



European Union Action to
Fight Environmental Crime

Contribution to conclusions and recommendations on environmental crime: Organised Environmental Crime



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LIST OF ABBREVIATIONS

ENPE	European Network of Prosecutors for the Environment
EP	European Parliament
EPPO	European Public Prosecutor
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
	Mutual Legal Assistance
MLA	Member States
MS	
NGO	Non Governmental Organisation
SOCTA	Serious and Organised Crime Threat Assessment
SWOT	Strengths, Weaknesses, Opportunities, Threats
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNEP	United Nations Environment Programme
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime

1 Introduction

This contribution addresses the issue of organised environmental crime.

In fact, evidence is mounting that different types of environmental crime can be and are executed under the form or with the involvement of organised crime (e.g. illegal trafficking of flora and fauna, illegal waste disposal and illegal shipment of hazardous waste, illegal fishing), usually in connection with corporations or company-like entities as well as with public officers in charge for issuing permits or certificates.¹ The EUROPOL SOCTA 2013 lists environmental crime as one of the emerging threats requiring intensified monitoring, with illicit trafficking in waste and illegal wildlife trafficking being regarded as the most prominent environmental crimes featuring the involvement of organised crime in the EU;² illegal logging and illegal fishing are other remarkable areas where the involvement of organised crime in environmental crime is acknowledged by international institutions such as UNEP/INTERPOL and UNODC.³ With specific regard e.g. to e-waste trafficking, an EFFACE case study stresses that the link between illegal waste shipment and organised crime has been confirmed in recent years by many studies carried out by or on behalf of the United Nations, UNODC, Interpol, the EU and NGOs, adding that a recent report by Eurojust “reveals that organised crime groups are behind cross-border environmental crime including illegal trafficking of e-waste”.⁴ As to e.g. trafficking in endangered species, the EU remains one of the most important markets for the trafficking in endangered species and it attracts highly specialised organised crime groups, with a lucrative market increasingly resembling that of other international serious crimes, with links established to EU organised crime groups.⁵

A SWOT analysis was conducted on the extent and impact of organised environmental crime (and the level of awareness of the phenomenon), as well as on the effectiveness of measures and enforcement efforts to tackle it.⁶

This contribution focuses on the policy options that resulted from the SWOT analysis. Through a critical scrutiny of these options, this contribution analyses whether and how to take organised environmental crime into account at the legislative and enforcement level, and formulates recommendations.

¹ See “Organised Environmental Crime in the 15 EU Member States. Final report”, coordinated by Tania Fröhlich, BfU-Max-Planck-Institute, 2003; Vagliasindi, G.M., “La direttiva 2008/99/CE e il Trattato di Lisbona: verso un nuovo volto del diritto penale ambientale italiano”, *Diritto del commercio internazionale* 24 (2010): 449-492, 458 ff.; Vagliasindi, G.M., in Faure, M., Gerstetter, C., Sina, C., and Vagliasindi, G.M., “Instruments, Actors and Institutions in the Fight Against Environmental Crime.” Study in the framework of the EFFACE research project, Berlin: Ecologic Institute, 2015, 36.

² EUROPOL, “EU Serious and Organised Crime Threat Assessment” (SOCTA) 2013. On wildlife crime as organised environmental crime see also UNEP/INTERPOL, “The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources. A UNEP Rapid Response Assessment”, 2014; European Commission, “The EU approach to combat wildlife trafficking”; Sollund, R., and Maher, J., “The Illegal Wildlife Trade: A Case Study Report on the Illegal Wildlife Trade in the United Kingdom, Norway, Colombia and Brazil.” Study in the Framework of the EFFACE Research Project. Oslo and Wales: University of Oslo and University of South Wales, 2015.

³ See, respectively, UNEP/INTERPOL (2014); UNODC, “Transnational Organized Crime in the Fishing Industry: Focus on Trafficking in Persons, Smuggling of Migrants, Illicit Drugs Trafficking”, 2011.

⁴ Geeraerts, K., Illes, A., and Schweizer, J-P., “Illegal shipment of e-waste from the EU: A case study on illegal e-waste export from the EU to China.” A study compiled as part of the EFFACE project. London: IEEP, 2015.

⁵ Sollund and Maher (2015).

⁶ See Vagliasindi, G.M., “Organised Environmental Crime”, in EFFACE SWOT Analysis, 2015.

2 Opportunities

Several opportunities were identified in the above mentioned SWOT analysis. These opportunities logically follow from a particular weakness or strength identified earlier. Here the following opportunities will be briefly presented: 1) calls by the European Parliament for adopting instruments and fostering enforcement and cooperation to tackle organised environmental crime; 2) possibility to enact new provisions on organised environmental crime on the grounds of Art. 83 TFEU; 3) enhancing investigative, prosecutorial and judicial cooperation.

The options arising from these opportunities will be addressed in the next section.

Table 1: Overview of Opportunities, Weaknesses and Strengths

Opportunities	Weaknesses addressed	Strengths to build on
Calls by the European Parliament	The resolutions call to pool efforts at the EU level for a more effective joint action to prevent and combat organised environmental crime	E.g. Italy's positive experience with the offence of "organised illegal waste trafficking"
Possibility to enact new provisions on organised environmental crime on the grounds of Art. 83 TFEU	EU instruments on organised crime and on environmental crime do not currently give consideration to the phenomenon of organised environmental crime Environmental criminal law is only integrated to a very small extent into organised crime legislation at international, European and national level Legislative differences across the EU facilitate organised environmental crime and create obstacles to enforcement	The harmonisation of the type and level of the criminal sanctions is now permitted on the basis of Article 83 (2) TFEU Article 83 (1) TFEU permits to introduce provisions in order to better tackle environmental crimes committed by or with the involvement of organised crime
Enhancing investigative, prosecutorial and judicial cooperation by: - building on best practices - supporting cooperation and networking - taking advantage of the possibilities offered by Articles 85 and 86 TFEU in order to enhance the role of Eurojust and foresee a role of the EPPO in fighting organised environmental crime	National investigation authorities incur in difficulties when investigating and prosecuting transnational organised environmental crimes Legislative differences across the EU facilitate organised environmental crime and create obstacles to enforcement	Cases of good enforcement experiences and/or cooperation documented at the international, EU and national level Positive role of NGOs and individuals in raising awareness and helping enforcement Positive role of EU in financing and assisting cooperation

2.1 Calls by the European Parliament

Several resolutions adopted by the previous European Parliament address organised environmental crime under different perspectives.⁷

The resolutions, whose content will be addressed in the next section, have been identified as an opportunity, since they call to pool efforts at the EU and national level for a more effective joint action to prevent and combat organised environmental crime.

