

Environmental crime affecting EU financial interests, the economic recovery and the EU's Green Deal objectives ¹

ABSTRACT

Recent developments within the framework of the European Green Deal have aimed at criminalization and an overhaul of regulatory frameworks to address environmental crime and its effects on the financial interests of the EU. This document was prepared by the Policy Department for Citizen's Rights and Constitutional Affairs at the request of the Committee of Petitions. The study suggests that despite commendable efforts, the transnational nature of environmental crime and its convergence with organized crime, money laundering and corruption, have not been adequately integrated into current reforms. A proper categorization of environmental crime as a 'serious crime' is needed as an essential basis for policy reforms.

Just over a period of five years, the PETI Committee received an impressive number (57) of petitions that are classified under the heading of environmental crime even though it may be clear that many of the issues brought up in these petitions do not necessarily constitute environmental crime. While some of the petitions are handed in by individual petitioners, others represent more than 6.000 individuals or large NGOs. It is therefore difficult to draw definite conclusions based on the number of these petitions, but they can be considered clear evidence of a large societal concern as regards the environment.

Environmental crime is seen as a major challenge in contemporary society. The crime is pernicious, harmful and may have multiple and multifaceted consequences that affect present generations and generations to come. Direct effects on the environment are commonly acknowledged, but other impacts on health, the economy, security and the rule of law are increasingly being emphasized. Depending on the area, this crime can involve a variety of offenders including individuals, companies, government, and informal criminal networks.

Despite these challenges, environmental crime is growing in scale, questioning the effectiveness of the measures to reduce or even eradicate it. Environmental crime is indeed sustained by the general low risks and high profits perception. Moreover, even though the personal motivations of the perpetrators play an important role, weaknesses in institutional and legislative mechanisms and regulatory and enforcement failures are also significant drivers for environmental crime. Measures to tackle the phenomenon have constantly been confronted with difficulties which undermine their ability to rise to the challenge. First, there is no universally recognized definition of environmental crime. It covers a wide range of rather different offences. For the European Commission, 'environmental crimes' can be considered environmental infringements that are or can

¹ Full study in English: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/737869/IPOL_STU\(2022\)737869_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/737869/IPOL_STU(2022)737869_EN.pdf)



be addressed through criminal law. Secondly, environmental crimes are perceived as 'victimless' or 'hidden' crimes. They can also be qualified as "control crimes" because their detection rate is directly dependent upon the efficiency of the controls of national authorities. Thirdly, criminals often rely on "comingling" (i.e., mixing illegal products with their legal counterparts) early in supply chains, which makes it difficult to distinguish between legitimate and illicit financial flows. Fourthly, the illicit and clandestine nature of environmental crime contributes to difficulties to establish accurate statistics on environmental crime itself and the scale of involved financial flows. Estimates often rely on a variety of sources including published reports, UN statistics on legal trades and estimates from criminal intelligence through INTERPOL, based on reporting from National Central Bureaus in Member States.

Regulatory efforts in recent decades have shown an evolving greening of criminal law. Green criminology enables to take into consideration the complexity of offences involving the environment, as well as the overlap of environmental offenses with many other areas of concerns such as corporate crime, organised crime, fraud or corruption, as well as actions of non-state criminal justice actors such as NGOs and civil society organizations.

In this context, the EU has embarked on a path of systemic changes in line with the dynamics of current ambitions to drive Europe's biggest transformation in more than a generation, evolving around a vision to build a fairer, healthier, greener and more digital society. Against this backdrop, the European Commission outlined various plans as part of a strategy with six headline ambitions. The European Green Deal, which was presented in December 2019 is one of these ambitions that are to be guided by the 2030 Agenda and its Sustainable Development Goals both internally and externally, as well as by the Paris Agreement. The developments have led to putting the environment at the center of many policy documents including the European Green Deal. Current policies seek a balance between environmental protection and other objectives such as the protection of the financial interests of the EU.

Within this framework, a revision of the Environmental Crime Directive (ECD), which remains the main instrument establishing criminal law measures to protect the environment, was proposed. In 2020, a review of the ECD confirmed many shortcomings and inconsistencies and revealed that the Directive has not kept pace with the evolution of EU environmental law and appears to be ill-equipped to respond to contemporary environmental and challenges. Due to the weaknesses, the ECD was found failing to yield the expected results on the ground. It has resulted in a very low number of successfully investigated and sentenced environmental crime cases. Sanctions levels are also too low to be truly dissuasive and the lack of systematic cross-border cooperation did not help advance the objectives of the Directive.

The European Green Deal has indeed called for better implementation and enforcement of environmental laws, underlining that ineffectiveness in this field could jeopardize the attainment of its objectives. Since 2012, the Commission has been devoting more attention to the criminal law aspect of the protection of the EU's financial interests. This protection takes on new impetus in the context of the EU Green Deal through which the Commission will explore a more holistic strategic approach at different levels aiming at systemic changes to secure sustainability. The culmination of the various steps resulted in the adoption in 2017 of the Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (the "PIF Directive"). Based on Art. 83(2) TFEU, the PIF Directive sets minimum rules concerning the definition of a number of criminal offences and sanctions with regard to combatting fraud and other illegal activities affecting the Union's financial interests, with a view to strengthening protection against criminal offences that affect those financial interests. Despite its wide-ranging scope, the PIF Directive does not specifically address environmental crime. The growing scale of environmental crimes is a major challenge that requires a consistent approach not only to fight against these crimes and to repress them consistently, but also ultimately reduce their impact on the financial interests of the EU, and hence the Green Deal.

Environmental crime is also growing due to its transnational character. Whereas financial crime and green crime are often closely linked, current legislative frameworks do not adequately address this interconnectedness. Furthermore, current efforts do not sufficiently tackle the convergence of environmental crime with other crimes such as organized crime, money laundering and corruption that are major enablers of environmental crime. This lack of comprehensiveness contributes to undermine the efforts to investigate and prosecute perpetrators of environmental. Unlike environmental crime, both corruption and money laundering are specifically recognized in Article 83 TFEU among the so-called 'euro-crime', i.e. particularly serious crimes with a cross-border dimension.

Taking into account all the intricacies involved in environmental crime and the fight thereof, calls for an EU green prosecutor are gaining momentum because of the belief that this would greatly compensate for the above-mentioned shortcomings and resolve some of the issues related to ineffective cross-border cooperation and heterogeneity across Member States. However, even though the Commission sees some added value for an EU Green Prosecutor, a recent address of the President of the Commission suggests that the establishment of such a prosecutor will not occur in the near future.

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