

Revision of Directive 2008/99/EC

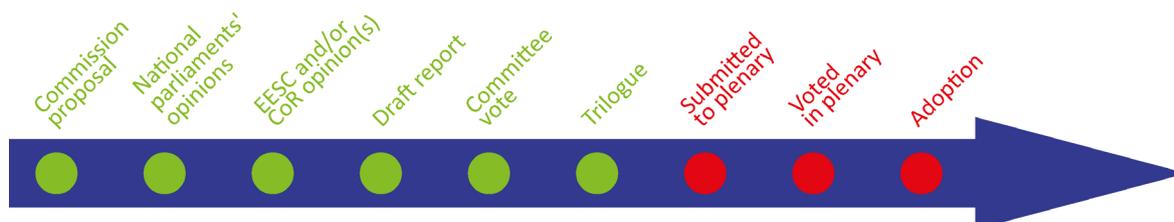
Protection of the environment through criminal law

OVERVIEW

In December 2021, the European Commission proposed a revision of Directive 2008/99/EC on the protection of the environment through criminal law. The proposal seeks to clarify some of the terms contained in the directive and includes an updated list of environmental crime offences, harmonised sanction types and levels, measures to strengthen international investigation and prosecution, improvements to the collection of statistical data, and measures to improve national enforcement chains. Ultimately, the revision is designed to increase the effectiveness of investigation and prosecution of environmental criminal offences across the European Union.

The Committee on Legal Affairs (JURI) was responsible for drawing up the Parliament's position on the proposal, adopting its report on 21 March 2023. The Council meanwhile adopted its general approach on the proposal on 9 December 2022. On 16 November 2023, the co-legislators reached a provisional agreement on the text, to be formally adopted early in 2024.

Proposal for a directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC		
<i>Committee responsible:</i>	Legal Affairs (JURI)	COM(2021) 851 15.12.2021
<i>Rapporteur:</i>	Antonius Manders (EPP, the Netherlands)	2021/0422(COD)
<i>Shadow rapporteurs:</i>	Franco Roberti (S&D, Italy) Ilana Cicurel (Renew, France) Marie Toussaint (Greens/EFA, France) Jorge Buxadé Villalba (ECR, Spain) Virginie Joron (ID, France) Manon Aubry (The Left, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	First-reading vote in plenary	



Introduction

Although there is no universally accepted definition of environmental crime, the [United Nations Environmental Programme \(UNEP\) and Interpol](#) agree that it 'encompasses illegal activities harming the environment and aimed at benefitting individuals or groups or companies from exploitation of, damage to, trade or theft of natural resources, including serious crimes and transnational organised crime'. Europol and [EnviCrimeNet](#) suggested that 'any illegal action with a negative, harming impact on the environment' can be defined as environmental crime, including any offences involving endangered species. According to Europol's 2021 [Serious and Organised Crime Threat Assessment \(SOCTA\)](#), environmental crime is one of the primary serious and organised crime activities in the European Union. Even though environmental crime encompasses a broad range of activities, the SOCTA 2021 report focuses on waste and pollution crime, as well as wildlife crime. By disregarding the existing (inter)national rules and guidelines on the collection, treatment and disposal of waste, which covers waste types ranging from hazardous waste, such as chemical waste, to non-hazardous waste, such as scrap metals, the offenders seek to maximise their profits. Through wildlife crimes, the risks of extinction of endangered species and of degradation of biodiversity increases. Moreover, the trafficked wildlife might transmit diseases that can negatively impact human health. Not only wildlife crime can affect human health, but environmental crime in general can 'cause [irreversible and long-term damage](#) to people's health and the environment', as Virginijus Sinkevičius, European Commissioner for the Environment, Oceans and Fisheries, stated. According to [Europol](#), it also poses 'the risk of disease; environmental disaster; irreversible climate change; the contamination of the food chain; reduced life expectancy; the death of human beings'. Considering these damaging effects, [Commissioner Sinkevičius](#) insisted that 'a high level of environmental protection is not only important for present but also future generations'.

The necessity of preventing and combating [environmental crime](#) also derives from the fact that it is the fourth-largest criminal activity (in terms of value) in the world. This criminal activity [grows](#) at a rate of 5-7 % annually, with related annual revenues globally estimated in 2016 to range between US\$91 billion and US\$258 billion. In the EU, for example, the illicit waste market already generated an estimated average annual revenue of €3.7 billion to €15.3 billion between 2014 and 2016.¹ The profitability of environmental crime renders it very [attractive](#) for organised crime groups (OCGs) involved in smuggling, terrorism, money laundering, and/or corruption. Moreover, the low detection rate of environmental crime offences and weak sanctions are incentivising offenders to engage in environmental crime. The environmental crimes committed by OCGs not only undermine the rule of law, but also the social, economic and political frameworks of the EU and its Member States. For example, legitimate businesses generate lower incomes, resulting in loss of tax revenue, which in turn [negatively affects](#) societies and services for EU citizens.

