act nº 47/2007 as modified by Act 33/2015 on Natural Heritage and Biodiversity forbids prejudicial activities on birds, in particular, deliberate killing, capture, disturbance and withholding of bird species during mating, nesting and breeding periods, and for migratory species, hunting during return to breeding sites. For specific methods, Act 1/1970 on Hunting activity. - blind or mutilated animals used as live decoys - tape recorders, electrocuting devices, electric and electronic devices that can kill or stun; - artificial light sources, mirrors, devices for illuminating targets, sighting devices for night shooting, comprising an electronic image magnifier or image converter; - semi-automatic or automatic weapons holding more than two rounds of ammunition; - non-selective traps; - nets, snares, traps, poisoned or anaesthetic bait - suspenders; - explosives; - gas or smoke suffocation; - crossbow; - baits or hooks (unless fish hook)	Yes Killing, hurting, catching or disturbing, taking of eggs or nests and destruction of breeding sites or resting places is criminalized. According to the Swedish Game Ordinance section 10, non-selective hunting methods and methods that can lead to a disappearance or serious disturbance of the local population of the species are prohibited. Specific methods prohibited by Swedish Game Ordinance, section 10 and Annex 5: - Snares, glue, hooks, tape recorders and electronic devices used to kill or stun; - blind or crippled living birds as callbirds. - artificial light sources, mirrors, devices for illumination of the point of aim and certain night vision sights. - explosives - airplane and motor vehicles - boats more than 5 km/h - nets or traps or use of baits containing poison or sedatives. - automatic or semi-automatic weapons with chambers with room for more than two bullets.  Derogations from some of the forbidden methods are regulated in the Game Ordinance.	Yes Illegal methods of killing are listed under Section V WCA, including use of traps, snares or any poisonous, poisoned or stupefying substance, nets, bird-lie, explosives, certain weapons, etc. Exceptions for authorised use of cage traps or nets under certain conditions and for certain huntable species. Specific Licenses issued by some UK authorities to permit an otherwise act (eg. For scientific research or education, preventing spread of disease, taking gulls eggs for food, sale of dead birds or parts, etc.)

	LUXEMBOURG	MALTA	PORTUGAL	NETHERLANDS	SPAIN	SWEDEN	UK
List of protected species Conformed to art. 2.b) Directive	Yes In Regulation of 9 January 2009. All birds are totally protected except the birds considered as game by the Law on Hunting	Yes, however the law also protects all species of avifauna naturally occurring in the wild state in the European territory of EU Member States, as well as all species of wild birds naturally occurring outside of such territory. Species listed in Schedule II of the Regulations may be hunted subject to the parameters and controls established in Regulations 5, 7, 8, 13, 15, 16, 18 and 19 and other subsidiary legislation that may also apply. Species listed in Schedule I and IX of the Regulations are subject to the highest order of legal protection, and any offence that involves the hunting or taking of such strictly protected species is subject to automatic, non-discretionary penalties of the highest order.	Yes	No. But Dutch legislation generally prohibits killing or taking of birds unless specifically excepted. Recreational hunting is allowed only for a very limited number of species. Killing or taking is allowed for specific species of birds causing damage Yes conformed to art. 2b Directive	Yes. In Royal Decree 139/2011, 4 <sup>th</sup> February, on Wild species under special protection and endangered species catalogue.	No. But the general rule is that <i>all</i> birds are protected in the Game Law. All hunting seasons for birds are constructed as derogations from this general rule. This means that also migratory birds are protected. The same is true for non-hunting activities leading to killing or taking of birds according to the Species Protection Ordinance	Yes. In Schedule 1, special protection to rare species afforded additional protection, which cannot be intentionally or recklessly disturbed when nesting nor hunted or taken.
Migratory species protected		Yes	Yes	yes	Yes	Yes	No. However many of these are afforded protection thorough protected sites (Birds Directive) and through national designation of sites of scientific interest.



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## 3. Intentional poisoning wildlife

### 3.1. Report

Use of poisoned-bait in the countryside is one of the most widely used predator eradication methods worldwide and is a threat to biodiversity in the European Union. Poison is used to kill wildlife which is considered to be harmful to certain activities, in particular, game management for hunting, livestock farming and other agriculture. Illegal use of poison, particularly targeting of birds of prey, is considered one of the most important issues regarding illegal killing of birds due to the serious conservation impacts and is confirmed to be among the most important direct threats in Europe to the Spanish imperial eagle (*Aquila adalberti*), Eastern imperial eagle (*Aquila heliaca*), red kite (*Milvus milvus*), or Egyptian vulture (*Neophron percnopterus*). Indiscriminate use of poison baits also presents a risk to other wildlife, pets and human health, with potentially lethal consequences.

The aim of this report is to analyse measures undertaken in different Member states on the ruling of the uses of poison in wildlife and precautionary measures undertaken. Member States included in the research are: Bulgaria (BG), Czech Republic (CZ), Germany (DE), Greece (GR), Hungary (HU), Italy (IT), Lithuania (LI), Luxembourg (LX), Malta (MT), Portugal (PT), Netherlands (NE), Sweden (SE), Spain (ES) and United Kingdom (UK).

Taking into account the existence of criminal or administrative consequences in each country for the cases of illegal use of poison, the comparison of the questionnaires evidences that:

#### **a) Criminal offence**

At least 10 countries observe as a criminal offence and punish with criminal sanctions the illegal use of poisoning or the use of poisoned baits: BG, GR, HU, IT, LI, MT, PT, ES, SE, UK. The sanctions for such conducts include imprisonment and fines, although in some countries other sanctions are also foreseen such as Community service orders (MT) or the suspension or permanent revocation of the license or permit issued (MT).

In CZ, LX, NE there is no specific criminal offence and sanction on illegal poisoning but the general provisions related to any form of killing of birds, allow the criminal punishment of such conducts.

#### **b) Liability to legal persons**

Further liability to legal persons is established in BG, CZ, GR, LI, LX, PT, ES, SE and UK. But seems not to be operating for intentional poisoning in HU, IT, MT and NE.

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Liability for legal persons only applies in part of the UK (Scotland) for Article 3.f offences. Inappropriate transposition has been recognised by the Law Commission and proposals for transposition of this liability are not currently law, or guaranteed to be implemented at this time.

In Sweden Criminal acts can be subject to a *corporate fine* according to the Penal Code (1962:700), chapter 36 section 7. Spain and UK (Scotland) have implemented administrative sanctioning proceedings for failure to prevent the planting or existence of poisoned-bait against those liable for this administrative fault (*vicarious liability*).

### **c) Legal definition of “poison”**

Hungary is the only country with a definition of poison in its criminal legislation. Art. 188.2 of the Criminal Codes states that “*Poison shall mean a dangerous substance or mixture which, based on their toxicological properties, endanger human life if inhaled, ingested or if they penetrate the skin, or likely to cause substantial damage or serious injury*”. However other Member states have government regulations or ministerial ordinances that determine what is poison. For instance, in the Czech Republic government regulation 467/2009 Coll. explains what substances are considered as poison. In Italy, the Ministerial Ordinance states that poison includes all harmful and toxic substances and glasses, plastic, metals and explosive materials.

### **d) Intentional and negligent conduct**

At least 8 national regulations establish a difference between intentional and unintentional poisoning (CZ, GR, HU, LI, IT, ES, SE, UK). In IT, for instance, only intentional poisoning is relevant, while in other countries such as CZ both intentional and unintentional poisoning deserve a criminal sanction. In Bulgaria there is no such legal difference though intentional and negligent behaviours are differently sanctioned.

### **e) Use of rodenticides**

Regarding use of rodenticides, 10 countries observe legal limitations for their use or commercialisation (CZ, GR, HU, IT, LI, MT, NE, ES, SE, UK). Most countries have specific legislation on the process of registration and monitoring.

In Sweden there are some legal limitations, but there is no general rules prohibiting use outdoors. Firstly, private persons are no longer allowed to buy rodenticides for rats, only professionals that have underwent a special training-course by the authorities can do that (except some products allowed to eliminate mice indoors, only). Secondly, a permit is needed for use of rodenticides in water quality protection areas. Thirdly, there are conditions for use attached to each permit from the Swedish Chemicals Agency for every rodenticide product, most often products are allowed only in combination with certain bait stations, and only within a range of 50 meters from buildings and/or in refuse disposal plants. Sometimes the conditions attached to the permits explicitly forbid use in parks or open ranges.

Luxemburg and Portugal state however not having specific legal provisions related to the use of rodenticides, and Bulgaria denies having such legislation except for the limits on concentration of pesticides (including rodenticides) in drinking water.

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## **f) Protocols for law enforcement**

Protocols for law enforcement officials on the collection of evidence do exist in GR, IT, MT, PT and ES. In Malta, officials have the power to enter and inspect any land, site or building, transport at any time to ascertain compliance. Following analysis, if such products present a hazard to consumers, criminal liability will arise. In Greece, Circular n. 2967/33905/13.03.2014 of the Pesticides Division (Ministry of Rural Development and Food) provided the following directives: 1. Treatment of cases of pesticides poisoned baits, and 2. First-aid for animals poisoned by pesticides poisoned baits. These directives are available both for the public and the competent officials. Information on such protocols is not available for BG, LI, LX, NE and UK. In CZ there are no specialised administrative bodies or laboratories, but rescue stations and active NGOs do work in this field. When cases of poisoned birds are reported by individuals, police or Czech environmental inspectorate take further steps in investigation.

In Spain, the Nature Protection Service of the Civil Guard (SEPRONA) at national level jointly with Forestry and Environmental officers at Regional Level leads the control of illegal use of poisoned baits in natural environment to achieve its eradication. Both law enforcement officials' strategies are combined with the Antidote Programme<sup>11</sup>, which is a European coalition of NGOs and administrations against the threat, involving local, national and international participation. Facing this problem, NGO's, autonomous communities, Biodiversity Foundation, the Environment Ministry and law enforcement officials join forces to realize the Antidote Programme and the National Strategy against illegal use of poisoned baits in natural environment. In order to do so, the following measures are used:

- Track system for the use of poison in each autonomous community.
- Report detected cases and presence in judicial proceedings.
- Train seminars for law enforcement officials, hunters and technicians' offices.
- Creation of new control and detection tools, especially Canine Units.
- Specialized toxicological laboratories like Diagnosis and data analysis centre of wild fauna (Andalusia), Forensic laboratory of wildlife, Toxicological unity of the Veteran's Faculty (Caceres), Research Institute of Hunting Resources, among others.
- Action protocol without defect in shape for authority's officials.
- Phone numbers provided to citizens to contact authorities, probably the most important is "SOS VENENO" (+34 900 713 182).

In Spain almost all Regions have adopted protocols for Forestry and Environmental officers and Seprona has an internal protocol. Under the project Life+ VENENO, SEO/BirdLife has drawn up two basic protocols for law enforcement: Procedural protocol for law enforcement officials in charge of surveillance and preventive action against use of poison in the countryside and a procedural protocol for law enforcement officials in charge of collecting presumably poisoned fauna or bait and the preliminary investigation of the offence. Both protocols are available at [www.veneno.org](http://www.veneno.org).

## **g) Investigative tools**

Investigative tools do not seem to be available in many countries. HU, LI, LX, NE, IT do not refer to any investigative tool. In CZ there seems to be many complex investigative tools but in practice they

<sup>11</sup> Antidote Program is supported by eight organizations, including those most representative of the Spanish conservation movement: Ecologistas en Acción, WWF-Spain, Black Vulture Conservation Found (BVCF), Fondo para la Protección de los Animales Salvajes (FAPAS), Fundación Oso Pardo (FOP), Fundación para la Conservación del Quebrantahuesos (FCQ), Grupo para la Recuperación de la Fauna Autóctona y su Hábitat (GREFA), Sociedad Española de Ornitología (SEO/BirdLife) and Sociedad Española para la Conservación y Estudio de los Mamíferos (SECEM)

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are not used systematically for the protection of wild birds. On the contrary, BG, GR, MT, PT, ES, SE and UK mention existing investigative tools.

In Malta, for instance, the Wild Birds Regulation Unit, the Administrative Law Enforcement Unit of the Police Force, the Pesticides Control Board, the Plant Health Directorate, the Environment and Resources Authority are some of the main institutions involved in investigation of wildlife crime. In Portugal, two canine patrols exist though existing infrastructures are still insufficient. In Spain, investigative tools include more than 6000 forestry and environmental officer acting in the 17 Spanish Region plus 1850 SEPRONA agents, canine units, specialized patrol of agents against poisoning (UNIVE, BIVE, Agents Rurals of Catalonia), specialized toxicological laboratories; environmental prosecutors; and an action protocol for authority's officials. In United Kingdom some police, government agency staff and NGOs are trained in detection and enforcement, and Wildlife Incident Investigation Scheme (WIIS) has specialist labs to analyse baits and suspected crime victims, although the availability of specialist units and facilities varies across the UK.

## **h) Precautionary and restorative measures**

Finally, regarding precautionary or restorative measures available, it has been stated from the questionnaires analysed that the most common measure undertaken is the withdrawal of the hunting or fishing license. BG, GR, ES, HU, IT, LI, MT, NE, SE, include such a measure in their administrative or penal regulations. However the measure is applied in a very different manner in each member state, sometimes as a precautionary measure, sometimes as a punishment for the contravention of an administrative act or as a criminal punishment. In the case of Bulgaria, the hunting license can be withdrawn in case of violation of the HGPA and BDA and the hunter would be expelled from the hunting company and his hunting rights terminated. In Greece, withdrawal of hunting or fishing license can be imposed in addition to other penal sanctions for a period of 3 months to 3 years, though in case of recidivism the license suspension is definitive. In Hungary the hunting license can be withdrawn as a precautionary measure. In Lithuania the measure can be imposed in conjunction with the main penalty. In Malta the Court may order the permanent revocation or disqualification from licensing or obtaining a permit even on first time conviction for illegal killing or taking of protected birds. In Holland, hunting permits can be temporarily revoked as an administrative sanction in cases of illegal poisoning. In Italy, hunting licenses can be suspended.

Other precautionary measures similar to the latter are the prohibition to undertake professional activities (CZ), a ban on receiving grants and subsidies (CZ), suspension of firearm licenses (UK), confiscation of vehicles, weapons and other devices (SE) or take a perpetrator into custody, if there is reason for suspicion of a crime being committed or in preparation (SE).

Among restorative measures Member states establish the obligation to restore to its original condition (CZ, LIT, MT, ES), a compensatory remedy (CZ, LIT, ES) and also the obligation to undertake work to make amends (HU).

## **i) Any relevant case law**

Most Member States indicate that they still have no substantial case law on intentional poisoning of Wildlife. Due to the fact that the legislation is still new, cases have still not reach the Court or no relevant s have been given. However Italy highlights two s:

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- Supreme Criminal Court No. 34944, 9/7/2015: In relation to hunting practiced with the use of poisoned bait or morsel, punished by letter h), the confiscation is neither mandatory nor an option.
  - Supreme Criminal Court, No. 11350 of 10/02/2015: The hunting practiced with forbidden means is different from the specific case of "*uccellagione*"; the latter is always forbidden, while the hunting is prohibited solely if practiced in forbidden periods and/or unlawful means. *Uccellagione* is a particular way of hunting that provides the capture through fixed and not temporary means (such as nets), which are different from fire weapons. This type of hunting is punished in a more severe way because it is more dangerous for the environment, considered the risk it entails in terms of indiscriminated impoverishment of wildlife.

