

# Improving environmental protection through criminal law

Fields marked with \* are mandatory.

## Introduction

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In 2008, 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 (hereinafter 'the Directive') was adopted. It is the main European instrument in the field of environmental criminal law. The Directive criminalises serious violations of over 70 legal instruments in the environmental field and requires effective, proportionate and dissuasive sanctions.

More particularly, the Directive:

- defines environmental offences that Member States must criminalise (based on the most serious infringements of rules aiming at protecting the environment as set out in legal instruments listed in the annexes to the Directive);
- requires Member States to ensure criminal liability also with regard to inciting, aiding and abetting;
- obliges all Member States to ensure effective, proportionate and dissuasive criminal sanctions for environmental crimes. Sanctions for legal persons do not need to be criminal sanctions.

### Evaluation

The Directive has recently been evaluated and the results were published in October 2020. Overall, it was found that the Directive did not have much effect on the ground and its implementation in practice is poor in all Member States. This is reflected by the fact that the Directive did neither lead to more prosecution and convictions of environmental crime nor to the imposition of more dissuasive sanctions in the Member States.

### The review of the Directive

It has therefore been decided to review the Directive to make it more effective, especially by provisions facilitating and fostering the work of practitioners (law enforcement authorities, prosecutors, judges). The Commission aims to present a legislative proposal for a revised Directive at the end of 2021.

### Public consultation

The results of this questionnaire will contribute to an impact assessment of possible options to address the challenges and will feed into the design of potential regulatory and non-regulatory measures to help improve the effectiveness of a revised Directive. The general public and all interested stakeholders are invited to respond to the questionnaire.

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.**

Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent select

## General questions

1. Do you think the EU should act to improve environmental protection through criminal law in the Member States?

X Yes, EU action is necessary.

No, EU-action. Improvement should be left to the Member States.

No improvement necessary. The level of protection under the current Directive is fine.

No answer

2. If you consider that EU action is necessary, what should be addressed by a revised Environmental Crime Directive? Several answers are possible.

X Clarify and expand the scope of the Directive

X Improve the description of offences to be criminalised and clarify terms used

X. Improve the deterrence of sanctioning of environmental crime

X. Improve cross-border cooperation between Member States

X. Improve the collection, sharing and reporting of statistical data on environmental crime

X. Improve the effectiveness of law enforcement within Member States including training and specialisation

Other

If other, please specify

### 3. Options to improve the approach to define the scope of the Directive.

The scope of the current Directive is defined by two annexes to the Directive listing 72 pieces of administrative environmental legislation containing obligations to protect the environment. A violation of these obligations constitutes an environmental crime if the violation has led to serious consequences as described in Article 3 of the Directive. Today, the list of legislation contained in the annexes is largely outdated, as the included legislation has in many cases been amended or repealed. New legislation and new areas of environmental law have not been included since the Directive entered into force. This leads to uncertainties regarding the scope of the Directive, demands a high degree of specialised knowledge from law-enforcement practitioners and creates inconsistencies as new areas of

environmental protection are not protected by the Directive.

Which of the following options do you consider most useful to ensure that the Directive is always up-to-date and its scope sufficiently clear for practitioners /businesses?

	Not useful	Useful	Very useful	No answer
No action. The current approach (description of offences to be criminalised in Article 3, definition of unlawfulness in Article 2 and the list of relevant legislation in annexes) works fine.	X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Update the Directive and its annexes and include new environmental areas or legislation that is currently not covered but should be covered.	<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>
Refer to the breach of related administrative obligations only in general terms without listing the relevant legislation explicitly in annexes (i.e. remove the annexes).	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>
Change the current approach: define environmental crime independently of a breach of environmental administrative law.	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>

If other, or any comments you wish to make, please use this box:

*With respect to extending the scope of the directive, we urge recognition of a crime of “Ecocide” to address damage and destruction of ecosystems of the most serious kind. If not in the frame of the directive, this crime should be legislated for separately, in which case, such legislation should be considered as a matter of urgency.*

*An international panel of high-level experts convened by the Stop Ecocide Foundation is currently drafting a legal definition of the crime of Ecocide for potential proposal by interested states at the International Criminal Court as a 5<sup>th</sup> crime under the Rome Statute. We suggest that any definition of this crime for the EU should take into account the report of that group, to be published in June 2021.*

*The European Parliament is currently discussing asking the Commission to study the recognition of ecocide in EU law. The European Commission should answer this call and work towards such recognition. The revision of the Environmental Crime Directive represents a crucial opportunity to do so.*

#### 4. Legislation not covered by the Environmental Crime Directive

Currently, the Directive covers the following areas:

- (a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water;
- (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);
- (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 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;
- (e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances;
- (f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species;
- (g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof;
- (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.

In your view, which environmental area or specific legislation is not covered by the Directive, but should be covered? **(SEE COMMENT TO QUESTION 3)**

## 5. Options regarding vague terms in the definitions of environmental crime.

Some crime-constituting elements in Article 3 (legal terms such “substantial damage”, ‘negligible quantity’) have been found to be too vague by many practitioners to be applied in practice. They can also lead to different interpretations in the Member States and thus hamper smooth cross-border cooperation.

Which measures do you consider useful to improve the definitions of environmental crime?

