



European Union Action to  
**Fight Environmental Crime**

# Contribution to conclusions and recommendations on environmental crime: Harmonisation of substantive environmental criminal law at EU level



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# 1 Introduction

This contribution addresses the question of the extent of further harmonisation of substantive environmental criminal law at EU level and will be based on the SWOT analysis that was executed for WP6. The focus here is on the various policy options that resulted from the SWOT analysis and a critical analysis of those options, finally leading to recommendations.

The structure of this contribution is as follows. After this brief introduction we will come back to the opportunities that were identified in the SWOT analysis (2). Next, we will deduce the various options for policy action from those opportunities. Those will be based both on the literature and on the earlier research done within the framework of EFFACE (3). After that, we will move to a critical analysis of the various options, by addressing the question which of the various options seem beneficial to implement and which options would not rank as high or would even be undesirable to implement (4). Section 5 will discuss alternative policy options. Section 6 will address the question of the extent to which further EU harmonisation is the way forward. Section 7 will ask the question to what extent the policy options that will be advanced are effective. The effectiveness question in this respect will directly link back to the SWOT analysis and will hence ask the question whether the policy option provides an opportunity either to solve a particular weakness addressed in the SWOT analysis or to exploit particular strengths. Section 8 will conclude.

# 2 Opportunities

The conclusions from the SWOT analysis are summarised in Table 1 below.

**Table 1: Overview of Strengths, Weaknesses, Opportunities and Threats**

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>• Comprehensive legal framework on EU criminal law harmonisation</li> <li>• Emergence of the EU as a global actor in the field of environmental criminal law</li> <li>• Combination of EU criminal law with administrative law</li> <li>• Inclusion of environmental crime within the scope of the work of EU criminal justice agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Inconsistency and lack of coherence between EU criminal law and EU administrative law on the protection of the environment</li> <li>• Lack of legal certainty</li> <li>• Gaps in the law- substantive criminal law</li> <li>• Weaknesses in investigation and prosecution of environmental crime at EU level</li> </ul>

Opportunities	Threats
<ul style="list-style-type: none"> <li>• Use of Articles 83(1) and 83(2) TFEU to address gaps in the law</li> <li>• Clarifying the relationship between environmental criminal law and anti-money laundering law</li> <li>• Ensuring legal certainty in EU law on environmental crime</li> <li>• Clarifying the relationship between EU criminal law and EU administrative law on the protection of the environment</li> <li>• Strengthening the role of Eurojust in the fight against environmental crime</li> <li>• Clarifying the role of the European Public Prosecutor's Office (EPPO) in the field of environmental crime</li> </ul>	<ul style="list-style-type: none"> <li>• Persistence of legislative and policy inertia in the field of EU criminal law</li> <li>• Danger that developments on substantive criminal law are overshadowed by negotiations on the EPPO</li> </ul>

As described in the table above, in the SWOT analysis a variety of opportunities were presented, following from particular weaknesses we identified. This part will address these opportunities in detail. It will focus on: the Use of Article 83(1) TFEU to address gaps in the law (section 2.1); Clarifying the relationship between environmental criminal law and anti-money laundering law (section 2.2); ensuring legal certainty in EU law on environmental crime (section 2.3); Clarifying the relationship between EU criminal law and EU administrative law on the protection of the environment (section 2.4); and strengthening and clarifying the role of EU criminal justice agencies including Eurojust and the European Public Prosecutor's Office in the field of environmental crime (section 2.5).