2.2 Enactment of new provisions on organised environmental crime on the grounds of Art. 83 TFEU

The SWOT analysis showed how EU instruments on organised crime and on environmental crime do not currently give consideration to the phenomenon of organised environmental crime. In fact, environmental criminal law is only integrated to a very small extent into organised crime legislation at international, European and national level (with the exception, to some extent, of Italy with regard to organised illegal waste trafficking).⁸

At the EU level, the adoption of the Lisbon Treaty has opened up new opportunities by that explicitly introduced the competence of the EU in criminal matters.

An opportunity to better tackle organised environmental crime is therefore offered by the competences entrusted to the EU by Art. 83 TFEU.⁹

2.3 Enhancing investigative, prosecutorial and judicial cooperation

Given the frequent transnational nature of organised environmental crime, cooperation in the EU (and beyond) is crucial. National investigation authorities incur in difficulties when investigating and prosecuting transnational organised environmental crimes. A crucial point in organised crime control has always been valid and reliable intelligence.

For this reasons, enhancing investigative, prosecutorial and judicial cooperation by building on best practices, supporting cooperation and networking and taking advantage of the possibilities offered by Art. 85 and Art. 86 TFEU, are identified as opportunities in the fight against organised environmental crime.

⁷ European Parliament Resolution of 25 October 2011 on organised crime in the European Union (2010/2309(INI)), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0459+0+DOC+XML+V0//EN>; European Parliament Resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report) (2013/2107(INI)), available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0444&language=EN&ring=A7-2013-0307>; European Parliament Resolution of 15 January 2014 on wildlife crime (2013/2747/(RSP)), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0031+0+DOC+XML+V0//EN>.

⁸ See the summary of EFFACE Workshop on “Organised Crime and Environmental Crime”, held in Catania on 24 June 2014, available at www.efface.eu; among the EFFACE country reports, see e.g. Sina, S., “Fighting Environmental Crime in Germany: A Country Report.” Study in the Framework of the EFFACE Research Project. Berlin: Ecologic Institute, 2014, 40.

⁹ Art. 83 TFEU lists the areas in which the approximation of laws can be realized and it distinguishes between the cases of “particularly serious crime with a cross-border dimension” (para. 1) and the ones in which the approximation proves essential “to ensure the effective implementation of a Union policy in an area which has been subject to harmonization measures” (para. 2).

3 Options

We will now illustrate the options for action at the policy level, identified in the light of earlier findings in EFFACE, literature and documentation. The options will be then critically analysed in the next section.

3.1 Calls by the European Parliament

As previously mentioned, several resolutions adopted by the previous European Parliament address organised environmental crime under different perspectives. They call to pool efforts at the EU and national level for a more effective joint action to prevent and combat organised environmental crime.¹⁰

The resolution of 25 October 2011 on organised crime in the European Union, in point 42, calls on the Commission to “develop innovative instruments for the prosecution of those who commit environmental offences in which organised crime plays a role, for example by submitting a proposal to extend to the EU Italy’s positive experience with the offence of “organised illegal waste trafficking”, since 2011 classed as an offence with a major social impact and thus dealt with by the District Anti-mafia Bureau”.¹¹

In 2013, the European Parliament recommended again that “joint action be taken to prevent and combat illegal environment-related activities connected to or resulting from organised crime and mafia-type criminal activities, including by strengthening European bodies such as Europol and Eurojust, and international ones such as Interpol and the United Nations Interregional Crime and Justice Research Institute (UNICRI), as well as by sharing working methods and information held by the Member States that have been the most involved in combating this form of crime, with a view to developing a common action plan”.¹²

More recently, as it concerns wildlife trafficking, the European Parliament underlined that it is concerned that organised crime groups, especially those with smuggling capabilities, find wildlife trafficking attractive because of the lack of law enforcement capacity and implementation, and because of high profits and weak penalties; it stresses that if the EU and its Member States wish to play a genuine leading role in the protection of endangered species, it is necessary not only to ensure, as a matter of urgency, the active and ambitious promotion of international negotiations, but also to create the most appropriate legal framework and the conditions of implementation that will ensure that all loopholes contributing to this illicit trade end at the Union’s borders.¹³ Having regard to the fact that illicit wildlife trafficking often involves transnational organised criminal networks and is used as a source of revenue for such networks, the European Parliament calls on the Member States to use all relevant European and domestic instruments for fighting organised crime, corruption and money laundering and ensuring asset forfeiture when combating wildlife crime; it calls on all Member States to comply with the resolution of April 2013 of the UN Commission on Crime, Prevention and Criminal Justice by updating their legislation to ensure that illicit trafficking of wild fauna and flora with the involvement of organised criminal groups is defined as a criminal offence punishable by up to four years of prison or more, so that the United Nations Convention against Transnational Organized Crime (the Palermo Convention) can be used as a basis for international cooperation and mutual legal assistance.¹⁴

Hence an option would be to rely on the propulsive force of EP resolutions to the Commission and MS, in order to reach the just described improvements of the legislative framework at the EU and national level (e.g. criminalisation by MS or enactment by the EU of an obligation for MS to criminalise “organised illegal waste

¹⁰ Luna, M., and Veening, W., “Organised Environmental Crime. The need for combating environmental crime as a serious and organized category of offense”, EFFACE Policy Brief 2, 2014, 4.

¹¹ European Parliament Resolution of 25 October 2011 on organised crime in the European Union, 66–79; Vagliasindi, G.M., Lucifora, A., and Bianco, F., “Fighting Environmental Crime in Italy: A Country Report”. Study in the Framework of the EFFACE Research Project. Catania: University of Catania, 2015, 30.

¹² European Parliament Resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken.

¹³ European Parliament resolution of 15 January 2014 on wildlife crime.

