



Proposal for a new Environmental Crime Directive and its relevance for tackling water offences

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Political context



- On 15 December 2021, the Commission adopted a proposal for **new Environmental Crime Directive (ECD)**.
- The new ECD contributes to the **European Green Deal**.
- **Biodiversity Strategy, Zero Pollution Action Plan, Chemicals Strategy** call for better enforcement and more stringent sanctions.
- **Council:** General Approach agreed on 9 December 2022.
- **European Parliament:** JURI leading committee, voting in plenary expected in late March 2023.

Why a proposal for a new ECD?



- The existing Directive from 2008 is outdated and too weak; lack of proper enforcement; undermining the environmental rule of law
- Need for precision of crime definitions; need for provisions on types and levels of sanctions, coordination and cooperation, enforcement chain
- Environmental crime is the fourth largest criminal activity in the world after drugs trafficking, human trafficking, and counterfeiting, growing at a rate between 5%-7% per year (*Interpol and the United Nations Environment Programme*)

Challenges to environmental criminal law enforcement

Most convictions only lead to lenient sanctions

Few cases get to the notion of prosecution office



Few cases end in convictions

Few initiated cases are brought before a court

Main novelties

- Legal basis & “Unlawful conduct”
- Definition of offences
- Water offences
- Sanctions’ provisions
- Recognising the role of the civil society
- Strengthening the enforcement chain and monitoring the application
- Further work to enhance enforcement

Legal basis & “Unlawful conduct”

Legal basis – Article 83(2) TFEU

‘Unlawful’ conduct as defined under Article 2(1) COM ECD proposal:

1. breach of obligations deriving from relevant sectoral EU legislation
2. breach of a law, an administrative regulation or a decision of a competent authority of a Member State
3. conduct carried out under an authorisation obtained fraudulently, or by corruption, extortion or coercion

Council GA: clarifies points 1 and 2; drops 3 point.

Definition of offences – conducts to be criminalised

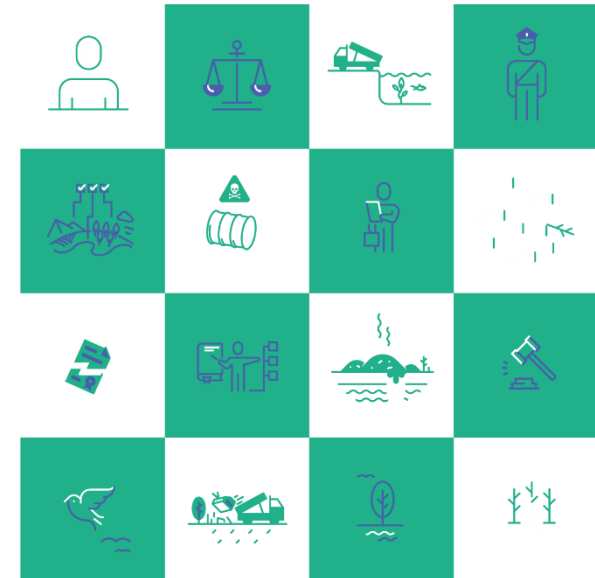
- Refined definition of offences existing under Directive 2008/99/EC

Examples: illegal waste management, operation of an installation where dangerous activities are carried out or dangerous substances are stored.

- Proposed new offences - examples:

- illegal abstraction of surface or groundwater;
- illegal ship recycling;
- illegal ship-source pollution;
- illegal timber trade.

→ Council GA - similar approach; updates from EP.



Definition of offences – clarification of terms used

Clarification of terms used to define environmental offences:

- ‘substantial damage’
- ‘negligible quantity’
- ‘likelihood to cause damage’ to the environment
- **Objective:** facilitate work on the ground and ensure consistent application across the EU by providing a non-exhaustive list of factors to be considered for investigation, prosecution and adjudication.

General pollution offence and other relevant offences

- Article 3 (1)(a) COM proposal
- Discharge, emission or introduction of a quantity of materials or substances or ionising radiation into air, soil or water...
- **“Substantial damage to the quality of water”** – constitutive element of other offences (e.g., breaches of legislation on chemicals, waste management, industrial activities)



Illegal water abstraction

- Text of COM proposal: “*abstraction of surface water or groundwater which causes or is likely to cause **substantial damage** to the ecological status or potential of surface water bodies or to the quantitative status of groundwater bodies*”.
- Examples: water abstraction without a permit or in breach of permit conditions, conducted intentionally or with at least serious negligence.



Illegal ship recycling

- Ships contain many carcinogens and toxic substances (e.g., asbestos, heavy metals, oil, mercury, ODS). Illegal recycling can damage **coastal ecosystems and local communities**. This can also lead to serious injuries and death.
- Proposed new criminal offence relates to breach of the obligation to send ships for recycling only to **authorised facilities**.
- Article 3(1)(g) COM ECD proposal and Article 6(2) Ship Recycling Regulation.



Ship-source pollution

- **Oil spills** are one of the most concerning sources of marine pollution: difficult to clean up and lasting for long periods of time in the marine environment.
- Transfer of the relevant criminal offence from the Ship-Source Pollution Directive (SSPD) to the ECD for legal basis and consistency reasons.
- Article 3 (1)(h) COM ECD proposal and Article 4(1) SSPD.



Sanctions in the ECD proposal



- **Effective, dissuasive and proportionate** sanctions for both **natural and legal persons**:
 1. Minimum maximum levels of imprisonment for natural persons;
 2. Minimum maximum level of fines for legal persons based on legal person's annual worldwide turnover.
- **Ancillary sanctions and measures** for both, natural and legal persons (Articles 5 and 7)
- **Aggravating and mitigating** circumstances (Articles 8 and 9)

Role of citizens and civil society



Protection of persons
who report
environmental
criminal offences and
support investigation
(Article 13)



Rights for the public
concerned to
participate in
proceedings in
accordance with
national law (Article
14)

Strengthening the enforcement chain

The proposal is to strengthen the enforcement chain and facilitate a more effective investigation and prosecution of environmental crime. Proposed requirements aim at ensuring:

- ❖ sufficient human and financial resources
- ❖ efficient cooperation and coordination
- ❖ appropriate training for judges, prosecutors, police, inspectors
- ❖ availability of effective investigative tools
- ❖ adoption of a national strategy on combating environmental crime.



Increase the ability to monitor application in practice

Obligations of the Member States to:

- **collect and regularly publish statistical data** on scale of environmental crime and efforts to combat it;
- **annually transmit** to the Commission the relevant statistical data.

Obligations of the Commission to:

- **regularly publish a report** based on the statistical data transmitted by the Member States;
- adopt **implementing acts establishing the standards format for data transmission.**



Further work needed to enhance enforcement capacities on the ground

- ❖ Support to and cooperation with European networks of environmental enforcement practitioners (IMPEL, ENPE, ECN, EUFJE)
- ❖ Develop specialised knowledge on investigation, prosecution and adjudication of specific environmental crimes
- ❖ Training material for judges, prosecutors, police, inspectors
- ❖ Increase knowledge and improve methodologies for assessing environmental damage and gravity of environmental crime
- ❖ Measures to facilitate the role of citizens and civil society.

Thank you!

