BRIEFING

Initial Appraisal of a European Commission Impact Assessment

European Parliament

Environmental crime directive

Impact assessment (SWD)(2021) 465, SWD(2021) 466 (summary) accompanying a Commission 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 (COM(2021) 851)

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's impact assessment (IA) accompanying the above-mentioned proposal, which was submitted on 15 December 2021 and referred to the European Parliament's Committee on Legal Affairs (JURI).

Despite the lack of systematic statistical data, environmental, social and economic damage caused by environmental crimes has been widely documented.[1] Directive 2008/99/EC (the Environmental Crime Directive, ECD) was aimed primarily at improving environmental protection by means of harmonised criminal legislation. In 2020, the evaluation of the ECD showed that legal shortcomings and enforcement gaps had affected its effectiveness in deterring environmental crime in all its forms. Its revision, planned in the 2021 Commission work programme, underpins the Commission's priorities around the Green Deal and the biodiversity strategy The European Parliament has called on the Commission to tackle environmental crime in its 2014 resolution on wildlife crime and its 2013 resolution on organised crime and corruption. The proposal is accompanied by a communication on stepping up the fight against environmental crime.

Problem definition

The four main objectives of the ECD were to: achieve a level playing field through the setting up of a harmonised EU legal framework; have in place effective, dissuasive and proportionate sanctions as a deterrent to environmental crimes; protect fair-playing businesses by reducing environmental crimes committed by unfair-playing businesses; and foster judicial cooperation.

The impact assessment identifies **six problems that hamper successful implementation of the ECD, together with their underlying drivers**.

Table 1

Problems	Drivers
1. The scope of the Directive is blurred and environmental criminal offences are subject to various interpretations in Member States	1-1 The legal technique used to define environmental criminal offences is too complex. It relies on a list of examples of imprecise unlawful conduct that may constitute a crime against the environment if in breach of national sectoral legislation (a list of which is annexed to the ECD) and if done intentionally or through serious negligence. This, according to the IA, leaves too much leeway to national interpretations. In addition, the list of sectoral legislation is partly outdated.

Author: Marie-Astrid Huemer
Ex-Ante Impact Assessment Unit

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	1-2 There is no easy mechanism to update the Directive and its annexes and bring new legislation under its scope.
2. The definition of some key legal terms attached to the definition of environmental crimes is vague	Member States have not systematically clarified those terms but, on the contrary, have transposed them literally or with similar words. When defined, those terms sometimes had different meaning, i.e. damage being qualified either financially or qualitatively.
3. Sanctions are not sufficiently effective, proportionate and dissuasive in all Member States, including when they apply to legal persons	Adopted pre-Lisbon, the lawmakers did not have the power to specify minimum and maximum level sentences.
4. Insufficient cross-border cooperation	4-1 Legal uncertainty and different national interpretations hamper cross-border cooperation. 4-2 Lack of a specific obligation to cooperate.
5. The lack of statistical data on the flow of cases over the enforcement chain,[2] with subsequent difficulties for policymakers and law enforcement authorities to monitor, evaluate and adapt accordingly their policies and remedial measures	5-1 Relevant statistics are fragmented within some Member States. 5-2 Different methodological approaches between Member States. 5-3 Some crimes with an adverse environmental impact might be classified under other categories of crime and be hidden, i.e. fraud, money laundering, organised crime. 5-4 Lack of specific provisions to address the collection and reporting of statistical data throughout all Member States or to offer a common framework to that effect.
6. The implementation of the Directive all along the enforcement chain is insufficient and characterised by a lack of detection, investigation and prosecution of environmental crimes	6-1 Lack of awareness of the harmfulness of environmental crimes among decision makers and practitioners. 6-2 Subsequent lack of priority for detecting, investigating, prosecuting and sanctioning such crimes and the corresponding lack of strategy. 6-3 Lack of specialisation among practitioners. 6-4 Lack of human and financial resources.

Source: Author, on the basis of information provided in the IA, pp 39-70.