¹⁴ European Parliament resolution of 15 January 2014 on wildlife crime, points 22-23.

trafficking”; MS to comply with the resolution of April 2013 of the UN Commission on Crime, Prevention and Criminal Justice by updating their legislation to ensure that illicit trafficking of wild fauna and flora with the involvement of organised criminal groups is defined as a criminal offence punishable by up to four years of prison or more) as well as in order to strengthen enforcement and cooperation (strengthening European bodies such as Europol and Eurojust, and international ones such as Interpol and UNICRI).

3.2 Enactment of new provisions on organised environmental crime on the grounds of Art. 83 TFEU

Like the UN Convention on Transnational Organized Crime, the Council Framework Decision 2008/841/JHA on the fight against organised crime does not deal directly with the phenomenon of organised environmental crime. The possibility of according relevance to environmental crime in light of the concept of “serious crime” used in both instruments is hampered by the fact that most States Parties of the Convention and EU Member States do not provide maximum penalties of at least 4 years imprisonment for environmental crimes as on the contrary is required by both instruments for the crime to be “serious”.¹⁵

As it concerns the EU legislation on environmental crime, following the judgment of the Court of Justice of 23 October 2007 in case C-440/05 - where the Court of Justice stated that, in contrast to the establishment of the obligation for Member States to criminally sanctioning certain conduct, determining the type and level of sanctions, was not within the competence of the Community – Directive 2008/99/EC does not contain provisions concerning the type of the criminal sanctions, the minimum levels of maximum sanctions for violations committed with aggravating circumstances, the same aggravating circumstances - and in particular those relating to environmental violations committed by or with the involvement of criminal organisations - and the accessory sanctions; these provisions were on the contrary contained in the original proposal of 9 February 2007.¹⁶

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union does not include environmental crime within the criminal offences covered by the directive; the inclusion of the Framework Decision 2008/841/JHA is, for the reason mentioned above, practically unable to indirectly cover organised environmental crime.

Environmental criminal law is only integrated to a very small extent into organised crime legislation at international, European and national level (with the exception, to some extent, of Italy with regard to organised illegal waste trafficking).¹⁷ In addition, neither an unanimous and precise definition of “organised crime”,¹⁸ nor a legal definition of “organised environmental crime” exist in international, EU and national instruments; this is additional to the lack of consensus on the same concept of environmental crime.

An option is therefore for the EU to address the phenomenon of organised environmental crime through the competences in criminal matters entrusted to the Union by Art. 83 TFEU,¹⁹ bearing in mind that it is an *indirect*

¹⁵ Vagliasindi, in Faure et al. (2015) 131. With regard to the Palermo Convention, see also “Tightening the Net: Toward a Global Legal Framework on Transnational Organized Environmental Crime, A collaborative project between WWF and the Global Initiative Against Transnational Organized Crime”, April 2015.

¹⁶ See Vagliasindi, G.M., “The European Harmonisation in the Sector of Protection of the Environment through Criminal Law: The Results Achieved and Further Needs for Intervention”, *The New Journal of European Criminal Law* (3/2012): 320-331, 327; Vagliasindi, “La direttiva 2008/99/CE”, 455 and 466 ff.; Vagliasindi, G.M., “Directive 2008/99/EC on Environmental Crime and Directive 2009/123/EC on Ship-source pollution.” Study in the framework of the EFFACE research project, Catania: University of Catania, 2015, 13.

¹⁷ See the summary of EFFACE Workshop on “Organised Crime and Environmental Crime”; among the EFFACE country reports, see e.g. Sina (2015) 40.

¹⁸ See Fajardo, T., “Organised Crime and Environmental Crime: Analysis of International Legal Instruments.” Study in the framework of the EFFACE research project, Granada: University of Granada, 2015; Faure et al. (2015); EFFACE Summary of Workshop on Organised crime and Environmental Crime; EFFACE Country reports, chapters 7.

¹⁹ See Krämer, L., *EU Environmental Law*, London: Sweet and Maxwell, 2012, 413; Vagliasindi (2015) 17 f.; Vagliasindi, “La direttiva 2008/99/CE”, 467 ff.; Vagliasindi, in Faure et al. (2015) 131 f.

criminal competence, which limits the discretion of the national legislator, but requires its intervention in order to introduce the criminal offences in the national criminal system.²⁰

Article 83(1) TFEU permits to introduce provisions in order to better tackle environmental crimes committed by or with the involvement of organised crime.²¹ Moreover, the harmonisation of the type and level of the criminal sanctions for environmental crimes is now permitted on the basis of Article 83(2) TFEU (on the one hand the environment is a legal interest of supranational importance, and, on the other hand, it has been subject to several interventions of harmonisation).²²

It should therefore be envisaged to amend directive 2008/99/EC in order: a) to introduce an obligation for Member States to foresee in their national legislation aggravating circumstances for the cases of environmental crimes committed by or with the involvement of organised criminality; and b) to establish minimum levels of maximum penalties for those serious environmental crimes for which empirical evidence shows the involvement of organised crime (e.g. wildlife trafficking, waste trafficking);²³ or c) to impose Member States to criminalise “organised wildlife trafficking” and “organised trafficking in waste.”²⁴

In addition, an option is to amend Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in order to include the most serious environmental crimes.

Finally, an option is to provide a better description of organised crime through an amendment of the framework decision 2008/841/JHA.

3.3 Enhancing investigative, prosecutorial and judicial cooperation

As stated above, given the frequent transnational nature of organised environmental crime, cooperation in the EU (and beyond) is crucial. The SWOT analysis revealed how positive experience of cooperation in the fight against organised environmental crime have been realised in the EU. However, national investigation authorities incur in difficulties when investigating and prosecuting transnational organised environmental crimes.²⁵ A crucial point in organised crime control has always been valid and reliable intelligence.²⁶

Bodies like EUROPOL already proved their role in raising awareness on and in fighting against organised environmental crime.

It has been stressed that the Lisbon Treaty has improved the competences of Eurojust by envisaging its competence to initiate investigations and to coordinate investigations and prosecutions, both competences that could be interpreted as implying that Eurojust can take binding decisions to be respected by national competent authorities. Such binding powers would allow Eurojust to evolve “from a player at horizontal cooperation level to a player at vertical integration level”²⁷ also in the field of organised environmental crime.

