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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the protection of the environment through criminal law and replacing Directive 2008/99/EC

{COM(2021) 851 final} - {SEC(2021) 428 final} - {SWD(2021) 465 final}

Executive Summary sheet

Impact Assessment for the review of the Environmental Crime Directive (Directive 2008/99/EC)

A. Need for action

What is the problem and why is it a problem at EU level?

This impact assessment follows the evaluation of the Environmental Crime Directive (ECD). Environmental crime has negative ecological, social and economic impacts and is the fourth most profitable area of crime globally, with total profits for criminals estimated to be around USD 260 billion every year. The ECD is the main horizontal EU instrument to protect the environment through criminal law. The evaluation – finalised in 2020 – showed that the ECD established a common EU framework of key environmental crime categories, but that in practice it did not have an effect. The ECD did not increase the number of convictions or the level of imposed sanctions in the Member States. The evaluation identified the following key specific problems:

1) The scope of the ECD (defined in two annexes to the ECD and in a list of offences in Article 3 of the ECD) is outdated and is defined in a complex way, hindering effective investigations, prosecutions and cross-border cooperation.

2) Definitions of what environmental crime is are unclear and hinder effective investigation, prosecutions and cross-border cooperation between and within Member States.

3) Sanction levels are not effective and dissuasive in all Member States.

4) Cross-border cooperation is too limited.

5) Policymakers and practitioners lack awareness of the nature and scale of environmental crime and the effectiveness of law enforcement measures due to limited collection, processing and sharing of statistical data.

6) There is an ineffective enforcement chain on environmental crime, inter alia, due to lack of training and specialisation, and insufficient coordination and cooperation between the different levels of environmental law enforcement.

What should be achieved?

The initiative aims to achieve better protection of the environment through more effective detection, investigation, prosecution and sanctioning of environmental crime.

More specifically, the objectives are to:

1) improve the effectiveness of investigations and prosecutions by updating the scope of the Directive and by including a feasible and simple mechanism to keep the Directive up to date;

2) improve the effectiveness of investigations and prosecutions by clarifying or eliminating vague terms used in the definitions of environmental crime in Article 3;

3) ensure effective, dissuasive and proportionate sanction types and levels for environmental crime;

4) improve the effectiveness of cross-border cooperation on environmental crime;

5) improve informed decision-making on environmental crime through improved collection and sharing of statistical data; and

6) improve the effectiveness of national enforcement chains (investigations, prosecutions, sanctioning).

What is the value added of action at the EU level (subsidiarity)?

Environmental crimes, such as serious forms of pollution of water and air, maritime pollution and the trafficking of chemicals, waste and wildlife typically have cross-border effects. Combating these cross-border crimes requires a level playing field across the EU on the definition of environmental crime and sanctions. This would facilitate judicial cooperation between relevant Member State authorities. Perpetrators, including corporate offenders, would no longer be able to go unpunished by, for instance, choosing to operate from Member States with the most lenient legislation.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why not?

The Commission has developed a number of legislative and non-legislative policy options. The following options were considered and discarded at an early stage: (1) to repeal the Directive; or (2) to address the identified problems through non-binding measures only, such as EU guidance on the interpretation of definitions and levels of sanctions. Based on the assessment, the only realistic option to achieve the specific objectives identified is to revise the Directive. This would not exclude supporting non-legislative measures ('main option'). Under this main policy option, the following sub-options ('options') have been identified and assessed in full detail in the impact assessment so as to address each specific objective.

Objective 1

- Option 1a: Update the existing list of legislation in the annexes, add new relevant crime categories to Article 3; introduce the comitology procedure to keep the annexed updated.
- Option 1b: Refer to relevant sectoral legislation in general terms and remove the annexes; refine the definition of what constitutes environmental crime in the Article 3 offences and add new relevant crime categories.
- Option 1c: Define environmental crime in the Directive without the requirement of a breach of relevant EU sectoral legislation.

The preferred option is option 1b, as it adds more legal clarity on which breaches of sectoral legislation constitute environmental crime. In the future, the Directive must – as today – be updated by the European legislator, as a more simple mechanism – namely the comitology procedure – is not applicable to essential components of the Directive. The definition of environmental crime is an essential component.