The analysis is comprehensive and, in general, clearly spelled out. It stresses the lack of implementation of the Directive, as already underlined by most stakeholders (i.e. Member States, businesses, law enforcement and judicial authorities, and civil society organisations). It highlights the need to tackle their role and resources holistically along the enforcement chain to enable a strategic approach. In listing the problems, the IA does not prioritise between them, which is a reflection of the interlinkages between these problems.[3] The analysis of the problem is supported by reliable evidence; it includes multiple references to the 2020 Commission evaluation and to recently published studies on environmental crime.[4]

When available, the IA uses statistical data to support the analysis and otherwise relies on information sources such as stakeholders' consultations.[5] It presents real-life examples to highlight those aspects of the Directive that it considers need to be tackled in a simplified, stricter and uniform manner.[6] Some graphs help to illustrate the nature and scale of the identified shortcomings in the sanctions system and the negative impacts of environmental crime. They show major differences between the levels of maximum prison penalties between Member States, starting from none to 9 years for the same offence. Likewise, there are major variations concerning financial penalties

against legal persons. For instance, for shipment of waste the fine may vary from €0.2 million in Luxembourg to €250 million in Sweden.

The IA explores how the problem is likely to evolve without EU intervention. It shows that the use of non-binding measures, such as national guidelines on undefined legal terms, help to support the enforcement chain but that this is not sufficient to ensure the harmonisation of legislation. The problems outlined will persist and, in some cases, worsen with growing environmental crimes, as demonstrated by studies mentioned in the IA. Non-binding measures cannot alleviate shortcomings such as the lack of financial and human resources.

Without a revision, the IA finds that the ECD will be increasingly outdated, emerging crimes will flourish, legal uncertainties would continue, and the sanctions remain insufficient. The consequence would be an unstoppable increase of environmental crime with irreparable damage to human health and biodiversity.

Subsidiarity/proportionality

The IA includes a distinct section on subsidiarity without the related grid, but addressing the key questions comprised in the subsidiarity and proportionality task force grid. The Directive was adopted before the Lisbon Treaty, but, as stressed by the IA, EU competences on criminal matters have been extended since then. The Union has the power to set up minimum rules with regard to the definition of criminal offences and sanctions if this is necessary for the enforcement of EU policies.[7] EU competences pertaining to cross-border judicial and police cooperation were also extended.

The need for EU action is explained well. The IA stresses the need to harmonise legislation that avails a clear definition of criminal offences, for Member States to have equal levels of sanctions at their disposal, and for there to be an 'obligation' of cross-border cooperation. This is justified by the legal shortcomings, and by the frequent cross-border dimension of environmental crimes. The IA considers that revised and harmonised legislation is expected to have added value in the economic sphere by enabling fair competition between businesses, notwithstanding their location in the EU. To that effect, the IA notes that environmental crimes often undermine legal and tax-paying businesses, who likely share a large part of the estimated annual global loss related to environmental crime.[8] Finally, a functioning EU policy to tackle environmental crime would help to combat other related crimes, such as organised crime. The IA analyses the proportionality of policy options when relevant.[9]

The deadline for the submission of reasoned opinions of non-compliance with the principle of subsidiarity was 29 March 2022. At the time of writing, no national parliament had issued a reasoned opinion.

Objectives of the initiative

The IA clearly identifies general and specific objectives, each of which is explicitly linked to the problems that need to be addressed.[10] Drawing lessons from the evaluation's conclusions, it justifies the need to shift from the former general objective of reducing environmental crime to a narrowed but measurable and more functional objective of **protecting the environment through criminal law by effective investigation, prosecution and conviction**.

The protection of the environment remains the ultimate ambition, but the causal link between criminal law and protection of the environment is more explicit than in the ECD and enables a formulation of detailed objectives that can be achieved through criminal law. Those **specific** objectives are to: (i) improve the effectiveness of investigations and prosecutions by updating the scope of the Directive and by inserting a feasible mechanism to keep it up to date;[11] (ii) improve the effectiveness of investigations and prosecutions by clarifying or eliminating vague terms used in the definitions of environmental crime; (iii) ensure effective, dissuasive and proportionate types and levels of sanctions; (iv) foster cross-border investigation and prosecution; (v) improve informed

decision-making through better collection and dissemination of statistical data; (vi) improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions, and sanctioning.

The IA proposes to leave aside the objective of protecting fair-playing businesses, which was one of the former ECD objectives. This is because, as found in the evaluation, there is no data to demonstrate a direct link between criminal environmental law and deterring the emergence of safe havens. The IA notes that preventing safe havens depends on other factors such as global trade, and the choice is made to focus on the problems documented by the evaluation. It contradicts the analysis on EU added value in the economic sphere, since the IA had mentioned the potential economic advantage of companies operating in Member States with a more lenient enforcement regime.