## 2.1 Use of Article 83(1) TFEU to address gaps in environmental criminal law

One opportunity is to use Article 83(1) TFEU further in order to address current gaps in EU environmental criminal law. Article 83(1) confers upon the European Union competence to define criminal offences and adopt criminal sanctions in the field of conduct related to 'securitise' criminal law including organised crime. Article 83(1) can be used as a legal basis for the development of further EU criminal law measures on wildlife trafficking and organised trafficking in waste. It can also be used in conjunction with Article 83(2) TFEU, which introduces a model of 'functional criminalisation' at EU level, to introduce a list of aggravating circumstances related to organised crime in the general EU instruments on the protection of the environment in the field of criminal law.<sup>1</sup>

<sup>1</sup> On the development of EU competence to criminalise under Article 83(2) TFEU see V. Mitsilegas, 'EU Criminal Law Competence After Lisbon: From Securitised to Functional Criminalisation' in D. Acosta and C. Murphy (eds.), *EU Security and Justice Law*, Hart, 2014, pp.110-129.

Both paragraphs of Article 83 TFEU can be used as legal bases for the development of further EU criminal law on environmental crime.<sup>2</sup>

## 2.2 Clarifying the relationship between environmental criminal law and anti-money laundering law

Another opportunity is to clarify the relationship between environmental criminal law and anti-money laundering law. This clarification involves both the internal and the external aspects of EU anti-money laundering law. With regard to the internal aspects, and as has been argued forcefully in the case-study on illegal logging, one of the key gaps in the current legal framework is the lack of an express link between environmental criminal law and anti-money laundering law.<sup>3</sup> This hinders the effectiveness of environmental criminal law both within the EU and at the level of law enforcement co-operation with third states, as it is not always clear that proceeds from environmental offences are considered to be proceeds of crime for the purposes of anti-money laundering law. These gaps can be addressed by revising EU anti-money laundering law to include express references to specific environmental offences as money laundering predicate offences. This move would enhance legal certainty in the implementation of anti-money laundering law at national level among EU Member States. These internal EU developments should be coupled with the emergence of the EU as a global actor in the field, by lobbying for the amendment of international hard and soft law instruments (in particular the 40 Recommendations of the Financial Action Task Force (FATF)) to require states to include specific environmental offences as predicate offences in domestic criminal law on money laundering. These developments would ensure a global level-playing field which would contribute towards effective international co-operation.

## 2.3 Ensuring legal certainty in EU law on environmental crime

A third opportunity consists of attempting to achieve a greater degree of legal certainty in EU environmental criminal law. The current EU Directives on environmental criminal law have introduced criminalisation in a complex manner. This is the case in particular with the environmental crime Directive, which introduces criminalisation by reference to a plethora of other instruments of EU secondary law on the protection of the environment. From a criminal law perspective, this approach presents challenges for legal certainty and the principle of legality as enshrined in Article 49(1) of the Charter of Fundamental Rights.<sup>4</sup> It also renders the task of transposition of the criminal law provisions in Member States complex and may lead to inconsistencies in implementation. The entry into force of the Lisbon Treaty- and in particular Article 83(2) TFEU- enables the Union legislator **to revise the relevant Directives in order to introduce greater legal certainty**. This can be done following the evaluation of the implementation of the Directives by the Commission.

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<sup>2</sup> See Grasso, G., Sicurella, R., Scalia, V. (2015). Articles 82-86 of the Treaty on the Functioning of the European Union and Environmental Crime. Study in the framework of the EFFACE research project, Catania: University of Catania.

<sup>3</sup> Saunders, J. and J. Hein, EUTR CITES and money laundering: A case study on the challenges to coordinated enforcement in tackling illegal logging. A study for the EFFACE project. Chatham House: London.

<sup>4</sup> On the principle of legality, see V. Mitsilegas, 'Article 49 - Principles of Legality and Proportionality of Criminal Offences and Penalties', in S. Peers, T. Hervey, J. Kenner and A. Ward (eds.), *The EU Charter of Fundamental Rights. A Commentary*, Hart/Beck, 2014, pp.1351-1373.