Objective 2

- Option 2a: Define unclear terms in the Directive (e.g. 'substantial damage') more precisely.
- Option 2b: Eliminate vague terms, such as for example 'substantial damage', and criminalise 'risky behaviour' (endangerment crime).
- Option 2c: A combination of options 2a and 2b.

The preferred option is option 2c.

Objective 3

- Option 3a: Introduce minimum and maximum sanctions levels.
- Option 3b: Option 3a plus aggravating circumstances and accessory sanctions.
- Option 3c: Option 3b plus an obligation to link the level of fines to the financial situation of legal persons and/or illegal profits.

The preferred option is option 3c.

Objective 4

A package of provisions directly fostering cross-border cooperation, such as harmonised effective investigative tools, an obligation to cooperate through Europol, Eurojust and OLAF, and rules on jurisdiction.

Objective 5

- Option 5a: Oblige Member States to collect and regularly report statistical data on environmental crime to the Commission.
- Option 5b: Option 5a plus an obligation on the Member States to collect and report statistical data according to harmonised common standards.

The preferred option is option 5b.

Objective 6
A package of obligations to foster practical implementation, such as the provision of targeted and regular training at all levels of the enforcement chain, overarching national environmental crime strategies and awareness-raising measures.

What are different stakeholders' views? Who supports which option?

The large majority of stakeholders, such as law enforcement practitioners and their EU level networks, EU agencies like Eurojust and Europol, NGOs, Member States, business and academia, agrees that the ECD needs improvements and that EU action is necessary. They favour revising the ECD over introducing non-binding measures or just updating the ECD's scope. Almost all stakeholders agree with the options proposed under each specific objective, with one exception concerning the scope of the ECD (objective 1, option 1c – not chosen as preferred option, see above).This option would define environmental crime in the ECD independently of a breach of administrative law. However, the Member States and academia consulted and a significant number of industry stakeholders consider that the link between criminal law and administrative law is necessary to ensure legal certainty for businesses that comply with sectoral legislation. Other stakeholders support decoupling environmental crime from sectoral legislation, to prevent perpetrators who have caused very severe environmental harm from escaping criminal liability.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, other than the main ones)?

According to the assessment, the preferred package of options would be effective in addressing the main problems and in meeting the general and specific objectives. More effective detection, investigation, prosecution and sanctioning of environmental crime is likely to help reduce the impact of environmental crime as compared to the baseline scenario. Since quantitative data on impacts is limited, the likely impact of the options is based on the views of experts and stakeholders, where possible supplemented by data.

Under **objective 1**, removing the annexes and instead refining the definition of what constitutes environmental crime in Article 3 and adding new environmental crime categories under the same article is likely to improve the effectiveness of investigations and prosecutions of environmental crime, especially with regard to cross-border cooperation. However, in the future there would also be a need to regularly update the Directive through legislative procedure if new environmental crime areas are to be added to the Directive's scope. There is no simpler way to do this, as the definitions of environmental crime categories are an essential component of the Directive and require a decision by the European legislator.

Under **objective 2**, both endangerment crime and crime that requires the manifestation of damage are necessary to respond adequately to environmental offences. The current Directive is built on a combination of these two types of crime definition. The proposal will have to add new endangerment crime categories and specify more exactly which behavior is criminalised; it will also have to add information enabling it to be determined what can constitute environmental damage.

More precise definitions of unclear terms – such as '*substantial* damage' and *'negligible or non-negligible quantity'* – will improve the clarity of the Directive. The focus on endangerment crime and risky behaviour will allow effective sanctioning in cases where it is difficult to establish the actual damage or where no damage occurred. Hence, the combined application of both options may lead to the increased effectiveness of investigations and prosecutions of environmental crime.

The preferred option under **objective 3** will lead to more effective, proportionate, dissuasive and uniform sanction levels across the EU and in practice across the EU. In addition, the minimum maximum levels of imprisonment

sanctions will give law enforcement practitioners access to investigative tools which are only available for crime punishable by a certain minimum maximum level of penalties. This will lead to more effective investigations and facilitate cross-border cooperation.

The measures under **objective 4** will directly foster cross-border cooperation, complement and reinforce each other and lead to investigations that are more effective, as many environmental crime cases can only be successfully conducted cross-border.