The IA stresses that the reformulation of the objective(s) should facilitate the monitoring and the identification of evaluation indicators and allow the measurement of successes and failures.

Range of options considered

As recommended in the Commission's Better Regulation Guidelines and Tool 12 of its Toolbox, the IA gives details of two options that were discarded at an early stage, explaining why these options were not retained for in-depth analysis.[12] Thus, in addition to the baseline of taking no further EU action, the IA concludes that the 'only realistic option' is to replace the ECD with a new directive and considers that the real policy choices are the sub-options under that option.

The IA then proceeds to a full assessment of the sub-options and looks at available alternatives, in light of the shortcomings listed in the evaluation. For each specific objective (column 1 in Table 2), the IA assesses the available sub-options (column 2) against the three criteria of effectiveness, coherence, efficiency and, when relevant, proportionality. As noted by the IA, the three criteria are not equally relevant for each of the sub-options and therefore they are not assessed to the same degree under each sub-option.[13] The approach to cost estimates is clearly spelled out (p. 39) and complemented by Annex 2 in showing the results of the calculation for each sub-option.

Elements of comparison with other EU environmental legislation are presented when needed, supported by practical examples and references to the relevant stakeholders' positions. This sheds light on practical needs and priorities.

The sub-options are summarised in Table 2, with the preferred options highlighted in grey.

Table 2

Objectives	Sub-Options	Analysis
1. Updating the scope of the Directive; introducing a simple mechanism to keep the Directive up to date with other legal and operational changes	(1.a) Update the existing list of sectoral legislation and add new relevant crimes. (1.b) Keep a reference to a list of legislation but provide a more precise definition of environmental crime. (1.c) Withdraw references to specific legislation and give a more precise definition of environmental crime (like in the Council of Europe Convention).	The IA opts for the combined approach (1.b), after analysing the benefits and limits of each of the options. This option is considered future-proof. The IA argues that, although the combined approach does not guarantee complete legal clarity, due to the dual role of criminal and administrative proceedings, the redefinition of an environmental crime and what falls under 'unlawful' is expected to clarify the scope of the Directive and foster harmonisation.
2. Clearer definitions of terms attached to environmental crime (i.e. substantial damage, non-	(2.a) Define unclear terms more precisely using several criteria to foster a common approach.	The IA opts for the combined approach (2. c), which is considered effective in improving clarity and in enabling the criminalisation of the most

negligible quantity, dangerous activity, significant deterioration)	(2.b) Eliminate undefined terms and criminalise risky behaviour instead; the crime would exist notwithstanding its consequences. (2.c) Clarify undefined terms and eliminate some terms; the crime of endangerment remains for some categories of offences.	serious breaches of environmental law, notwithstanding the damage.
3. Improving the proportionality and dissuasiveness of sanctions	(3.a) Introduce a minimum level of maximum sanctions.[14] (3.b) Introduce a minimum level of maximum sanctions, plus aggravating circumstances and accessory sanctions. (3.c) Introduce a minimum level of maximum sanctions, plus aggravating circumstances and accessory sanctions, plus an obligation to link the level of fines to the financial situation of legal persons and/or illegal profits.	The IA opts for option 3(c). It demonstrates clearly that a more uniform sanctioning system throughout the EU can be set up, while allowing flexibility and increased severity depending on the circumstances of each case. Real-life Member State case studies illustrate the advantage of such a system of sanctions in terms of **effectiveness and coherence** with other EU environmental legislation (i.e. the Environmental Liability Directive). The IA presents a comprehensive account of stakeholders' opinions, which helps to illustrate the legal and practical issues at stake.
4. Improving cooperation and coordination between Member States	(4.) Introduce a package of provisions that aim to foster cross-border cooperation, such as an obligation to use special investigative tools, cooperate with EU agencies, and nominate national contact points.	**Effectiveness** – The IA determines the reasons and impact of such measures in comparison to similar measures in other EU instruments (see Annex 6) and relies on the favourable opinion of the majority of relevant stakeholders (networks, NGOs – with the exception of a majority of businesses, which do not consider harmonisation measures for cooperation to be necessary). **Efficiency** – According to the IA, there is a probability of additional costs but subsequent higher social and economic benefits.
5. Improving data collection, statistics and reporting	(5.a) Obligation for Member States to collect and report data and statistics to the Commission. (5.b) Obligation for Member States to collect and report data and statistics to the Commission according to harmonised standards.	Supported by the majority of stakeholders' opinions (except a few Member States), and coherent with similar provisions in other legal instruments, option 5(b) is deemed more **effective**. According to the IA, no comparison of data is possible if collection and reporting are not based on minimum common standards. It is more costly but more effective in facilitating informed decision making.
6. Improving the effective operation of the enforcement chain	Include in the Directive new provisions to oblige Member States to foster specialisation at all stages of enforcement, provide training, promote intra-institutional cooperation, raise public awareness, and adopt a national strategy.	The IA explains that a vast majority of relevant stakeholders support those measures (almost all practitioners support specialisation and enhanced training); there are similar examples in EU instruments that have proved to be effective. Although some measures such as training are more costly, costs are deemed to reduce over time. The analysis is supported by quantified estimates.