## 2.4 Clarifying the relationship between EU criminal law and EU administrative law on the protection of the environment

A key opportunity consists of clarifying the relationship between EU criminal law and EU administrative law with regard to the protection of the environment. The current EU legal framework on the protection of the environment consists of new criminal law instruments (the Directives on environmental crime and ship-source pollution), which apply in addition to extensive EU administrative law provisions in the field, including in particular the environmental liability Directive. The entry into force of the Lisbon Treaty, and in particular the introduction of Article 83(2) TFEU, provides a first-class opportunity to consider and clarify the relationship between EU criminal and administrative law in the field of environmental protection, and make choices as to which conduct should be treated most appropriately as criminal and which conduct should be treated most appropriately as non-criminal (including administrative) infractions at EU level. This clarification could ensure consistent approaches on the protection of the environment in Member States and contribute towards the respect of the principle of proportionality in criminal offences and sanctions enshrined in Article 49(2) of the Charter.<sup>5</sup> EU institutions have embarked on a similar exercise post-Lisbon in the field of market abuse, where two parallel legal instruments- an administrative law Regulation and a criminal law Directive- have been adopted.

## 2.5 Strengthening and clarifying the role of EU criminal justice agencies in the field of EU environmental criminal law- the role of Eurojust and the European Public Prosecutor's Office

An opportunity which is closely related to the question of further EU intervention in the field of substantive environmental criminal law involves clarifying and strengthening the role of EU criminal justice agencies in the field of environmental crime. A key step forward in this direction would be to strengthen the role of Eurojust in the field. The importance of the need to ensure effectiveness in the enforcement of environmental criminal law has been highlighted by Eurojust in a recent Report.<sup>6</sup> There is further scope to enhance the role of Eurojust in the fight against environmental crime. One way forward is the prioritisation of the fight against environmental crime by Eurojust itself, a trend which can be discerned in the development of the workload of Eurojust in recent years. The Treaty of Lisbon provides further opportunities more broadly by providing a legal basis- Article 85 TFEU- which enables the strengthening of the powers of Eurojust, most notably in empowering Eurojust to initiate investigations in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases (Article 85(1)(a)). Environmental crime would fall within this scope. Negotiations on a post-Lisbon Regulation on Eurojust are currently under way, but these are conducted in parallel (and potentially in the shadow of) negotiations to establish a European Public Prosecutor's Office (EPPO).<sup>7</sup> Another opportunity arises from the current negotiations to establish an Office of a European Public Prosecutor (EPPO). Although the precise form and structure of the EPPO are yet to be finalised, the establishment of an EPPO will be a major innovation in EU criminal law in transferring powers of investigation and prosecution from the national to the supranational level. The mandate of the EPPO will consist in the investigation and prosecution of offences related

<sup>5</sup> On the principle of proportionality, see V. Mitsilegas, 'Article 49 - Principles of Legality and Proportionality of Criminal Offences and Penalties', in S. Peers, T. Hervey, J. Kenner and A. Ward (eds.), *The EU Charter of Fundamental Rights. A Commentary*, Hart/Beck, 2014, pp.1351-1373.

<sup>6</sup> Eurojust, Strategic Project on Environmental Crime, Report finalised in October 2014.

<sup>7</sup> See Grasso, G., Sicurella, R., Scalia, V. (2015). Articles 82-86 of the Treaty on the Functioning of the European Union and Environmental Crime. Study in the framework of the EFFACE research project, Catania: University of Catania.

to fraud against the Union's financial interests. Aspects of environmental crime may be included in the scope of the EPPO if they are considered to be 'ancillary offences' related to fraud – however the definition and scope of such 'ancillary offences' is currently under negotiation. At a later stage, Article 86(4) TFEU allows for the extension of the mandate of the EPPO to include serious crime having a cross-border dimension. It is thus likely that, if this provision is used, that environmental crime will fall expressly within the mandate of the EPPO.

## 3 Options

The different options for action at the policy level correspond to the opportunities identified above, as well as from earlier research and doctrine. These options will now be briefly reviewed and illustrated in more detail.