As part of the European Green Deal, the EU is aiming to curb pollution, manage waste and safeguard biodiversity. Against this background, the Council first identified environmental crime as one of the priorities for the [EU policy cycle for organised and serious international crime](#) in May 2017, the European Multidisciplinary Platform against Criminal Threats – EMPACT 2018-2021). It has since renewed its priority to reinforce the fight against environmental crime during the ongoing EU policy cycle ([EMPACT 2022-2025](#)).² Currently, the EU's main law addressing [environmental crimes](#) is [Directive 2008/99/EC](#) on the protection of the environment through criminal law. The directive – commonly known as the Environmental Crime Directive (ECD) – sets out instances of conduct to be criminalised by Member States. However, according to the 2020 Commission [evaluation](#), the ECD has significant limitations and shortcomings. The evaluation revealed the need to improve, for example: statistics gathering, the definition of legal terms, the level of sanctions and accessory sanctions, the definition of the scope of the directive and its possible extension to new areas of environmental crime (such as illegal logging and timber trade), cross-border cooperation, as well as cooperation between enforcement authorities within Member States, the practical implementation and public awareness. Resulting from this evaluation, the Commission announced the revision of the ECD in its [2021 work programme](#) and published the [legislative proposal](#) on 15 December 2021.

Existing situation

On 19 November 2008, Directive 2008/99/EC was adopted by the European Parliament and the Council. It stated the general aim of protecting the environment more effectively and decreasing the environmental crime levels in the EU. The directive sets out minimum common rules on the criminalisation of numerous actions that violate EU environmental laws and requires effective, proportionate and deterrent sanctions. In addition, the ECD aims to enhance compliance with EU environmental legislation, by adding criminal penalties to the administrative sanctions regime,³ and it provides for the criminal liability of natural and legal persons. The [actions](#) constituting unlawful acts are stated in [Article 3\(a\) to \(i\) of the ECD](#) and can be divided into three groups: offences that cause or are likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water and/or to animals or plants (a, b, d, e); offences that are undertaken in a non-negligible quantity or with a non-negligible impact on the conservation of species (c, f, g); or offences causing a significant deterioration of habitat within a protected site (h). Finally, as regards the production, importation, exportation, placing on the market or the use of an ozone depleting substance (i), the directive does not further specify this offence.

After the directive entered into force on 26 December 2008, Member States had 2 years to transpose the ECD into their national legislation. The Commission's 2020 [evaluation](#) reveals that the directive has not fully met its objectives and that significant divergence remains between Member States. The first difference between Member States relates to the approaches taken to transpose the directive: for example, Hungary, Lithuania and Spain transposed the directive through their Criminal Code; Denmark, France and Ireland transposed the directive through environmental legislation; Austria, Italy and the Netherlands combined the transposition through sectoral legislation and the Criminal Code; whereas Cyprus, Malta and Greece transposed the directive through a specific act. Secondly, the Commission's evaluation reveals that Member States have interpreted several legal terms stated in the directive in a diverging manner, changing the scope of the related criminal offences. Most Member States transposed '**substantial damage**' as stated in Article 3(a), (b), (d) and (e) of the directive literally, whereas others (i.e. Czechia and Slovakia) interpreted the substantiality of the damage based on its financial value, or based it on the reversibility of environmental damage (i.e. France). These differences are also visible in terms such as '**non-negligible quantity**', '**negligible quantity/impact**', '**dangerous activity**', and '**significant deterioration**'. Lastly, criminal sanctions differ significantly per Member State, as they are often set in accordance with their national legal traditions, economic situation and/or income level. As for financial penalties, the maximum level for Article 3 (a) offences ranges from €25 000 in Bulgaria to €15 000 000 in Ireland, with Denmark having no minimum or maximum fine levels and other Member States (i.e. Estonia and Finland) linking fine levels to the offender's income. Regarding prison sentences, for example, the maximum sentence for Article 3 (a) offences varies from 2 years in Brussels (Belgium), to life imprisonment in the Netherlands and Malta.

Apart from the diverging legal transposition, the practical implementation of the directive also differs significantly per Member State. However, the detection, investigation and prosecution of environmental crime are essential for the effectiveness of environmental crime laws. According to the evaluation, a series of studies on the practical implementation of environmental criminal law have concluded that 'there are major deficiencies in all Member States and at all levels of the law enforcement chain that prevent criminal environmental law from being effective'.

