



Revising the Environmental crime Directive

Directive 2008/99/EC

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Environmental Crime Directive (ECD)

- Main binding EU instrument in the field of combating environmental crime
- Describes environmental offences that Member States must criminalise on the basis of serious violations of administrative environmental legislation
- Requires liability of both natural and legal persons, also with regard to inciting, aiding and abetting
- Obliges Member States to ensure effective, proportionate and dissuasive criminal penalties for environmental crimes

2020 Evaluation of the Directive

- Evaluation report published on 28 October 2020
- Directive created a common legal framework, but had little impact on the ground in terms of practical implementation.
- Large differences across Member States remain regarding criminalisation, interpretation of legal terms to define environmental crimes, and sanctioning
- Limitations to the practical implementation of the Directive due to issues not covered by the Directive such as a lack of statistics, cross-border cooperation and effectiveness of the enforcement chain

Review of the Directive

Political priority, planned for end of 2021

New legal basis; art. 83.2 TFEU instead of 191 TFEU

Objectives for a revised Directive:

- Clarify and update scope of the Directive
- Clarify legal terms used to determine what is an environmental crime
- Improve availability of dissuasive and comparable sanction types and levels
- Improve cross-border cooperation
- Improve the collection and dissemination of statistical data
- Improve functioning of the enforcement chain (training, coordination, resources)

Roadmap for the revision: 4 options

1. Maintain the status quo and simply update the annexes to the Directive
2. Repeal the Directive
3. Amend the Directive. Focusing on 4 main issues:
 1. Scope of the Directive
 2. Definition of offenses
 3. Sanction levels
 4. Enforcement
4. Amend the Directive and provide non-binding measures

Main issues: 1. Scope of the Directive

Defined by 'unlawful' infringement of sectoral legislation in Annexes to the Directive, and by definitions of offenses in art. 3

Legislation in the Annexes is out of date, new areas of environmental crime (such as illegal logging) are not included in art. 3.

Options:

1. Update the legislation in the Annexes, introduce comitology procedure to keep them up to date, and introduce new criminal offenses to art. 3
2. Refer to an infringement of sectoral legislation in general terms, without referring to special legislation in Annexes
3. Define environmental offenses independently of breach of sectoral legislation
4. Option 3 in combination with options 1 or 2

Main issues: 2. Definitions of offenses

Legal terms used to define offenses in art. 3 such as ‘substantial damage’ are considered vague by practitioners and lead to divergent interpretations across Member States

Options:

1. Provide clarity on interpretation through non-binding guidelines
2. Define vague terms more clearly in the Directive itself
3. Redraft the definitions of offenses with a focus on criminalising the behaviour rather than the damage caused

Main issues: 3. Sanctions

Directive (art. 5) requires effective, proportionate and dissuasive sanctions.

Sanction levels vary substantially (from 1 year to life in prison for the same offense) across Member States and sanctioning is often not dissuasive.

Options:

1. Introduce minimum-maximum sanctions in the Directive
2. Oblige Member States to provide the same sanctions for environmental crime as for organised crime and other serious crime categories

Main issues: 4. Enforcement

Current Directive does not include provisions on enforcement

Enforcement was identified as a major area for improvement in evaluation

Main areas:

- Cross-border cooperation
- Effective coordination, training and allocation of resources in the enforcement chain
- Collection and sharing of statistical data

Options:

1. Provide guidelines and share best practices to enhance enforcement
2. Include provisions in the Directive with obligations for Member States on enforcement
3. A combination of 1 and 2

Steps ahead

Ongoing:

- Stakeholder consultation in close cooperation with DG ENV
- Public consultation until 3 May
- Study by external contractor on cost-benefits of options

Next steps:

- Submission of Impact Assessment to Regulatory Scrutiny Board at the end of August (end of September hearing)
- Adoption of draft proposal for a legislative text in December 2021

