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Accompanying document to the

**Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

on the protection of the environment through criminal law

SUMMARY IMPACT ASSESSMENT

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1. IDENTIFICATION OF THE PROBLEM

Environmental crime is a major threat to the environment and the health of human beings and animals in the EU, even though its exact scope is difficult to define because statistics are particularly unreliable.

The great majority of offences have cross-border implications and many offences are linked to organized criminal structures.

Underlying causes for environmental crime are the high profits generated in the area, the low risk of detection, the growing international trade and the insufficient sanctions in many Member States.

The types and levels of sanctions for environmental crimes differ significantly in the Member States: some do not apply criminal law but rather administrative sanctions, even for serious offences; some sanction levels are so low that they have no deterrent effect. The examples of the trade in endangered species and the illegal shipment of waste show these differences.

The differences allow perpetrators to easily circumvent the Member States with the stricter legislation for their operations and to later profit from the free movement of goods and persons within the EU.

The necessity to act at Community level is shown by the cross-border implications of environmental crime and the need to ensure full application of Community legislation on the protection of the environment throughout the Community. The need to act jointly has also been recognized by the Member States when adopting the Framework Decision 2003/80/JHA on the Protection of the Environment through Criminal Law which was annulled by the European Court of Justice in September 2005 due to a wrong legal basis.

The Treaty on the European Community sets an obligation for the Community in Article 174 to guarantee a high level of protection of the environment through its environmental policy. In order to achieve this goal, the problem of environmental crime needs to be tackled. This constitutes a major challenge for the European Union, causing every year significant damages to the health of human beings and animals and to the quality of air, soil and water.

While evidently different tools are required to respond to the challenge of environmental crime, the following analysis examines possible options to respond through criminal law, i.e. notably through common definitions of offences and sanctions applicable to such offences.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

The problem of environmental crime has been analysed in numerous studies and expert meetings in the last years.

Information on the studies and conferences can be found on DG Environment's environmental crime website: <http://ec.europa.eu/environment/crime/index.htm>

3. OBJECTIVES

The European Community has the objective of ensuring a high level of protection of the environment throughout the Community.

In order to achieve this aim numerous legislative acts have been adopted. The Community must ensure that this legislation is fully implemented, applied and enforced.

In addition, it is necessary to create a level playing field for businesses that comply with environmental legislation and avoid safe-havens for criminals in the Community.

4. POLICY OPTIONS

In order to achieve these goals, various options were considered:

Option 1: No action on Community level

Option 2: Improving cooperation between the Member States through voluntary initiatives

Option 3: Limited approximation of the national legislation on environmental crime in the Member States

The option of full harmonization of environmental criminal law was excluded without further analysis as this option would go beyond the necessary and would ignore the fact that national criminal law is still strongly influenced by the respective cultural values of each Member State so that certain flexibility in the implementation is required.

5. IMPACT OF OPTIONS

The options and sub-options were analysed with respect to their effects on the protection of the environment, the judicial cooperation between Member States, businesses and public authorities.

Options 1 and 2 would not have a positive impact on the level of protection of the environment and would not tackle the existing difficulties with the fight against environmental crime which are rooted to a significant extent in the differences between the legislation of the Member States. They would entail no or no significant costs for public authorities, but not bring significant benefits for the protection of complying businesses.

Option 3 would lead to better enforcement of environmental legislation throughout the Community, thus to a better protection of the environment, better protection of businesses vis-à-vis their competitors that do not comply with environmental legislation. Option 3 would lead to a strong improvement of the judicial cooperation between Member States. Benefits for public authorities include the potential reduction of criminal proceedings and of clean-up costs for environmental pollution due the higher deterrent effect of criminal sanctions.

6. PREFERRED POLICY OPTIONS

Based on the positive impacts, the preferable policy option is a limited approximation of criminal law covering the following elements:

- minimum list of offences
- approximation of the scope of liability both for natural and legal persons
- approximation of penalties for natural and legal persons for offences committed under aggravating conditions.