Comparative elements

The first efforts to protect nature and wildlife were made by the International Union for Conservation of Nature (IUCN) in the 1960s. This led to [the Convention on International Trade in Endangered Species of Wild Fauna and Flora](#) (CITES, also known as the Washington Convention), a multilateral treaty protecting endangered plants and animals that entered into force on 1 July 1975. At the time

of writing, 184 countries have agreed to be bound by the Convention and are recognised as parties. The EU became a [party](#) to CITES in 2015.

In addition to CITES, numerous other multilateral environmental agreements have been established with the aim of protecting and preserving the environment at global and regional level ([estimations](#) point to over 300 such multilateral international treaties). The Montreal Protocol on Substances that Deplete the Ozone Layer and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal are just two [examples](#). Both agreements entered into force in 1989 and set out extensive legislative and administrative trade measures for the states parties. The Council of Europe's [Convention on the Protection of the Environment through Criminal Law](#) (ETS No 172), was opened for signature in 1998. Although a ground-breaking [text](#) in this field at that time, the convention has never entered into force.

Parliament's starting position

The European Parliament has undertaken continuous efforts over the past decades to protect the environment, for example with several Community environment action programmes. Before the approval of Directive 2008/99/EC, Parliament adopted the [sixth Community environment action programme](#) (6th EAP) on 22 July 2002. The 6th EAP set out a framework for environmental policy-making in the EU and outlined the integration of environmental protection requirements and legislation throughout the Community to meet the EU's environmental goals by 2012. The Environmental Crime Directive [complements](#) the 6th EAP, as it 'obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment'.

In its 2013 [resolution](#) on organised crime, corruption and money laundering, summarising the findings of the dedicated Special Committee ([CRIM](#)), Parliament underscored the involvement of organised crime groups in waste management, and trade in wildlife and natural resources. Parliament called for joint action by all European countries 'to prevent and combat the so-called ecomafias'. Furthermore, Parliament focused on wildlife crime as one of the environmental offences committed by organised crime groups, which led to the adoption of several resolutions aimed at reducing and preventing wildlife crime and trafficking, and strengthening enforcement of laws against it at EU and international level, for instance the resolutions on [wildlife crime](#) (2014) and on the [EU action plan against wildlife trafficking](#) (2016). In its 2014 resolution on wildlife crime, Parliament called on the European Commission to monitor and supervise the implementation of the ECD, as some Member States had made no provisions for effective criminal penalties. In a 2021 resolution on the [liability of companies for environmental damage](#), Parliament called on the Commission and the Member States 'to allocate appropriate financial and human resources to preventing, investigating and prosecuting environmental crimes, and to increase the expertise of the authorities involved, including prosecutors and judges, with a view to more effectively prosecuting and sanctioning environmental crime'; and invited the Member States 'to set up or reinforce specialised units within their national police services at the appropriate levels for the investigation of environmental offences'.

Council starting position

The Council of the EU adopted extensive [conclusions](#) on countering environmental crime in December 2016. Defining it as one of the most important criminal threats affecting the EU, the Council has included environmental crime in [EMPACT](#), among the EU's priorities for the fight against serious and organised crime, aiming '[t]o disrupt criminal networks involved in all forms of environmental crime, with a specific focus on waste and wildlife trafficking, as well as on criminal networks and individual criminal entrepreneurs with a capability to infiltrate legal business structures at high level or to set up own companies in order to facilitate their crimes'.

In September 2019, the Finnish Presidency of the Council drew up a [report](#) on the state of environmental criminal law, based on replies by Member States to a set of relevant questions.

Furthermore, on 3 December 2019 the Justice and Home Affairs Council discussed the [report](#) on the eighth round of mutual evaluations in the field of criminal matters, focusing on environmental crime. The evaluations emphasised the risks to human health and the environment posed by: illegal trafficking of waste and the illegal production or handling of dangerous materials; the low environmental crime detection rate; the lack of reliable national statistics; and the 'general lack of priority at political level' for efforts to prevent and fight environmental crime. The Council concluded that 'further efforts by the Member States to use the potential of the national law enforcement and criminal law systems to their full extent, by involving all stakeholders at the same level, using all the available tools efficiently and fostering international cooperation, could contribute to achieving better management of environmental matters across the EU and in a cross-border context'.