Source: Author, on the basis of information provided in the IA, pp. 40-69.

Assessment of impacts

The IA adopts a **two-tier approach**. First, it evaluates concisely specific impacts of those options for which evaluation is possible.[15] This is the case for the economic impact of some policy options on

business (option 1(c), 2(b), 3(c)). Second, it evaluates economic, social and environmental impacts in a holistic manner: the Directive is taken as an instrument from a broader environmental protection policy, where criminal law is the last stage of intervention against those who disrespect the rules. Considering, on one side, the lack of systematic data and, on the other, the inter-linkages between policy options, the IA opts justifiably for a **qualitative analysis** of direct and indirect impacts of better environmental protection rather than the impacts of individualised policy options, which are impossible to determine in some cases.[16] However, information is scattered between the core text and annexes, which blurs the overview at some points.

The main part of the analysis is presented in Annex 5. In the core text, the assessment of the **indirect social impact** is very succinct, even though it would be hard to contradict the statement that 'the positive environmental impacts of better environmental crime law enforcement would have immediate positive social impacts on human life, health and well-being' (p. 71). That said, the assessment acknowledges the positive social impact of better enforcement of environmental crime laws for specific countries where wildlife trafficking is a source of financing for other criminal activities, i.e. terrorism.

The **assessment of the impacts on the environment**, briefly mentioned in the core text, is developed in Annex 5(3). Annex 5 shows that the impacts of any policy option will depend on external and internal factors (i.e. country, location). It underlines the most serious environmental crimes that are not yet covered by the ECD. The examination of crimes – such as the illegal logging and timber trade, illegal, unreported and unregulated (IUU) fishing, wildlife poaching, forest fire crimes, waste-related crimes, crimes related to chemicals, and pollution crimes affecting soil, air and water – is based on extensive studies and statistical estimates. By stressing the extensive (current and upcoming) damage to the environment and the adverse social and economic impact for each specific crime, the IA clarifies and illustrates the need to expand the scope of the Directive, to clarify its terms and to enable its enforcement, including through new types of sanctions. Insights into specific impacts are explained when relevant, such as combating cross-border environmental crime more effectively, and supporting smaller affected communities.

The recapitulative table in Annex 5(4) provides global estimates and is useful in mapping the nature and extent of damages. It further pinpoints negative impacts on developing countries, the social impact of illegal timber imported from third countries, economic loss caused by illegal fishing, and extinction of species caused by wildlife trafficking. Annex 5 also underlines specificities such as the involvement of criminal networks.

Since the Directive concerns criminal law matters, the IA draws attention to the **impact on human rights** and the obligation for Member States to ensure that their transposition of legislation guarantees full respect for fundamental rights and freedoms, including data protection, and rights associated with judicial proceedings (p. 72).

SMEs/Competitiveness

The IA notes that environmental criminal law also applies to small and medium-sized enterprises (SMEs), even though 'specific impacts on SMEs are not quantified or described' (p. 178). Key questions from the SME test in line with Tool No 23 of the Better Regulation Toolbox are addressed. When relevant, the IA analyses those options that could have a specific impact on SMEs and details the outcomes of the consultations with businesses: option (1.c) on the scope of the Directive, option (2.b) on the definition of legal terms and, under certain conditions, option (3.c) on the type and level of sanctions; Annex 5 also briefly discusses the economic impact on SMEs. The SME test appears to be in conformity with the Toolbox recommendations.