In Spain about 80 convictions have been issued for illegal poisoning. Some of these cases are the following:

- Judgment nº 447/2015 of the Criminal Court No. 1 of Ciudad Real, on October 2015. A farmer was convicted of laying out nine poisoned baits and of poisoning six Spanish Imperial Eagles and a fox. His crimes were uncovered following a search of his land by specialist canine units trained to detect poisons. The sentence was as follows: 18 months imprisonment; a three-year disqualification from hunting and the payment of Civil Liability of 360,000 € to be paid to the regional government for the estimated value of the six eagles.
- Judgment 145/2015 of the Criminal Court No. 3 of Santander, on June 2015. A farmer in Spain was found guilty of laying out poisoned-baits and poisoning at least 11 red kites, five dogs, six foxes, a cat, a raven, a buzzard and four vultures. The sentence was as follows: two years in prison, two years disqualification from farming or any other profession relating to animal husbandry, four years disqualification from hunting (post release), a fine of 90,270 Euros plus an additional fine of 28,500 Euros to be used specifically to monitor red kites in the local area for the next three years.
- Judgment No. 270/2001 of the Provincial Court of Asturias, on December 14<sup>th</sup>. This judgment is important as an example of determining criminality of the misconduct foreseen in article 336 of Spanish Criminal Code. The Provincial Court sentenced for the offense of poisoning wildlife a person who had used a steel loop to hunt, with which caught a bear and it was an endangered specie. At that time, non-selective methods were not defined, because were committed before the reform of Spanish Criminal Code held in 2010, but still was considered that the conduct was punishable on the basis that the destructive efficiency should also be considered in relation to the species that may affect.
- Judgment of the Provincial Court of Palma de Mallorca, on September 10th. Regarding to the consideration of the offence of poisoning wildlife as conduct crime, this judgment considers that the application of article 336 of Spanish Criminal Code "does not require the production of a particular harm, but that is a risk crime". In the same vein, the judgment No. 143/2007 of the Provincial Court of Murcia, of October 11th, when it determines that "receiving one or several pieces are not required for the consummation of the offence, but simply the use of methods."

## 3.2. Charts

### Intentional poisoning (I)

	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
Definition of poison or poisoning of wildlife	No	No straight legal definition, but government regulation 467/2009 Coll. explains what substances are considered poisons.	No	No	Yes. Art. 188.2 Criminal Code: Dangerous substance or mixture which, based on their toxicological properties, endangers human life if inhaled, ingested or if it penetrates the skin, or likely to cause substantial damage or serious injury.	No legislative definition. But the Ministerial Ordinance states that poison includes all harmful and toxic substances and glasses, plastic, metals and explosive materials.	No
Difference between intentional and unintentional poisoning	Not legally defined But intentional or unintentional behaviour are sanctioned differently.	Yes. Administrative infractions: intention is required, in case of other administrative delicts the liability is constructed as objective instead of intention. Criminal liability: Section 300 of the Criminal Code requires negligence, and Section 302, intention.	Yes. Serious negligence is an offence	Yes. The practice of illegal use of poison and/or poisoning wildlife is considered as a misdemeanour, punishable if committed intentionally. Exceptionally and where specifically provided by law, misdemeanours are also punishable when committed unintentionally. The Joint Ministerial Decision H.Π. 37338/1807/E.103/1-9-10 (Gazette n. 1495/vol. B/06.09.2010) does not provide specifically the punishment of unintentional poisoning.	Yes. As poisoning may be qualified as damaging environment, damaging nature, cruelty to animals and poaching, the two first criminal offences can be committed unintentionally by negligence.	Yes. Only intentional poisoning is relevant. However, "intentional" includes the case of mere acceptance of the risk of the event (so called "dolo eventuale"), even if there is no direct intent to poison the animal.	Yes. Depending on the consequences and on all the circumstances of the case.

	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
<b>Legal limitations for use of rodenticides</b>	No. Except for the limits on concentration of pesticides (includes rodenticides) in the drinking water. In addition, the baits should be set in a way to prevent the risk of consumption by other animals.	Yes. Especially Act No 114/1992 and Act No. 156/1998 Coll. Main limits are set upon farming near water, on specific soil, during specific season; and fertilisers too.	---	Yes. Limitations on the use of rodenticides in and around residences solely, the use of large amounts of rodenticides in open spaces, such as dumps, exclusively by authorized certified personnel, the use of special bait cages etc. License required.	Yes. The use of rodenticides is authorized only in habited areas but not in the natural environment.	Yes. The Ministerial Ordinance provides that the use of rodenticides is allowed, but particular measures are needed.	Yes. Several laws on chemical materials and products.
<b>Protocols for law enforcement officials on collecting evidence</b>	No data available on such protocols. However, the Wildlife Rehabilitation and Breeding Centre, aimed at healing and rehabilitation of rare animal species, and the Central Laboratory for Veterinary-Sanitary Expertise and Ecology.	No specialized administrative bodies or laboratories, but rescue stations and active NGOs. Poisoned birds are reported by individuals and afterwards police or Czech Environmental Inspectorate takes further steps in investigation.	---	Yes. Circular n. 2967/33905/13.03.2014 of the Pesticides Division. By this Circular, the Ministry has issued two directives: 1. Treatment of cases of pesticides poisoned baits, and 2. First-aid for animals poisoned by pesticides poisoned baits. The Joint Ministerial Decision 6669/79087/15.07.2015 also applies.	The investigation and collection of evidence happens according to the general procedural rules. The Hungarian Code on Criminal Procedure applies the principle of free evidence taking, therefore the gathering and use of any lawful evidence is permitted.	Yes. The Ministerial Ordinance provides that the owner or the responsible subject of the deceased animal must report the case to the competent Authorities through his veterinary. The veterinary, after proper analysis, renders the diagnosis of suspected poisoning.	No information available.
<b>Investigative tools available</b>	- Wildlife Rehabilitation and Breeding Centre – Green Balkans. - Central Laboratory for Veterinary-Sanitary Expertise and Ecology.	There are many complex investigative tools available but in practice these are not used systematically to enforce protection of wild birds.	---	Lack of specialized tools. But programs such as LIFE + "Urgent measures to secure the survival of the Egyptian vulture in Bulgaria and Greece" made possible advanced and specialized tools, such as canine patrols, informative campaigns and regular in situ patrols for the identification of the use of poisoned baits.	---	---	---

	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
Precautionary or restorative measures	<p>The hunting license could be withdrawn in case of violation of the HGPA and BDA, the hunter will be expelled from the hunting company and his hunting rights will be terminated.</p> <p>However in practice, police is interviewing several times the persons that are complaining for illegal poisoning without further actions.</p>	<p>Administrative law allows application of precautionary or restorative measures, or a compensatory remedy. However in practice, offenders are not found and not punished.</p> <p>Criminal judges cannot impose remedial sanctions, but some sanctions may have a similar result (for example, the judicial prohibition to undertake professional activities, forfeiture, prohibition to participate in public concession procedure or public tender, a ban on receiving grants and subsidies).</p>	---	<p>According to Article 11 par.b.2 of the Joint Ministerial Decision H.Π. 37338/1807/E.103/1-9-10 , in addition to the penal sanctions, other measures can be imposed:</p> <ul style="list-style-type: none"> <li>- Seize the species of wild fauna or flora, whether they are in possession of the offender or a third party.</li> <li>- Seize the tools or means used for the illegal capture, killing, wounding or collection of protected species.</li> <li>- Seized species are confiscated and then delivered to natural history museums or other institutions or public law legal persons or for educational or other purposes.</li> <li>- Withdrawal of hunting or fishing license of the offender for a period of 3 months to 3 years.</li> <li>- In case of recidivism the license suspension is definitive.</li> </ul>	<ul style="list-style-type: none"> <li>- As a <u>precautionary measure for hunters</u>, the hunter license can be withdrawn if the hunter used illegal methods or tools (poison) for hunting.</li> <li>- The punishment can be reduced without limitation if the danger or damage to nature is terminated, or nature's original state is restored by the perpetrator before the first course decision.</li> <li>- Cruelty to animals or Poaching where imprisonment does not exceed 3 years: the Court may rule that the perpetrator shall work in order to make amends. The perpetrator upon his/her choice may perform amendment works at the state or at local governments or at civil organizations.</li> <li>- Civil liability on the Protection of nature: in case of natural damage primarily the restoration shall be carried out in nature.</li> <li>- Administration law, in the event of damaging, disturbing or endangering nature: the respective activity may be restricted, suspended, prohibited and in addition restoration obligations can be imposed.</li> </ul>	<ul style="list-style-type: none"> <li>- Suspension of hunting licenses</li> <li>- However, no specific precautionary measures are explicitly envisaged prior to ascertainment of the perpetrator.</li> </ul>	<p>The court shall order compensation or elimination of property damage (Art. 69 Criminal Code).</p> <p>Measures necessary to prevent environmental damage, damage to human health and life, property and interests of other persons shall be taken. Persons guilty of causing damage must restore the state of the environment, where possible and compensate. Deprivation of the right to hunt (additional measure imposed in conjunction with the main penalty).</p>



	LUXEMBOURG	MALTA	PORTUGAL	THE NETHERLANDS	SPAIN	SWEDEN	UK
Precautionary or restorative measures	No specific provision.	The Court shall order the offender to remove the causes and to undo anything which was done without a permit. If the offender fails to comply he shall be liable to a fine. Court may order the disqualification from licensing or obtaining a permit.	Provided in the law but no effectivity in the implementation of restorative measures. No suspension or withdraw of hunting licenses.	Hunting permits can be (temporarily) revoked as an administrative sanction in cases of illegal poisoning.	The Court will order the offender to adopt measures to restore the ecological disturbed balance, and any other measure to protect the environment. Act 42/2007 states that, added to any criminal or administrative sanction, the offender must repair damage caused. In case damages can't be repaired, compensation is foreseen.	Police, game wardens and conservation wardens can turn perpetrators away from an area, when there is evidence of a crime. They can also confiscate vehicles, weapons and other devices. The police have further authority to take a perpetrator into custody. Also recall of weapon licenses.	Currently no system of licensing for hunting in the UK. Firearms licenses can be suspended for those convicted for offences under other legislation. In Scotland, powers were introduced in 2014 for the restriction of use of open general licenses for predator control when there are reasons to believe illegal killing or taking has taken place.

## Intentional poisoning (II)

	LUXEMBOURG	MALTA	PORTUGAL	THE NETHERLANDS	SPAIN	SWEDEN	UK
Definition of poison in national law	No.	No.	No.	No.	No Although it has been conceptualized.	No	No.
Difference between intentional and unintentional poisoning	No difference.	-	Not in Law, but in informal definitions.	No.	Yes. The Criminal Code requires the intentional conduct of the offender.	Yes. Intentional poisoning is punishable as a general rule. Unintentional poisoning is only punishable if the act can be classified as careless. What is considered "careless" is mainly decided in case law according to general penal law principles.	Yes. Failure to use properly rodenticides and other pesticides can lead to unintentional poisoning of non target species. The intent to poison can be difficult to prove. Cases of possession and storage of banned substances are the norm.
Legal limitations for use of rodenticides	No specific legal provision related to the use of rodenticide.	Yes: The process of inspection, registration and effective monitoring are regulated in specific legislation (Pesticides control act and Biocides Regulations) and its use monitored by the Pesticides Control Board.	No.	Yes: - The use is only allowed in accordance with the requirements contained in the Pesticides and Biocides Act. - The use of rodenticides to kill and to protect species requires a permit.	Yes. The use and commercialization of a biocidal substance can be reduced or prohibited if it creates an unacceptable risk for human or animal health or for the environment.	Yes, there are some legal limitations, but there is no general rules prohibiting use outdoors.	Yes. Rodenticides are regulated as a pest control agent under the EU Biocidal Products Regulation (528/2012) and the Regulations 8 (1) of the Biocidal products and chemical resitaions 2013.. Restrictions apply to the use of toxic substances to wildlife which are licensed for indoor use only.
Protocols for law enforcement officials on collecting evidence	No protocols.	Officials have the power to enter and inspect any land, site or building, transport at any time to ascertain compliance. Following analysis, if such product presents a hazard to consumers criminal liability will arise.	Yes. The Programme Antidote (involving NGOs, the governmental entity for nature protection and the SEPNA) develops some procedures. - As for projects, the LIFE project "Innovation Against Poison".		Environment and Forestry officers and SEPRONA leads the control of illegal use of poisoned baits in natural environment to achieve its eradication. Both enforcements bodies' strategies are combined with the ONG's actions by Antidote Programme	No special protocols related to poisoning wildlife. No recovery centers specialized in poisoned wildlife.	

	LUXEMBOURG	MALTA	PORTUGAL	THE NETHERLANDS	SPAIN	SWEDEN	UK
<b>Investigative tools available</b>	No investigative tools.	<ul style="list-style-type: none"> <li>-The Pesticides Control Board.</li> <li>-The Minister for Sustainable Development, the Environment and Climate Change.</li> <li>-The Plant Health Directorate.</li> <li>-Animal Welfare Centre.</li> </ul>	Yes. Two canine patrols, though existing infrastructures are still insufficient (few recovery centres, short budget and just one specialized laboratory).		Yes, More than 6000 forestry and environmental officer acting in the 17 Spanish Region plus 1850 SEPRONA agents; as canine units; specialized patrol of agents against poisoning (UNIVE, BIVE, Agents Rurals of Catalonia); specialized toxicological laboratories; Environmental prosecutors; Action protocol for authority's officials	No enforcement officials exclusively dedicated to crimes of poisoning wildlife. It is a task for the local police, the County administrations' game wardens and nature conservation wardens to monitor and investigate those crimes. The National Unit for Environmental and Work Environmental Cases within the Swedish Prosecution Authority can also investigate cases of poisoning wildlife.	Some Police, government agency staff and NGO's are trained in detection and enforcement. No canine patrols. RSPCA/SSPA and other veterinary centres may be specialised in care. Wildlife Incident Investigation Scheme (WIIS) in UK has specialist labs to analyse baits and suspected crime victims.
<b>Precautionary or restorative measures</b>	No specific provision.	The Court shall order the offender to remove the causes and to undo anything which was done without a permit. If the offender fails to comply he shall be liable to a fine. Court may order the disqualification from licensing or obtaining a permit.	Provided in the law but no effectivity in the implementation of restorative measures. No suspension or withdraw of hunting licenses.	Hunting permits can be (temporarily) revoked as an administrative sanction in cases of illegal poisoning.	The Court will order the offender to adopt measures to restore the ecological disturbed balance, and any other measure to protect the environment. Act 42/2007 states that, added to any criminal or administrative sanction, the offender must repair damage caused. In case damages can't be repaired, compensation is foreseen.	Police, game wardens and conservation wardens can turn perpetrators away from an area, when there is evidence of a crime. They can also confiscate vehicles, weapons and other devices. The police have further authority to take a perpetrator into custody. Also recall of weapon licenses.	Currently no system of licensing for hunting in the UK. Firearms licenses can be suspended for those convicted for offences under other legislation. In Scotland, powers were introduced in 2014 for the restriction of use of open general licenses for predator control when there are reasons to believe illegal killing or taking has taken place.

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## 4. Habitat destruction

### 4.1. Report

Habitat destruction is criminalized as an offence in article 3.h) of Directive 2008/99/EC of the European Parliament and of the Council, of 19 November 2008, on the protection of the environment through criminal law.