Preparation of the proposal

The European Commission conducted a public and stakeholder [consultation](#) on the implementation of the directive and new challenges in environmental crime, from 10 October 2019 to 2 January 2020, and published its evaluation of the Environmental Crime Directive on 28 October 2020, identifying several areas of improvement. On 1 December 2020, the Commission published a [roadmap](#) on its initiative to improve the directive, including an inception impact assessment. Between February and May 2021, the Commission conducted a public consultation, which gathered around 500 contributions. The feedback was largely in favour of the revision of the directive and highlighted, among other things, the need to clarify the vague terms, to update the list of applicable EU legislation, extend the scope to new criminal offences, reinforce judicial cooperation between authorities (within the same Member State and cross-border) and improve the collection of data. Respondents to the subsequent public consultation also welcomed the clarification of some legal terms in the directive; the need to review types and levels of sanctions to deter recurrent offenders; the inclusion of accessory sanctions and measures to improve deterrence; the need for accurate and reliable data from Member States; and the need for effective enforcement across the Member States and for sufficient financial and human resources for national authorities. Some contributions argued in favour of using the established anti-money laundering mechanisms to tackle wildlife crime, while others expressed the view that the revised directive should include responsibility for environmental crimes that are committed outside the EU by European companies or legal entities. It was also underlined that environmental destruction was a very complex phenomenon that often caused indirect harm to people or whose effects were not necessarily immediately tangible, therefore the terms 'substantial damage' or 'serious injury' were inappropriate as prerequisites in criminal provisions.

The proposal is accompanied by a detailed [impact assessment](#) (IA) that identified and assessed policy options for the following key elements: the scope of the ECD; definitions of environmental crime; sanctions levels; cross-border cooperation; policy-makers' and practitioners' awareness of the nature and scale of environmental crime; and ineffectiveness of the enforcement chain. Regarding the costs of the preferred policy measures, the IA states that the budgetary implications of the proposal are negligible for both Member States and for the Commission. The proposed policy measures would lead to judicial cooperation between relevant authorities and would improve the effectiveness of investigations, prosecutions and sanctions. This *de facto* results in a reduction of environmental crime, positively impacting health, economy and biodiversity, as well as fundamental rights, through the improvement of environmental protection, dignity, health and wellbeing.

The European Parliamentary Research Service (EPRS) prepared an [implementation appraisal](#) of the ECD, in light of the Commission's proposal to revise it. An [EPRS appraisal](#) of the Commission's impact assessment was published in April 2022.

The changes the proposal would bring

The Commission's [proposal](#) to revise Directive 2008/99/EC is based on [Article 83\(2\) TFEU](#), which allows the establishment, by way of directives, of minimum rules regarding the definition of criminal

offences and sanctions in areas already subject to harmonisation measures. To improve the effectiveness of criminal investigations and prosecution across Member States, the proposal sets six objectives:

- clarify terms used in the definitions of environmental crime that leave too much room for interpretation;
- update the directive by bringing new environmental crime sectors under its scope;
- ensure more effective, dissuasive and proportionate sanctions by defining sanction types and levels for environmental crime;
- foster cross-border investigation and prosecution;
- improve informed decision-making on environmental crime through better collection and dissemination of statistical data according to common standards in all Member States; and
- improve the effectiveness of national enforcement chains.

Clarification of definitions

The current directive contains several unclear and vague terms, which hinders the effectiveness of investigations and prosecutions. Examples thereof are: 'likely to cause damage', 'substantial damage' and 'negligible or non-negligible quantity'. The proposed revised directive aims to improve the definitions of unclear terms and eliminating vague terms to the best extent possible. Furthermore, risky behaviour (endangerment crime) will be criminalised, as this will help legislators to catch cases where the environment has been put at intolerable risk. These proposed changes can be found in Articles 2 and 3, for example, with Article 2 providing a more extensive definition of 'unlawful' and 'public concerned'. 'Unlawful', according to Article 2(1) of the proposed directive, means conduct infringing on Union legislation in line with EU policy to protect the environment, or infringing on a law, regulation or decision taken by a Member State that transposes the Union legislation. Furthermore, authorised conduct is rendered unlawful if the authorisation was obtained fraudulently or by corruption, extortion or coercion. As stated in Article 2(4), the 'public concerned' encompasses the persons affected or likely to be affected by the offences stated in the proposed directive, individuals with a sufficient interest, or those concerned with the enforcement/protection of a right. In addition, Articles 3(3) and (4) provide the necessary elements to be taken into account during the investigation, prosecution and adjudication of offences, when assessing the (possible) substantial damage to the environment in general, and to the quality of air, soil, water, animals or plants. Article 3(5) also defines the 'negligible or non-negligible quantity', by stating the elements that Member States have to include in their national legislation. In providing these elements, the Commission aims to establish a criminal framework that is the same in all Member States and to increase the effectiveness of investigations and prosecutions of environmental criminal offences.