Art. 86 TFEU, in order to combat crimes affecting the financial interests of the Union foresees the establishment of the European Public Prosecutor; the EPPO shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union’s financial interests. According to Art. 86(4) TFEU, the European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public

²⁰ Grasso G., in Grasso G., Sicurella R., and Scalia, V., “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, 22, Catania: University of Catania, 2015.

²¹ Vagliasindi, “La direttiva 2008/99/CE”, 464 ff.

²² Vagliasindi, “La direttiva 2008/99/CE”, 456 ff.

²³ Vagliasindi, “La direttiva 2008/99/CE”, 474 ff.

²⁴ Grasso, in Grasso et al. (2015) 31.

²⁵ Sicurella, R., “Setting up a European Criminal Policy for the Protection of EU Financial Interests: Guidelines for a Coherent Definition of the Material Scope of the European Public Prosecutor’s Office”, in Ligeti, K. (ed.) *Toward a Prosecutor for the European Union*, Vol. 1: A Comparative Analysis, Oxford: Hart Publishing, 2013, 870 ff.

²⁶ “Organised environmental crime in the EU Member States, Final Report”, 719.

²⁷ Gerstetter, C., and Sina, S., in Faure et al. (2015) 134 f.; Sicurella, in Grasso et al. (2015) 37.

Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State.

An option is indeed to enhance investigative, prosecutorial and judicial cooperation by:

- 1) building on best practices at the MS and EU level, and particularly sharing working methods and information held by the Member States that have been the most involved in combating this form of crime, with a view to developing national action plans and/or a common action plan;
- 2) enhancing strategic intelligence by bodies like EUROPOL;
- 3) supporting cooperation and networking;
- 4) taking advantage of the possibilities offered by Art. 85 and Art. 86 TFEU, and particularly:
 - 4.1) enhance the strategic role of Eurojust in the fight against organised environmental crime on the grounds of Art. 85 TFEU;
 - 4.2) extension to organised environmental crime of the material scope of the future European Public Prosecutor on the grounds of Art. 86(4) TFEU.

4 Critical analysis of options

The options described in the previous section will be now critically analysed and a normative position will be taken.

4.1 Calls by the European Parliament

As stated above, an option would be to rely on the resolutions by the European Parliament in order to push MS and the Commission to improve the legislative framework on organised environmental crime and to strengthen enforcement and cooperation.

However, the variety and complexity of factors underpinning the phenomenon of organised environmental crime (different national concept of organised crime, its transnational nature, the needs of mutual assistance and cooperation in investigations etc) make it unrealistic to have an effective response against the phenomenon if this response is left at the national level alone. This is true for instance as it concerns the EP call on MS to comply with the resolution of April 2013 of the UN Commission on Crime, Prevention and Criminal Justice by updating their legislation to ensure that illicit trafficking of wild fauna and flora with the involvement of organised criminal groups is defined as a criminal offence punishable by up to four years of prison or more, so that the UN Convention on Transnational Organized Crime can be used as a basis for international cooperation and mutual legal assistance.

Therefore, merely relying on the propulsive effect of the EP resolutions on the national legislations and enforcement systems is not an option. The EP calls can most likely represent only an indirect tool to enhance prioritisation of organised environmental crime at the EU and MS level (including allocation of resources) and to lead to the enactment by the EU of specific provisions aiming at contrasting the phenomenon (see 4.2) as well as to policy actions aiming at enhancing cooperation (see 4.3).

Therefore, we will not give autonomous consideration to this option in the remaining of this contribution.

4.2 Enactment of new provisions on organised environmental crime on the grounds of Art. 83 TFEU

We are in favour of an EU intervention based on Art. 83 TFEU aiming at introducing new provisions on organised environmental crime.

In particular, as mentioned above Directive 2008/99/EC should be amended in order: a) to introduce an obligation for Member States to foresee in their national legislation aggravating circumstances for the cases of environmental crimes committed by or with the involvement of organised criminality and b) to establish minimum levels of maximum penalties for those serious environmental crimes for which empirical evidence shows the involvement of organised crime (e.g. wildlife trafficking, waste trafficking);²⁸ or c) to impose Member States to criminalise “organised wildlife trafficking” and “organised trafficking in waste.”²⁹ In both cases, provisions on responsibility of corporations should be foreseen, as organised environmental crime often is characterised by the joint activity of individuals and corporations.

Such provisions should then be transposed and implemented in all the national legal systems.

It is clear that the mere existence of such provisions in the national legislative systems would not increase by itself the effectiveness of the criminal justice systems, as the provisions have then to be enforced by the competent national authorities. However, due the characteristics of organised environmental crime the existence of this minimum level of harmonisation among the EU MS represents a pre-condition for any further action.

The Environmental Crime Directive requires that the Member States take the necessary measures to ensure that the environmental offences listed therein are punishable “by effective, proportionate and dissuasive criminal penalties”. However, as pointed out by Eurojust report, there is no uniform interpretation of those terms (“effective, proportionate and dissuasive”) among the Member States. Also, the importance that Member States give to this particular crime area is not always the same and there are very different levels of penalties for the same offence in the Member States.³⁰ Such a difference can trigger conducts of forum shopping which could reduce the deterrent effect of the criminal provisions introduced on the basis of the directive, when they concern criminal offences committed in the exercise of an economic activity or having a transnational nature as it is often the case with organised environmental crime;³¹ the lack of a uniform sanctions regime could lead to the existence of ‘pollution havens’.³² Indeed, as stated by EUROPOL “The harmonisation of criminal justice legislation would also make it increasingly difficult for criminals to escape prosecution by fleeing individual jurisdictions”.³³

It is a fact that low sanctions for environmental crimes in many Member States make it impossible to consider these crimes as “serious offences” with regard to the Palermo Convention and the Council Framework Decision 2008/841/JHA.

As stated by Eurojust, an important issue to consider is that in many Member States the level of potential penalties corresponds to the investigative measures that can be used to investigate environmental crimes. This means that if the penalty for the illegal trafficking in waste or trafficking in endangered species is not high enough or if the behaviour is not qualified as a serious crime, coercive or complex investigative techniques (e.g. interception of communications, video and audio surveillance) can potentially not be used. In addition, if the offence is only punishable by fines, attempts are not punishable and no coercive measures such as search/seizure can be performed³⁴. It should also be underlined that the different levels of penalties and consequent levels of enforcement could make particularly troublesome the mutual legal assistance and co-operation among enforcement authorities.³⁵

²⁸ Vagliasindi, “La direttiva 2008/99/CE”, 474 ff.