During consultations,[17] SMEs have, in particular, expressed their fear about **higher costs**,[18] **higher risks** of being investigated or fined, and about the potential **negative economic impact of the new sanction** regime.[19] There is no analysis of how those risks could affect competitiveness, but the IA does address these specific concerns. The IA seeks to strike a balance between risks and benefits of

the new ECD for businesses. It explains that the potential for higher costs – although not quantified – is mainly the result of administrative procedures, whose violation does not necessarily constitute a crime under the ECD, especially for those acting in good faith. It argues that there is a difference between administrative processes and criminal investigations, and that the risk of being criminally investigated is not systematic. As a result, potential higher costs must be seen in a general perspective where businesses that respect the rules will be better protected.

Simplification and other regulatory implications

The ECD was part of the REFIT programme in the 2021 Commission work programme, which aimed for a better and more consistent environmental criminal law. The IA does not identify any need to reduce unnecessary costs.

Annex 2B provides an insight into the methodology, assumptions and analytical models used to estimate the costs. Using a wide variety of sources, it distinguishes between one-off and recurring costs, Member State costs and EU costs, some possibly supported by EU financial instruments. The assumption is that coordination and collection of statistical data may constitute most of the additional administrative burden. The Directive – being a criminal law instrument – is not considered to result in any additional costs for citizens, businesses and SMEs.

The IA examines the coherence of the sub-options with other EU sectoral legislation. In particular, it looks at the coherence of the sanctioning options with relevant EU criminal provisions – the European Arrest Warrant and European Investigation Order (p. 48) and administrative sanctions (restoration of damages foreseen in the ELD, p. 50); the IA stresses the need to ensure such coherence. In some cases, the sole reference to a relevant EU directive in the ECD would be sufficient, i.e. the Freezing and Confiscation Directive (p. 54). To prevent overlap, it notes that EU sectoral legislation should only regulate administrative sanctioning systems and the combination of administrative and criminal sanctions should not breach the *ne bis in idem* principle.

Monitoring and evaluation

In a table of four columns (p. 77), a list of mostly quantitative indicators are linked to each specific objective of the Directive, together with the baseline – the fourth column proposes a situation that could be considered as a success. Those indicators are all related to the general objective of the Directive – better protection of the environment through criminal law. The qualitative indicators could have been developed further to enable a better evaluation.[20]

According to the proposal, Member States are obliged to report statistics to the Commission (Article 21(4)), which must in turn report on a regular basis (Article 21(5)) and later on evaluate the Directive's effectiveness (Article 25). Likewise, Member States have a reporting obligation (Article 25(2)). There is a comparative table of provisions on practical implementation from other directives, but the IA does not indicate whether this could serve as a model – for instance, concerning reporting; the Directive on combating fraud and counterfeiting of non-cash means of payment obliges Member States to set up a system for the recording, production and provision of anonymised statistical data measuring the reporting, investigative and judicial phases.

Stakeholder consultation

In Annex 7, the IA provides a full account of the 12-week open public consultation carried out between 8 February and 3 May 2021. This consultation sought to collect stakeholders' opinions, firstly, on the merits of EU intervention and, secondly, on each sub-option. Respondents were not asked to identify their preferred option. The questionnaire included open-ended questions allowing stakeholders to give their own suggestions/priorities.

The IA points to the evidence of 'coordinated responses' on the issue of ecocide. It notes that 'a total of 168 contain identical wording (in part or in full) of a statement urging the recognition of ecocide as a crime either within the scope of the directive or through separate legislation'. It notes further the work done by the Stop Ecocide Foundation. In this light, it is significant that, in assessing the

sub-options in relation to revising the scope of the Directive, the IA does not stress the relevance of the international debate on ecocide.[21]

The IA further analyses the responses (question by question, with 490 replies in total). It notes that most measures are supported by a large majority despite few specific views, particularly by some businesses. The analysis is supported by relevant graphics and visuals, and pays special attention to the positions of businesses, practitioners and NGOs. There is an overview and summary of the documents submitted with the responses, most of them from academics, NGOs and professional networks (p. 260).

In Annex 8, the IA includes a synopsis report of targeted consultation activities by stakeholders: experts, practitioners, businesses, professional networks, and EU agencies. The Commission organised expert group meetings, workshops, and took advantage of external events to foster exchanges of views. There were also a few semi-structured interviews. The results of both the public and targeted stakeholders' consultation activities are summarised in a comprehensive overview of discussions.

