

Protection of the environment through criminal law

2021/0422(COD) - 15/12/2021 - Legislative proposal

PURPOSE: to strengthen the protection of the environment through criminal law.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: criminal law is one part of a comprehensive EU strategy to protect and improve the status of the environment. The current EU legislation that provides common minimum rules to criminalise environmental crime is [Directive 2008/99/EC](#) on the protection of environment through criminal law. Criminal law measures come in as a last resort when other measures have not sufficed to ensure compliance. Enforcement gaps have been identified in all Member States and at all levels of the enforcement chain (police, prosecution and criminal courts). The lack of coordination between administrative and criminal law enforcement and sanctioning often hinders effectiveness.

CONTENT: the proposed Directive establishes minimum rules concerning the definition of criminal offences and sanctions to protect the environment more effectively.

The proposal has six objectives:

(1) Improve the effectiveness of investigations and prosecution by updating the scope of the Directive

The following new categories of criminal offences have been proposed in the revised Environmental Crime Directive: (i) illegal timber trade; (ii) illegal ship recycling; (iii) illegal water abstraction from ground- or surface water; (iv) serious breaches of EU chemicals legislation; (v) serious breaches related to dealing with fluorinated greenhouse gases; (vi) serious breaches of legislation on invasive alien species with Union concern; (vii) serious circumvention of requirements to get a development consent and to do environmental impact assessment causing substantial damage; (viii) source discharge of polluting substances from ships.

(2) Improve the effectiveness of investigations and prosecutions by clarifying or eliminating vague terms used in the definitions of environmental crime

The proposal clarifies undefined legal terms used to describe environmental crime in the current Directive, such as for instance 'substantial damage'. This will lead to a more harmonised application of criminal law and understanding of environmental crime across the EU, and more legal certainty to duty-holders.

(3) Ensure effective, dissuasive and proportionate sanction types and levels for environmental crime

The Commission proposes to set a common minimum denominator for sanctions for environmental crimes. Where offence cause or are likely to cause death or serious injury to any person, Member States should provide at least up to ten years imprisonment. The draft directive also proposes additional sanctions, including the restoration of nature, exclusion from access to public funding and procurement procedures or the withdrawal of administrative permits.

(4) Foster cross-border investigation and prosecution

Criminal activities related to the environment often have a cross-border dimension, while some environmental crimes usually impact several countries (for example the illicit trafficking of waste, of protected species or of wildlife products, or have cross-border effects (e.g. in the case of cross-border pollution of air, water and soil). Cross-border cooperation between law enforcement and judicial authorities is therefore essential.

(5) Improve informed decision-making on environmental crime through improved collection and dissemination of statistical data

The proposal addresses the need to systematically collect information on efforts to combat environmental crime and to provide statistical data on environmental crime. It requires Member States to collect, publish and send relevant statistical data to the Commission. It also establishes an obligation for the Commission to regularly publish a report based on the statistical data provided by the Member States. This provision also aims to help address the current limited availability of environmental crime data which would assist in evaluating the effectiveness of national systems in fighting environmental criminal offences.

(6) Improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning

To ensure an effective, integrated and coherent enforcement system that includes administrative, civil and criminal law measures, Member States should organise internal cooperation and communication between all actors along the administrative and criminal enforcement chains and between punitive and remedial sanctioning actors. Following the applicable rules, Member States should also cooperate through EU agencies, in particular Eurojust and Europol, as well as with EU bodies, including the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF), in their respective areas of competence.