



Joint NGO position on Commission Proposal for a Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC

Environmental crime is the third largest crime worldwide and the European Union, as a global trade force, is a major hub for organised environmental crime. Strengthening and harmonising environmental criminal law is an imminent necessity considering the EU's international leadership role in the fight against global climate change and biodiversity loss and the Union's commitments under the European Green Deal and the 2030 Climate target plan.

As environmental, conservation, and animal protection NGOs, we therefore, warmly welcome the Commission's proposal to revise the Environmental Crime Directive. Given the weaknesses in the current legislation and the disparities in its implementation by Member States, we are pleased that the legislation is being revised, rather than simply being amended, and broadly support the key elements of the proposal.

We salute the broadening of the scope of the Directive, which now includes most forms of environmental crime offences. Furthermore, we believe that it is indeed prudent to strengthen the implementation of the Directive through national strategies and reporting requirements, as well as establishing minimum requirements for resources, training and investigative tools.

We welcome the reference to additional penalties and sanctions. Ensuring equivalency of sanctions will assist data collection and comparison between Member States with regard to the implementation of the Directive. Moreover, we applaud the fact that the proposal includes provisions on the protection and involvement of civil society organisations (CSOs) and individual citizens given their important role in detecting and combating environmental crime.

Notwithstanding our general support for the proposal, we have a number of concerns and suggestions that are outlined below:

Scope and futureproofing

There is no general definition of what constitutes an environmental crime; instead, the proposal relies on a list of secondary legislation. This is problematic because it does not make the legislation futureproof and the Directive will require amending each time new environmental laws are adopted to cover for them. The EU should, for example, take into account in the Directive any future legislative action to halt the EU trade in wild species of fauna and flora which have been illegally harvested and/or exported from their country of origin.

Greater legal clarity is needed with regard to the definition of the terms "substantial damage" and "negligible quantity". Further, we note that there is a reference to ecocide in the recitals, which should also be addressed in the operational part of the Directive.

Sanctions and penalties

We maintain that the minimum standards for maximum limits for penalties and sanctions are too low for legal persons. In our opinion, sanctions will be considered as 'dissuasive' and 'effective' when they will represent such a great level of risk, across all the participating Member States, that they will be a real and observable disincentive for criminals.

As such, convicted perpetrators of environmental crimes should not be allowed to profit from their crimes as a result of lenient penalties, and must undertake the restoration of the damage caused, including the payment of compensation associated with civil and environmental liability. Moreover, the financial burden of a fine should be at least as high as the cost of the remediation of the damage caused. Limits for fines for environmental crimes should also not be lower than those imposed in the area of competition law. We suggest that the Commission develops sentencing guidelines to assist Member States in defining and applying dissuasive, proportionate and harmonised penalties and sanctions, including the economic valuation of environmental damage.

Enforcement

It is important that there is a provision for the establishment of specialised coordination bodies in every Member State. Besides, jurisdiction should be extended as far as possible to increase environmental protection. Further to this, given that there should be a right to access to information on environmental matters, it is crucial that raw statistical data from Member States on environmental crimes be made public, instead of just consolidated versions thereof.

Cross-border cooperation

Currently environmental crime only accounts for [less than 1% of the workload of Eurojust](#). We, therefore, maintain that the provisions relating to cross-border cooperation on environmental crime should be at least as strong as those stipulated in EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

The European Public Prosecutor's Office's mandate should be extended to cover serious environmental crimes with a cross-border dimension for which reinforcement of the criminal law response is unlikely to be achieved through the traditional channels of judicial cooperation. Police cooperation is essential in the investigation of cross-border crime, such as wildlife or waste trafficking. The Directive should contain provisions fostering cooperation between specialised environmental units, for instance, via Europol or other relevant intelligence hubs. In addition, given the global nature of environmental crime, cooperation with third countries should be addressed in the Directive.

Civil society

In addition to people (e.g. whistle-blowers), the Directive should make explicit reference to organisations, such as CSOs, as playing a key role in exposing and preventing breaches of environmental law. These organisations should also be protected from intimidation or litigation when reporting environmental crimes or assisting investigations.

Additional issues

- To help address the incomplete and inconsistent implementation of the Directive and ensure reporting is effective, Member States should be provided with clarity on the indicators that will be used, and the information that will be required from them for evaluation and other purposes. Performance indicators to measure the implementation and application of the Directive are lacking and should be included. The Commission should develop a series of tools and processes to facilitate reporting by Member States, including standard formats for the different types of reported data to ensure their relevance, objectivity, and allow comparative analyses between Member States.
- Anthropogenic energy (e.g. acoustic emissions released in the aquatic environment) should be added to the list of pollutants that can cause death, injury or damage.
- The entire marine environment should be protected from source-ship discharges of polluting substances, given that it is not only water quality that can be affected by pollution, but also marine biodiversity.
- Serious infringements of the EU Fisheries Control System should constitute an environmental crime and this Directive should be used as a tool to set minimum harmonised standards for sanctions for infringements.
- Ecosystems and species populations should also receive specific protection alongside individual species and their habitats.
- Cruelty or causing avoidable pain, distress and suffering to animals should also be taken into consideration as an aggravating circumstance as well as whether species, populations, ecosystems or habitats are protected under EU or internal legislation or agreements.