According to article 3, *Offences*, Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

*h) any conduct which causes the significant deterioration of a habitat within a protected site*

The aim of this report is to analyse how Member states have adapted state legislation to the content of the Directive with particular mention to relevant issues. The Member States included in the research are: Bulgaria (BG), Czech Republic (CZ), Germany (DE), Greece (GR), Hungary (HU), Italy (IT), Lithuania (LI), Luxembourg (LX), Malta (MT), Portugal (PT), Netherlands (NE), Spain (ES), Sweden (SE) and United Kingdom (UK).

The questionnaires sent by all mentioned Member states show that habitats destruction is considered a criminal offense in all their territories. Although the specific regulation may differ in each country, most of them refer to the Habitat directive as the framework regulation and observe criminal sanctions (mainly prison or fines or a combination of both) for criminal offences consisting on the destruction of protected habitats. However in Czech Republic such offenses are mainly punished as administrative offenses, mainly with fines.

#### a) Legal definitions

Most Member states have defined in their internal law what they consider as a **habitat**. The Habitats Directive and the Birds Directive have played an important role in the incorporation of such definitions in inner legislation. However such definitions are not harmonized among countries and some legislations use a general concept of habitat, including any natural place where the circle of life occurs, while other legislation focus their protection measures mostly to habitats within protected sites. In Bulgaria, the legal definition of Habitat is contained in the Biodiversity Act, which defines the terms: “habitat of species”, “natural habitat” and “subject of special areas of conservation”. The Czech Republic admits no definition of “habitat”, but the Criminal Code gives a wide scope of elements like landscape elements, especially protected areas, caves, trees, etc. In Greece, “Natural habitats” are described as terrestrial or aquatic areas distinguished by geographic,

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abiotic and biotic features, whether entirely natural or semi-natural. In Hungary, Habitat shall mean a determined spatial unit where a particular living organism and its population or symbiosis of living beings occur in a natural system and the environmental conditions for the formation, survival, reproduction and breeding thereof is given. Italy defines "Habitat within a protected site" as any habitat of species for which an area is classified as a special protection area pursuant to Birds Directive or any *natural habitat* or *habitat of species* pursuant to Habitats Directive, and "Natural habitat" as terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or seminatural. Lithuania considers "habitat site" as a natural place of growth of flora and fungi and their populations, while "habitat of species" is the environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle. In Luxembourg, "Natural habitat" is an earthy or aquatic zone distinguished by their geographical, abiotic and biotic characteristics, whether entirely natural or semi-natural, while "habitat of a specie" is the defined environment by specific abiotic and biotic environment where the specie lives at stages of its biological cycle. In Malta, "Habitat within a protected site" is defined as any habitat of a species for which an area is classified as a special protection area pursuant to 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 Directive 92/43/EEC. In Portugal, the Law gives three classifications: Habitat of a species, which means an environment defined by abiotic and biotic factors themselves where this species occurs at any stage of their life cycle; Natural habitats including terrestrial or aquatic natural or semi-natural areas that are distinguished by abiotic and biotic geographical features, and Natural habitats of Community interest, which are the habitats listed in Annex B-I of this Law and forms part thereof. Types of priority natural habitat are the types of natural habitat and endangered species existing in the country. In Holland, these concepts are not separately transposed in national criminal law. It refers to natural habitats and the habitats of species for which an area has been designated as a special protection area pursuant to the Birds Directive or the Habitats Directive, as well as sites that are on the list of sites of Community importance. In Spain, such concepts are not defined in Criminal Code but in Administrative regulation (Act 42/2007): Natural habitat: terrestrial or aquatic areas distinguished by geographical, abiotic and biotic features, whether entirely natural or semi-natural; Habitat of species: environment defined by specific abiotic and biotic factors, in which species live at any stage of their biological cycle. In Sweden, "Habitat" as such is not used as a legal concept, instead the terms describing the protected values differs with different types of nature protection. Sometimes the criminalized act isn't related to harming nature, but for carrying out an activity without prior authorization. However, Swedish legislation includes several offences for cases of habitat destruction. For instance:

- *Crimes against area protection* ("brott mot områdesskydd"): (deliberately or through negligence) In a biotope protection site: "activity that can damage the natural environment"; In areas with shore protection: "erecting buildings or other activities prohibited" in the Environmental Code's rules of beach protection; In sites protected as national parks, nature reserves, culture reserves, animal protection areas and vegetation protection areas or water protection areas; "causes damage or risk of damage or other inconvenience for the environmental values that are meant to be protected". Punishable by fines or imprisonment up to two years. (Environmental code chapter 29 section 2).

- *Area protection offence* ("förseelse mot områdesskydd"): (deliberately or through negligence) violation of a provision that has been decided in a particular national park, nature reserve, culture reserve, biotope protection area, animal protection area, vegetation protection area, shore protection area or water protection area. Punishable by fines (Environmental code chapter 29 section 2a).

*Unauthorized environmental activity* ("otillåten miljöverksamhet"): (deliberately or through negligence) starts or pursues an activity or takes some other measure without obtaining a decision

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concerning Natura 2000 permit. Punishable by fines or imprisonment up to two years (Environmental code chapter 29 section 4.1.a).

Most countries do also have particular legislation on **protected sites**. BG, GR, HU, IT, LIT, LX, MT, PT, NE, ES, SE and UK have specifically regulated protected sites. Only CZ seems not to have developed a definition of such term.

Regarding the concept of **disturbance**, it seems the term is not so common in the inner legislation of MS. Only UK admits having developed the concept of disturbance. The term has been interpreted by the Supreme Court as requiring an ecological impact on species which is more than just mere annoyance. Regulation 41(2) defines disturbance by stating that disturbance of animals includes any disturbance which is likely to impair the ability to survive, breed or reproduce or to rear or nurture their young in case of animals or hibernating or migratory species, to hibernate or migrate. Also to affect significantly the local distribution or abundance of the species to which they belong. Also Bulgaria explains that although Disturbance is not properly defined, the Biodiversity Act prohibits disturbances of species, particularly during periods of breeding, rearing, wintering and migration. In the Spanish report, the term “Disturbance” is assimilated to “environmental damage” a term which is included in administrative legislation.

Similarly there seems to be no legal definition among MS of the term “**significant deterioration of a habitat**”. However Bulgaria points out that in any assessment procedure any significant negative impact on the special areas of conservation has to be assessed. Czech Republic mentions that any serious or irreversible damage to the habitats which disturbs its integrity shall be considered significant deterioration. In Germany there is no definition for the term “severe deterioration” but a general aggravation is observed when a protected site is disturbed and such disturbance can only be eliminated with high amounts of expenditure or time. In Greece, according to Article 2.4 of the Law n. 1650/1986, deterioration means “any pollution or other change in the environment caused by human activities, which is likely to cause negative impacts to the ecological balance, the well-being and health standards of the people, the historical and cultural heritage and the aesthetic values”. The Hungarian questionnaire explains that the Criminal Code punishes the significant alteration of habitats and considers it an aggravated offense the significant damaging or destroying. Portugal affirms that there is no legal definition but the implementation of the concept is left to the courts and entities responsible for nature conservation. Spain points out that the term is not included in its criminal law, although the Act on Environmental Liability classifies damages according to the adverse changes caused. Damage with a proven effect on human health must be classified as a significant damage. Finally, the UK pinpoints that the Sites of Special Scientific Interest (SSSI) regime provides criminal legal protection against significant deterioration of SSSIs.

## **b) How is the severity of impact quantified?**

Information is available only for BG, GR, HU, IT and PT. In Bulgaria the impact is assessed by experts using the appropriate procedure. In Greece it is up to the Courts to decide upon the severity, seriousness and substantiality on the negative impacts, based on scientific data. The type, the quantity of the pollutants and the scale and extent of degradation do matter for the quantification of impacts. In Hungary the quantification of impact is considered and expert’s competence. In Italy, regulation 357 of 1997 provides that those who wish to carry a plan or a project have to identify and assess the effects

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on the protected site. In Portugal, the impacts are quantified by impact assessments with specific regard to the “Plano Sectorial Redes Natura 2000”. In Spain, Criminal Law does not provide an impact assessment, but requires the conduct to be serious, while administrative regulation qualifies the seriousness of infringements taking into account its economic impact.

### **c) Causes or forms of “damage” listed in national law**

Regarding causes and forms of damage, it can be inferred that most Member States have not developed lists of damages. Some countries consider any conduct which causes deterioration or damage to the habitat (CZ, GR, HU, MT).

### **d) Negligence**

The negligent destruction of habitats is criminalized in BG, GR, HU, LIT, MT, PT, NE, ES, SE and UK. No information is available for other member states.

### **e) Inciting, aiding and abetting**

Inciting, aiding and abetting is criminalized in CZ, GR, HU, LIT, MT, PT, NE, ES, SE and UK.

### **f) Case Law**

Regarding case law on habitat destruction, BG, GR and LUX state that there is very few Court cases. Hungary cites a case of illegal logging which amount to the destruction of a protected habitat. In Lithuania, national experts refer to the judgment of a man was sentenced for changing irreversibly the river bed, the landscape around it, causing serious damage to the protected site, as well as radically changing the conditions of life of certain species of fish and water plants. In Malta, most of the cases seem to be related to animal cruelty. Spain refers to Judgment Nº 10/2001 of the Provincial Court of Teruel, of March 6<sup>th</sup>. The judgment states that the accused committed the offence of habitat destruction (provided in articles 332 and 338 of Spanish Criminal Code) as he executed the action of plowing farms, knowing that was prohibited because it destroyed species or subspecies of endangered flora or its habitat, being that area a nature reserve. In Sweden two cases could be addressed: Blekinge Court of Appeal judgement no. B 2996-12 (illegal draining in ditch in nature wetland reserve, suspended imprisonment and the company was fined) and Scania and Blekinge Court of Appeal judgement no. B 778-14 (jetty built in area protected by shore protection, perpetrator was fined). In UK no specific judgments are indicated but more information is contained in RSPB Newletters.

## 4.2. Charts

### Habitat destruction (I)

	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
<b>Criminal conduct</b>	Criminal offence: Illegal destruction or damages to a protected territory or to habitat which is subject to protection in a protected zone.	Illegal acts are almost exclusively punished as administrative offences, although the Criminal Code contains offences.	Criminal offence	Criminal offence. Anyone who pollutes or degrades the environment by an act or omission.	Criminal offence any person who unlawfully and significantly alters Natura 2000 areas, protected caves, protected sites and the population or natural habitat of protected living organisms. Administrative offence, too.	Whoever causes the destruction of a habitat within a protected site or the deterioration, compromising the conservation status of such habitat, unless otherwise permitted by law. ( 733bisCC) Destroy or alter areas subject to special protection (734CC)	Criminal offence. (art. 271CC)
<b>Criminal or administrative sanctions</b>	Criminal sanction (imprisonment or corrective labour and a fine).	Administrative sanctions (fine).		Criminal sanction (imprisonment or a fine).	- Criminal sanctions (imprisonment). - Administrative sanctions (fine).	Imprisonment up to 18 months and a fine not less than 3000€	Criminal sanctions (fine or restriction of liberty or arrest or imprisonment).
<b>Legal concept of 'habitat'</b>	Legal definition contained in BDA Legal concept of "habitat of species", "natural habitat" and "subject of special areas of conservation.	No definition of habitat.	--	Yes. "Natural habitats"	Yes. "Habitat"	Habitat within a protected site (733 CC) Natural habitat	Habitat site Habitat of a species (art. 2 of Law on protected species of Fauna, Flora and Fungi)
<b>Legal concept of 'protected site'</b>	Yes Defines the special areas of conservation and protected territories.	No definition of protected site (idem).	Yes Art. 329CC makes reference to three different types of protected sites.	Yes "Habitat within a protected site": any habitat of species for which an area is classified as Special Protection Area (...), or any natural habitat or a habitat of species for which a site is designated as a Special Area of Conservation (...).	Yes "Protected Site": protected or especially protected territory pursuant to the Act LIII of 1996 on the Protection of nature or other laws.	The law foresees: - natural habitat types of community interest - priority natural habitat types  Art 733bis: protected areas are those designated as special area of conservation and special protection areas	- Yes. Protected areas: Land and/or water areas which have clearly defined boundaries, an acknowledged scientific, ecological, cultural and other value and for which a special protection and use regime (procedure) has been introduced by legal acts.



	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
How is the severity of impact quantified	Assessed by experts in the procedure of appropriate assessment.	---	---	It is up to the National Courts to decide upon the severity, seriousness and substantiality of the negative impacts based on scientific data. The type, the quantity of pollutants and the scale and extent of degradation matter for the quantification of impacts.	It is an expert's competence. The alteration may affect the type, the size of a territory and its use.	The case law has not dealt with this question yet. But art.5 of Regulation 357 of 1997 which implements Directive 92/43/ec provides that those who wish to carry a plan or project have to identify and assess the effects on the protected site.	---

	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
<b>Definition of 'Disturbance'</b>	No, but the BDA prohibits disturbances of species, particularly during period of breeding, rearing, wintering and migration.	No.		Not, if "disturbance" is to be understood as "deterioration"		No	No.
<b>Causes and forms of 'Damage' listed in national law</b>	The extent of damage is evaluated according to BDA.	Any conduct which causes the significant deterioration of a habitat within a protected site so that it ceases to exist or is weakened or the reason for its protection is severely compromised.		No. Any kind of possible cause and form is included as a conduct.	No. If the alteration results in significant damage or destruction, it shall be qualified as the aggravated case and punished as significant damaging or destruction.	No	No.
<b>Negligence criminalized</b>	Yes	---		Yes	Yes		Yes
<b>Inciting, aiding and abetting criminalized</b>	No.	Yes		Yes	Yes		Yes
<b>Legal definition of 'significant deterioration' of a habitat</b>	No legal definition. But in the assessment procedure any possible significant negative impacts on the special areas of conservation have to be assessed.	No legal definition but any serious or irreversible damage disturbing their integrity shall be considered significant deterioration.	No. But there is a general aggravation in cases of severe deterioration.	No.	No, but the CC punishes the significant alteration of habitats and establishes and aggravated offence when damaging and destroying are significant. Therefore it is the duty of the Courts and other competent authorities to determine.	No, but it is mentioned in Legislative Decree 152 of 2006 and helps interpret arts. 727 and 733bis CC.	No.
<b>Case Law</b>	There are very few court cases.	No		There is no relevant case law so far.	Only related to illegal logging which amount to the destruction of protected habitat.	No	Yes.

	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY	ITALY	LITHUANIA
<b>Definition of 'Disturbance'</b>	No, but the BDA prohibits disturbances of species, particularly during period of breeding, rearing, wintering and migration.	No.		Not, if "disturbance" is to be understood as "deterioration"		No	No.
<b>Causes and forms of 'Damage' listed in national law</b>	The extent of damage is evaluated according to BDA.	Any conduct which causes the significant deterioration of a habitat within a protected site so that it ceases to exist or is weakened or the reason for its protection is severely compromised.		No. Any kind of possible cause and form is included as a conduct.	No. If the alteration results in significant damage or destruction, it shall be qualified as the aggravated case and punished as significant damaging or destruction.	No	No.
<b>Negligence criminalized</b>	Yes	---		Yes	Yes		Yes
<b>Inciting, aiding and abetting criminalized</b>	No.	Yes		Yes	Yes		Yes
<b>Legal definition of 'significant deterioration' of a habitat</b>	No legal definition. But in the assessment procedure any possible significant negative impacts on the special areas of conservation have to be assessed.	No legal definition but any serious or irreversible damage disturbing their integrity shall be considered significant deterioration.	No. But there is a general aggravation in cases of severe deterioration.	No.	No, but the CC punishes the significant alteration of habitats and establishes and aggravated offence when damaging and destroying are significant. Therefore it is the duty of the Courts and other competent authorities to determine.	No, but it is mentioned in Legislative Decree 152 of 2006 and helps interpret arts. 727 and 733bis CC.	No.
<b>Case Law</b>	There are very few court cases.	No		There is no relevant case law so far.	Only related to illegal logging which amount to the destruction of protected habitat.	No	Yes.