²⁹ Grasso, in Grasso et al. (2015) 31.

³⁰ Eurojust, “Strategic Project on Environmental Crime Report”, October 2014, 39.

³¹ Vagliasindi, “La direttiva 2008/99/CE”, 463.

³² Vagliasindi, “La direttiva 2008/99/CE”; Mullier, E., “Emergence of Criminal Competence to Enforce EC Environmental Law: Directive 2008/99 in the Context of the Case-Law of the European Court of Justice”, *The 6 Cambridge Student Law Review* (2010): 94-116, 112.

³³ EUROPOL (2015) 13.

³⁴ Eurojust, “Strategic Project on Environmental Crime Report”, 18.

³⁵ Giardi, G., “Fighting the European Ecomafia: Organised Trafficking in Waste and the Need for a Criminal Law Response from the EU”, *The New Journal of European Criminal Law* (2/2015): 229-258, 244.

Clearly, the levels of criminal sanctions cannot be established on the grounds of functional needs only;³⁶ however, the conduct listed in the Directive 2008/99/EC when committed by or with the involvement of organised crime might seriously damage or hamper the environment as well as other relevant legal interests.

Hence, serious differences in the area of organised environmental crime could compromise the achievement of the aims of the directive 2008/99/EC.³⁷

Moreover, if following an evaluation undertaken in conformity with the principles which should guide the choices of criminalisation³⁸ (e.g. principle of proportionality) a maximum of at least three years imprisonment will be foreseen for the most serious environmental crimes, mutual assistance instruments could be used; this might strengthen the tools against environmental crimes which are often transnational in nature.³⁹

In addition, the provision of a maximum of at least four years imprisonment for the most serious environmental crimes would let these crimes to fall under the scope of the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (as well as, at international level, within the concept of “serious crime” as it is spelled in the UN Convention against Transnational Organized Crime).⁴⁰

Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union should be amended in order to include environmental crime within the criminal offences covered by the directive. This is essential in order to target the profit gain motivation of organised environmental crime. This motivation also leads to propose to take into consideration links between legislation on (organised) environmental crime and legislation on money laundering.

The enactment of the above described EU legislative tools based on Art. 83 TFEU should therefore play an important role in future actions aiming at tackling organised environmental crime.

An instrument based on Art. 83 TFEU is also an opportunity to contribute to a better description of the concept of organised environmental crime.

The 2008 Framework Decision should be amended. Such amendment must ensure both a higher degree of harmonisation and a narrower criminalisation of participation in a criminal organisation which will achieve legal certainty and justify the need for the separate and distinct criminalisation of participation in a criminal organisation from other related offences. Any new proposal should be based on a thorough evaluation of the implementation of the 2008 Framework Decision by Member States and of the interpretation of the relevant concepts by national courts.⁴¹

4.3 Enhancing investigative, prosecutorial and judicial cooperation

An option is to enhance investigative, prosecutorial and judicial cooperation by:

1) Building on best practices at the MS level, and particularly sharing working methods, case law and information held by the Member States that have been the most involved in combating this form of crime, with a view to developing national action plans as well as a common action plan.

This option facilitates enforcement⁴² and can be pursued through coordination and networking among MS, and can be facilitated by the EU.

2) Enhancing strategic intelligence by bodies like EUROPOL.

³⁶ Vagliasindi, G.M., “Obblighi di penalizzazione di fonte europea e principi di politica criminale: le indicazioni promananti dalla materia ambientale”, in Grasso, G., Picotti, L., and Sicurella, R. (eds.), *L'evoluzione del diritto penale nei settori d'interesse europeo alla luce del Trattato di Lisbona*, Milano: Giuffrè, 2011, 133-170.

³⁷ Vagliasindi, “La direttiva 2008/99/CE”, 455 and 463. See also Grasso, in Grasso et al. (2015).

³⁸ On these principles see “The Manifesto on European Criminal Policy”, *Zeitschrift Für Internationale Strafrechts Dogmatik* 12 (2009): 707-716.

³⁹ Vagliasindi (2015) 17 f.

⁴⁰ Vagliasindi (2015) 18; Vagliasindi, in Faure et al. (2015) 132.

⁴¹ Mitsilegas, V., “The Council Framework Decision on the Fight against Organised Crime: What can be done to strengthen EU legislation in the field? Note”, 2011, 14.

⁴² EnviCrimeNet, “Intelligence Project on Environmental Crime. Preliminary Report on Environmental Crime in Europe”, The Hague, 30.11.2014, 16.

Intelligence is necessary in order to plan for prevention as well as for allocating investigation resources and in order to guide legislation on the European level as well as national levels.⁴³

According to Europol, there are still significant intelligence gaps relating to the scope of activity and the *modi operandi* associated with environmental crime in the EU. In many MS, environmental crime is investigated by various agencies or governmental authorities, which are not necessarily part of law enforcement structures.⁴⁴ According to Eurojust, it seems evident that a more systematic collection of intelligence would enable law enforcement authorities to more easily establish cross-links with other crime areas. In this context, it may be worth noting that criminal networks involved in the illegal trade in wildlife tend to use the same routes as those used for other illegal commodities, and that when links to other serious crimes are recognised by Member States, the most common offences relate to corruption, the fraudulent obtaining of licences or forgery of the latter (including customs official documents), money laundering and, as the case may be, other illegal activities of the OCGs involved (for instance drug trafficking). Those links typically enable investigators and prosecutors to, indirectly, deal with the trafficking in endangered species in the same manner as any other serious and organised crime, and to use the entire spectrum of investigative techniques.⁴⁵

Strategic intelligence can effectively be collected through those bodies that today already are involved in systematic efforts to account for risks posed by various forms of organised crime, like Europol.⁴⁶ Enhancing EUROPOL's role also through a greater allocation of resources is indeed an option.

3) Supporting cooperation and networking

The EU should facilitate cooperation among national authorities and support initiatives such as setting up of a list of contact points of national prosecutors and establishing joint investigation teams by national competent authorities specifically focusing on e.g. the illegal e-waste shipments or illegal wildlife trafficking.⁴⁷

EU policy makers should make the fight against transnational environmental crimes a priority, thereby providing for instance for substantial and permanent budgets for international police and customs cooperation.⁴⁸

4) Taking advantage of the possibilities offered by Art. 85 and Art. 86 TFEU, and particularly:

4.1. Enhancing the strategic role of Eurojust in the fight against organised environmental crime, also on the grounds of Art. 85 TFEU.

