A. Context, purpose and scope of the evaluation

The Environmental Crime Directive\(^1\) has as an objective to contribute to a more effective protection of the environment and full application of the existing Union environmental legislation through criminal law, to ensure a level playing field in the Member States by approximating the criminal offenses, and to ensure deterrent sanctions and overall effective sanctioning systems in all Member States.

To achieve this objective, the Directive:

- establishes a common set of offenses that Member States must criminalize;
- approximates the scope of liable perpetrators, especially by requiring that legal persons can incur liability;
- requires that Member States extend criminal liability also to inciting, aiding and abetting such offenses;
- approximates criminal sanctions (and seeks stricter criminal sanctions) by requiring all Member States to ensure effective, proportionate and dissuasive criminal penalties for environmental crimes. However, the sanctions for legal persons, while required to be effective, proportionate and dissuasive, need not be criminal sanctions.

The Environmental Crime Directive criminalises serious violations of more than 60 legal instruments in the environmental field which are listed in two annexes to the Directives (environmental areas covered are for example illegal waste trade, producing and handling of hazardous materials, pollution of water, air, ground water, agricultural area, wildlife).

According to a report done by the UN and Interpol in 2016, environmental crime is now the fourth largest criminal activity in the world after drug smuggling, counterfeiting and human trafficking. It is valued at somewhere between USD 91 billion and 259 billion and rising by 5-7 per cent annually. Serious forms of environmental crime often have a cross-border dimension and involve organised crime groups or corporate actors. The EU is directly affected by environmental crime as origin (e.g. waste trafficking) or destination market (e.g. illegal logging) or as a transit point between two regions of the globe (e.g. between Africa and Asia for wildlife products)\(^2\).

The EU considers fighting environmental crime as one of its priorities and has stepped up its activities in this field:

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• The EU Agenda on Security (2015)³ highlighted the link between environmental crime and organised crime, as well as the link between environmental crime and money laundering and terrorist financing. It provided for that the Commission should “review existing policy and legislation on environmental crime”⁴.

• In 2016, the Council in its Conclusions invited the Commission to monitor the effectiveness of EU legislation in the field of countering environmental crime⁵. In the same year the Council chose environmental crime as the subject for the 8th Mutual Evaluation round⁶. This cycle will be finalised in 2019.

• In 2016, an EU Action Plan to combat wildlife trafficking⁷ sets out the need to review the EU policy and legislative framework on environmental crime, in line with the European Agenda on Security – in particular by reviewing the effectiveness of the Environmental Crime Directive including the criminal sanctions applicable to wildlife trafficking throughout the EU.”

• In 2017, the Council in its Conclusions has recognised the need to address environmental crime, and especially illegal waste exports and wildlife trafficking, as a priority of the EU policy against organised crime for the period 2018-2021⁸.

• In 2018, the Commission published an EU action plan to improve environmental compliance and governance, including in the area of combating environmental crime⁹. One of the actions relates to preparation of a good practice guidance document on strategies for combating environmental crimes and other related breaches, with a particular focus on waste and wildlife offences.

An evaluation of the performance of the Environmental Crime Directive is therefore necessary. Given that the transposition period has expired in 2010 and all Member States are today compliant with the Environmental Crime Directive, enough time has elapsed to generate sufficient experience with the implementation practice and -effects in the Member States.

Purpose and scope

The evaluation will assess the results over the Environmental Crime Directive’s whole lifetime from 2011 to 2018 and with respect to all Member States. The focus will be on waste- and wildlife crime.

The evaluation will cover the criteria of effectiveness, relevance, efficiency, coherence/complementarity, EU-added value. Under the criterion of efficiency, the Member States’ costs to implement the Directive and to the extent possible, the benefits will be assessed. The coherence analysis will focus on the Directive’s coherence with other instruments harmonising criminal law such as the Directive on ship-source pollution¹⁰, the Market Abuse Directive¹¹ and the Euro Counterfeiting Directive¹² as well as the coherence with other law enforcement

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⁴ Page 18 of the Agenda on Security (footnote 4): “The Commission will consider the need to strengthen compliance monitoring and enforcement, for instance by increasing training for enforcement staff, support for relevant networks of professionals, and by further approximating criminal sanctions throughout the EU”.