Updated list of environmental crime offences

The 2008 directive criminalises serious violations of obligations contained in 72 pieces of environmental legislation included in the two annexes to the directive. The current proposal removes the annexes and adds new relevant crime categories to its Article 3, to provide more legal clarity and to ensure the directive is in step with the evolution of EU environmental legislation. As a result, the proposed directive refers to the relevant sectoral legislation in general terms and refines the definition of what constitutes environmental crime. The scope of the directive is enlarged from nine to 18 crime categories, allowing for more acts to be investigated and prosecuted, particularly when they concern cross-border criminal acts. New offences relate to illegal ship recycling, illegal water abstraction, the placing of illegally harvested timber or such products on the Union market, and serious breaches of the rules on the introduction and spread of invasive alien species on EU territory. This approach aligns with Parliament's focus on waste management, trade in wildlife and natural resources. Article 4 obliges Member States to criminalise incitement, aiding and abetting, and attempt to commit any of the criminal offences in Article 3. Furthermore, Member States should ensure the criminalisation of most acts in Article 3 committed with serious negligence.

Harmonised sanction types and levels

As sanction levels vary between Member States, or are too low to be dissuasive, the Commission aims to establish more effective, proportionate, dissuasive and uniform sanction levels across the EU for natural and legal persons through the proposed revision to the directive. By harmonising sanction types and levels, a uniform legal framework for all Member States could be established, leading to more effective investigations and facilitating cross-border cooperation. According to the proposal, Member States will have to include a minimum level of maximum sanctions, proportionate to the seriousness of the offences, in their national criminal legislation. For instance, offences listed in Article 3 that have caused or are likely to cause death or serious injury to any person should be punishable by a maximum prison term of at least 10 years (Article 5(1)). The proposed directive also introduces ancillary sanctions and measures for natural persons (Article 5(5)), such as the obligation to reinstate the environment (a), fines (b), exclusion from access to public funding (c), or the withdrawal of permits (e). Article 6 provides for the liability of legal persons for offences listed in Articles 3 and 4. In Article 7 of the proposal, several sanctions for legal persons are listed, ranging from fines, placing under judicial supervision, or the temporary or permanent closure of establishments used for the offence. The minimum level of maximum fines depends on the offence committed, as well as the illegal profits and the total worldwide turnover of the undertaking. For example, most of the offences in Article 3 should give rise to a fine amounting to no less than 5 % of the total worldwide turnover of the legal person in the business year preceding the fining decision.

Furthermore, Articles 8 and 9 provide for aggravating and mitigating circumstances that can either increase or decrease the sanctions (e.g. links to organised crime, the compliance history of the offender, obstruction of inspection or investigation activities, etc.). Article 10 provides for the freezing and confiscation of proceeds and instrumentalities of crimes covered by the directive.

Strengthened international investigation and prosecution

By clearly defining the terms used in the directive and by establishing a level playing field for the sanction types and levels across Member States, it will be easier for different Member States' competent authorities to cooperate. Ultimately, this will lead to more effective investigation and prosecution across borders. The Commission also urges Member States to cooperate through EU agencies, such as Eurojust and Europol, as well as EU bodies, such as the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF). In addition, the rules on establishing jurisdiction (Article 12) will help foster cross-border investigation and prosecution. This objective underscores Parliament's call to Member States to contribute jointly to the prevention of and the fight against '[ecomafias](#)'.

Improved collection and dissemination of statistical data on environmental crime

To assess the scale of environmental offences as well as their trends, the proposed directive would oblige Member States to collect accurate, consistent and comparable statistical data, according to harmonised common standards (the Commission will establish a standard format for data transmission). These data should provide insights into the country's efforts to combat environmental crime, serve the operational and strategic planning of enforcement activities and be used to provide information to citizens. As stated in Article 21 of the proposal, Member States shall provide statistical data at least on the number of environmental crime cases reported (a) and investigated (b), the average length of the criminal investigations of environmental crime (c) and the number of convictions (d), the number of natural persons convicted (e), and legal persons sanctioned (f), the number of dismissed court cases (g), and the types and levels of sanctions imposed for environmental crimes, per category of environmental offences (h). All Member States must submit the data to the Commission annually.

Improved effectiveness of national enforcement chains

Fostering the knowledge and practical skills of all actors involved in the enforcement chains will contribute to the effectiveness of investigations and prosecutions of environmental crime offences. The proposed directive instructs Member States to ensure that the national investigative and enforcement agencies have a sufficient number of qualified staff, as well as sufficient technical and financial resources to perform their duties (Article 16). Additionally, Member States are instructed to provide specialised training, with respect to the objectives of the directive, to judges, prosecutors, police, judicial staff and other competent authorities' staff on a regular basis (Article 17). Member States should also ensure that effective investigative tools, such as those used for organised crime (i.e. interception of communications and covert surveillance), are available for investigating and prosecuting environmental offences (Article 18). Furthermore, the coordination and cooperation between competent authorities within Member States has to be strengthened (Article 19) and national strategies are to be published (Article 20). By undertaking these measures to improve national enforcement chains, it is expected that more cases would be prosecuted successfully.