### **3.1 Using Article 83 TFEU to harmonise further EU environmental criminal law**

Article 83(1) can be used as a legal basis for the development of further EU criminal law measures on wildlife trafficking and organised trafficking in waste. Specific Directives on the criminalisation of wildlife trafficking and organised trafficking in waste can be adopted at EU level. Article 83(1) can also be used in conjunction with Article 83(2) TFEU, which introduces a model of 'functional criminalisation' at EU level, to introduce a list of aggravating circumstances related to organised crime in the general EU instruments on the protection of the environment in the field of criminal law.

### **3.2 Reforming EU and global anti-money laundering standards**

EU anti-money laundering law can be revised to expressly include environmental offences as money laundering predicate offences. This move would enhance legal certainty in the implementation of anti-money laundering law at national level among EU Member States. These internal EU developments should be coupled with the emergence of the EU as a global actor in the field, by lobbying for the amendment of international hard and soft law instruments (in particular the 40 Recommendations of the Financial Action Task Force (FATF)) to require states to include specific environmental offences as predicate offences in domestic criminal law on money laundering

### **3.3 Revising the environmental crime Directive to ensure greater legal certainty with regard to criminalisation**

The Directive on environmental crime has introduced criminalisation in a complex manner, by introducing criminalisation by reference to a plethora of other instruments of EU secondary law on the protection of the environment. The entry into force of the Lisbon Treaty- and in particular Article 83(2) TFEU- enables the Union legislator to revise the relevant Directives in order to introduce greater legal certainty. The Directive can be revised to articulate in a more direct manner the conduct which is being criminalised.



### **3.4 Revising the environmental crime and environmental liability Directives to ensure clarity on the relationship between criminal and administrative law**

Article 83(2) TFEU, provides a first-class opportunity to consider and clarify the relationship between EU criminal and administrative law in the field of environmental protection, and make choices as to which conduct should be treated most appropriately as criminal and which conduct should be treated most appropriately as non-criminal (including administrative) infractions at EU level. The Directives on environmental crime and environmental liability can be revised in order for the relationship between criminal and administrative law to be further clarified. EU institutions have embarked on a similar exercise post-Lisbon in the field of market abuse, where two parallel legal instruments- an administrative law Regulation and a criminal law Directive- have been adopted.

### **3.5 Granting greater powers to Eurojust and expanding the competence of the EPPO in the field of environmental crime**

Two further options would be to increase and clarify the powers of EU criminal justice agencies in the field of environmental crime. Article 85 TFEU can be used to extend the powers to Eurojust initiate investigations in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases (Article 85(1)(a)), which include environmental crime. Environmental crime will fall within the mandate of the European Public Prosecutor's Office under the currently negotiated EPPO Regulation if these offences are considered to be 'ancillary offences' related to fraud. At a later stage, Article 86(4) TFEU allows for the extension of the mandate of the EPPO to include serious crime having a cross-border dimension

## **4 Critical analysis of options**

### **4.1 Using Article 83 TFEU to harmonise further EU environmental criminal law**

One option for going forward is to enhance EU harmonisation in the field of substantive criminal law by the use of Article 83(1) TFEU to harmonise national criminal legislation in the fields of wildlife trafficking and organised trafficking in waste. It could be argued that such conduct is already covered by EU and national legislation on organised crime (and in particular the Framework Decision on participation in a criminal organisation) and that some elements of these offences already fall within the scope of the environmental crime Directive. However, introducing specific EU legislation criminalising wildlife trafficking and organised trafficking in waste would have the advantage of legal certainty and of placing upon Member States clear duties to introduce related criminal offences specifically focused on trafficking in their domestic legal systems when implementing EU law. The trafficking dimension in both phenomena demonstrates a cross-border dimension which meets the legal basis requirements of Article 83(1) TFEU and complies with the principle of subsidiarity. Further harmonisation in the field would also enhance judicial cooperation, and in particular the operation of the European Arrest Warrant Framework Decision, which has removed the requirement to verify dual criminality for environmental crime including illicit trafficking in endangered animal species and in endangered plant species and varieties.<sup>8</sup>

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<sup>8</sup> Article 2(2).