⁶ See above


instruments in the area of environmental crime, in particular the EU-action plan to improve environmental compliance and governance including in the area of combating environmental crime and the EU-action plan to combat wildlife trafficking.

Other issues to be examined would include:

- the measures taken by the Member States to ensure implementation of the Environmental Crime Directive;
- the degree of organised crime involved;
- geographic dimension of the crimes (cross-border/domestic).

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### B. Better regulation

#### Consultation of citizens and stakeholders

The evaluation will draw on views and experiences of the general public and relevant stakeholders in order to collect relevant data and information on effectiveness and efficiency of the Directive, as well as the EU-added value and possible room for improvement of the Directive.

A public consultation questionnaire will be published on the Commission’s central public consultation page in the second quarter of 2019 for 12 weeks on: [https://ec.europa.eu/info/law/better-regulation/have-your-say_en](https://ec.europa.eu/info/law/better-regulation/have-your-say_en).

The consultation will be available in all EU languages. Replies to the public consultation may be submitted in any of the official EU languages. The results of the public consultation will be published on the public consultation-website of the Commission soon after closure of the public consultation. A synopsis report summarising the results of all consultation activities will be published on the DG JUST website: [https://ec.europa.eu/info/polices/justice-and-fundamental-rights_en](https://ec.europa.eu/info/polices/justice-and-fundamental-rights_en), indicatively in Q4 2019. In parallel, also targeted consultations of relevant stakeholders will be conducted.

The main stakeholders to be targeted can include EU networks (European Union Forum of Judges for the Environment) (EUFJE), European Network of Prosecutors for the Environment (ENPE), EnviCrimeNet, the European Union Network for Implementation and Enforcement of Environmental Law (IMPEL), environmental associations and organisations, stakeholders in industry and concerned businesses, academia and relevant international and European bodies and agencies, such as Europol and Eurojust. Also national authorities (administrative, law enforcement- and judicial authorities) will be consulted.

Consultations may take the form of targeted questionnaires, workshops or interviews.

#### Data collection and methodology

The evaluation will take into account:

- data collected by the Commission from Member States and information collected in workshops with Member States (2016), with a view to prepare this evaluation;
- data from the 8th mutual recognition round on environmental crime (2017-2019);
- replies to a Commission’s questionnaire on the functioning of the Environmental Crime Directive, circulated to Member States in 2017;
- the results of the Research Project “European Union Action to fight environmental crime”;
- a study conducted in 2016 on the implementation of the ECD in Member States;
- work done by the EU-level environmental enforcement networks, such as ENPE, EUFJE and IMPEL; EnviCrimeNet as well as Europol and Eurojust.

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13 EFFACE: [https://efface.eu/](https://efface.eu/)


As the Environmental Crime Directive criminalises serious violations of more than 60 legal instruments in the environmental field as contained in the two annexes to the Directive, the Commission will also take due account of the evaluations of these instruments and the data gathered in this context.

The quantification of costs and benefits will draw upon all above-mentioned sources as well as estimates provided in earlier documents such as the impact assessment for the Environmental Crime Directive\(^\text{16}\) as well as information to be gathered from the Member States.

The Commission will contract an external contractor to inform the Commission's evaluation of the Environmental Crime Directive, taking also account of existing studies, articles and other input from academia. The contractor should also gather relevant up-to-date data in the Member States that is not yet available from existing studies and public sources, in particular regarding statistical material, trends in Member States regarding convictions and sanctions in the field of environmental crime as well as possible transposition and implementation challenges over the life cycle of the Directive.

\(^{16}\) http://ec.europa.eu/environment/legal/crime/legis_en.htm