



## NGO briefing concerning trilogue negotiations on proposed revision of the Environmental Crime Directive

As an informal coalition of environmental, conservation, and animal protection organisations, we believe that it is high time for the EU to combat the billion-euro industry that is environmental crime. Having reviewed the Council's rather conservative general approach and the report adopted by the European Parliament, which we broadly support, we would like to highlight a number of issues in advance of the upcoming inter-institutional negotiations.

### **STRUCTURAL ELEMENTS REQUIRING THE NEGOTIATORS' ATTENTION**

The Commission's proposal did not provide a **general definition of what constitutes an environmental crime**, instead relying on a list of secondary legislation. **Recital 10** of the Council's general approach acknowledges that new categories of unlawful conducts, not yet covered by the scope of this Directive, will require the Directive to be amended at each turn. We call upon the negotiators to use the Parliament's text (**Article 3, paragraph 1a (new)**) as a basis for agreeing upon a general definition of what constitutes an environmental crime. That would enable criminal liability in **all** serious cases of environmental offences and provide an effective response to the risk of futureproofing acknowledged by the Council.

The **definitions** outlined in **Article 3, paragraphs 3 to 5** need to be sufficiently precise. The evaluation of the 2008 Directive identified vague definitions as the main obstacle to the use of environmental crimes as basis for prosecution. Greater legal clarity is still needed with regard to the definition of the terms 'substantial damage' and 'negligible quantity'.

Unnecessary qualifier statements should be removed. Limiting statements constraining EU obligations to what is already possible under existing national law or allowing Member States to choose which provisions to transpose into their national law among those provided in the Directive will simply maintain the status quo, instead of strengthening the EU criminal law response to environmental crimes. We call upon the negotiators to create a level-playing field across the EU that harmonizes the fight against environmental crimes to allow enforcement and prosecution authorities to cooperate with each other.

### **KEY ISSUES**

**Article 2, paragraph 1, point 4:** It is essential that the Directive makes **explicit reference to civil society organisations** in its definition of 'public concerned' given their key role in exposing environmental crimes. These organisations, as well as all whistle-blowers and environmental human rights defenders across the EU (both legal and natural persons) should also be protected from intimidation or litigation and provided with support and assistance when reporting environmental crimes or assisting investigations and proceedings, as outlined in Parliament's amendments to **Article 13, paragraphs 1 and 2**.

**Article 3, paragraph 1, point a:** We concur that, in line with the provisions of the Directives 2008/56/EC and 2010/75/EU and the Parliament's proposal, anthropogenic **energy** (e.g., acoustic emissions released in the aquatic environment) should be added to the list of pollutants that cause substantial damage to the quality of air, soil or water, or to biodiversity, ecosystem services and functions, animals or plants.

**Article 3, paragraph 1, point l:** Including non-defined qualifiers besides 'negligible quantity' creates an excessively high burden of proof for enforcement and prosecution authorities making this offence difficult to transpose into national law and impossible to apply in court. We urge the negotiators to agree upon a text which is close to the Commission's original proposal.

**Article 3, paragraph 1:** We welcome Parliament's proposed addition of **Illegal, Unreported and Unregulated Fishing (IUU)** to the list of offences (**Article 3, paragraph 1, point ra (new)**). Including IUU fishing in the Directive would provide current legislations with a clear and harmonized framework for the imposition of effective, proportionate and dissuasive criminal sanctions in cases of serious infringements.

**Article 5, paragraphs 3 & 4:** The Council's general approach proposes maximum terms of at least **5 and 3 years of imprisonment**. We support the Commission's original proposal of maximum terms of at least **6 and 4 years of imprisonment** in order to enable the use of special investigative tools and international judicial cooperation.

**Article 6, paragraph 3:** We support Parliament's proposal to explicitly include **corporate board members** as natural persons criminally liable under the Directive. European jurisdictions are yet to convict those responsible for the notorious Volkswagen Dieselgate scandal for the environmental crimes they committed.

**Article 7, paragraph 4 & 5:** We maintain that sanctions will be considered dissuasive and effective when they will represent such a great level of risk, across all Member States, that they will be a real and observable disincentive for criminals. We therefore strongly favour Parliament's proposal to set the minimum standard for maximum limit of fines at **not less than 10%** of the average worldwide turnover of the **legal person in the three business years** preceding the fining decision. If calculated as a lump sum, we urge negotiators to ensure that the maximum level of fines is not less than EUR 100 million as proposed by the LIBE Committee's opinion on this file.

**Article 16 to 18:** Parliament's proposal concerning the establishment of **specialised investigation units** for competent authorities, accompanied by proper resources and training to deal with environmental criminal cases is warmly welcomed.

**Article 20:** It is concerning that the Council's general approach deletes significant elements of the Commission's proposal on **national strategies**, whereas the Parliament expands it further. For consistency and clarity, it is vital that Member States' national strategies to tackle environmental crimes encompass similar elements. We urge support for Parliament's proposal.

**New Article:** We urge support for Parliament's proposal (**Recital 30a (new) & Article 19a paragraph 2 (new)**) to **extend the mandate of the European Public Prosecutor's Office (EPPO)** to cover serious environmental crimes with a cross-border dimension for which reinforcement of the criminal law response is unlikely to be achieved through traditional channels of judicial cooperation.

## ADDITIONAL ISSUES

**Article 3, paragraph 1:** In view of the Digital Services Act, it is pertinent to consistently include references to **online trade** as proposed by the Parliament. Environmental offences, such as wildlife trafficking, are routinely facilitated by cybercrime.

**Article 12, paragraph 1, point d:** With respect to the issue of **jurisdiction over offences**, we support Parliament's proposal to extend this to legal persons established on a Member State's territory.

**Article 10:** Parliament's proposal to add language stating that Member States shall take necessary measures to ensure that **frozen and confiscated** proceeds and instrumentalities are appropriately managed is welcomed. This is particularly relevant with regard to live animals which require specific management measures that are not addressed in the Commission and Council's texts, nor in the EU proposal for a Directive on asset recovery and confiscation.

**Article 11:** We support Parliament's proposal to provide for a limitation period that starts after the **discovery of environmental offences**.

**Article 21 and Article 25:** The **reporting requirements** proposed by the Parliament are warmly welcomed. They will help ensure effective and harmonised reporting by Member States. The Commission should develop tools and processes to facilitate reporting by Member States, including standard formats allowing comparative analyses between Member States. We also warmly support Parliament's proposals to **make relevant data available to the public (Article 14)**.

**Article 21, paragraph 5 a (new):** We strongly support Parliament's proposal for the Commission to develop **guidelines** to assist Member States in defining and applying dissuasive, proportionate and harmonised penalties and sanctions. This should include the economic valuation of environmental damage.

**Article 24:** We are concerned that the Council's general approach has extended the **transposition period** for the implementation of the Directive to 30 months after its entry into force. This delay is not justifiable when environmental crimes undermine our efforts to reach our 2030 climate and biodiversity targets.

**As concerned NGOs, we urge you to consider the issues outlined above during the upcoming trilogues and to deliver greatly strengthened legislation to tackle the scourge of environmental crime in the EU.**

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