Questions and Answers on the revised EU Directive on environmental crime

Brussels, 15 December 2021

**Why is the Commission proposing a new Directive on environmental crime?**

There is a real need to strengthen the protection of the environment through criminal law. Despite the seriously damaging effects of environmental crimes, current rules do not tackle them effectively enough.

Environmental crime is a growing concern causing significant damage to the environment, citizens' health and the economy within and beyond the Union. According to Interpol and the United Nations Environment Programme, environmental crime is the fourth largest criminal activity in the world after drug trafficking, human trafficking and counterfeiting, growing at a rate between 5%-7% per year, two to three times the pace of global economic growth.

The current proposal is part of the wider package of initiatives under the European Green Deal. It aims at improving how the EU defines criminal offences related to pollution, waste and threatening biodiversity and other natural resources. By improving how Member States address the most serious environmental offences, the proposal will contribute to the Green Deal's overall goals of tackling the climate crisis, environmental degradation, pollution and loss of nature and will contribute to strengthening the environmental rule of law.

According to Eurojust, illegal trafficking in waste and in wildlife species, pollution crimes, and illegal trading in hazardous substances are among the most serious environmental crimes. Yet, the current rules do not deter these crimes effectively enough. An evaluation of the 2008 Environmental Crime Directive carried out in 2019 and 2020 showed that reforms are necessary in order to make the use of criminal law more effective for serious infringements of EU environmental rules.

In particular, the evaluation showed that with the Directive currently in place the number of environmental crime cases successfully investigated, prosecuted and punished remains low. Imposed sanctions are not always dissuasive enough and cooperation within and between Member States does not take place in an effective and systematic manner.

**What is the Commission aiming to achieve with this proposal?**

The Commission's proposal aims to improve and add precision, legal certainty and effectiveness to the EU's legal framework on environmental crime so that it sanctions the activities most damaging to the environment, provides better definitions, allows for a greater choice of adequate sanctions and a more targeted approach to applying them. These measures will improve the framework supporting the crucial work of crime-fighting professionals, such as inspectors, police officers, prosecutors and judges.

An improved framework will increase the likelihood of serious environmental offences being discovered and successfully prosecuted. In the long term, this is expected to deter and reduce the incidence of environmental abuses and contribute to a culture of compliance with EU environmental rules across the EU.

Increased compliance levels will help safeguard clean air, water and soil as well as Europe's endangered natural habitats and plant and animal species.

**What do the new rules propose on criminal offences?**

Based on the evaluation of the current rules in place, the new law proposes a wider range of offences and an increased legal certainty by providing specific and clear descriptions of the criminal offences.

New categories of criminal offences proposed in the revised Environmental Crime Directive are:

- illegal timber trade;
- illegal ship recycling;
illegal water abstraction from ground- or surface water;
serious breaches of EU chemicals legislation;
serious breaches related to dealing with fluorinated greenhouse gases;
serious breaches of legislation on invasive alien species with Union concern;
serious circumvention of requirements to get a development consent and to do environmental impact assessment causing substantial damage;
source discharge of polluting substances from ships.

The proposal also clarifies undefined legal terms used to describe environmental crime in the current Directive, such as for instance 'substantial damage'. It suggests criteria that explain more precisely how to interpret these terms. This will lead to a more harmonised application of criminal law and understanding of environmental crime across the EU, and more legal certainty to duty-holders.

What are the new provisions on sanctions and why are they proposed?

The main sanctions for criminal offences are prison sentences and fines. The proposal recognises that, in addition, other sanctions and measures may be appropriate and necessary. The new rules propose accessory sanctions, such as withdrawal of permits, disqualifications and exclusion from access to public funding. Accessory sanctions are often deemed more effective than financial sanctions, especially for legal persons. Particular attention is paid to the restoration of the damaged environment.

As regards sanctions for legal persons, similarly to the 2008 Directive, the proposal takes account of national legal traditions and provides that Member States may introduce sanctions, which for legal persons can also be of non-criminal nature.

To ensure that punishment is effective, proportionate and appropriate, mitigating and aggravating circumstances are proposed. Aggravating circumstances include the severity of the damage done, the involvement of organised crime, the illegal profits generated or expected. Mitigating circumstances include providing the authorities with useful information that they would not otherwise have obtained.

How will the proposal make combating environmental crime more effective in practice?

More precise rules regarding the definition of environmental criminal offences and the type and levels of sanctions will facilitate the practical implementation of the Directive, lead to more successful detection, investigation and prosecution of environmental crimes and support more effective and dissuasive sanctioning.

The Commission recognises that it is equally important to foster the effective enforcement of the rules. The proposal includes obligations of the Member States to provide for adequate training, resources, cooperation, communication and information sharing among enforcers. The adoption of national strategies aims at bringing together all the elements needed to make fighting environmental crime successful is also proposed. This builds on Council recommendations in the final report of the eighth round of mutual evaluations on environmental crime following a 2019 peer-review by Member States on the practical implementation and operations of EU policies to combat environmental crime.

What is the role of the public and environmental defenders?

The public is and has to be involved in combating environmental crime. Environmental non-governmental organisations have played a key role in addressing wildlife and forestry crime, for instance. There is a risk, however, that environmental defenders are harassed. The proposal, therefore, includes measures to support and assist people who report environmental offences and cooperate with the enforcement. It also enables, at certain conditions, the public concerned to be present in proceedings linked to the prosecution of crime cases where appropriate, pursuant the rules set out in Member States.

How is the Commission stepping up the fight against environmental crime by other means?

The Commission considers it important that, in addition to having an updated legal framework, Member States also have practical support at EU level. In 2018, the Commission created a high-level expert group, the Environmental Governance and Compliance Forum, to facilitate exchanges with Member States and with European networks of environmental inspectors, police officers, prosecutors, judges and environment agencies. These networks play a valuable role in sharing knowledge, experience and insights on crime fighting. With their help and the help of Member State experts, the Commission has prepared Guidance on combating environmental crime and related infringements.

In addition, the Commission is publishing today a Communication on stepping up the fight against
environmental crime. It envisages building on this cooperation and presents practical forms of EU support – for example, use of the LIFE Regulation, which provides a basis for funding both the networks and individual crime-fighting projects. The Communication also recognises the importance of helping to combat environmental crime beyond the EU’s borders and of cooperation with its partner countries and internationally.

**For more information**

**Press release**

Factsheet on Strengthening EU law to combat environmental crime

Proposal for a new Directive on environmental crime

Communication accompanying the proposal

Guidance on combating environmental crime and related infringements

European Commission webpage on environmental compliance assurance

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