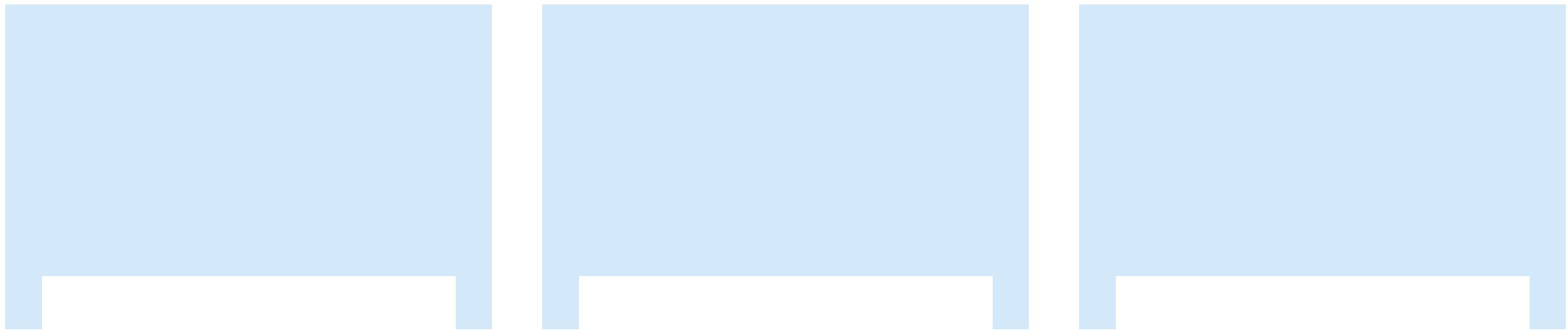
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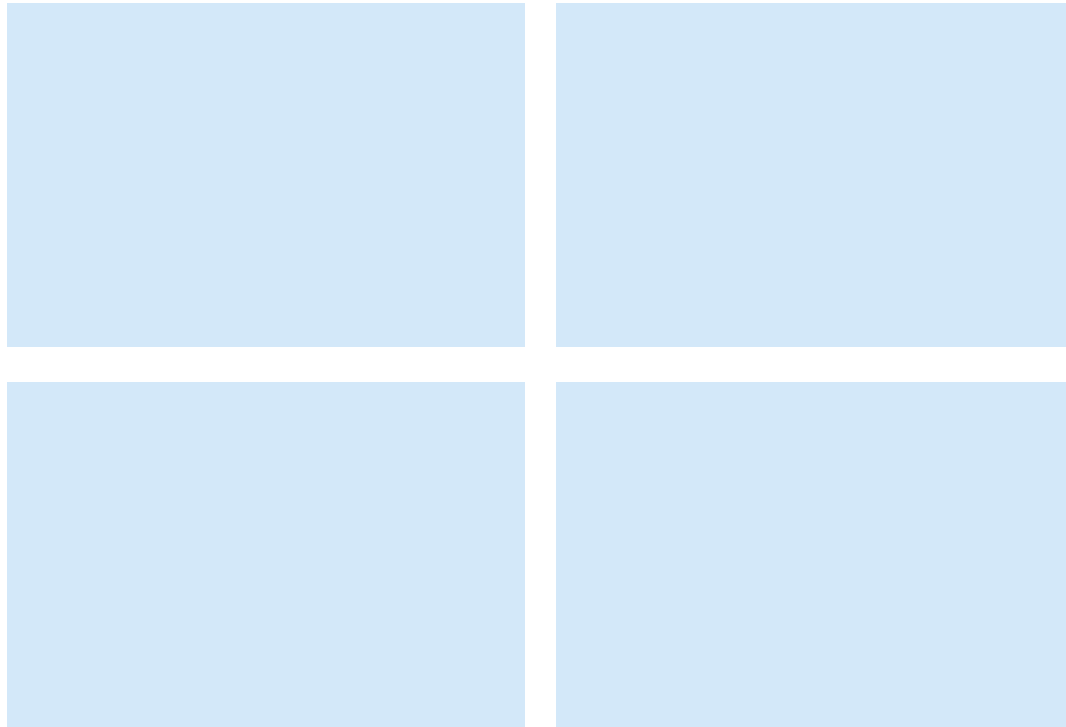