## Habitat destruction II

	LUXEMBOURG	MALTA	PORTUGAL	THE NETHERLANDS	SPAIN	SWEDEN	UK
<b>Criminal or administrative offence</b>	Criminal offence	Criminal offence	Criminal offences	Criminal offence (prohibits projects and other activities that can lead to deterioration of habitats or significant disturbance of the species for which the site has been designated).	Criminal offence when the habitat of wild flora species or wild fauna species are illegally destroyed. Administrative laws also include offences.	Criminal offence: - <i>Crimes against area protection</i> . (Environmental code chapter 29 section 2). - <i>Area protection offence</i> (Environmental code chapter 29 section 2a). - <i>Unauthorized environmental activity</i> (Environmental code chapter 29 section 4.1.a).	Criminal offence. Various criminal offences relating to habitat destruction, in particular under the Conservation of Habitats and Species Regulations 2010 and equivalent regulations which apply in other parts of the UK; under the Wildlife and Countryside Act 1981, which applies to England, Wales and Scotland, and under the Environmental Damage (Prevention and Remediation) (England) Regulation 2015 and equivalent regulations which apply in other parts of the UK.
<b>Criminal or administrative sanctions</b>	The Law provides criminal sanctions to all offences included in the Law.	Criminal sanctions (fine or imprisonment).	Criminal sanctions (imprisonment and fine.	Criminal sanction (fine or imprisonment and fine or detention).	Criminal sanction (imprisonment or fine and disqualification for profession or occupation)	Criminal sanction (fines or imprisonment up to two years) . Crimes can be subject to fines according to the Penal Code (1962:700), chapter 36 section 7.	Criminal sanctions (imprisonment, or a fine, or both).
<b>Legal concept of 'habitat'</b>	Yes. Natural habitat Habitat of a specie	Yes. Habitat within a protected site.	Yes, the Law gives three classifications: Habitat of a species Natural habitats Natural habitats of Community interest Types of priority natural habitat: types of natural habitat and endangered species existing in the country, which are marked an asterisk in Annex B-I.	Yes. Natural habitats and the habitats of species for which an area has been designated as a special protection area pursuant to the Birds Directive or the Habitats Directive, as well as sites that are on the list of sites of Community importance.	Not defined in Criminal Code. But defined in Administrative regulation (Act 42/2007):  - Natural habitat - Habitat of species	"Habitat" as such is not used as a legal concept, instead the terms describing the protected values differs with different types of nature protection. Sometimes the criminalized act isn't related to harming nature, but for carrying out an activity without prior authorization	No. The 2010 Regulations do not contain any criminal offence which specifically relate to significant deterioration of a habitat within an SPA or SAC
<b>Legal concept of 'protected site'</b>	Yes.	Yes.	---	Yes. These concepts are not separately transposed in national criminal law.	Yes. Natural protected areas: national territory (including inland waters and marine environment) with specific characteristics.	In sites protected as national parks, nature reserves, culture reserves, animal protection sites and vegetation protection sites or water protection sites; "causes damage or risk of damage or other inconvenience for the <i>environmental values that are meant to be protected</i> ".	Yes. Legislation recognizes Special protection areas (SPAs), Special areas of conservation (SACs), Sites of special scientific interest (SSSIs), etc.

	LUXEMBOURG	MALTA	PORTUGAL	THE NETHERLANDS	SPAIN	SWEDEN	UK
How is the severity of impact quantified	---	---	The impacts are quantified in impact assessments with specific regard to the "Plano Sectorial Rede Natura 2000".	---	Criminal Law does not provide an impact assessment, but requires the conduct to be serious. Administrative regulation qualifies the seriousness of infringements taking into account its economic impact.	The severity of the impact isn't quantified in the law. However, minor offences are exempted from punishment. A minor offence is described as insignificant with respect to the interest that the penal provision was intended to protect (Environmental Code chapter 29 section 11).	---
Definition of 'Disturbance'	No.	Not yet.	---	No, but the article follows another article that refers to it. The meaning will depend on the site and species/habitats involved.	Not in criminal law. But in Administrative Law the term "environmental damage" can be considered equivalent and is described as damage to wildlife and habitats	No definition of "disturbance".	Yes. Regulations 2010, contains a definition. Also interpretation of the Supreme Court. However the WCA 1981 contains a disturbance defence in respect of wild birds, but not a definition of the term "disturb".
Causes and forms of 'Damage' listed in national law	Yes (certain number of possible causes and forms of damages to habitats).	No, but the Law chooses to encompass every possible harm that might befall the habitat by stating "will damage, in any way".		No	Yes. In Act 26/2007 on Environmental liability.	No	No. However, specific operations are prohibited under SSSI regime and in relation to Nature Conservation Orders under sections 25 and 26 of the 2010 Regulations.
Negligence criminalized	---	Yes, The regulation provides for various levels of intent.	Yes	Yes	Yes	Yes	Yes
Inciting, aiding and abetting criminalized	No	Yes	Yes	Yes	Yes	Yes	Yes
Legal definition of 'significant deterioration' of a habitat	No. But the Law states that it is forbidden to reduce, destroy, change biotopes like swamps, wetlands, dry grass, natural areas covered by reeds, hedges, wild bushes or shrubbery.	No. But it is mentioned in the regulation.	No. The interpretation is left to courts and agencies, and entities responsible for nature conservation.	No, because it will require a case by case assessment.	Not in criminal law. But Act on Environmental Liability classifies damages according to their significance.	No	No. However the SSSI regime provides criminal legal protection against significant deterioration.

	LUXEMBOURG	MALTA	PORTUGAL	THE NETHERLANDS	SPAIN	SWEDEN	UK
Case Law	There is no relevant case. Most of the time, the cases are treated by the Administration directly.	Yes, basically with animal cruelty.	Yes (criminal court sentence and administrative court sentence).	Not many cases, but one example was happened in 2014	Judgement N°10/2001 of the Provincial Court of Teruel, of March 6 <sup>th</sup>  Judgement n°289/2011 of the Provincial Court of Tarragona, of May 19 <sup>th</sup>	- Blekinge Court of Appeal judgement no. B 2996-12 (illegal draining in ditch in nature wetland reserve, suspended imprisonment and the company was fined). - Scania and Blekinge Court of Appeal judgement no. B 778-14 (jetty built in area protected by shore protection, perpetrator was fined).	The report refers to RSPB newsletters: BirdCrime and Legal Eagle.

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## 5. Report on positive or negative impact of the Directive

The questionnaires developed by national experts on the implementation of Directive 2008/99/EC include a global assessment on the positive or negative impact of the Directive. In the following pages we review the most remarkable positions contained in each report as a form of overview of the impact of the Directive in each Member State.

### Bulgaria

The requirements of the Directive 2008/99/EC were implemented in the Bulgarian legislation with amendments in the Penal Code promulgated in State Gazette, No.33/2011, in force from 27.05.2011. They have been in force for a less than 5 years and the court practice and case-law has not been developed. Even before the entry into force of these amendments, when similar crimes were already defined in the Penal Code they were not prosecuted because of the complexity of the crimes and insufficient capacity of the prosecutor's office in the field of environmental crime –both in terms of specialized staff and experience with such cases.

The same lack of practice could be observed in the work of judicature. Very limited court practice has been established in the past 4 years on the full range of crimes defined by the Directive and only few court cases have been heard and very few sentences passed.

There is no sufficient amount of court cases to draw conclusions on the application of the Directive. However there are some positive actions which could help redress this tendency.

- One positive trend is established by the training of prosecutors within the project “Enhancing of the control and keeping the rules stipulated in the environmental law and risk management”, implemented by the Association of the Prosecutors in Bulgaria (<http://www.ecorime.bg>).

- Another important step to enhance the capacity of the enforcement bodies is the process of creation of a network of prosecutors, specialised in investigation of environmental crimes, promoted by the Association of Prosecutors in Bulgaria. The leader of the project has stated before the press that although environmental crimes are well known among prosecutors, for some of them they are not well enough prepared. As an example illegal traffic of protected species, of dangerous substances, crimes against habitats and species and environmental pollution were given. At the moment the network is not formalized and trained prosecutors could not work only on those crimes because of the system of random distribution of cases. However, they are prepared to help their colleagues. From the association are intending to propose to the Prosecutor General to formalize the network of prosecutors of environmental crimes.

In the past other initiatives for capacity building in the field of environmental crimes were undertaken, like an international seminar organized by a NGO - *Center for Study of Democracy* - with a topic „Environmental Crimes and the pollution of the marine waters in EU“. In the seminar representatives of the judiciary, professors in jurisprudence, attorneys-at-law, experts and civil society' representatives from Bulgaria and Italy took part. (<http://www.csd.bg/artShowbg.php?id=16165>).

The limited court practice shows that courts do not consider environmental crimes as crimes of

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high social importance and dangerousness and usually the perpetrators are released of criminal responsibility by imposing on them administrative sanctions.

## Czech Republic

Criminal offences against environment and its components had been enacted in the Czech Criminal Code even before the transposition of the Eco-crime Directive. However, it was necessary to alter, and eventually add current legal framework so it would be in compliance with the Eco-crime Directive. The Eco-crime Directive has been transposed by the Act no. 330/2011 Coll. This act came into force on 1<sup>st</sup> December 2011, thus after the expiry of the deadline for the transposition of the Eco-crime Directive (26<sup>th</sup> December 2010). The Czech legislator, implementing the directive, altered and eventually added legal framework so it would be in compliance with the directive (e.g. the ozone layer protection was added). The legislator chose for a “copy paste” regarding the untreated (new) offences or supplementation of existing offences.

The offences against environment according the Czech Criminal Code are:

- damaging and threatening of environment (§ 293 CC),
- damaging and threatening of environment with negligence (§ 294 CC),
- damaging of water source (§ 294a CC),
- damaging of forest (§ 295 CC),
- unauthorized discharge of pollutants (§ 297 CC),
- unauthorized handling the waste (§ 298 CC),
- unauthorized production and other handling substances damaging the ozone layer (§ 298a CC),
- unauthorized handling protected wild fauna and flora (§ 299 CC),
- unauthorized handling protected wild fauna and flora with negligence (§ 300 CC),
- damaging of protected nature component (§ 301 CC),
- cruelty to animals (§ 302 CC),
- dereliction of duty of care for animals with negligence (§ 303 CC),
- poaching (§ 304 CC),
- unauthorized production, possession and other handling pharmaceuticals and other substances that affect utility of livestock (§ 305 CC),
- spreading an infectious animal disease (§ 306 CC),
- Spreading an infectious disease and pest of useful plants (§ 307 CC).

Furthermore, the offences listed in Art. 3 have been embodied into the law no. 200/1990 Coll. on the Administrative Infractions and Special Environmental Laws, setting rules concerning specific segments of the environment, violation of which is punished by the Criminal Code, include only administrative infractions and other administrative delicts (sphere of administrative law). The criminal regulation however prevails.

Breaching of the “environmental laws” can be punished through administrative fines within area of the administrative law. In the Czech Republic we distinguish “*přestupky*” (administrative infractions) which are committed by natural persons, and there is personal liability; and so-called “*jiné správní delikty*” (other administrative delicts). These are committed by legal persons and by natural persons if they are conducting their business; liability is no-fault. The former are regulated at Law. no 200/1990 Coll. on Administrative Infractions, as well as in special laws, e.g. law no. 114/1992 Coll. on Nature and Landscape Protection; law no. 254/2001 Coll. on Water; law no. 201/2012 Coll. on Air Pollution.



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So-called other administrative delicts are regulated just in special laws – e.g. law on Nature and Landscape Protection, law on Water; law on Air Pollution.

A given violation of law is always either an administrative infraction (eventually other administrative delict), or a crime, never both at the same time. It follows that every time only one type of proceedings (administrative or criminal) can be conducted with respect to a determined violation of law, never both of them. The above mentioned relates to one subject, not to one conduct. It means that one person cannot be punished with both criminal and administrative sanction at the same time. However, regarding one conduct it could be punished on the following schema: e.g. an employer (legal person) with an administrative sanction and at the same time an employee (natural person) with a criminal sanction.

Although the system of administrative liability and punishment is well established, more attention has been paid to criminal sanctions in recent years. This was partly due to preparation of the new criminal code, partly because of the Directive. There are on-going seminars in this area for enforcement bodies active in criminal proceedings but practical experience remains limited to the simple and traditional crimes like poaching or cruelty to animals. The cases most frequently brought to criminal courts are the offence of poaching; less commonly the offences of cruelty to animals, dereliction of duty of care for animals with negligence and damaging and threatening of environment; finally not so often there are offences of unauthorized handling protected wild fauna and flora and unauthorized handling the waste.

The Police Headquarters and the Czech Environmental Inspectorate are preparing the staff training for police officers and inspectors (they took an example from the Slovak colleagues), which would markedly improve the investigation of the cases and strengthen the cooperation between both bodies. An improvement in cooperation with the Police Headquarters is visible – bigger willingness to cooperate with other responsible authorities such as the Czech Environmental Inspectorate or with other specialists, particularly in poisoning. For example, at this time the Police Headquarters and the Czech Environmental Inspectorate have been preparing the staff training for the policemen and inspectors, which would markedly improve the investigation of the cases and strengthen the cooperation between both bodies. The Police was also successful in several cases related to trading with stuffed animals. Unlike the administrative authorities, police often lacks knowledge or resources to treat the more sophisticated cases properly. Moreover, these are often committed by legal persons, something which surpasses the general concept of criminal liability. To sum up, the practical application of the Directive is not far reaching and should be perceived as complementary to the administrative liability.

Nevertheless, if the conditions are met, the criminal liability will usually apply. Hence the conduct of the perpetrators does not remain unpunished, but it is rather penalized with administrative sanctions. There is – besides the environmental authorities – also important role of building departments consisting in preventing or avoiding of causing damage to the environment. Changes brought by the Directive are rather subtle and some of the “new” crimes were not yet registered or dealt with.

The main reasons why environmental offences would not reach a criminal court are as follows:

- the proceeding ends by the Czech Environmental Inspectorate (the conduct is not regarded as a

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- criminal offence),
  - there is an unknown offender,
  - insufficient qualification of investigative, prosecuting and adjudicating bodies, difficulty with proving causal relation etc.,
  - the offender often commits more serious offence so the environmental offences are therefore „set aside“ or punished through the punishment for the more serious offence,
  - the problem is also in public tolerance regarding some criminal offences (such as cruelty to animals) so that the police is not informed of such offences.

All the offences listed in the Art. 3 of the Eco-crime Directive are criminal offences in the Czech Republic, but these are not exactly the same offences as in the Eco-crime Directive. For example the Czech Criminal Code states different criteria of liability. Specifically where the directive lays down “[causing] or (...) 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”, the Czech Criminal Code in § 294 CC (damaging and threatening of environment with negligence) lays down: “Whoever with gross negligence injures or endangers soil, water, air or any other component of the environment, to a greater extent, or in a larger area, or in such a way that it could cause serious bodily injury or death or if the elimination of the consequences of such behavior must incur costs to a considerable extent, shall be punished with imprisonment up to six months or with a judicial prohibition to undertake professional activities”. As a result of this the Czech legislation is not consistent with the Eco-crime Directive. It doesn’t mean that the conduct of the perpetrator remains unpunished, however the perpetrator is mostly punished with an administrative sanction rather than with a criminal sanction.