The typical cross-border and organised nature of environmental crime immediately indicates most of environmental crimes as naturally falling within the remit of Eurojust; scholars suggest the possibility for Eurojust to play a significant role in the strategy to tackle them.⁴⁹

According to Eurojust, coordination of investigations and prosecutions should be carried out on a more regular basis through the early involvement of Eurojust. The use of joint investigation teams, coordination meetings and coordination centres could, in this context, be considered more systematically in cross-border environmental cases. The increased involvement of Eurojust could make the investigation and prosecution of serious cross-border environmental crime more effective. Eurojust's role to facilitate coordination and cooperation between national judicial authorities in environmental crime cases needs to be strengthened.⁵⁰

The Council Conclusions on the Prevention and Combating of the Illegal Trafficking of Waste, as well as the European Network of Prosecutors for the Environment (ENPE) and the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), have suggested the possibility for Eurojust to

⁴³ "Organised environmental crime in the EU Member States, Final Report", 719.

⁴⁴ EUROPOL, "Interim SOCTA 2015: An update on Serious and Organised Crime in the EU", 22.

⁴⁵ Eurojust, "Strategic Project on Environmental Crime Report", 14-15.

⁴⁶ "Organised environmental crime in the EU Member States, Final Report", 719.

⁴⁷ See, with regard to illegal shipment of e-waste, Geeraerts et al. (2015).

⁴⁸ See, with regard to illegal shipment of e-waste, Geeraerts et al. (2015).

⁴⁹ See Grasso et al. (2015).

⁵⁰ Eurojust, "Strategic Project on Environmental Crime Report", 39.

play an enhanced coordination role in this field⁵¹. Eurojust's potential added value was noted in the following areas: facilitation and coordination of mutual legal assistance (MLA) requests, gathering and sharing of best practice, awareness-raising of environmental crime, and facilitation of judicial cooperation with third States.⁵²

As previously recalled, scholars stress that the Lisbon Treaty has improved the competences of Eurojust by envisaging its competence to initiate investigations and to coordinate investigations and prosecutions, both competences that could be interpreted as implying that Eurojust can take binding decisions to be respected by national competent authorities; such binding powers would allow Eurojust to evolve “from a player at horizontal cooperation level to a player at vertical integration level”⁵³ also in the field of organised environmental crime. On 17 July 2013 the Commission presented a proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation on the basis of Article 85 TFEU. The aim of the Commission's proposal is to increase Eurojust's efficiency by establishing a new governance model. It also aims to improve its operational effectiveness through homogeneously defining the powers and status of National Members.⁵⁴

The above mentioned (section 3.2. e 4.2) innovations of the EU legal framework on organised environmental crime would permit the powers granted to Eurojust by Art. 85 TFEU to be operational also in fighting organised environmental crime, and the above mentioned regulation would help implementing this process.

4.2) Extension to organised environmental crime of the material scope of the future European Public Prosecutor on the grounds of Art. 86(4) TFEU.

National investigation authorities incur in difficulties when investigating and prosecuting transnational organised environmental crimes.⁵⁵

Organised environmental crime is considered among the ‘favourites’ sectors to be interested by a future extension of the material scope of the European Prosecutor, as a consequence of its very nature and above all the relevance of environment protection in EU policies.⁵⁶

5 Alternative policy options

Due to the seriousness and complexity of organised environmental crime we do not believe that policy options outside the criminal justice system could by themselves effectively address the issue.

However, a complementary approach to the phenomenon should be taken into account.

This means, in addition to the options analysed above, fostering the administrative tools to deter organised environmental crime, like e.g. including among the requirements requested to obtain an authorisation to manage a waste recovery facility or to perform a waste transportation activity to provide evidence of the lack of convictions or preventive measures for organised crime related offences (like corruption, forgery of documents, money laundering etc). This option has the advantage to prevent the involvement of organised crime in activities which might represent a profitable opportunity for the commission of environmental crimes.

⁵¹ Eurojust News, Issue n°10 – December 2013, 1.

⁵² Eurojust News, Issue n°10 – December 2013, 2.

⁵³ Gerstetter and Sina, in Faure et al. (2015) 134 f.; Sicurella, in Grasso et al. (2015) 37.

⁵⁴ Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust)/COM/2013/0535 final, Brussels, 17.7.2013. On this proposal, see Weyembergh, A., “An overall analysis of the proposal for a Regulation on Eurojust”, *Eucrim* (4/2013): 127-131.

⁵⁵ “Organised environmental crime in the EU Member States, Final Report”, 719.

⁵⁶ Vagliasindi, G.M., “Istituzione di una Procura europea e diritto penale sostanziale: l'eventuale estensione della competenza materiale della futura Procura alla criminalità ambientale”, in Grasso, G., Illuminati, G., Sicurella, R., and Allegrezza, S. (eds.), *Le sfide dell'attuazione di una Procura europea: definizione di regole comuni e loro impatto sugli ordinamenti interni*, Milano: Giuffrè, 2013, 189 ff.; Sicurella, “Setting up a European Criminal Policy”, 870 ff.

Other complementary (rather than alternative) policy options can be formulated with regard to specific sectors where the involvement of organised crime is empirically shown:

1) With regard to waste trafficking, new technical tools for tracking hazardous waste flows should be implemented; currently, every year huge amounts of waste escape from the official statistics, with most of them strictly connected to tax evasion. Thus, it could be useful to empower environmental protection agencies' officers with inspection functions allowing them to act as administrative police and to control those firms that are obliged to declare the generated volumes and characteristics of waste.⁵⁷

2) With regard to e-waste trafficking, the EU should encourage national authorities even further to introduce a more integrated approach towards enforcement whereby inspection activities downstream in the e-waste chain (e.g. at EEE outlets) and inspection activities in more upstream segments of the chain (e.g. in ports) mutually support and inform each other. Regulation of the (informal) recycling industry in developing countries in order to avoid environmental harm from inadequate disposal of e-waste should be enhanced; the EU could support establishing collection and recycling facilities in developing countries, thereby looking for funding by electronic producers in the EU within the context of extended producer responsibility. Prevention or reduction of e-waste through reducing toxics or replacing them all together should be further enhanced, making products environmentally friendly and easier to dismantle and recycle, but also towards the reduction of consumption of electronic and electrical tools in Europe.⁵⁸

6 Harmonisation and coordination

The enactment of specific provisions aiming at targeting organised environmental crime should be realised at the EU level via harmonisation through a directive to be implemented by MS.

