

ENVIRONMENTAL CRIME IS CRIME – IT'S TIME TO ACT LIKE IT

Parliament must enter negotiations with a strong position on the environmental crime directive. The vote on 28 February in the legal affairs committee is crucial for the EU to strengthen its legislation on environmental criminal law. The EU must maintain its leadership role in fighting global climate change and biodiversity loss.

Environmental crime is everywhere and most of the time remains unpunished. The United Nations Environment Programme (UNEP) and Interpol estimate the cost of environmental crime at around €188 billion per year, which makes it [the third most profitable transnational criminal activity](#).

The legal arsenal to tackle environmental crime is lacking both at Member State and European level. A good example of the extent to which this area of law is overlooked is demonstrated by the result of the Volkswagen emissions (Dieselgate) scandal, where it was revealed that millions of diesel vehicles manufactured by Volkswagen Group (VW) were fitted with illegal software that allowed them cheat emissions test. In prosecuting Volkswagen officials, public prosecutors focused on fraud charges. Since the illegal software installed in the vehicles caused massive air pollution, harmful to the environment and human health, environmental charges should have also been brought against them. But [German legal offenses](#) for air pollution were not suited to indict Volkswagen and its officials. This contrasts with other countries, like for example [Canada](#), where Volkswagen were prosecuted and fined for breaching the federal environmental legislation. Pursuing fraud charges instead of environmental charges ignores the fact that Volkswagen has caused enormous environmental damage for which it will not be held accountable.

This example is striking and shows how ill equipped the EU is to address environmental crime. The overdue revision of the Environmental Crime Directive (last revised in 2008) is an opportunity to create the tools needed to fight organised environmental crime in Europe.

A first step in the right direction

As part of a coalition of NGOs, the EEB warmly welcomed the 2019-2020 evaluation of the outdated Environmental Crime Directive and the Commission's revision proposal in late 2021. While there were plenty of [areas for improvement](#) in the proposal, NGOs nonetheless [praised](#) it as a crucial step in the right direction.

But negotiations were off to a sad start. Since they commenced in January 2022, Member States [have indeed been showing](#) disturbing reluctance to progress their outdated criminal law traditions with some seemingly having all but forgotten the Dieselgate scandal. The General Approach of the Council of the EU on the revision proposal published in late 2022 must be criticised for [failing to appropriately address environmental crimes](#). It watered down the penalty and sanction levels applicable when environmental crimes are committed and stripped other crucial provisions from their substance.

The revision proposal is now in the last stages of parliamentary debates. Environmental, conservation and animal protection organisations have warmly welcomed the report drafted in the lead Committee

European Environmental Bureau

• Rue des Deux Églises 14-16, 1000 Brussels, Belgium • ☎ +32 228 91090 • eeb@eeb.org • www.eeb.org

*International non-profit association • Association internationale sans but lucratif (AISBL) • EC register for interest representatives:
ID number: 06798511314-27 • BCE ID number: 0415.814.848 • RPM Tribunal de l'entreprise francophone de Bruxelles*

on Legal affairs, which includes many good amendments that will serve to further strengthen the Commission's proposal. But a lot of work still needs to be done.

The Legal Affairs committee must vote for a progressive position including the below points:

- **NGOs demand sanctions of 15% annual turnover for companies** The directive sets a minimum level for the highest sanctions Member State criminal codes can give as a guide to judges when ruling on a case of environmental crime. While EU competition law is set at 10%, the Commission's proposal on environmental crime is a mere 5%. The protection of the environment and human health should not be treated as less important than that of the EU single market.
- **The protection of environmental whistle-blowers should cover both natural and legal persons (such as NGOs)** This will allow civil society organisations to fall under the scope of protection, as they are often at the forefront of detecting and bringing attention to environmental crime. The role of civil society should also be recognised as a vehicle for nature reparation claims. Nature is the constant victim of environmental crime but does not have legal standing (while corporations, and even ships do!). Members of the public should have rights allowing them to represent nature in court proceedings.
- **A crime of Ecocide must be created** Ecocide is the most serious environmental offence and refers to severe damage to an ecosystem on a large scale and over the long term. As all opinion-giving committees of the Parliament have added, the revision of the Environmental Crime Directive should provide for a harmonised definition of this infraction.
- **The EU needs a green EPPO** Better prosecution of environmental crime can be achieved through the extension of the jurisdiction of the European Public Prosecutor's Office, to environmental crimes which should be supported by the Committee in its report, as done by the other Committees.
- **Expand the jurisdiction of courts** To ensure environmental accountability outside of the European Union, Member states should also be obliged to open their courts for judgements of offences committed for the benefit of a legal person (usually a company) established on their territory.

Environmental crime in Europe is steadily on the rise and small administrative fines have failed to stop this trend. Europe cannot afford another failed criminal law response like the one we have seen with the Diesel-gate scandal. Therefore, EU legislators and Member States must demonstrate resolve to effectively step up the fight against environmental crimes and address it with the seriousness it warrants. The Parliament's Legal Affairs Committee vote on 28 February is a chance for Politicians to show that they are taking crime seriously.