## **4.2 Reforming EU and global anti-money laundering standards**

Another option for change would be to make the link between environmental crime and money laundering more explicit at both the EU and the global level. A key way to achieve this is to expressly include environmental offences as predicate offences in money laundering law. The recently adopted fourth money laundering Directive contains a broad definition of predicate offences including all offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months.<sup>9</sup> The extensive scope of the predicate offences to include serious crime as defined above would include a number of environmental offences. However, expressly including environmental crime in the list of money laundering predicate offences would overcome differences in national legal approaches to the criminalisation of environmental crime and focus the mind of investigative and prosecutorial authorities on pursuing the proceeds of environmental crime. In this context, greater linkages can be made between the criminalisation of the laundering of the proceeds of environmental crime and their confiscation.

## **4.3 Revising the environmental crime Directive to ensure greater legal certainty with regard to criminalisation**

The environmental crime Directive criminalises certain categories of conduct if it is unlawful. The term ‘unlawful’ is defined by reference to a list of sectoral EU Directives which are attached as an annex to the text of the Directive. This method of criminalisation raises serious legal certainty concerns and raises the question of the compatibility of the Directive with Article 49 of the Charter of Fundamental Rights, and in particular the principle of legality in criminal offences and sanctions. The current approach may also lead to overcriminalisation, as the precise relationship of the criminalisation required by the Directive and the scope and content of the various Directives listed in the annex is unclear. A way forward would be to revise the Directive in order to define the concept of unlawfulness in a direct and express manner, by focusing on specific categories of conduct and mens rea rather than on a list of Directives. Such a development would also ensure a greater degree of legal certainty and harmonisation. It would also enhance judicial cooperation, and in particular the operation of the European Arrest Warrant Framework Decision, which has removed the requirement to verify dual criminality for environmental crime.<sup>10</sup>

## **4.4 Revising the environmental crime and environmental liability Directives to ensure clarity on the relationship between criminal and administrative law**

In examining opportunities for further legislative intervention in the field of environmental criminal law, a key question is whether criminal law is the best way forward to address effectively the phenomenon of conduct detrimental to the environment- or whether administrative law does provide with more effective solutions, at least for non-serious types of conduct. A way to launch this conversation is to revisit existing EU criminal and administrative law related to the protection of the environment and revise such legislation if necessary. This move may be considered as constituting legislative overkill especially by those who would not wish to reopen

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<sup>9</sup> Article 3(4)(f).

<sup>10</sup> Article 2(2).

carefully worded legislative compromises at EU level. However, revising existing EU law in the field would not only provide the opportunity to modernise and address gaps in the current system, but also enable the launch of a conversation of the relationship between criminal and administrative law in relation to the protection of the environment. Such a move has already happened at EU level in the context of legislation on insider dealing and market abuse, with a Regulation and a Directive addressing enforcement from an administrative and criminal law perspective respectively being adopted. The clarification of the relationship between criminal and administrative law on the protection of the environment may actually lead to decriminalisation, and to a careful examination of the possibilities offered by administrative enforcement in the field. According to the principle of effectiveness of Union law, electing to treat conduct detrimental to the environment as an administrative – and not a criminal-offence would essentially limit Member States' capacity to treat the same conduct as a criminal offence at the national level.<sup>11</sup>

## **4.5 Granting greater powers to Eurojust and expanding the competence of the EPPO in the field of environmental crime**