Role of civil society

The proposed directive provides for the balanced and effective protection of whistleblowers, and also envisages a possibility for the public concerned to participate in proceedings concerning the offences covered by the directive, in accordance with national law, for example as a civil party.

Revision and evaluation

Within one year of the directive's entry into force, Member States are obliged to develop a national strategy to combat environmental crime and set up an action plan to transpose the directive. The transposition deadline is set at 18 months after the directive's entry into force. The Commission will produce a report on the measures taken by the Member States and a study on the directive's effectiveness, respectively 2 and 5 years after the end of the transposition period. Member States are also required to produce a report every 2 years containing related information, such as their national strategy or their coordination and cooperation measures. Due to its Treaty [opt-out](#), Denmark is not participating in the adoption of the directive, but will remain bound by Directive 2008/98/EC. [Ireland](#) will not participate in the adoption of the proposal either.

Advisory committees

The European Economic and Social Committee (EESC) had already prepared an [evaluation](#) of the 2008 Directive in December 2019, setting out a series of recommendations to the European Commission in light of the revision of the ECD. The EESC adopted its final [opinion](#) on 23 March 2022. The EESC welcomes the Commission's proposal and expresses support for its objectives. However, some aspects of the proposal could be further enhanced. For example, the EESC recommends the creation of a Green European Public Prosecutor's Office as part of the EPPO, as well as the creation, at Member State level, of specialised police forces, prosecutors, judges and courts in the area of environmental crime. It also suggests substantially increasing the maximum limits for sanctions and extending the list of offences to as many types of crime as possible. Finally, it regrets that the term 'ecocide' is mentioned only in the recitals and not in the operational part of the directive.

National parliaments

EU national parliaments had until 29 March 2022 for the [submission](#) of reasoned opinions on the grounds of subsidiarity. The Swedish Parliament issued a [reasoned opinion](#) that concluded that the proposed provision stating that a natural person who has been prosecuted for environmental crimes would be temporarily banned from running for elected or public office was in breach of the principle of subsidiarity; it argued that such measures must be left to each Member State to decide. The Czech Senate, which did not send a reasoned opinion but asked the government to modify the

proposal according to the [resolution](#) adopted on 5 April 2022, raised the same objection. In addition, the Czech Senate objected to the proposal to allow the public concerned to participate in criminal proceedings, arguing that Article 83(2) TFEU does not authorise the EU to interfere in national procedural criminal law. The resolution raised further concerns regarding the proposed designation of criminal offences and levels of criminal sanctions. The Irish Houses of the Oireachtas' [opinion](#) on the proposal underlined the concern that some of the definitions remained vague, as well as the need to take account of Ireland's common law system if Ireland were to participate in the application of the future directive.

Stakeholder views⁴

Following the publication of the proposal on 15 December 2021, stakeholders and the public had the opportunity to give [feedback](#) until 21 April 2022 (19 contributions were registered). The proposal was generally welcomed; however, criticism and suggestions to add elements were also conveyed. While expressing support for the provisions on increasing the resources and training opportunities for Member States' authorities and cross-border cooperation, and for providing rights for the public concerned to participate in proceedings, most contributions also emphasised that:

- the proposal still contained vague terms; therefore, greater legal clarity was needed for terms such as 'substantial damage' or 'negligible quantity';
- the text contained no general definition of environmental crime;
- the directive was not 'future proof', as it remained unclear how the directive would be updated in a systematic and effective way when amendments to the existing environmental legislation or new laws are adopted;
- national statistical data should be published in its raw form and not through consolidated review;
- the directive should extend its scope to illegal, unreported and unregulated fishing.

A few contributions called for sanctions guidelines to assist Member States' authorities, and for a maximum sanction of at least 15 % of annual turnover for legal persons (instead of the proposed 5 %). Other contributors proposed to extend the [mandate](#) of the EPPO to cover serious environmental crime with a cross-border dimension or with links to organised crime; to define ecocide and include it in the operational part of the directive; or that Member States should establish jurisdiction over offences committed outside the EU for the benefit of a legal person established on EU territory. Moreover, whereas some organisations considered that the minimum standards for the maximum limits for penalties were still too low, others argued that administrative sanctions have proven their effectiveness over criminal sanctions (e.g. in the context of the shipping industry).

Legislative process

Within the European Commission, the Directorate-General for Justice and Consumers (DG JUST) is responsible for the revision of the directive. In the European Parliament, the file was referred to the Committee on Legal Affairs (JURI) on 27 January 2022, with Antonius Manders (EPP, the Netherlands) designated rapporteur. On 15 March 2022, during a joint committee [hearing](#) on the topic of creating an EU Green Prosecutor, Members also debated the Commission's new proposal.