The preferred option under **objective 5** will lead to a commonly defined minimum standard for the collection of data on environmental crime procedures and thus to statistical data that is comparable across the EU.

The package of measures proposed under **objective 6** will have a positive influence on the effectiveness on the ground at all levels of the enforcement chain (inspectors, police, prosecution, criminal judges).

What are the costs of the preferred option (if any, apart from the main ones)?

The current proposal has negligible budgetary implications both for Member States and for the Commission. Specific information on the financial implications for the Commission can be found in the legislative financial statement attached to this legislative package.

The European Commission

The Commission has two kind of costs: one-off, and recurring.

The first financial implications for the Commission are linked to the fifth objective of the revision: improving statistical data collection and reporting on environmental crime. The overall cost is divided into three kind of expenditure:

- Definition of minimum standards: around EUR 110 000 (one-off cost)
- Maintenance of standards: around EUR 16 000 (recurring cost)
- Biennial report on Member State data from the Commission: around EUR 25 000 (recurring cost).

Besides the costs linked with the revision's fifth objective, the Commission will also need to provide for another kind of one-off cost, that of its reporting obligations. The legislative proposal states that the Commission will have to produce two reports:

- Member States' transposition of the Directive: will cost EUR 405 000 (one-off cost)
- Study on the effectiveness of the Directive with a certain series of indicators: will cost around EUR 420 000 (one-off cost).

Member States

The Directive's financial implications for Member States are linked with three objectives of the revision: improving effective cooperation and coordination between Member States (objective 4), improving statistical data collection and reporting on environmental crime (objective 5) and improving the effective operation of the enforcement chain (objective 6).

Regarding objective 4, the costs for all Member States are two-pronged: the cost of investigative tools and the cost of setting up national contact points.

- Investigative tools: the data were not available to enable a first assessment of the cost
- Setting up of national contact points: the cost for all Member States will vary between EUR 475 000 and EUR 792 000

Regarding objective 5, several kinds of cost for Member States can be identified:

- Setting up of national coordination procedure: would cost EUR 146 000 for all Member States
- Definition of minimum standards: would cost EUR 281 000

- Maintaining of those standards for all Member States: this should cost EUR 35 000.
- Coordination, collection and reporting: will cost EUR 220 000 for all Member States.

Regarding objective 6:

- Training costs for all Member States will cost around EUR 8 000 000
- National strategies
    - One-off cost around EUR 864 000 for all Member States
    - Recurring cost around EUR 324 000 for all Member States
- Increase of staff linked with this Directive estimated at EUR 4 million for all Member States.

What are the impacts on SMEs and competitiveness?

Businesses are likely to benefit from effective law enforcement, as it will protect them from unfair competition from illegally operating businesses. Likewise, reputational damage for a whole industry that can be caused by criminal activities will be reduced for compliant businesses. Effective criminal law enforcement would not create an additional financial burden, as compliance costs stem from sectoral legislation and not from the Directive.

Will there be significant impacts on national budgets and administrations?

There will be a moderate increase in administrative burden and costs due to the collection of statistical data and the costs of units and training along the enforcement chain. The revision of the Directive aims to foster a more effective enforcement chain. This is expected to lead to an increase in cases that are picked up and effectively investigated and convicted. This in turn might lead to the need to employ or shift additional staff (police and prosecutors) to the environmental crime law enforcement field.

Will there be other significant impacts?

The reduction of environmental crime is expected to have beneficial impacts on health (e.g. through reduced pollution), economy (through the reduction of unfair competition and tax loss), and biodiversity. The initiative is likely to have a positive impact on fundamental rights through an improvement of environmental protection (Article 37 of the Charter) and improvement in the areas of dignity, health and well-being (Articles 1, 2, 3, 24, 31, 34, 35).

Proportionality?

In accordance with the principle of proportionality, the proposed measures will not go beyond what is necessary in order to achieve the objectives. The preferred options under objectives 4, 5 and 6 would entail costs for the Member States, but would also improve the effective protection of environment through criminal law. Overall, the balance of the preferred options is positive, as the result will be positive impacts on the environment itself as well as on the economy and society.

D. Follow-up

In addition to regularly producing reports based on the statistics provided by the Member States, the Commission will evaluate the implementation of the initiative to assess whether the policy objectives have been achieved.