Fostering investigative, prosecutorial and judicial cooperation should be realised both at the EU and MS level by: 1) sharing working methods, case law and information held by the Member States that have been the most involved in combating this form of crime via coordination and networking (MS) and developing national enforcement action plans (MS) or a common action plan (MS/EU); 2) fostering the role of Europol in strategic intelligence service, also through a greater allocation of resources (EU); 3) support coordination and networking, e.g. through the institution of national contact points and establishing joint investigation teams by national competent authorities specifically focusing on e.g. the illegal e-waste shipments or illegal wildlife trafficking; this could be done via coordination and networking by MS, and could be facilitated by the EU; 4) in a *de iure condendo* perspective, by expanding the material competences of the EPPO through a EU hard law instrument.

Alternative or, better said, complementary policy options should be realised: 1) at the MS level, or at the EU level through harmonisation by a soft law or a hard law (directive) instrument as it concerns fostering the administrative tools to deter organised environmental crime; 2) at the MS level, or at the EU level through a soft law or a hard law instrument (directive) as it concerns, with regard to waste trafficking, new technical tools for tracking hazardous waste flows to be implemented and environmental protection agencies' officers empowered with inspection functions; 3) with regard to e-waste trafficking, at the EU level through a soft law or hard law instrument (directive) as it concerns the introduction of a more integrated approach towards enforcement (inspections); at the MS, and at the EU level through a soft law or a hard law instrument (directive) as it concerns further enhancing prevention or reduction of e-waste through reducing toxics or replacing them all together.

⁵⁷ These policy options were formulated by D'Alisa, G., Falcone, P.M., Germani, A.R., Imbriani, C., Morone, P., and Reganati, F., "Victims in the 'Land of Fires': A Case Study on the Consequences of Buried and Burnt Waste in Campania, Italy." Study in the Framework of the EFFACE Research Project. Rome: University of Rome "La Sapienza," 2015.

⁵⁸ These policy options were formulated by Geeraerts et al. (2015).

7 Effectiveness

The above described policy options address weaknesses identified in the SWOT analysis or could build on strengths identified in the SWOT analysis.

EUROPOL recently stated that “legislative differences and a proliferation of legislation across the EU create loopholes and opportunities for organised crime”.⁵⁹ With specific regard to wildlife trafficking, the European Commission has underlined how “low levels of awareness about the problem, a low risk of detection and low sanction make it particularly lucrative for criminals”.⁶⁰ An EFFACE case study concludes that while existing international regulations are identified as robust enough, “national wildlife legislation, enforcement and punishment by EU Member States (MS) limit the effectiveness of these regulations and place all MS at risk as criminals exploit the EU’s open borders. There is insufficient deterrent effect as punishment is seldom certain and rarely severe; the potential for profit outweighs the risk (...)”.⁶¹ With regard to illegal e-waste shipment, an EFFACE case study states that “The current loopholes in enforcement and legislation also act as a motivation for the actors involved in the illegal activity”.⁶² Ambiguity in the concepts of organised crime, environmental crime, organised environmental crime affect enforcement and cooperation: “if investigators, prosecutors and judges have to cope with vague or inconsistent definitions of the crimes they are addressing, there could be a considerable difference in how investigations and prosecutions are carried out. In such scenarios, the effectiveness of enforcement and judicial efforts is substantially reduced and OCGs have a greater advantage”.⁶³

In addition, the UN Convention against Transnational Organized Crime and the Council Framework Decision 2008/841/JHA on the fight against organised crime do not deal directly with the phenomenon of organised environmental crime. The possibility of according relevance to environmental crime in light of the concept of “serious crime” used in both instruments is hampered by the fact that most States Parties of the Convention and EU Member States do not provide maximum penalties of at least 4 years imprisonment for environmental crimes as on the contrary is required by both instruments for the crime to be “serious”.⁶⁴

Therefore, weaknesses related to problems both at the regulatory and implementation level would be addressed by the enactment at the EU level of the above described specific provisions aiming at targeting organised environmental crime (see above 4.2). This policy option should be able to contribute to solve the problem at the level of the regulation (norm drafting) and implementation (practice), as the latter are in this case interconnected.

For the above mentioned reasons, this option would contribute to eliminating discrepancies among national legislation and inefficacy of sanctions which facilitate organised criminal groups and create obstacles to enforcement.⁶⁵

It is also worth recalling that, if following an evaluation undertaken in conformity with the principles which should guide the choices of criminalisation⁶⁶ a maximum of at least three years imprisonment will be foreseen for the most serious environmental crimes, mutual assistance instruments could be used, which might strengthen the tools against environmental crimes which are often transnational in nature.⁶⁷ Moreover, the provision of a maximum of at least four years imprisonment for the most serious environmental crimes would let these crimes to fall under the scope of the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (as well as, at international level, within the concept of “serious crime” as it is spelled in the UN Convention Against Transnational Organized Crime).⁶⁸ Extending the scope of Directive 2014/42/EU on the freezing and confiscation

⁵⁹ EUROPOL (2015) 13.

⁶⁰ See European Commission, “The EU approach to combat wildlife trafficking”. In general, on low awareness related issues, see also Giardi, “Fighting the European Ecomafia”, 233, who argues that lack of public awareness is an important factor in the proliferation of organised crime activities especially in the case for environmental crimes, which most individuals do not consider serious - because of a lack of direct human victims - or which they do not see - because it usually occurs outside densely populated areas.

⁶¹ Maher, J., “Illegal Wildlife Trade: A Case Study”, EFFACE Policy Brief 9, 2015.

⁶² Geeraerts et al. (2015) 17.

⁶³ Luna and Veening (2014) 2 f.

⁶⁴ Vagliasindi, in Faure et al. (2015) 131.

