

## PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

### EEB briefing note on the revision of the Environmental Crime Directive

Environmental crime is the third largest crime in the world only falling short of illegal drug trafficking and counterfeiting crimes<sup>1</sup>. Europe as a global trade force is a major hub for organized environmental crime, but Member States are ill equipped to tackle European wide environmental crime effectively.

The EU has an international leadership role to play in the fight against global climate change and biodiversity loss. Strengthening the protection of the environment through harmonizing aspects of criminal law within the EU is a necessary step to support the enforcement of the European Green Deal and the 2030 Climate target plan.

When criminals damage the environment without being effectively persecuted and sentenced, the ultimate price of restoration and remediation of the damage is born by the European taxpayer. An update of the minimum harmonization of EU environmental criminal rules will go a long way in combatting the rise of environmental crime in Europe, ensuring they are equally enforced in all the Member States.

#### Shortcomings of the current directive

- Limited scope leaving out large parts of EU environmental law
- Lack of implementation in the member states
- Ambiguous legal terms unusable for national prosecutors
- No harmonization of sanction levels
- Lack of cross-border cooperation

#### Perspective on the proposed revision

The EEB welcomes the Commission's proposal and supports the general direction of the text. It is crucial that the co-legislators maintain a broad extension of scope and support the proposed strengthening of implementation measures. The recognition of the need to protect environmental defenders and ensure participatory rights in criminal cases needs to be retained as well.

#### Areas for improvement:

##### Scope:

- The system of scope effectively relies upon a list of secondary legislation rather than giving legal certainty through a general definition of environmental crime.
- The reference to ecocide in the recitals is a step in the right direction but ecocide should also be recognized in the operational part of the directive.
- The scope should be extended to cover also the most serious infringements of illegal, unreported and unregulated fishing.

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<sup>1</sup> <https://globalinitiative.net/wp-content/uploads/2018/09/Atlas-Illicit-Flows-FINAL-WEB-VERSION-copia-compressed.pdf>

### Sanctions:

- The proposed minimum standards for maximum limits for penalties and sanctions should be increased to be truly effective and dissuasive. The new legal basis of article 83(2) TFEU should be utilised to its full potential and a minimum standard for a maximum sanction of 15% of annual turnover for legal persons should be aimed at.

### Enforcement:

- Provisions for the establishment of specialised coordination bodies in every member state should be made.
- Statistical data gathered at Member State level should be made public in its raw format rather than only via consolidated reviews.

### Definitions:

- The ambiguity of legal terminology in the previous text was identified as a major obstacle to effective prosecution on the ground. The proposed revision still lacks sufficient clarity on a number of offences and on what constitutes “substantial damage”.

Finally, the revision of the Environmental Crime Directive is an opportunity for the co-legislators to discuss the extension of the European Public Prosecutors Office’s jurisdiction to include environmental crimes with known links to organised crime, as has also been called for by the European Parliament.