The European Commission initiated the infringement procedure against the Czech Republic in autumn 2013 (EU PILOT no. 5627/13/JUST). During the proceedings it became clear that it is necessary to specify some offences against environment. Therefore the Czech legislator approved the law no. 165/2015 Coll. which came into force on 1st September 2015. This law should transpose the Eco-crime Directive properly. Regarding the offences of unauthorized production and possession of radioactive substance and a highly dangerous substance (§ 281 CC), unauthorized production and possession of nuclear material and special fissionable material (§ 282 CC) and unauthorized production and other handling substances damaging the ozone layer (§ 298a CC), the new law provides that it is not only possible to commit these offences intentionally, but also with a gross negligence. Article 298a CC does not required anymore committing the offence in not a small extensity because the Eco-crime Directive does not allow such a restriction

## **Germany**

Professional Lawyer’s and Judge’s Associations voted heavily against the strict offences introduced by the Directive 2008/99/EC. You can find votes against the criminal offences arguing you should protect nature with administrative law and better personal capacities within the administrative bodies and not with the sharp weapon of criminal law as the criminal authorities often don’t have the knowledge of judging about the scientific prerequisites laid down in the offences

## **Greece**

Given that the Directive 2008/99/EC has been transposed in the national legislation just back in the

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year 2012 by the Law n. 4042/2012, and taking into consideration that, so far, there is no relevant jurisprudence, since there are no relevant cases brought before the national courts, it is impossible to draw any secure conclusions regarding the impacts of the application of the Directive in Greece, since there is no relevant experience gained yet. However, many experts claim that the Directive boosted the national legislation towards a more complete approach regarding the environmental protection based on penal procedures, and it actually attached to the environmental crimes described the necessary severity, by providing such sanctions.

According to Article 187 of the Greek Penal Code ("*Criminal Organization*"), as amended by Article 8 Law n. 4042/2012, anyone who establishes a structured crime unit of continuous action, consisting of three (3) or more members (organization), or becomes part of it as a member, in order to commit more felonies provided by the legislation on environmental protection (among other types of crimes) is punished with incarceration of up to ten years. The term "*legislation on environmental protection*" includes all the crimes contained in the Directive. Furthermore, Law n. 3691/2008 on money laundering ("*Prevention and combating of money laundering etc.*"), and especially Article 3 of it, as amended by Article 8 Law n. 4042/2012, includes in its list of punishable criminal activities the crimes "*provided and punished by the provisions of Article 28 paragraph 3.a Law n.1650/1986*". It has to be stated that according to Article 3 Law n. 4042/2012, the offences described in article 3 of the Directive are punishable by Article 28 Law n. 1650/1986.

## Hungary

The new Hungarian Criminal Code (Act 100 of 2012) stipulates in one chapter (Chapter XXIII) the crimes against the environment and nature and is fully in compliance with the requirements of the European Union Law.

However, considering the relative novelty of the new Criminal Code there is no relevant case law available yet. No relevant case law is available according to the new Criminal Code which in turn is fully harmonized with the Directive.

## Italy

The Directive has been finally fully implemented only through recent Law n. 68/2015 and, consequently, we are not yet able to assess the positive and negative impacts of the new crimes introduced into the Italian criminal system.

Regarding illegal killing and taking of birds, for instance, the implementation of the Directive 2008/99/EU in the Italian system seems to be incomplete. Article 727-*bis* of Italian Criminal Code provides with an inadequate punishment for the protection of species pursuant to EU legislation: firstly it seems to be of limited application, given that it covers killing of a significant number exemplars of a protected species, with negligence and not during the hunting activity. Secondly, sanctions envisaged by Art. 727-*bis* do not seem sufficiently dissuasive: by way of example, the killing of one animal that is considered a protected species is not punished, whereas the killing of a non-protected species, in application of Article 544-*bis*, is seriously sanctioned. Moreover, problems of coordination could emerge in relation to the application of the abovementioned provisions. For example, according to the Jurisprudence, in case of killing of a protected species during the practice of hunting activity, the hunter could be liable pursuant to Law 157/1992 and Article 544-*bis* of Italian Criminal Code.

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However, the crimes recently introduced could have a certain positive impact as they provide specific tools for the criminal judges dealing with conducts which cause an impairment of the environment. In fact, it is worth noting that, up to 2015, judges had to “creatively” apply other provisions of the Criminal Code in order to punish environmental crimes. For example, in lack of the specific crimes of environmental disaster and pollution, criminal judges had to apply, for example, the general crime of “unnamed” disaster or the provision which punishes the dangerous throwing of objects. From this point of view, the full implementation of the Directive should have a positive impact in terms of legal certainty and focused criminal judicial procedures.

On the other hand, after the partial implementation occurred through Legislative Decree n. 121/2011, we had already noticed some positive impacts of the new legislation. In particular, we noticed an emerging concern of enterprises with regard to the amendments to Legislative Decree n. 231/2001 on the responsibility of legal entities for environmental crimes. Legal entities began to insert into their organizational models specific provisions aimed at preventing the commission of environmental crimes.

With regard to the practical application of the Directive, Law No. 68/2015 has introduced the following tools:

1. Under art. 452-*septies* of the Italian Criminal Code (ICC), save when the facts constitute a more serious crime, whoever, denying access, setting obstacles or artificially changing the state of the areas, prevents, hampers or avoids the environmental/health and safety monitoring activities or compromises their results, is liable to a term of imprisonment from 6 months to three years.
2. Art. 452-*terdecies*, para 6 of the ICC has doubled the statute of limitations for the environmental crimes introduced by Law No. 68/2015, which as a consequence reaches 30 years. This innovation is particularly important, given the complex inquiries the authorities often face in order to ascertain the causes/responsibility of environmental crimes.
3. Art. 452-*terdecies*, para 7 of the ICC establishes that the Judiciary entrusted with cases of environmental pollution and disaster, illegal waste and nuclear materials trafficking must inform the general district attorney, in order to ensure coordination of the investigations. If the district attorney ascertains connected investigations, he will immediately inform the prosecutors involved.
4. Under Article 452-*decies* of the ICC the sanctions provided for the abovementioned crimes are reduced by a half to two thirds when the party concerned (i) adopts measures to prevent the criminal activity from having any further consequences, or (ii) effectively makes the areas affected safe, cleans them up and, where possible, restores them to their original condition before the setting up of the first level proceedings. The penalties are also reduced by a third to a half in the case of parties who effectively assist the police and judicial authorities in reconstructing the events, identifying the perpetrators or removing significant resources aimed at committing crimes.

Law No. 68/2015 allows for elimination of the misdemeanours listed in the Environmental Code, which have not damaged the environment, provided the competent authority ascertains the regularisation, in accordance with its prescriptions (art. 318-*bis* and following of the Environmental Code).

## **Lithuania**

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More attention is now paid to environmental crimes and their prevention in Lithuania. There seems to be more cooperation between prosecution officers and environmental inspectors and other environmental institutions. However it should also be mentioned, that too general, too vague provisions of Criminal Code, cause practical problems sometimes.

Prohibition to exercise a special right, deprivation of public rights, deprivation of the right to work in a certain job or engage in certain activities, confiscation of property, obligation to live separately from the victim and (or) prohibition to approach the victim closer than a prescribed distance, participation in the programmes addressing violent behaviour, extended confiscation of assets may be imposed in conjunction with a penalty. A legal entity may be subject to confiscation of property and extended confiscation of assets in addition to the penalty.

A problem with environmental cases is the appropriate collection and evaluation of evidence. For example, there was a case, when 10 tons of construction waste, contaminated with fuel oil (10 tons of fuel oil in it), was disposed in lignin fields, thus causing significant damage to flora, fauna and environment. However, due to the lack of evidence no one was held liable.

## **Luxembourg**

Information not available in the questionnaire sent by the national expert.

## **Malta**

Whereas legislation is available, case law is scarce or inexistent. From the little case law that we see in the respective section the Court seems to award the minimum penalty and early admission is considered an asset in final sentencing.

The enforcement body is always the Police that brings forward the case to Court. We must have more case law to identify further gaps and what is necessary within the implementation stage in such matters, a stage Malta has not reached yet. So far, it seems that Maltese Courts always aim for the lowest penalty that is available at law.

## **Portugal**

Information not available in the questionnaire sent by the national expert.

## **Netherlands**

Dutch legislation is generally in line with the requirements of the Directive and in that sense the Directive has had a positive impact, although it does not appear that sanctions for the environmental crimes involved have been raised or are imposed more frequently now than before the Directive was adopted and implemented.

Dutch legislation allows for the imposition of a wide range of criminal sanctions for the listed environmental crimes, but in most cases only monetary penalties are imposed. In the Netherlands the highest available sanctions are rarely imposed for environmental crimes. There are examples, however, of cases where high sanctions (both fines and imprisonment) have been issued, in particular

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in relation to illegal trade in endangered species.

## Spain

From the perspective of the Spanish regulation, two positive impacts can be stressed:

1) The transposition of the Directive has enabled a better regulation of offences related to waste. Previous to the transposition of the Directive, which was effective in 2010, the regulation of waste offences was partial. Furthermore, the passing of a new reform affecting the Criminal Code in 2015 has contributed to a new amelioration of such offences. The amendment introduced in 2015, which has eliminated the existing overlap between the main environmental crime and the waste offences, is expected to improve the application of such environmental crimes.

2) Due to existing gaps in the implementation of flora and fauna offences, the 2015 reform of the Spanish Criminal Code has also amended these offences. In particular, the new regulation includes the consideration of a criminal offence when such conducts are committed with serious negligence. This should improve the capacity to reach the goals of the Directive in this field.

However, a critical negative impact can also be described. The Spanish legislator tends to literally transpose the Directive into national legislation. This results in the infringement of fundamental criminal principles. The use of vague terms like “substantial damage”, “negligible quantity” or “significant deterioration” is highly criticized due to the infringement of the principles of legality and legal certainty that applies in Spanish Criminal Law.

On the other hand, some of the offences involved do not distinguish in terms of penalty between conducts that “causes or are likely to cause” damages on the environment. According to the principle of proportionality the severity of punishment should be proportionate to the seriousness of the offence. Therefore, concrete harm to the environment and threat of harm to the environment (endangerment crimes) should deserve a different level of sanction. The types of values protected by the offence (environmental values or human health) should also be reflected in the type and level of sanction.

Although the Directive was implemented in 2010, in 2015 the Spanish legislator amended the most traditional environmental crime - initially unaffected by the Directive- by introducing the same legal description (“cause or likely to cause”), which has increased the negative impact of the Directive.

Unfortunately, in 2015 the Spanish legislator did not take the opportunity to improve the implementation by fulfilling the still existing gaps, like the punishment of the conduct described in article 3.i) of the Directive, when committed by serious negligence.

From the practical point of view, it is still too early to reach conclusions on the application of the

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Directive. In most of the new offences implemented in the Spanish criminal law, there is little or no case-law at all. In those fields in which pre-existing offences were available (like flora and fauna), case-law still does not allow an evaluation of the full impact of the Directive in Courts.

Moreover, it has to be pointed out that in Spain, although there is academic research in the field of environmental law, there is a lack of academic research in the field of green criminology, which is the discipline that along with environmental law should address the impact of the Directive.

Regarding national enforcement bodies, the existence of specialized units can be stressed as strength of the Spanish criminal justice system. The existence of specialized police units and specialized prosecutors should lead to a more effective practical application of the Directive.

## **Sweden**

The impact of the Directive 2008/99 in Sweden is hard to evaluate. The directive was subject to a 9-paged governmental memorandum in 2007, concluding that Swedish law probably already criminalized the deeds covered by the directive<sup>12</sup>. The memorandum also mentions that Sweden as a Member State “dispute if EG has mandate to enact such detailed rules on punishments or sanctions as is proposed”.

The conclusion must be that the practical application of the Directive is negligible in Sweden. This is probably because Swedish law was considered sufficiently clear and covering the articles in the Directive. It should also be noted that Swedish constitutional law says means that no one can be convicted of a crime regulated in an EU directive, only. The crime must be enacted in Swedish national law.

## **United Kingdom**

Overall, we consider that the impact of the Directive has not been that significant because most of the criminal offences it requires were already in the United Kingdom criminal law in some form. This also makes the Directive difficult to use.

We have used the Directive once for commenting on proposed legislation in Wales in order to call for there to be criminal offences.

We also note that Article 6(2) of Directive 2008/99/EC is being relied on by the Law Commission in its recommendations for there to be a free standing offence in the Wildlife Bill (currently proposed) extending the criminal liability of legal persons to circumstances where an individual has committed an offence while acting as employee or agent of the legal person and the offence would not have been committed but for the failure of an officer of the legal person to exercise appropriate supervision or control over the employee or agent in question (see para 1.238 of Law Commission Wildlife Law Report Summary).

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## 6. Report on national enforcement bodies

This report explores the existence of stakeholders who are responsible for the enforcement of the Directive and who are involved in the investigation of environmental crimes.

**In Bulgaria** there are specialized enforcement agencies for the investigation of environmental crimes.

Signals of pollution could be sent to the following agencies:

- MoEW (Minister for Environment and Water of Bulgaria),
- EEA,
- RIEW (Regional Inspectorates of Environment and Water),
- Directors of RBD,
- Directors of NP (National Park),
- Mayors,
- Regional Governors,
- Police and prosecutor's office.

The RIEW is competent to collect and analyse the information according to the signal and in case there is a reasonable doubt that a crime was committed the case is reported to the prosecutor's office.

The Supreme Cassation Prosecutors' Office has a specialized sector which has competence to monitor and advise the work of the first instance PPOs in cases of environmental crime. Its competence applies to all other crimes listed by the Directive

In case of Waste shipment national enforcement bodies are:

- Nuclear Regulatory Agency
- Customs
- Chief Directorate Fire Safety and Civil protection
- Police
- Prosecutor's office

For Illegal killing and taking national enforcement bodies are:

- MoEW
- EEA
- RIEW
- Director of the Executive Forest Agency
- Directors of Regional Forest Administrations
- Directors of RBD
- Directors of NP
- Police and prosecutor's office with general competence for supervision of lawfulness



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For trading with protected species:

- Customs
- EEA
- RIEW
- Directors of RBD
- Directors of NP
- Police and prosecutor's office with general competence for supervision of lawfulness

In cases of deterioration of a habitat in a protected site:

- MoEW
- EEA
- RIEW
- Directors of RBD
- Directors of NP
- Directors of State and Regional Forest Administrations
- Police and prosecutor's office with general competence for supervision of lawfulness

Although there seem to exist quite a number of specialized bodies, the questionnaire sent by Bulgarian experts highlights that after the implementation of the crimes against the environment following the dispositions of the Directive, Court practice and case-law have not been developed. Even before entry into the force of these amendments when similar crimes were defined by the Penal Code they were not prosecuted because of the complexity of the crimes and insufficient capacity of the prosecutor's office in the field of environmental crime – both in terms of specialized staff and experience with such cases. The same lack of practice could be observed in the work of judicature. Very limited court practice has been established in the past years on the full range of crimes defined by the Directive and only few court cases have been heard and very few sentences passed.

However, prosecutors have been trained within the project “Enhancing of the control and keeping the rules stipulated in the environmental law and risk management”, implemented by the Association of the Prosecutors in Bulgaria (<http://www.ecocrime.bg>).

**In Czech Republic** neither prosecution offices nor courts have specialized sections regarding environmental crimes. Generally there are no specialized sections focusing on certain kind of crime. Bodies active in criminal proceedings include the Court, the Prosecutor, the Investigator and the Police.