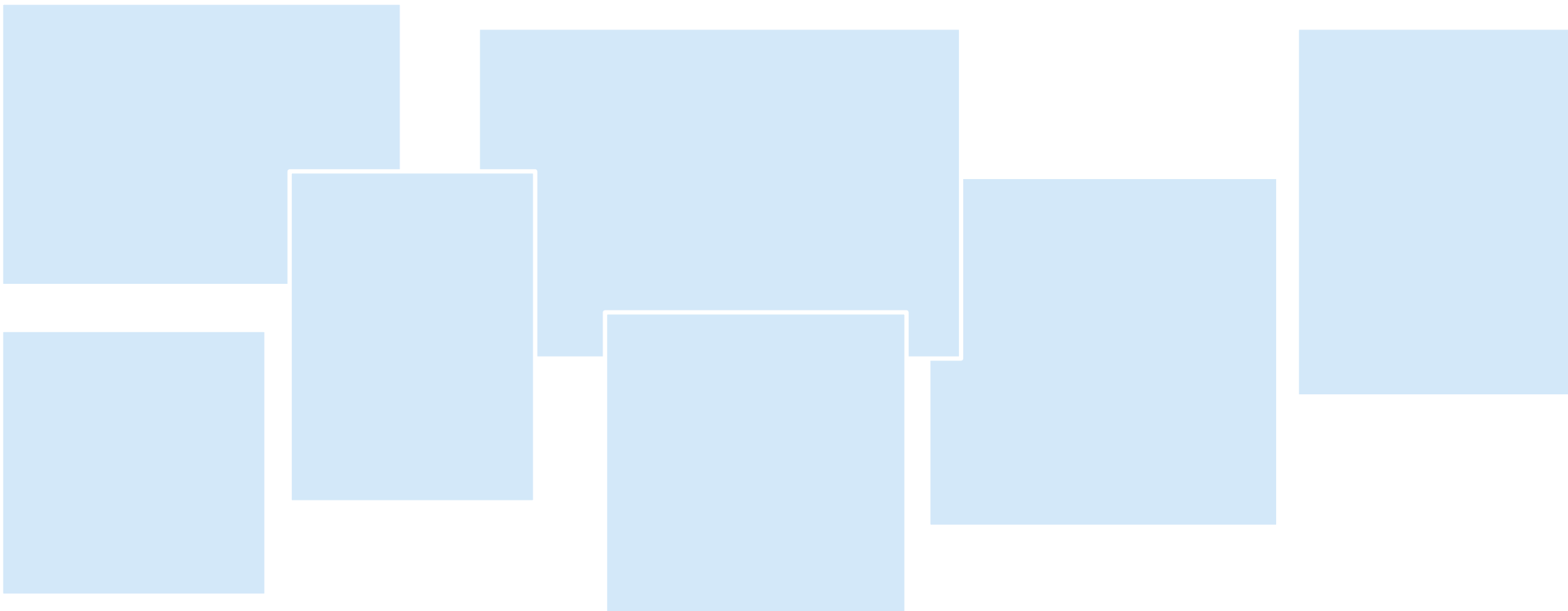


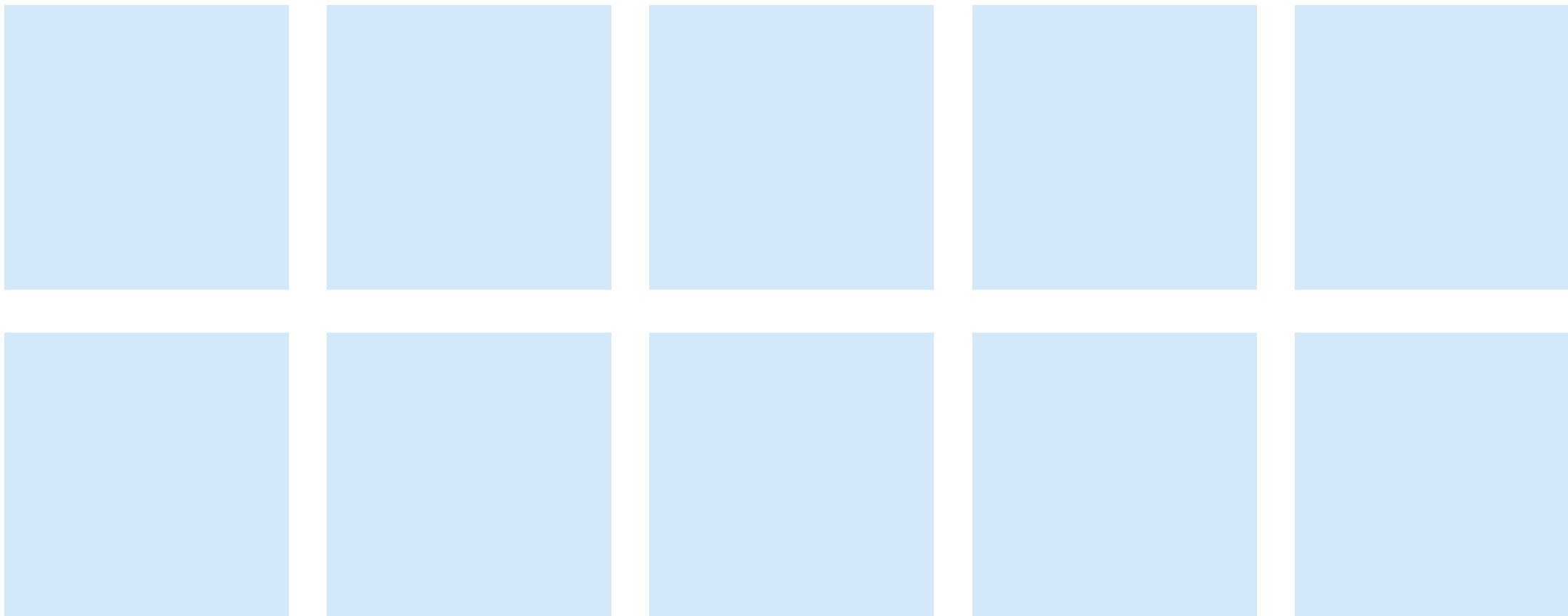


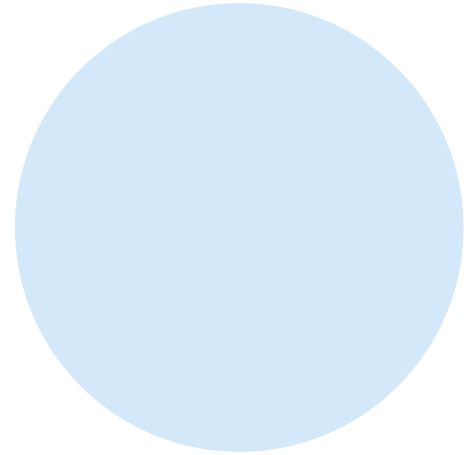
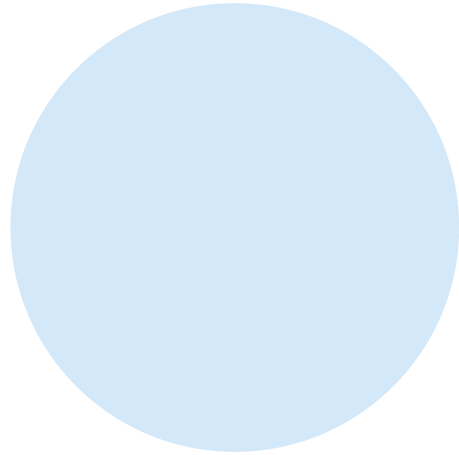