A question which is inextricably related to opportunities to further harmonise substantive criminal law on environmental crime is the extent to which such criminalisation can lead to effective investigative and prosecutorial action at EU and Member State level. The role of Eurojust and the European Public Prosecutor's Office are central in this context. The TFEU opens the possibility to strengthen the powers of Eurojust by granting the latter powers to initiate investigations in Member States. This increase in powers would have the potential to result in a greater focus on the investigation and prosecution of environmental crime at national level. Current negotiations on a new Eurojust Regulation (and the general approach reached by the Council in spring 2015) indicate that Eurojust will not be granted these powers. In this light, the main contribution that Eurojust can make in the fight against environmental crime is via its coordinating role in particular in complex transnational cases involving more than two jurisdictions. Further capacity to fight environmental crime will be added by the establishment of a European Public Prosecutor's Office, a Regulation on which is currently being negotiated under the legal basis of Article 86 TFEU. Environmental crime may fall within the competence of the EPPO to the extent that it is considered to be an ancillary offence to the offences which form the EPPO main mandate, namely fraud against the EU budget and related offences. Article 86(4) TFEU leaves open the possibility of legislating in the future to expand the competence of the EPPO in the field of serious crime having a cross-border dimension. Environmental crime is a prime candidate for inclusion in such a list if and when the EPPO Regulation (whose inaugural version is not yet finalised at the time of writing) is adopted.

## **5 Alternative policy options**

The main alternative policy option is to shift the focus from further harmonisation of environmental criminal law to the use of administrative sanctions to address conduct detrimental to the environment. However, existing EU environmental criminal law leaves much to be desired in terms of legal certainty and focus. Further harmonisation of environmental criminal law should not necessarily lead in heavier criminalisation, but would rather lead to the

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<sup>11</sup> V. Mitsilegas, 'From Overcriminalisation to Decriminalisation. The Many Faces of Effectiveness in European Criminal Law' in *New Journal of European Criminal Law*, vol.5, 2014, pp.415-424.

achievement of a higher degree of legal certainty both in terms of the use of criminal law and in terms of its relationship with administrative law.

## 6 Harmonization and coordination

The opportunities presented involve a combination of harmonisation and coordination initiatives. Further harmonisation of environmental criminal law will have a three-fold function:

- To address gaps in current environmental criminal law, most notably by legislating specifically on serious forms of cross-border environmental crime including wildlife trafficking and organised trafficking in waste.
- To ensure the achievement of a greater degree of legal certainty and compliance with the principle of legality of criminal offences and sanctions as enshrined in Article 49 of the EU Charter of Fundamental Rights; and
- To clarify the relationship between criminal and administrative law regarding the protection of the environment, and in this manner to set clear limits to criminalisation at national and EU level.

Further harmonisation will be effective if backed up by a higher degree of coordination in the field of environmental criminal law. Such coordination can be achieved at three levels:

- By ensuring the smooth operation of the principle of mutual recognition in criminal matters, and in particular the European Arrest Warrant Framework Decision, by providing legal certainty and a high degree of harmonisation in substantive environmental criminal law;
- By focusing the coordination role of Eurojust on the fight against environmental crime (including on the laundering of the proceeds of environmental crime), both in terms of cross-border investigations and prosecutions and in terms of the resolution of conflicts of jurisdiction.
- By considering the role that the EPPO can play in the field of environmental criminal law, either by the framing of environmental crime as an ancillary offence falling within EPPO competence, or in the longer term by using Article 86(4) TFEU to extend of the EPPO mandate to cover serious environmental offences having a cross-border dimension.

## 7 Effectiveness

The SWOT analysis identified three main areas of weaknesses in the field of EU substantive environmental criminal law: the lack of legal certainty; gaps in the law; and weaknesses in the investigation and prosecution of environmental crime.

The recommendations for law reform outlined in this paper address these weaknesses directly.

The lack of legal certainty can be addressed by: a revision of the environmental crime Directive in order to clarify the scope of the environmental offences prescribed by EU law; the reconfiguration of the relationship between administrative and criminal law as regards the protection of the environment. The achievement of a greater degree of legal certainty will ensure compliance with Article 49 of the Charter of Fundamental Rights, while at the same time facilitating judicial cooperation in criminal matters, in particular the operation of the European Arrest Warrant Framework Decision.