The need for harmonisation, for more coherence between criminal and administrative sanctions, for more specialisation and training of practitioners (option 4), and for collecting data are consensual. There is wide support for the preferred options, although with nuances. On the redefinition of environmental crime more precisely (option 1.b), it is supported by a high number of Member States, but they also favour the uptake of the Annex, whereas experts and practitioners note the difficulty of having full clarity. On the clarification of legal terms (option 2.c), Member States favour guidance documents, whereas experts favour the preferred option. On sanctions (option 3.c), it is favoured by professional networks and NGOs, while most Member States agree on the introduction of minimum levels for maximum sanctions.

Supporting data and analytical methods used

The IA is based on the 2020 ex-post evaluation and an external study contracted by the Commission to assess the impact of different options. At the time of writing, the external study does not seem to be publicly available.[22] The IA also relies on extensive desk research, including expert and academic research, studies from international organisations, EU institutions and EU agencies, NGOs and professional networks; most (but not all) are referenced and include hyperlinks. In addition, public and targeted stakeholder consultations were widely used. As a consequence of unavailable or scattered statistical data, the analysis is mainly qualitative; it gives a comprehensive overview of policy options, challenges and the rationale behind the preferred options. The legal analysis may appear somewhat complex for non-lawyers, though. Overall, the analysis is well documented and the presentation of the main environmental crimes currently not covered by the Directive is effective at stressing the need to extend its scope and ensure its effective enforcement.

The Standard Cost Model (SCM) is used to estimate the costs of administrative burdens, and the analytical methods and assumptions are explained well. For some cost estimates (one-off transposition costs, guidance preparation costs, costs for setting up focal points for improving effective cooperation and coordination between relevant authorities), the IA highlights the use of reference data similar to that used to assess compliance costs in the Directive on combating fraud and counterfeiting of non-cash means of payment; since the options in this directive are similar, the method seems adequate. When relevant, for each policy option the IA warns against limitations to the assessment of compliance costs, in that estimates often depend on the baseline situation in the Member States.[23] The IA emphasises warnings given by some Member States about the high costs of some options (investigative tools).

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

On 1 October 2021, the Commission's Regulatory Scrutiny Board (RSB) adopted a positive opinion with reservations. In its opinion, the RSB made a number of recommendations for improvements, notably: (i) for greater clarity and additional information on the choices concerning essential

elements; (ii) for a thorough justification of the measures selected under the preferred package of options; and (iii) for an assessment of the cumulative impact of the preferred package of options. The consequent changes that have been made are presented in a table in Annex 1, with references to the relevant chapters in the IA. The changes appear to cover the points above with few exceptions. The RSB had underlined that the report was not clear enough on the choices and on whether 'these choices are legal, technical or political in nature'. The IA does not indicate the nature of each option in a systematic manner, with the exception of the legal points.

Coherence between the Commission's legislative proposal and IA

The proposal appears to mostly correspond to the preferred package of options indicated in the IA. There does, however, appear to be a discrepancy between the IA and the proposal regarding the list of new offences in the proposal. In Annex 5, the IA presents illegal, unreported and unregulated (IUU) fishing as one of the offences to include in the proposal, to ensure that it is up to date and covers criminal offences otherwise regulated by sectoral EU legislation. The new Article 3 in the proposal defines more precisely which breaches of EU sectoral legislation are criminally relevant. It includes a long list of EU legislation whose infringement constitutes a criminal offence according to criteria defined in the Directive; IUU is ostensibly missing from the list. Recital (6) of the proposal notes that, under the set of rules for control and enforcement of the common fisheries policy (CFP),[24] in case of serious infringements, including those that cause damage to the marine environment, Member States should establish certain examples of intentional lawful conduct as criminal offences. It is not clear if the non-inclusion of IUU is a consequence of ongoing discussions around the revision of the fisheries control system, with sanctions being one of the issues at stake.

The proposal includes specific provisions in support of environmental defenders, and whistle-blowers, whose role is mentioned without further analysis in the IA.

The IA presents a clear definition of the problem and of the general and specific objectives. The logic of intervention is well articulated between the problems and the retained policy options and sub-options. The range of sub-options appears comprehensive and tailored to the problems while reflecting stakeholders' positions. Policy sub-options are described in a clear and balanced manner. The choice to assess, in the core text, environmental, economic and social impacts in general terms is justified by the inter-linkage between all policy sub-options; details are given only when relevant in the case of specific sub-options. However, with analytical points scattered throughout the IA (text and annex), the distinction between the assessment of impacts from sub-options and the assessment of impacts from environmental crime may appear unclear at some points.