	Not useful	Useful	Very useful	No answer
Define more precisely vague terms i(e.g. 'substantial damage', 'negligible' or 'non-negligible' quantities) in the Directive .	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Delete such vague elements from the definitions and leave it to the national authorities to decide whether a particular incident is severe enough to be prosecuted.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide non-binding EU-guidance on the interpretation of vague elements in the definitions.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do not act at EU level but leave the interpretation of vague terms in the Directive to Member States and national courts.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
No action necessary. The elements in Article 3 of the Directive are clear enough.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

If other, or any comments you wish to make, please use this box:

## 6. Measures to foster a more deterrent criminal sanctioning system with regard to environmental crime.

The current Directive obliges Member States to provide for effective, proportionate and dissuasive penalties in their national law to sanction environmental crimes.

However, in practice large differences in available sanction levels remain across Member States. In some Member States sanction levels imposed in practice appear too low to be a deterrent.

To improve the deterrent effect of criminal sanctions for environmental crime, which measures do you consider useful?

	Not useful	Useful	Very useful	No answer
Maximum sanction levels that must be available to judges (for example at least 4 years of imprisonment).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Definitions of aggravating circumstances (for example for environmental crimes committed in the context of organised crime, the severity of the damage caused, actions of the offender to obstruct administrative controls and inspection) that should lead to higher sanction levels to be imposed in practice.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The provision of a broad range of accessory sanctions such as restoration of damage, exclusion from public procurement procedures, unwinding of a company, shutting down production- or other sites used for the crime committed, seizure of profits and material used to commit the crime.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Linking the level of imposed penalties to the profits expected or generated and to the financial situation of businesses involved in committing the crime.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
EU-non-binding guidance/best practices regarding sanction practices in the Member States.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Dissemination of information on sanction practices and imposed sanctions with regard to environmental crime among Member States.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
EU-guidance to Member States to better coordinate their administrative and criminal sanctioning systems.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
No action at EU level is necessary.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

If other, or any comments you wish to make, please use this box:

## 7. Measures to improve cross-border cooperation

Environmental crime often has cross-border effects and involves cross-border activities. In order to tackle effectively cross-border environmental crime, cooperation between Member States law enforcement- and judicial authorities is considered an important element.

Which measures do you consider useful to improve cross-border cooperation?

	Not useful	Useful	Very useful	No answer
Include a provision in the Directive to require Member States to provide for common investigative tools that should be available in all Member States to investigate environmental crimes (e.g. wire tapping, surveillance, etc.).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Include a provision in the Directive to require Member State authorities to cooperate with each other and with EU-agencies mandated with facilitating cross-border cooperation such as Europol, OLAF and Eurojust.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Include a provision in the Directive to oblige Member States to provide professional training on cross-border cooperation.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Provide EU-guidelines on cooperation between Member States and how to make use of EU agencies such as Eurojust, Europol and OLAF.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Include a provision in the Directive on rules on jurisdiction with regard to cross-border environmental crimes in the Directive.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
No further action necessary at EU level.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If other, or any comments you wish to make, please use this box:



## 8. Options to foster the practical implementation of the Directive

Effective national law enforcement is an important element of any crime-combatting strategy. However, Law enforcement with regard to environmental crime is deficient in most Member States. There is often a lack of human and financial resources, specialized training, information sharing and cooperation as well as generally a lack of overarching national strategies to combat environmental crime involving all levels of the enforcement chain (detection, investigation, prosecution, sanctioning).

Which measures should be taken by the European Commission to foster the effectiveness of law enforcement in the Member States?

	Not useful	Useful	Very useful	No answer
Include in the Directive a general provision to oblige Member States to implement the Directive.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Include in the Directive provisions to oblige Member States to take specific measures to foster practical implementation such as the provision of training or the set up specialised units, to oblige relevant national law-enforcing authorities to exchange information and cooperate with each other, to oblige national authorities to cooperate with other national authorities, to take measures to raise public awareness of the harmfulness of environmental crime.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Provide non-binding guidance to Member States on the establishment of overarching national enforcement strategies involving all levels of the enforcement chain (administrative controls and monitoring, tax authorities, police, prosecution, judiciary).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide guidance to Member States on specialised training /specialisation of law enforcement officials, criminal judges and prosecutors with regard to environmental crime issues.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
A combination of binding measures and non-binding guidance (as outlined above)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
No additional measures necessary at EU level.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If other, or any comments you wish to make, please use this box:

**9. Measures to foster and improve the collection of statistical data on environmental crime.**

Currently, the collection, sharing and reporting statistical data on detection, investigation, prosecution and sanctioning of environmental crime in the Member States is very limited. The lack of statistical data entails a lack of insight in the scope and scale of environmental crime but also on the effectiveness of criminal proceedings related to environmental crime. Accurate and complete statistical data would be necessary to identify disfunctions in the enforcement chain and to enable targeted and evidence-based solutions.

Which measures do you consider useful to foster the collection of accurate, complete and comparable data across Member States?

	Not useful	Useful	Very useful	No answer
Oblige Member States to collect and regularly report to the Commission statistical data related to environmental crime.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Non-binding guidelines of the Commission on the collection of statistical data related to environmental crime.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
A combination of a) and b).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Professional training and awareness-raising for national law enforcement authorities regarding the importance of collecting, processing and sharing of statistical data, fostered by the Commission.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The development at EU-level of common standards on the collection of statistical data on environmental crime proceedings.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The provision of a common platform to collect and exchange statistical data at EU-level.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
No action at EU-level.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**10. Do you have any other comment or suggestion? You have the possibility to upload documents with information you want to draw our attention to.**

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Only files of the type pdf,txt,doc,docx,odt,rtf are accepted