On 12 October 2022, the JURI rapporteur published the [draft report](#) on the proposal with a series of amendments aiming, among other things, to ensure the effectiveness of sanctions, strengthen prevention measures and improve the effectiveness of investigations, prosecutions, trials and judicial adjudications of environmental crimes. The rapporteur suggested raising the level of fines for legal persons to a maximum of at least 10 % of their average worldwide turnover in the last three business years preceding the fining decision. Moreover, the [limitation periods](#) for the offences should be extended, to allow more time to uncover the crimes. Also, the polluter should pay targeted fines for the environmental harm caused, the revenues from which would contribute partly to funding preventive measures, specialised training and other tools and resources dedicated to the

investigation and prosecution of environmental crimes. In addition, the competences of the EPPO could be enhanced so that it could take the lead in combating and prosecuting cases of cross-border environmental damage and environmental crimes. The Commission should, 3 years after the transposition date and every 2 years thereafter, present an evaluation of the impact of the directive and the need to update the list of environmental offences. The Committee on Legal Affairs (JURI) adopted its [report](#) on 21 March 2023.

The Committees on Environment, Public Health and Food Safety (ENVI), Development (DEVE), Petitions (PETI) and Civil Liberties, Justice and Home Affairs (LIBE) adopted opinions on the proposal, which raised a series of common points, such as:

- expanding the scope of the directive to include the crime of ecocide; other offences to be covered should be: illegal logging, disregard for animal welfare legislation, environmental damage to forests (ENVI [opinion](#)); fisheries crime and the exploitation and trade of illegal minerals (DEVE [opinion](#)); mistreatment of animals and conduct that causes forest fires affecting an area of more than one hectare (PETI [opinion](#)); illegal logging, starting a forest fire, unauthorised development or construction on land with ecological or cultural value (LIBE [opinion](#));
- extending the EPPO's mandate to deal with serious (cross-border) environmental crime;
- public authorities should not be excluded from prosecution for environmental crimes;
- extending the limitation periods for the offences; no limitation should apply to ecocide;
- using the funds from the applied fines or confiscated gains to repair the damage caused, compensate victims and finance prevention measures;
- increasing the maximum limit of the fine for legal persons: at a maximum of 12 % of the total worldwide turnover of the legal person in the business year preceding the fine, or 15 % for offences with aggravating circumstances and for ecocide (ENVI); at a maximum of 10 % of the legal person's total worldwide turnover in the business year preceding the fining decision (PETI); at a maximum of 12 % of the total average worldwide turnover in the three business years preceding the detection of the offence or, when that turnover is very low, to no less than €100 million; for the crime of ecocide, that maximum limit should be set at between 12 % and 25 % of the total average worldwide turnover in the three business years preceding the detection of the offence (LIBE); at 15 % of the total worldwide turnover in the business year preceding the fining decision; for ecocide, the minimum amount should be between 15 % and 30 % of the total worldwide turnover in the business year preceding the decision and the maximum should be the total amount necessary for restoring the damage to the environment and for paying compensation and damages to affected persons (DEVE);
- the Commission should issue guidelines on the implementation of the directive and should set up a platform for anonymous reporting of environmental crimes;
- Member States should set up specialised units within their law enforcement or judicial authorities to deal with environmental crime and give them appropriate resources.

At its [meeting](#) on 9 December 2022, the Council adopted its [general approach](#) as the basis for the negotiations with Parliament on the file. It stated that certain concepts should be interpreted in accordance with national law, such as the intention of unlawful conduct that causes death to any person or serious injury, as well as the notion of at least serious negligence. Moreover, defining the maximum level of fines should be without prejudice to the discretion of national judges to impose appropriate sanctions in individual cases. The Council added the unlawful manufacture, use, import and export of mercury and mercury compounds to the list of covered offences, and modified the list of aggravating circumstances. Furthermore, the Council agreed on the level of sanctions, as follows:

- for natural persons: (i) for intentional offences causing death to any person, a maximum prison term of at least 10 years; (ii) for offences committed with at least serious negligence causing death to any person, a maximum prison term of at least 5 years; (iii) for other intentional offences included in the legislation, a maximum prison term of either at least 5 years or at least 3 years;

- for legal persons: (i) for the most serious offences, a maximum fine of at least 5 % of the legal person's total worldwide turnover, or alternatively € 40 million; (ii) for all other offences, a maximum fine of at least 3 % of the legal person's total worldwide turnover, or alternatively € 24 million. The Member States will have the choice of whether to apply the percentage of total worldwide turnover (in this case, they may choose as a basis either the business year preceding the fining decision or that preceding the commission of the offence) or the fines determined as absolute amounts.

The limitation periods were reduced for certain offences compared to the Commission proposal. On the statistics to be collected, the Council's general approach provided for a more limited range of data to be provided. The transposition deadline was also modified, from 18 months in the Commission's proposal to 30 months.