⁶⁵ Vagliasindi, “La direttiva 2008/99/EC”.

⁶⁶ On these principles see “The Manifesto on European Criminal Policy”, 707 ff.

⁶⁷ Vagliasindi (2015) 17 f.

⁶⁸ Vagliasindi (2015) 18; Vagliasindi, in Faure et al. (2015) 132.

of instrumentalities and proceeds of crime in the EU in order to include environmental crime within the criminal offences covered by the directive would target the profit gain motivation of organised environmental crime. An instrument based on Art. 83 TFEU is also an opportunity to contribute to a better description of the concept of organised environmental crime, which would facilitate cooperation in transnational cases and contribute to raise public awareness, as well as to prioritise organised environmental crime.

The SWOT analysis revealed that good practices can be identified in the enforcement actions of international, EU and national institutions. The role played by ‘key’ individuals in the criminal justice system and NGOs has been underlined also with regard to illegal wildlife trading.⁶⁹ The successful experience of some environmental enforcement networks also has to be highlighted.⁷⁰ The positive role of granting resources to support cooperation has to be mentioned (e.g. the development of EU-Twix, an enforcer’s intranet, has provided a successful platform for MS co-operation and enforcement⁷¹).

Building on these strengths, fostering investigative, prosecutorial and judicial cooperation (see above, 4.3) would be beneficial at the implementation level.

The SWOT analysis showed the seriousness of the extent and impact of organised environmental crime, particularly in the sector of waste trafficking, e-waste shipment and wildlife trafficking. Complementary (rather than alternative) policy options formulated with regard to specific sectors where the involvement of organised crime is empirically shown (see above, 5) would address this weakness by contributing to solve the problem of extent and impact of organised crime in the above mentioned areas at the implementation level.

8 Conclusions

It is desirable to focus specifically on environmental crime in relation to organised crime. Specific criminal provisions and specific enforcement efforts need to focus on the situations where environmental crime is in fact the result of organised crime.

In particular:

1) Directive 2008/99/EC should be amended in order a) to introduce an obligation for Member States to foresee in their national legislation aggravating circumstances for the cases of environmental crimes committed by or with the involvement of organised criminality and b) to establish minimum levels of maximum penalties for those serious environmental crimes for which empirical evidence shows the involvement of organised crime (e.g. wildlife trafficking, waste trafficking); or in order c) to impose Member States to criminalise “organised wildlife trafficking” and “organised trafficking in waste”. The new provisions should also cover the responsibility of corporations, due to the frequent links between individuals and corporations in the phenomenon of organised environmental crime.

2) Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime should be amended in order to include the most serious environmental crimes. Links between legislation on organised environmental crime and legislation on money laundering should be also taken into consideration.

3) A better description of the concept of “organised crime” should be provided through an amendment of the framework decision 2008/841/JHA.

Such provisions should then be transposed and implemented in all the national legal systems.

⁶⁹ Sollund and Maher (2015).

⁷⁰ Smith, L., and Klaas, K., “Networks and NGOs Relevant to Fighting Environmental Crime.” Study in the Framework of the Efface Research Project. Berlin: Ecologic Institute, 2014, 15.

⁷¹ Maher (2015) 2.

These recommendations concern improvements of the criminal justice systems through harmonisation at the EU level of the regulatory framework (including a clearer common description of concepts like “organised crime”). These are core proposals.

Investigative, prosecutorial and judicial cooperation should be enhanced by

- 1) sharing working methods, case law and information held by the Member States that have been the most involved in combating this form of crime and/or developing national enforcement action plans or a common action plan;
- 2) fostering the role of Europol in strategic intelligence service, also through a greater allocation of resources;
- 3) support coordination and networking, e.g. through the institution of national contact points and establishing joint investigation teams by national competent authorities specifically focusing on e.g. the illegal e-waste shipments or illegal wildlife trafficking;
- 4a) fostering the role of Eurojust and 4b) in a *de iure condendo* perspective, expanding the material competences of the EPPO through a EU hard law instrument.

These recommendations address improvements of the criminal justice system. These recommendations relate to coordination among MS and between the latter and the EU (with the exception of 4, relating to harmonisation). Recommendations 1 to 4a are core proposals; recommendation 4b is at this stage supplementary.

Alternative or, better said, complementary recommendations are:

- 1) fostering the administrative tools to deter organised environmental crime;
- 2) with regard to waste trafficking, new technical tools for tracking hazardous waste flows should be implemented and environmental protection agencies’ officers empowered with inspection functions;
- 3) with regard to e-waste trafficking, to introduce a more integrated approach towards enforcement (inspections); the EU to support establishing collection and recycling facilities in developing countries; further enhancing prevention or reduction of e-waste through reducing toxics or replacing them all together.

Complementary recommendations address both indirect improvements of the criminal justice system and ‘alternatives’. These options relate to MS initiative, propulsive role of the EU, coordination between EU and MS, harmonisation of non criminal law EU instruments. At this stage, these options are supplementary.

Table 2: Overview of Policy Options

Level	Option	Recommended	Political feasibility	Priority
EU	Directive 2008/99/EC should be amended in order a) to introduce an obligation for MS to foresee in their national legislation aggravating circumstances for the cases of environmental crimes committed by or with the involvement of organised crime and b) to establish minimum levels of maximum penalties for those serious environmental crimes for which empirical evidence shows the involvement of organised crime (e.g. wildlife trafficking, waste trafficking)	Yes	+	Yes
EU	Directive 2014/42/EU should be amended in order to include the most serious environmental crimes Links between legislation on organised environmental crime and legislation on money laundering should be also taken into consideration	Yes	+	Yes
EU	Provide a better description of the concept of “organised crime” through an amendment of the framework decision 2008/841/JHA	Yes	+/-	Yes
EU	Foster the role of Europol	Yes	+	Yes
EU	Foster the role of Eurojust	Yes	+	Yes
EU	Extend the material competences of EPPO	Yes	-	No
MS	Sharing working methods, case law and information	Yes	+	Yes
MS (EU to facilitate)	Support coordination and networking	Yes	+	Yes
MS/EU	Fostering administrative tools to deter environmental crime	Yes	+	No
MS/EU	New technical tools for tracking hazardous waste flows	Yes	+	No
MS/EU	Further enhancing prevention/reduction of e-waste	Yes	+	No

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