In the case of administrative offenses, the bodies of environmental protection are active, mostly Czech Environmental Inspectorate and the relevant local or regional municipal authority as well as the management of National parks and Protected Areas. Regulation of the powers and competences of individual bodies is highly fragmented in special laws governing the protection of the individual components of the environment.

**In Germany**, the prosecutor's offices of the Länder (regions) are responsible for the enforcement of criminal offences committed by natural persons (with some small exceptions bound to the federal authorities). As to legal persons, enforcement of infringements (not being criminal offences) should happen through local administrative bodies.

Because lack of capacities, one can assume that authorities don't make heavily use of the offences introduced through the Directive 2008/99/EC (though there have been some prosecutions especially related to the trade of certain species).

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**In Greece**, there are special stakeholders competent for the prosecution of the environmental crimes implemented with the EcoDirective.

- Environmental Inspectorate Special Unit (Article 9 Law n.2947/2001, Article 9 Law n. 4042/2012)
- Hellenic Police Environmental Protection Department (Article 16 par. c PD n. 42/2011)
- Prosecution - Environment District Attorney
- Preliminary Inquiry Officers (Justice of the Peace, Police Officers, Local Municipal Authorities) (Articles n. 33,243 of the Greek Criminal Procedure Code)
- Hellenic Data Protection Authority (Article 4 par. 1 Law n. 2225/1994 – Gazette n. 121/ volume A/20.07.1994)
- General Department of Forestry and Rural Affairs of each competent Decentralized Administration
- National Courts

**In Hungary**, the information available highlights the activity of the Police as the general investigatory authority on crimes against the environment

**Italy** has specific bodies and stakeholders involved in the investigation and prosecution of offences against the environment.

- Criminal Judiciary.
- Inspective powers are also entrusted, amongst others, to a wide plethora of bodies, including the Ministry of the Environment, National and Regional Environmental Protection Agencies, police forces (Carabinieri) and State Forestry Corps.
- Administrative sanctions related to IPPC are enforced by the prefect (local officer of the Ministry of Interiors) for installations under the State competence and by the local regional or provincial authorities in case of installations under the competence of the latter.

**In Lithuania**, the investigation and prosecution of environmental crimes is developed by Prosecutors and pre-trial investigation bodies (Police, State border guard service, customs, Special investigation service, Military police, Financial crime investigation service, Fire and rescue department, etc.).

In Lithuania there are no special investigation officers only for environmental cases. However it should be mentioned, that if the institutions, carrying out state environmental protection control (i.e. a number of institutions under the Ministry of Environment) in the course of their activities become aware of possible environmental crime, they are obliged by law to supply all the information to the prosecutors or pre-trial investigation bodies.

Competent bodies and agencies **in Luxembourg** for the prosecution of environmental crimes are:

- Police of Grand Duchy Ministry of Health.
- Administration of nature and forests.
- Police of the Grand Duchy
- Customs Administration

**In Malta**, bodies competent for the protection of the environment in general are the Malta Environment and Planning Authority, and the Ministry for Sustainable development, the environment and climate change

With regards to this Directive, the competent body for investigative aims is the Executive Police.

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**In Portugal,** the prosecution of environmental crimes is developed by the Public Prosecutor through criminal and/or administrative courts.

On the other side, NGOs can be part in the administrative courts. In the criminal courts NGOs can denounce and intervene but it depends on the intervention of the Public Prosecutor in prosecuting and taking the action to the end.

**In Netherlands,** the enforcement of environmental law is the responsibility of national, regional and local authorities.

However, the detection of environmental crimes under the Criminal Code and the Economic Offences Act is the responsibility of general investigative officers and special investigative officers.

The police department has dedicated officers working on environmental crimes. Police investigations of environmental offences are conducted under the authority of the National Public Prosecutor's Office for environmental crime that is responsible for tackling environmental offences. To that end, it exercises authority over the special investigation services of the Food and Consumer Product Safety Authority (NVWA) that has competence in relation to the enforcement of the Flora and Fauna Act and the Nature Conservation Act and the Human Environment and Transport Inspectorate (ILT) that has competence in relation to the enforcement of other environmental legislation.

There are also special investigative officers that have competences in relation to the enforcement of environmental legislation that operate under the authority of provinces and municipalities, as well as certain land management organizations. Environmental offences are brought before general criminal courts.

**In Spain,** national bodies and stakeholders competent for the investigation of environmental offences are:

- Specialised prosecutor for the prosecution of environmental crimes. This public prosecutor intervenes in cases involving offenses relating to land planning, protection of historical heritage, natural resources and the environment, the protection of flora, fauna and domestic animals, and forest fires;
- Ministry of Agriculture, Food and Environment (Ministerio de Agricultura, alimentación y medio ambiente, Magrama)
- The Regional Governments in 17 Spanish Region are competent for the prosecution of environmental crimes
- The SEPRONA (which belongs to the Guardia Civil) and the Forestry and Environmental officers have the mission to ensure compliance with the provisions tending to the conservation of nature and the environment, water resources and the wealth of species, fisheries, forestry and other related nature. Those enforcement officers are thus responsible for the protection of soil, water and atmosphere, animal health and conservation of flora and fauna. They also fights dumping and environmental pollution, illegal trade in protected species, hunting activities and illegal fishing, protection of natural spaces, prevention, research and firefighting.

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**In Sweden,** there are several bodies competent for the investigation of the crimes of the Directive: the Swedish Prosecution Authority, National Unit for Environmental and Work Environmental Cases, Swedish Environmental Protection Agency, County Administrations, Swedish Customs Agency, Swedish municipalities and County Administrations.

**In United Kingdom,** there are several bodies competent for the investigation of the crimes of the Directive. For instance:

- The Environment Agency and Local Authorities, in the case of Unlawful discharge of hazardous substances into water (Art. 3.a), Unlawful dumping of waste (3.b), Illegal shipment of waste (3.c), Unlawful operation of a plant (3.d), Unlawful discharge of radioactive substances (3.e),

- Police are main enforcers for Article 3(f), 3(g) killing/taking and trade offences, supported by a National Wildlife Crime Unit.

Natural England and other statutory nature conservation agencies elsewhere in the UK support in some cases for Article 3(f) offences. Natural England and other SNCOs enforce a majority of Article 3(f) habitat offences.

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## 7. Report on intentional and negligent offences

Article 3 of Directive 2009/99/EC establishes that Member States shall ensure that *the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence*. As a consequence all conducts described in art. 3 should be criminalised, when transposed into national legislation, both as an intentional conduct and as a negligent one, concurring, at least, serious negligence. The aim of this chapter is therefore to examine if Member states have complied with the European mandate.

In this case, information has been obtained both from the questionnaires obtained from national experts and which have been the basis for the most part of the research as well as from the reports published by the European Commission and available at [http://ec.europa.eu/justice/criminal/criminal-law-policy/environmental-protection/index\\_en.htm](http://ec.europa.eu/justice/criminal/criminal-law-policy/environmental-protection/index_en.htm).

### **Austria**

#### *Assessment (Milieu Report):*

Pursuant to the Austrian legislation, all conducts listed in the Directive are sanctioned if committed intentionally (§§ 180, 171, 177b, 181b, 181d, 181f, 181h, 177d). Additionally, most acts are sanctioned if committed with negligence (§§ 181 (impairment of environment), 172 (endangerment through nuclear material and ionising substances), 177c (unlawful handling of nuclear material, radioactive substances or ionising installations), 181c (shipment of waste), in order to constitute a criminal offence.

Only some offences need to be committed with serious negligence (§§ 181e (operation of a plant in a way which endangers the environment), 181g (damaging the stock of plants and animals), 181i (damaging the habitat in protected sites), 177e (handling of ozone-depleting substances) StGB and § 7(5) ArthG with regard to the commerce with protected species).

Criminal offences are sanctioned with fines or imprisonment.

### **Belgium**

#### *Assessment (Milieu Report):*

As regards the federal legislation implementing/transposing the Directive, it is general criminal law that takes care of this aspect (cfr. the ToC of the Flemish Region). Since the XIXth century the Belgian Supreme Court has upheld adamantly the requirement of an intentional element (guilt) in order to conclude to an offence that can be punished by criminal law. The basic form of intent/guilt, *dolus generalis*, is most often depicted as the requirement to have acted knowingly and willingly, meaning

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more precisely that one committed the illegal conduct as such knowingly and willingly; it isn't required to have, on the more, been knowing and willing the illegal character of the conduct. Additionally, the absence of guilt can be accepted by the criminal courts in very few hypotheses, labelled as 'grounds of exclusion of guilt': irresistible constraint, and insurmountable erring or ignorance.

As backed by the grounds of exclusion of guilt, the Supreme Court requirement of *dolus generalis* makes that the requirement of the Directive that 'unlawful' behaviour should be punishable whenever committed 'intentionally' or 'at least with serious negligence' is undoubtedly met.

## **Bulgaria**

*From National experts Questionnaires*

Bulgarian legislation observes negligent conduct as punishable. No distinction between the seriousness of the negligence.

## **Czech Republic**

*From National experts Questionnaires*

Czech Republic observes negligent conducts as punishable when negligence is gross or serious.

## **Croatia**

*Assessment (Milieu Report):*

Articles 27-29 regulate punishability for intentional and negligent conduct. Thus, only the intentional perpetration of a criminal offence is punishable, unless a statute expressly provides punishment for negligent conduct as well. A criminal offence may be committed with direct (*dolus directus*) or indirect intent (*dolus eventualis*) or by advertent or inadvertent.

## **Cyprus**

*Assessment (Milieu Report):*

Cyprus did not transpose Directive 2008/99/EC within the Criminal code. Instead, Law 22(I)/2012 implemented the Directive in Cyprus. It covers all offences while its Annex provides a list of the relevant legislation, the infringement of which constitutes an unlawful conduct in accordance with the Directive.

Article 4(1) which transposes Article 3 of the Directive covers, similarly to the Directive, intention and gross negligence.

## **Denmark**

*Assessment (Milieu Report):*

Intention and negligence Criminal offences are sanctioned with fines or imprisonment. Pursuant to the Danish environmental criminal law, in many cases, it is sufficient that the act is committed with simple negligence in order to constitute a criminal offence for which the sanction would be a fine.

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Where the offence is committed intentionally or through gross negligence and where the offence :

- 1) damaged or gave rise to the risk of damage any of the interests that EPA or sectoral legislation intend to protect, or
- 2) resulted in actual or intended economic advantages for the person in question or for others, including through savings, the sanction may be imprisonment up to two years under the environment legislation. The term of imprisonment under the Criminal Code is up to six years for serious environmental offences (Section 196). It is a condition for applying Section 196 of the Criminal Code that the act is committed intentionally.

## **Estonia**

*Assessment (Milieu Report):*

The Estonian penal law does not distinguish between negligence and serious negligence. Under the Penal Code negligence is recklessness or carelessness. According to the Explanatory note to Penal Code the Directive's serious negligence should equate to negligence under Estonian penal law.

## **Finland**

*Assessment (Milieu Report):*

Chapters 34, 44 and 48 of the Penal Code use the term "intentionally or with gross negligence" and the rulings apply to "violations" of existing material laws and orders.

## **Germany**

*From National experts Questionnaires*

Germany punishes the offences contained in article 3 when committed with negligence.

## **Greece**

*Assessment (Milieu Report):*

Pursuant to the Greek legislation, in all cases, the act needs to be committed intentionally in order to constitute a criminal offence. Offences committed by negligence have to be explicitly mentioned (as in Article 28 of Law 1650/1986) and are punished through a reduced sentence, while offences committed intentionally, in specific cases (for example, economic or other benefit) can constitute aggravating circumstances, punished with even stricter sanctions. (See Article 7 of Law 4042/2012, amending Article 28 of Law 1650/1986 and transposing the provisions of Article 3 of the present Directive).

## **Hungary**

*From National experts Questionnaires*

Hungary has incriminated the environmental crimes of the Directive when committed with negligence.

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## **Ireland**

### *Assessment (Milieu Report):*

The review of the key transposing provisions has not identified any instances where the form of words used to create the criminal offence does not amount to an adequate transposition of the unlawful requirement. All of the criminal offences in the key transposing provisions are strict liability offences.

Therefore, it is only necessary to prove the commission (or omission) of the physical act, not the state of mind of the accused. In this regard, Ireland's transposition of the Directive is stricter.

## **Italy**

### *Assessment (Milieu Report):*

Almost all of the offences provided by the Italian legal system which cover the offences provided in the Directive (i.e. apart from the one contained in Art. 260 of D. Lgs. n. 152/2006) are structured as 'contravvenzioni', i.e. misdemeanours.

This means that the conducts contained in those provisions are, per se, unlawful and hence punishable and may also be punished when committed with mere negligence ('colpa'). In other words, for liability to arise, it is not necessary to prove intention or serious negligence, but an assessment of mere negligence will suffice. In this sense, the transposing legislation sets an even broader standard than that required by the Directive.

## **Latvia**

### *Assessment (Milieu Report):*

Under Latvian criminal law, only a person who is guilty of committing a criminal offence, that is, one who deliberately (intentionally) or through negligence has committed an offence which is set out in the Criminal Law and which has all the constituent elements of a criminal offence, may be held criminally liable and punished (Article 1(1) CL). In addition, only a person who has committed a criminal offence deliberately (intentionally) or through negligence may be found guilty of it (Art. 8(1) CL).

There are two types of negligence. The first one is criminal self-reliance, which means that the person who committed a criminal offence foresaw the possibility that the consequences of his or her act or failure to act would result in a criminal offence and nevertheless carelessly relied on these being prevented. The second type of negligence is criminal neglect, where the person did not foresee the possibility that such consequences would result from his or her act or omission, although according to the actual circumstances of the offence he or she should and could have foreseen such consequences (Art. 10(1) CL).

## **Lithuania**

### *Assessment (Milieu Report):*

Under Article 11(2) of the Criminal Code, the act or omission needs to be committed with negligence or intentionally in order to constitute a criminal offence. There is a differentiation between intention



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and negligence in the classification of crimes. Crimes committed intentionally are classified into minor, less serious, serious and very serious crimes; while crimes committed with negligence are not classified in groups. Crimes committed intentionally are considered as more socially dangerous. The Criminal Code establishes more stringent sanctions for crimes committed intentionally than for crimes committed with negligence.

## **Luxembourg**

### *Assessment (Milieu Report):*

Criminal sanctions set for the infringement of the transposing legislation of the EU acts listed in Annexes A and B to Directive 2008/99/EC are imposed on offenders if they committed this infringement intentionally or with negligence. These criteria are not defined as such in the Criminal Code but they were developed by the case law of the Superior Court of Justice (See National Report for further explanation). To note that the transposing legislation of Directive 2008/68/EC on the inland transport of dangerous goods does not set sanctions neither refer to sanctions in other legal texts in case of infringement of its provisions

## **Malta**

### *Assessment (Milieu Report):*

The drafters of Chapter 522 refer to criminal liability if the same offences are the result of “imprudence” or “negligence” in article 4 which makes a cross reference to 3 and therefore includes all the offences that literally transpose the corresponding article 3 of the directive. The transposing provisions under Maltese law go beyond the minimum required by the Directive which refers to “with at least serious negligence”. The corresponding provision under Maltese law namely article 4 includes also “imprudence” and does not qualify negligence hence it is more stringent than the directive’s equivalent which mentions “or with at least serious negligence”

## **Netherlands**

### *Assessment (Milieu Report):*

Under the Penal Code, separate clauses exist for conducts committed ‘intentionally’ and with fault (simple negligence) (such as Art 173(a) vs. 173(b) of the Penal Code).