Gaps in the law can be addressed by further EU harmonisation of substantive criminal law by legislating specifically on serious forms of cross-border environmental crime including wildlife trafficking and organised trafficking in waste. Specific criminalisation of these offences will ensure both greater legal certainty and the prioritisation of the fight against these phenomena by EU and national authorities. Gaps can also be addressed by revising EU anti-money laundering law to expressly include environmental crime as a money laundering predicate offence.

Weaknesses in investigation and prosecution can be addressed by achieving a greater degree of harmonisation and legal certainty in the field of substantive environmental criminal law but also by ensuring a greater focus of EU criminal justice agencies such as Eurojust on the fight against environmental crime via increasing use of its coordinating powers. The future development of the EPPO may also contribute in this context, especially if in the longer term environmental crime falls within the remit of the EPPO.

## 8 Conclusions

The paper has set out to recommend a number of policy options in the field of the harmonisation of substantive environmental criminal law at EU level (see Table 2). The line taken is that further harmonisation is desirable, but that such harmonisation should not lead to overcriminalisation. On the contrary, further harmonisation will serve as a safeguard enhancing legal certainty and compliance with the principle of legality in criminal offences and sanctions and can serve to clarify the relationship between criminal and administrative environmental law. Further harmonisation can also address current gaps in the law, especially with regard to the criminalisation of serious forms of cross-border environmental crime and the laundering of the proceeds of environmental crime. It has been argued that further harmonisation of substantive criminal law should go hand in hand- and could contribute towards- more effective judicial cooperation, investigation and prosecution of environmental offences by the EU and Member States. Further harmonisation can facilitate the operation of mutual recognition in criminal matters, and most notably of the Framework Decision on the European Arrest Warrant. Eurojust, via its coordinating functions, and in the longer term the European Public Prosecutor's Office, can play a leading role towards the development of an effective EU criminal law framework on the protection of the environment.

**Table 2: Summary of the policy options**

Level	Option	Recommended	Political feasibility	Priority
EU	<ul style="list-style-type: none"> <li>Use Art. 83(1) and (2) TFEU as legal basis for the development of measures such as on wildlife trafficking, organized trafficking in waste and introducing a list of aggravating circumstances related to organized crime in the general EU instruments on the protection of the environment in the field of criminal law</li> </ul>	Yes	medium	+
	<ul style="list-style-type: none"> <li>Revise EU anti-money laundering law to include express references to specific environmental offences as money laundering predicate offences</li> </ul>	Yes	medium	+
	<ul style="list-style-type: none"> <li>Lobbying for the amendment of 40 Recommendations of the Financial Action Task Force to require States to include environmental offences as predicate offences in domestic criminal law on money laundering</li> </ul>	Yes	high	+/-
	<ul style="list-style-type: none"> <li>Use Art. 83(2) TFEU as a legal basis to revise the EU Directives in order to introduce greater legal certainty (e.g. by articulating in a more direct manner the conduct which is being criminalized)</li> </ul>	Yes	medium	+
	<ul style="list-style-type: none"> <li>Use Art. 83(2) TFEU to clarify the relationship between the Directives on environmental crime and environmental liability</li> </ul>	Yes	medium	+
	<ul style="list-style-type: none"> <li>Grant greater power to Eurojust through enhancing its coordinating role in particularly complex transnational cases</li> </ul>	Yes	high	+/-
	<ul style="list-style-type: none"> <li>Framing environmental crime as an ancillary offence falling within EPPO competence</li> </ul>	Yes	high	+/-
	<ul style="list-style-type: none"> <li>Use 86(4) TFEU as a legal basis to expand the mandate of the EPPO to include serious crime having a cross-border dimension</li> </ul>	Yes	medium	+/-

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