On 16 November 2023, the Council and Parliament reached a [provisional agreement](#) in the interinstitutional negotiations. The main differences with the Commission proposal are as follows.

- **Offences (Article 3):** The text now includes a new offence relating to the manufacture, use, and trade of mercury and mercury products, but leaves out violation of legislation on genetically modified organisms, on unauthorised, unreported and illegal fishing, and on conduct causing forest fires or forest degradation. It also introduces a '[qualified offence](#)' that results in destruction, or widespread and substantial damage that is either irreversible or long-lasting, of an ecosystem of considerable size or environmental value, or habitat in a protected site, or of the quality of air, soil or water;
- **Penalties (Articles 5 and 7): Natural persons** responsible for environmental offences causing death to any person may be sentenced to a maximum term in prison of at least 10 years. Qualified offences will be punishable by a maximum of at least 8 years imprisonment. A maximum of at least 5 years in prison will apply to most offences committed with serious negligence (Article 3(3)), resulting in death, as well as to most offences committed intentionally set out in Article 3(2) when there is no resulting death. Intentional offences relating to abstraction of surface and groundwater, to legislation on wild flora and fauna (including trade), to deterioration of habitats within a protected site and to invasive alien species, when there is no resulting death, will be punished by a maximum of at least 3 years detention. No maximum penalties are defined for the offences in Article 4 (i.e. intentionally inciting, aiding and abetting, and attempt). **Legal persons** may be fined either with up to 3 % or 5 % of the company's annual worldwide turnover (based on the business year preceding the commission of the offence or that preceding the fining decision), or with fixed amounts of € 24 million or € 40 million – a choice to be made by Member States. Legal persons found liable of a qualified offence may incur more severe criminal or non-criminal sanctions and measures. **Additional criminal or non-criminal sanctions and measures** may be imposed on natural and legal persons (there is no longer an obligation as proposed by the Commission and Parliament).
- **Limitation periods (Article 11):** To enable the investigation, prosecution and judicial decision of environmental crimes, Member States must provide for limitation periods of at least 10 years from when the offence was committed for offences incurring a sanction of at least 10 years; at least 5 years from when the offence was committed for offences incurring a sanction of at least 5 years; and at least 3 years from when the offence was committed for offences incurring a sanction of at least 3 years. Limitation periods must also be set in order to enable the enforcement of penalties (Article 11(3)).
- **Transposition and review:** The transposition period is set at 24 months after the entry into force of the directive. The Commission must report to Parliament and Council on the national transposition measures 2 years after the transposition deadline, and must issue an evaluation of the impact of the directive, as well as of the need to update the list of criminal offences therein, 5 years after the transposition deadline.

- **Other points:** Member States must send the related annual statistics to the Commission within 36 months of the entry into force of the directive, while the national strategies on combatting environmental offences must be published 1 year after the end of the transposition deadline and updated every 5 years. The Council did not agree to a Commission assessment on the extension of the EPPO mandate under the directive.

The [JURI committee](#) endorsed the provisional text on 11 December 2023 with 16 votes in favour and 4 against. Once Parliament endorses the agreement in plenary (possibly in February 2024), the Council will then also adopt the directive.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Huemer M., [Revision of Directive 2008/99/EC on the protection of environment through criminal law](#), EPRS, European Parliament, November 2021.

Huemer M., [Environmental crime directive](#), EPRS, European Parliament, April 2022.

OTHER SOURCES

[Protection of the environment through criminal law](#), Legislative Observatory (OEL), European Parliament.

ENDNOTES

- ¹ [Mapping the risk of serious and organised crime infiltrating legitimate businesses](#), final report prepared for the Directorate-General for Migration and Home Affairs of the European Commission (2021), edited by S. Hulme, E. Disley and E. Blondes, p. 40. The study identifies growth in the revenue estimates of the EU illicit waste market for both hazardous and non-hazardous waste and indicates that, without more effective measures in place, the illegal shipment of plastic waste, end-of-life vehicles and e-waste are expected to increase further. The estimation covers data from 23 EU Member States, with revenue adjusted for inflation in 2019 prices.
- ² For the results of EMPACT in 2022 as regards environmental crime, see [EMPACT 2022 Results: Factsheets](#), p. 19.
- ³ In 2007, the Court of Justice of the EU ruled that 'the determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence' ([Case C-440/05](#), para. 70). This is why the 2008 directive does not include types and levels of criminal penalties, but only refers to 'effective, proportionate and dissuasive criminal penalties'. The Lisbon Treaty now allows the EU to define minimum rules regarding the definition of criminal offences and sanctions in areas already subject to harmonisation (Article 83(2) TFEU).
- ⁴ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

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