Under the Act on Economic Offences, the economic offences listed under Art 1a (1) and (2) that are committed ‘intentionally’ are considered a felony. In the absence of intent, they are misdemeanors (Art 2 AEO). Only simple negligence is required, which is a lower legal threshold than ‘serious negligence’, and therefore the Dutch criminal codes exceed the requirements of the Directive in this respect.

In its listing of all environmental offences, the Law of Economic Offences has three subcategories (1a (1), 1a(2) and 1a(3)). According to its Art 2, the first and second subcategories are felonies when committed intentionally; otherwise they are misdemeanours. Offences in the third category are misdemeanours or each of these three sub-categories, the Act determines the maximum sanction.

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## **Poland**

### *Assessment (Milieu Report):*

Art. 9 of the PC states in § 1 that: "A prohibited act is committed with intent when the perpetrator has the will to commit it, that is when he is willing to commit or foreseeing the possibility of perpetrating it, he accepts it" (intent).

According to Art. 9 § 2, a prohibited act is committed without intent (unintentionally) when the perpetrator, not having the intent to commit it, nevertheless does so because:

- he is not careful in the manner required under the circumstances, although he has foreseen the possibility of committing a prohibited act (serious negligence)
- he is not careful in the manner required under the circumstances, although he could have foreseen the possibility of committing a prohibited act (recklessness).

The above general rules apply not only to offences foreseen by the PC but also to the offences foreseen by other Acts.

## **Portugal**

### *Assessment (Milieu Report):*

Pursuant to the Portuguese criminal system, the conduct needs to be committed intentionally or with negligence, whenever that is specially foreseen in the law, in order to constitute a criminal offence (Article 13 of CP). Criminal offences are sanctioned with terms of imprisonment or fines.

The conducts mentioned in Articles 278, 279 and 279-A are unlawful when committed with intent or negligence. Pursuant to Articles 14 and 15 of the CP the Portuguese criminal system distinguishes three levels of intention (malice in fact, malice without heed to the consequences and malice in law) and two levels of negligence (gross and simple also known as conscious and unconscious) but negligence conducts punished by Law 56/2011 can be of the two types:

- Article 280 (Pollution with common danger) expressly distinguishes between two different scenarios: a conduct and creation of danger both with intent and a conduct committed with intent but when the danger was created with negligence.
- Articles 278, 279 and 279-A do not make such distinctions: the sanctions are set as a period (for example up to one year), so the distinction between those levels intent and negligence is relevant only to the judge for the duration of the sanction (Article 71(2)(b) of CP).

## **Slovakia**

### *Assessment (Milieu Report):*

According to Article 17 of the Criminal Code, criminal liability is recognised only in case the offence has been committed intentionally, unless the Criminal Code expressly indicates that it is sufficient to cause the offence by negligence. According to Article 16 of the Criminal Code, the criminal offence may be caused by conscious or unconscious negligence.

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## **Slovenia**

### *Assessment (Milieu Report):*

Article 3 is transposed within the Criminal Code KZ-1 in an almost literal way. When transposing Article 3 of the Directive, the KZ-1 uses the same approach as the Directive in Article 3: it does not spell out all elements of particular criminal offence but refers to other legal acts where particular infringements are prescribed. The wording is a bit different though: the Directive states that the conduct constitutes a crime “when unlawful”, whereas the KZ-1 states that the conduct constitutes a crime “when in breach of regulations”. The meaning and effect of KZ-1 approach is the same as that of the Directive. KZ-1 criminalises both the intentional crimes and those committed by negligence – see e.g. Article 332(4) of KZ-1 below and the sanctions in Table II.

## **Spain**

### *From National experts Questionnaires*

Environmental crimes included in the Spanish Criminal Code are punishable both when committed intentionally and with negligence. Recent reforms introduced in the Criminal Code in 2015 have ameliorated the regulation of negligence in environmental crimes including such conducts when committed against flora and fauna. However, as stated in the experts’ questionnaire, art. 348.1 CC relating to art. 3.i) of the Directive does not regulate how the action committed by gross negligence will be punished.

## **Sweden**

### *From National experts Questionnaires*

Environmental crimes included in Swedish legislation are punishable when committed intentionally and with negligence

## **United Kingdom**

### *Assessment (Milieu Report):*

The courts have taken a broad approach to the question of whether a person ‘caused’ a certain act, as a result of which there is no need to show that a person knew about the activity or intended it. If the pollution is due to a chain of events, a person may be regarded as having caused it even if someone else’s actions immediately triggered the end result. However, for someone to have knowingly permitted a certain activity, a person (or company) must know about it, and can therefore include cases where a person is aware of a polluting incident but failed to take steps to stop the pollution.

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## 8. Chart - Identified gaps (see annex)

### Conclusions

1. Part I shows a high level of compliance with the main goal of the Directive: the use of criminal law to enforce legislation implementing environmental directives. Member States use criminal (or quasi-criminal) sanctions to punish the conducts described in article 3 of the Directive. Only very few exceptions can be observed to this rule.
2. The Directive underlines that penalties have to be effective, dissuasive and proportionate. Although it is commonly believed that only criminal law has a sufficiently deterrent effect, merely from the statutory provision of criminal sanctions in national legislations, it cannot be inferred that such an effect is being achieved. Enforcement and specific criminology research should be promoted in this field.
3. As is well known, the Directive does not establish a framework of maximum and minimum penalties. This circumstance has led to significant disparities both in typology and severity of the sanctions. This might be regarded as a lack of proportionality when comparing Member States. However, this is a problem that exceeds this concrete Directive. It refers to the unresolved legal and political issue of the approximation of criminal penalties across the UE. Even being undoubtable that such a framework would have facilitated a truly approximation of sanctions, it is important to recall that principle of proportionality must first operate within each national criminal system.
4. Regarding the typology of sanctions, six options have been identified in the national legislations: 1) Only imprisonment; 2) Imprisonment and fine; 3) Imprisonment or fine; 4) Imprisonment and/or fine; 5) Imprisonment or and fine; 6) Only (criminal) fine.
5. Options number 1), 2) and 6) leave less discretion to the judiciary while options 3), 4) and 5) imply, to some extent, a higher degree of flexibility. Even though flexibility can be considered as a source of disparity in the practical application of the Directive, the possibility of establishing a single penalty for an offence or a combination of them must be regarded as unavoidable, even positive, due to: 1) the number of vague terms included in the definition of the offences; 2) the need to distinguish cases in which a harm to the environment has been caused from cases resulting in a threat of harm to the environment; and 3) the need to punish differently depending on the values involved (environment, human health and human life).

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6. The quantitative analysis shows that in national legislations the use of imprisonment (as a single penalty or as a cumulative sanction along with fine) is higher for offences described in article 3 a) to e). The use of imprisonment as alternative to fine significantly increases for offences f) to h) – flora and fauna – and offence i) – ozone-depleting substances –.
  7. Regarding severity, as stressed above, this study faces important limitations since a conclusive analysis should take into consideration the whole criminal system of each Member State. Therefore, the analysis focuses on maximum imprisonment penalties imposed by Member States for each offence when committed intentionally. Disparities shown in graphs are significant but they have to be read as merely indicative of the existence of differences across the EU. Maximum penalties are not fully comparable from national reports as aggravating factors and other sentencing rules are not always described. For instance, Member States describing the penalty that applies when the offence has been committed by organized crime or when the death of any person has been caused, can appear as much more severe than other Member States that do not reflect these circumstances when describing the offences, even though the same circumstances might exist in their criminal legislation resulting in a more severe punishment.
  8. On the other hand, as Member States can introduce more stringent measures than those described in the Directive, disparities in maximum penalties within the EU cannot be considered necessarily as an infringement of the Directive.
  9. For this reason, in terms of evaluation of disparities greater interest has the analysis of the lowest maximum penalties. By lowest maximum penalties is meant those maximum penalties below the maximum penalty most used by Member States for each offence. The analysis shows that Luxembourg, Estonia, Denmark and Austria are the Member States that can be found more times in that group. This suggests that those Member States should be analysed more closely, in order to determine whether the criminal penalties they use are effective, dissuasive and proportionate in their national criminal systems.
  10. Comparing the maximum and minimum fines described in the national reports for the infringement of the Directive is a hardly achievable task due to the existence of different systems and criteria within the EU to determine the fine amount. The European Commission should ask Member States to indicate in Euros the maximum and minimum fine applicable to each offence, once applied the national rules to determine its amount.
  11. Part II shows that determining the real impact of the Directive in Member States is still a pending issue. Since the Directive has only recently been implemented in most Member States, there is still little Court practice and no sufficient case law to draw conclusions on the practical impact of the new regulation on environmental crimes. Along with the novelty of this legislation, the inherent complexity of environmental crimes and the insufficient capacity of stakeholders and courts to prosecute and punish such conducts make difficult to assess the results of the new legislation.

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12. However there are several elements which show a change towards a greater public awareness on environmental issues and the prosecution of environmental crimes. Firstly, even in those Member states where offences against the environment were already available previous to the approval of the Directive 2008/99/EC, the Directive has boosted the national legislation towards a more complete approach. Most Member States analysed consider that their inner legislation is now harmonised with the Directive. Secondly, many Member States have developed strategies to train staff for the prosecution of environmental crimes. Some Member States have indicated that, recently, training courses have been developed, professional networks have been set up and special agencies have been created to enhance the prosecution of environmental offences. However, the questionnaires analysed show a lack of investigative tools and serious difficulties for police officers, inspectors, prosecutors and other agencies to collect the evidence required to prosecute these crimes.
13. Regarding illegal killing and taking of birds, which the Directive criminalises in art. 3.f), it can be stated that none of the Member states included in our analysis has developed a legal definition of the terms “illegal killing” or “illegal taking” of birds. However, it is important to take into account that all of them have included negligence in the definition of the criminal offence, which is an important effect of the passing of the Directive. Most Member States describe in their national legislation illegal methods of taking or killing of birds. In some cases such regulations are extremely detailed. Besides, all Member States have created a list of protected species in accordance to art. 2.b of the Directive. However not all Member States have specific legislation for the protection of migratory species, which is an issue that should be revised.
14. Regarding intentional poisoning of wildlife, it is important to note that most Member states observe this conduct as a criminal offence and punish with criminal sanctions the illegal use of poison or the use of poisoned baits. However a definition of poison is normally not contained in the criminal legislation but in other government regulations or ministerial ordinances. Although most Member states have introduced a difference between intentional and negligent poisoning, there are still some Member States where only intentional poisoning is relevant. Taking into account the difficulty to investigate conducts of poisoning, it seems urgent that Member states create investigative tools and make them available to all stakeholders as well as specific protocols for law enforcement officials on the collection of evidence. Finally, considering precautionary and restorative measures undertaken in cases of poisoning, all Member states should implement the measure involving the withdrawal of the hunting license and should also explore the creation of other measures such as the ban on receiving grants and subsidies or the obligation to undertake community work which currently is only available in few countries.
15. Regarding the conduct of habitat destruction, it seems that the Habitats Directive and the Birds Directive have played an important role in the incorporation of the protection of habitats in the national legislations. However, even if most Member states have incorporated the concepts of ‘protected site’, ‘disturbance’ or ‘deterioration of a habitat’ in their regulation, there seems to lack proper procedures to quantify the severity of impact on habitats. Finally, it is important to note that the negligent destruction of habitats is criminalised in most Member States included in the research.

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## Recommendations

The study carried out focuses on the implementation of Directive 2008/99/EC on the protection of the environment through Criminal Law. Implementation must be understood both as the formal transposition into national law and as the effective achievement of its goals. Proposals and recommendations should therefore target the improvement of this particular Directive. Given that the Directive is still at an early stage of implementation to be fully evaluated, recommendations will focus on the next steps to be taken. Nevertheless, since the Directive should be considered as a piece of a broader strategy for combatting environmental crimes, the authors will take this opportunity to show full adherence to the recommendations drawn by some organizations at international and European level.

### **A) Recommendations concerning the implementation of the Directive 2008/99/CE:**

- **In relation to its formal transposition:**

#### 1. Taking further actions on the transposition infringements

It is well known that the transposition of the Directive into national law has been complex. As it was set out by the European Commission representatives during the EUFJE Annual Conference (30-31 October 2015, Bolzano) “23 Member States were requested on implementation of the Environmental Crime Directive through EU Pilots”.

From the comparative analysis presented in this report, it can be stated a high level of compliance with the overall goal of the Directive, which is the use of criminal sanctions to enforce legislation implementing environmental directives. However, gaps are still identified and must be addressed by using the EU law available tools.

- **In relation to the achievement of its goals:**

The Directive imposes the obligation to punish the environmental crimes described in article 3 with effective, dissuasive and proportionate criminal sanctions.

As stressed in this study but also as it has been highlighted by experts in other forums, it is still too early to evaluate whether the sanctions provided by Member States accomplish this goal. It is however important to emphasize that it is not only a matter of time but also of resources. Therefore, recommendations concerning this point are:

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## 2. Investing resources on the study of the effectiveness of the sanctions

Criminological research is required on the application of the Directive. Data shall be collected and carefully analysed by criminologists and criminal lawyers within each Member State. Such a research shall be aimed at reaching conclusions on a wide range of issues concerning effectiveness, like the specific and generic deterrence created, the improvement of the compliance with EU environmental regulations, the technical reasons that may lead to an acquittal or the level of restoration of harm achieved with the existing measures and remedies. In doing so, it is important to take into consideration all the measures that can be taken in a Member State, beyond criminal penalties. Only then, recommendations on the improvement of the Directive could be made. Therefore, the EU should require Member States to make available criminal statistics and any other relevant data to this purpose.

## 3. Investing resources on the study of the dissuasiveness of the sanctions

In this field, criminological and interdisciplinary research shall be aimed at analysing issues like the profile of perpetrator, the cost-benefit analysis in which perpetrators may engage when deciding to commit the crime and their connection with organized crime. Regional and international organizations have already warned about all these topics and have shown the way to follow. At European level, it is time to take it as a priority and carry out the kind of legal scientific research that can lead to improvements in legislation and its enforcement. Since an applied qualitative research shall depend on a quantitative analysis, data collection is again a key point.

## 4. Investing resources on the study of the proportionality of the sanctions

As indicated in the conclusions of this report, significant disparities both in typology and severity of the sanctions provided as a result of the Directive can be observed across the UE. However, this cannot necessarily lead to the conclusion that minimum penalties shall be imposed to Member States. This is still an open debate both at academic and political level that requires further research. It is generally accepted that the principle of proportionality must first operate within each national criminal system and that the approximation of sanctions faces multiple legal challenges and political problems.

## **B) Recommendations concerning the fight against Environmental Crimes:**

Although the study undertaken here is focused on the Directive 2008/99/CE, the authors want to take this opportunity to stress the importance to frame it in the overall international fight against environmental crimes. Given the reasons already stated, research-based recommendations for the improvement of this particular Directive still need time and resources, but this does not mean that nothing can be done at the European level in the meanwhile.

