



# Combating environmental crime in the EU - the long way from an idea through regulation to law enforcement

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# What is environmental crime?

- ⊕ Different approaches to defining the term
  - Legalistic definition: behaviour that is defined as environmental crime in criminal law
  - Non-legalistic definition: doing intentionally or through (gross) negligence serious harm to the environment, irrespective of illegality
- ⊕ Examples: illegal wildlife trade, poaching, illegal logging, illegal fishing, large-scale pollution of water/air/soil ...

# Background: research project on environmental crime

- 🌐 European Union Action to Fight Environmental Crime (EFFACE)
- 🌐 Funded by EU
- 🌐 11 EU think tanks and universities
- 🌐 December 2012 - March 2016
- 🌐 Aimed at developing recommendations for EU to better fight environmental crime

# The EU legislative framework

- ⊕ Environmental Crime Directive
- ⊕ Rationale: criminal law as particularly deterrent and hence effective instrument for combating environmental crime
- ⊕ Allowing use of certain investigation techniques and cross-border cooperation
- ⊕ Requires Member States to criminalise certain actions that Member States already needed to prohibit under other EU legislation (e.g. disposal of hazardous waste)
- ⊕ Criminal sanctions that need to be “effective, proportionate and dissuasive”

# History of the environmental crime directive

- ⊕ Previous convention on environmental crime by Council of Europe (non-EU, regional organisation), but never entered into force due to lack of ratifications
- ⊕ 2001: Commission proposal for directive, rejected by majority of Member States in Council, because of competence issues
- ⊕ 2003: Framework decision by Council at initiative of Denmark, including minimum sanctions
- ⊕ Brought to European Court of Justice by Commission, because of competence issues over sanctions
- ⊕ 2005: Court ruling: Commission has competence for “application of effective, proportionate and dissuasive criminal penalties is an essential measure for combating serious environmental offences”.
- ⊕ 2007: Commission tables proposal for environmental crime directive
- ⊕ 2008: Adoption of Environmental Crime Directive (2008/99)
- ⊕ Transposition deadline for Member States: end of 2010

# Properly transposed in EU Member States?

- 🌐 Study commissioned by DG Justice on implementation in Member States, but not made public yet
- 🌐 Some general concerns: wide variety of sanctions in Member States
- 🌐 Sometimes not all aspects of Environmental Crime Directive implemented

# Bringing MS in line with current legislation

- ⊕ EU Commission is in dialogue with Member States where transposition of environmental crime directive not properly transposed
- ⊕ Potential follow up: infringement procedure before European Court of Justice (ECJ); judgment of ECJ
- ⊕ If Member State does not comply: second procedure initiated by Commission, sometime on basis of information furnished by NGOs/citizens, financial penalty for Member State (not frequent)

# Problems with enforcement

- ⌚ Environmental crime is still happening and considered serious problem by EU (notably wildlife crime high on agenda)
- ⌚ Implementation and enforcement in hands of Member States
- ⌚ Environmental crimes often difficult to detect, lack of expertise in police, prosecutors' offices, among judges  
> few cases are forwarded to prosecution office, fewer cases go to court, most cases end with lenient sanction
- ⌚ Environmental crime sometimes low priority
- ⌚ Environmental crime legally complicated (dependency on administrative law)



# Evaluation of current regulatory framework

- ⊕ Through our research project EFFACE
- ⊕ Through other projects
- ⊕ Through analysis by Europol and Eurojust
- ⊕ Problem: availability of data on environmental crime and sanctions
- ⊕ Policy proposals, potentially additional proposals by Commission on measures to better combat environmental crime

# Potential additional measures

- ⌚ Background: the EU now has additional competences it did not have before regarding stipulating minimum sanctions - one way forward?
- ⌚ Gather more and better data?
- ⌚ Increase number or scope of environmental crimes in environmental crime directive?
- ⌚ Provide more funding for training, networking between enforcement officials, guidance on sentencing, NGOs working on environmental crime?

# Take home points

- ④ You may have a smart idea for policy-makers, yet until it makes it into a policy is a very long way - and it's not only about how good the idea is, but may also be about institutional power plays
- ④ When a policy is adopted at EU level, the “war is not won” - Member States need to transpose and then implement
- ④ It may be quite tricky to assess whether a certain policy instrument has actually worked or it has not, e.g how do you prove a negative?

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