Overall, the IA's reasoning appears to rest on a sound evidence base, relying on supporting studies and the results of comprehensive public consultations, with the exception of concerns expressed around ecocide. However, the main supporting study is not publicly available. Finally, most of the RSB's recommendations seem to have been reflected in the final IA, and the proposal appears to mostly correspond to the preferred policy option indicated in the IA. There does, however, appear to be a discrepancy between the IA and the proposal regarding the list of new offences where illegal, unreported and unregulated fishing is not included, without a clear justification.

ENDNOTES

1 For instance, UNEPT-INTERPOL Rapid Response assessment: the rise of environmental crime, June 2016.

2 The enforcement chain covers actions exercised by authorities to fight environmental crime, starting from crime detection to investigation, prosecution, arrest and convictions.

3 A clear definition of crimes does not strengthen implementation without effective and dissuasive sanctions, for instance.

4 Despite the lack of systematic data, numerous reports from specialised EU and international agencies, and from NGOs, have documented the impact of environmental crime on biodiversity, on air pollution, and on human health.

5 For instance, there is no data on how many environmental crimes were not investigated as a consequence of the complexity of the ECD and the leeway given to Member States in choosing between administrative and criminal

sanctions, but targeted stakeholder consultations confirmed that such complexity contributed to the ineffectiveness of the Directive (p. 15). See also EUROPOL's response to stakeholder consultations (note 69).

6 i.e. lack of systemic criminal sanctions against ship owners who circumvent obligations in the ship recycling regulation.

7 See Article 82(2) and Article 83(2) TFEU.

8 According to UNEP and Interpol's Rapid Response assessment from 2016, between US$91 billion and US$259 billion.

9 Some options are discarded because they entail the risk of going beyond the objective of the Directive. On the contrary, there are measures on the use of investigative tools that are included only to the extent necessary to achieve the objective of increasing effective investigations against environmental crime.

10 The IA uses the term 'specific objective'; it has the meaning of an operational objective.

11 The ECD only provides, in Recital 15, that 'whenever subsequent legislation on environmental matters is adopted, it should specify where appropriate that this directive will apply. Where necessary, Article 3 should be amended.'

12 The first one, which consists of repealing the ECD, risks minimising the relevance of criminal law and sanctions. The second one, which is to rely solely on non-binding measures, is contradicted by facts and the adverse unanimous opinion of stakeholders for whom such measures are useful only in combination with binding measures (IA p. 38).

13 i.e. costs inferred by legal changes cannot be compared to costs triggered by awareness measures and training along the enforcement chain.

14 The minimum level of maximum sanctions defines maximum sanctions that Member States must at least provide for in their national law, i.e. a maximum level of at least two years.

15 Some of the (sub) options concern legal techniques or enforcement of the ECD. Their impact relates to the effectiveness of the whole Directive; they do not have an isolated impact on society, the environment or the economy.

16 There is no social impact as such from data collection, or from training, for instance; it is their combination that will contribute to strengthening investigation, prosecution and sanctions according to the IA.

17 The IA underlined that organisations specifically representing SMEs paid little or no attention to consultations and that it was not possible to conduct an interview with any of the three EU-level SME organisations contacted.

18 Some SMEs fear that an expanded scope of the Directive could oblige them to implement new precautionary measures.

19 Some businesses fear that fines as foreseen by the new sanctioning system threaten economically legitimate smaller business, which may be held criminally liable for environmental damage despite the absence of wrongdoing (p. 178).

20 The nature of training facilitates the assessment rather than the sole number of training sessions delivered, for example.

21 See, for instance, recognition of ecocide as an international crime gets support in the European Parliament.

22 Ref. FWC No JUST/2020/PR/03/0001-04-Lot 1: consortium led by Milieu Consulting SRL. There is no hyperlink.

23 See also Annex 4 table; it provides a comprehensive overview of the Member State baselines per policy option.

24 Regulation 1224/2009 control rules of the common fisheries policy (the Control Regulation) and Regulation 1005/2008 to prevent, deter and eliminate illegal, unreported and unregulated fishing.

This briefing, prepared for the JURI committee, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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