For this reason, the authors want to adhere to the recommendations drawn by organizations like UNEP, UNODC, INTERPOL, the World Bank, The Global Initiative Against Transnational Organized Crime and, more recently, EFFACE (European Union Action to Fight Environmental Crime) in the following documents:

- INTERPOL & The World Bank (2009) *The Chainsaw Report* ;
- United Nations Office on Drugs and Crime - UNODC (2012), *Wildlife and Forest Crime Analytic Toolkit*;
- The World Bank (2012) *Justice for Forests*;



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- The Global Initiative Against Organized Crime (2014) *The Global Response to Transnational Organized Environmental Crime*;
  - United Nations Environmental Programme -UNEP & INTERPOL (2014) *The Environmental Crime Crisis*;
  - European Union Action to Fight Environmental Crime - EFFACE (2016) *Conclusions and recommendations*

There is a wide consensus among these organizations on the need of an international approach to environmental crime due to its global environmental, social, political and economic impact as well as, in many cases, its direct or indirect connection to transnational organized crime and corruption. A response which tackles both the environmental offences and the so-called associated offences (such as money-laundering, tax evasion or corruption) urges the international community to take coordinated action. The European Union shall identify how the criminal chain operates for each environmental crime and clearly define its role in the prevention and enforcement of transnational environmental crimes.

According to the documents cited, recommendations aimed at taking a truly and effective transnational approach to the fight of environmental crimes include, among other actions:

1. Raise public awareness in the global impact of environmental crimes by designing specific campaigns and supporting civil society actors who are already playing an important role in this field;
2. Consider all applicable offenses;
3. Promote effective sanctions, including civil and administrative sanctions (also fines);
4. Analyse more closely the criminal economy chain;
5. Make illegal trafficking harder to commit by improving international cooperation;
6. Reduce criminal incentives by targeting, following, and reducing profit, including confiscation and forfeiture;
7. Strengthen institutional, legal and regulatory systems to address corruption;
8. Improve specific and generic deterrence by increasing the visibility of law enforcement;
9. Ensure that law is enforceable by improving education and awareness of policy makers and utilising law enforcement experts in policy drafting;
10. Invest in capacity building and technological support to national environment, wildlife and law enforcement agencies;
11. Create specialised courts and prosecutors for environmental crime;

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12. Strength support to INTERPOL, UNODC, WCO and CITES to enable them to support member states and other relevant stakeholders to further identify develop and implement the most appropriate responses to environmental crime;
  13. Regarding specifically the EU, enhance the role of Eurojust, Environmental Enforcement Networks and the European Public Prosecutor's Office, and stimulate networking at the domestic level;
  14. Stimulate the role of NGOs in monitoring enforcement and compliance and reporting environmental crime.

## 8.1. Charts

## Identified gaps (questionnaires)

Article 3 Ar Offences Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious article 3 -negligence:	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY
(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	<p>There are some problems as to how the crime is defined and could be implemented by the enforcement bodies and the court:</p> <p>a) The scope of environmental media is defined in more detail: soil, air, water streams and basins, underground waters, sea waters.</p> <p>b) The Penal Code does not stipulate ionising radiation or radiation as causing or likely to cause death.</p> <p>c) The Penal Code does not define the means of causing or likely to cause death, and instead of 'discharge, emission or introduction of materials' uses the term 'polluting.</p> <p>d) The Penal Code is stipulating the criminal damage or result broader by defining substantial damage to soil, air and water as making them no good to use for 'cultural, living, agriculture and other economic objectives' which makes the rule more stringent than the requirement of the Directive.</p>	<p>All the offences listed in the Art. 3 of the Eco-crime Directive are criminal offences in the Czech Republic, but these are not exactly the same offences as in the Eco-crime Directive. As a result of this the Czech legislation is not consistent with the Eco-crime Directive. It doesn't mean that the conduct of the perpetrator remains unpunished, however the perpetrator is mostly punished with an administrative sanction rather than with a criminal sanction.</p>		Verbatim transposition of the original text of the Directive.	<p>There is no direct reference in the Art. 241 of the Criminal Code to the damage causing death or serious injury to natural persons just to the damage caused to living resources in general. There is no direct reference in the Art. 241 of the Criminal Code to the damage causing death or serious injury to natural persons just to the damage caused to living resources in general. This however should not be interpreted as a gap in every cases, since other general rules of the Criminal Code might be available here.</p>

Article 3 Ar Offences Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious article 3 –negligence:	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY
(b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare 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>The approach of the Bulgarian legislator in the Penal Code is more general in defining the details of the criminal act. The act is “managing waste” and does not list all the means of waste management as the Directive does. Also the Code is more stringent than the Directive because even the likelihood of damage to the health without qualifying it as likely to cause serious injury is a criminal act as well the acts causing insignificant (not substantial) damages to the environment. The implementation requires a high level of expertise and understanding of rather technical issues, such as the different categories of waste, its composition and its definitions. This expertise is not yet sufficiently developed in Bulgaria.</p> <p>Not many court cases which could establish consistent court practice.</p>				<p>There is no such criminal offence that punishes the death or serious injury and substantial damage caused exclusively with waste management. However more general criminal offences (see: Damaging the environment) can be applied to such cases.</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 (1) and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;	<p>Correct legal implementation due to insufficient court and administrative practice. Problems with the coordination of different enforcement bodies and difficulties in collection of evidences</p>				

<p><b>Article 3 Ar Offences</b> Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious article 3 -negligence:</p>	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY
<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>The scope of Art.353 is limited compared to the provision of the Directive – not every plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used, is taken into consideration. Also the subject of the crime is special – only an official. The Penal Code should be amended to transpose in full the requirements of the Directive.</p>			<p>Verbatim transposition of the original text of the Directive</p>	<p>There is no such implemented specific criminal offence which punishes exclusively the crimes committed with the operation of a plant apart from the illegal operation of a nuclear installation.</p> <p>However more general criminal offences like professional misconduct or damaging the environment can be applied to such cases.</p> <p>The official argumentation of the Criminal Code states that the terms of dangerous activity and dangerous substance set forth in Art 3. d) of the Directive are not clear and exact therefore their implementation would have caused legal uncertainties.</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>The Directive's requirements are not fully transposed in the Penal Code because in case of damage to a nuclear material, a nuclear installation or another source of ionising radiation caused by negligence there is no sanction for damages to the environment but only to the property, health and human life (Art.356 g). The same applies to violation of rules for the nuclear or radiation safety where damages to environment by negligence are not sanctioned. (Art. 356i)</p>			<p>Verbatim transposition of the original text of the Directive</p>	

<p>Article 3 Ar Offences Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious article 3 -negligence:</p>	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY
(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>Lack of knowledge on the wild flora and fauna in the enforcement bodies like police.</p> <p>Coordination between the enforcement bodies.</p> <p>Not enough court cases to establish consistent court practice.</p>		<p>An infringement procedure should still be ongoing because of the missing implementation of at least some offences related to invasive species, but the European Commission already declared that it will accept the legal proposal Germany is working on.</p> <p>Furthermore, there could be a gap as to the offences related to the species protection of the Birds and Habitats Directives as certain practices of agriculture qua legal definition are not to be seen as breach of the species provisions hence there cannot be any criminal offence (see § 44 para 4 BNatSchG).</p>	Verbatim transposition of the original text of the Directive	
(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>Lack of knowledge on wild flora and fauna in the enforcement bodies like the police.</p> <p>Coordination between the enforcement bodies might be a problem in more complex cases.</p> <p>Not many court cases to establish consistent court practice</p>		<p>An infringement procedure should still be ongoing because of the missing implementation of at least some offences related to invasive species, but the European Commission already declared that it will accept the legal proposal Germany is working on.</p> <p>Furthermore, there could be a gap as to the offences related to the species protection of the Birds and Habitats Directives as certain practices of agriculture qua legal definition are not to be seen as breach of the species provisions hence there cannot be any criminal offence (see § 44 para 4 BNatSchG).</p>	Verbatim transposition of the original text of the Directive	

<p>Article 3 Ar Offences Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious article 3 -negligence:</p>	BULGARIA	CZECH REPUBLIC	GERMANY	GREECE	HUNGARY
<p>(h) any conduct which causes the significant deterioration of a habitat within a protected site;</p>	<p>Lack of knowledge on the wild flora and fauna in the enforcement bodies like the police.</p> <p>Coordination between the enforcement bodies might be a problem in more complex cases.</p> <p>Not many court cases to establish consistent court practice.</p> <p>The court in the few decided cases tends to release the perpetrator of criminal responsibility thus downsizing the value of the damages to the environment and social dangerousness of the act</p>			<p>Verbatim transposition of the original text of the Directive</p>	
<p>(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.</p>	<p>The Bulgarian law might be considered even more stringent than the requirements of the Directive because of the way the term "placing on the market" is transposed into the Code with a meaning which could be interpreted more broadly as even disseminating, giving, handing to someone for free though this is a highly unlikely case.</p> <p>Correct legal implementation is a problem because the court has decided very few cases and in its sentences tends to release the perpetrator of criminal responsibility and replacing it with administrative sanctions thus downsizing the value of the damages to the environment and social dangerousness of the act.</p>			<p>Verbatim transposition of the original text of the Directive</p>	

## 8.2. Charts

### Identified gaps (questionnaires)

<p><b>Article 3 - Offences</b> Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:</p>	ITALY	LITHUANIA	LUXEMBURG	MALTA	NETHERLANDS
<p>(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</p>	<p>a) The definition of "environmental pollution" is somewhat unclear: no reference is made to art. 300 of the Legislative Decree No. 152/2006 (the so called "Environmental Code"), which defines "environmental damage" as any significant and measurable deterioration, direct or indirect, of the soil, species and natural habitats as well as internal, coastal and territorial waters. Therefore, it is necessary to wait for further clarifications from the case law on this issue.</p> <p>b) The difficulties of proof, given that the event must be a direct consequence of the conduct of the responsible individual.</p> <p>c) The concept of "illegal conduct" which is necessary in order to ground a conviction. This condition has generated a heated debate, given that some commentators have stated that it is too vague, whereas general principles of criminal law require that the conduct necessary to ground the crimes must be precisely indicated.</p> <p>d) With regard to art 452-bis of the Criminal Code, providing the crime of environmental pollution, the concepts of "ecosystem", "biodiversity", "extensive or significant portions of the soil and subsoil", are not defined, and this could generate some difficulties in the practical application of this new provision.</p>	<p>Too general provisions of CC. No special provisions for pollution in it.</p>	<p>The Regulation does not provide any specific sanction regarding Article 3 a). It has not been transposed with the wording of Article 3 a).</p>	<p>No information can be given on this point as there is no case law and no issues have been brought forward under this Directive to date.</p>	



<p><b>Article 3 – Offences</b> Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:</p>	<p>ITALY</p>	<p>LITHUANIA</p>	<p>LUXEMBURG</p>	<p>MALTA</p>	<p>NETHERLANDS</p>
<p>(b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare 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>Possible criticalities with respect to the “polluter pays” principle established by EU legislation and case law could emerge in the application of the new crime under art. 452-terdecies of the Italian Criminal code, which seems to apply also to the innocent landowner/persons not involved in the pollution.</p>	<p>Too general provisions of CC. No special provisions for pollution, violations of waste management rules (the only special provision – concerning waste shipment) in it.</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 (1) 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>The wording of Article 259 has not been modified following the repeal of EEC Regulation n. 259/1999 by EC Regulation n. 1013/2006. In any case, this seem to be more of a formality, rather than a substantial gap. In this regard, case law has confirmed that reference must be made to EC Regulation n. 1013/2006 in order to ground the crime envisaged in art. 259 of the Environmental Code (Supreme Criminal Court, Judgement No. 8153 of 30 January 2015).</p>				

<p><b>Article 3 – Offences</b> Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:</p>	ITALY	LITHUANIA	LUXEMBURG	MALTA	NETHERLANDS
<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>The main gap in implementation of Directive 2008/99/EC is that for breaches of the IPPC rules and regulations or of the prevention of major accidents (Legislative Decree No. 105 of 26 June 2015), – and therefore installations which generally have a significant impact on the environment – no specific liability of legal persons has been established. However, following adoption of Law No. 68/2015, should the plant cause death or serious injury to any person or a substantive damage to the environment, the crimes of environmental pollution and environmental disaster are likely to apply (see first part of this chart where the implementation of Article 3.a) of the Directive is addressed). The same considerations are applicable to the substantial lack of liability of legal persons with regard to the breaches envisaged by art. 279 of the Environmental Code for installations out of the scope of the IPPC rules and regulations</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>The Regulation does not provide any specific sanction regarding Article 3 e). It has not been transposed with the wording of Article 3 e).</p>		

<b>Article 3 – Offences</b> Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:	ITALY	LITHUANIA	LUXEMBURG	MALTA	NETHERLANDS
(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	The scope of application of art. 727-bis of the Italian Criminal Code seems to be very limited and it provides an inadequate punishment for the protection of species. In particular to negligent killing of animals out of hunting activities. It covers the killing of a significant number of exemplars of protected species, with negligence and not during the hunting activity. Therefore, this new crime does not seem to reinforce the protection of the animals, as required by Directive 2008/99/EC. Moreover, the sanctions envisaged by Art. 727-bis do not seem sufficiently dissuasive.				
(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;					
(h) any conduct which causes the significant deterioration of a habitat within a protected site;	The lack of the reserve clause (which is present in art. 727-bis) could pose coordination issues with other crimes punished with more serious sanctions such as environmental pollution and environmental disaster (that are however aggravated if protected areas are involved).				Penalties for the listed offences are rather low. The maximum penalties will remain at the same level under the new Nature Conservation Act that will replace the current Act in 2016.

<p><b>Article 3 - Offences</b> Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:</p>	ITALY	LITHUANIA	LUXEMBURG	MALTA	NETHERLANDS
<p>(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.</p>	<p>Please note that Legislative Decree n. 231/2001 does not include sanctions for legal entities related to the more specific crimes provided by Legislative Decree n. 108/2013 with regard to the violations of the Regulation n. 1005/2009</p>				

## 8.3. Charts

### Identified gaps (questionnaires)

<p><b>Article 3 - Offences</b></p> <p>Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:</p>	<p><b>PORTUGAL</b></p>	<p><b>SPAIN</b></p>	<p><b>UNITED KINGDOM</b></p>
<p>(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</p>			<p>Given limited regulator resources, effective enforcement can be an issue. See for example a recent article (attached) on a category 2 incident with significant fish mortality and breach of legislation, but offender simply received warning letter.</p>
<p>(b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare 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>Particularly in the context of fly-tipping, identification of the offender can cause practical difficulties, particularly given constrained resources of the regulator.</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 (1) 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>Again, detection of this offence is a significant constraint to effective implementation</p>

<p><b>Article 3 – Offences</b></p> <p>Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:</p>	<p><b>PORTUGAL</b></p>	<p><b>SPAIN</b></p>	<p><b>UNITED KINGDOM</b></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>The Spanish Criminal Code does not require the damage to have effects outside the plant.</p>	<p>Environment Agency uses operational risk assessment (OPRA) to score operators and target their resources on those with a history of non-compliance and facilities with most significant potential environmental impacts. The annual cost of some permits is linked to the OPRA score.</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>Production, import and export conducts are not explicitly included in the Spanish text.</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>The Spanish Criminal Code does not include the exception to the conduct when it concerns a negligible quantity of such specimens and has negligible impact on the conservation status of the species.</p>	

<p><b>Article 3 - Offences</b></p> <p>Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:</p>	<p><b>PORTUGAL</b></p>	<p><b>SPAIN</b></p>	<p><b>UNITED KINGDOM</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>The Spanish Criminal Code does not include the exception to the conduct when it concerns a negligible quantity of such specimens and has negligible impact on the conservation status of the species.</p>	
<p>(h) any conduct which causes the significant deterioration of a habitat within a protected site;</p>			
<p>(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.</p>		<p>The Criminal Code does not regulate how the action committed by gross negligence will be punished.</p>	





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