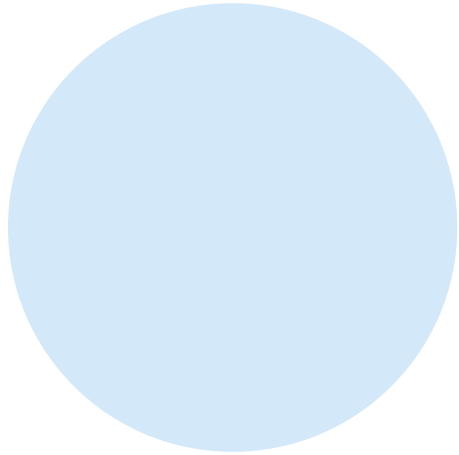
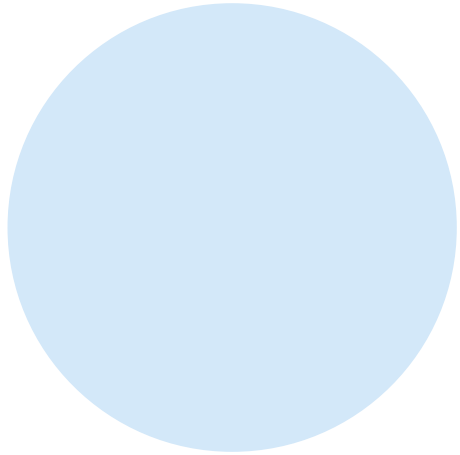












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