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PART 1/2

COMMISSION STAFF WORKING DOCUMENT

EVALUATION

of the
DIRECTIVE 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (ENVIRONMENTAL CRIME DIRECTIVE)

{SEC(2020) 373 final} - {SWD(2020) 260 final}

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Glossary

Term or acronym	*Meaning or definition*
ADR	European Agreement concerning the International Carriage of Dangerous Goods by Road
AT	Austria
BE	Belgium
BG	Bulgaria
CEPOL	European Union Agency for Law Enforcement Training
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJEU	Court of Justice of the European Union
CPS	UK's Crown Prosecution Service
CY	Cyprus
CZ	Czechia
CZK	Czech koruna
DE	Germany
DG	Directorate-General
DGT	Directorate-General for Translation
DK	Denmark
Duty holder	Person or entity bound by environmental legislation
EA	Enforcement Action
EE	Estonia
EC	European Community
ECJ	European Court of Justice
EEB	European Environmental Bureau
EESC	European Economic and Social Committee
EFFACE	European Union Action to Fight Environmental Crime
EJTN	European Judicial Training Network
EL	Greece
ELD	Environmental Liability Directive
ENCA	European Nature Conservancy Agency
ENEC	European Network against Environmental Crime
ENPE	European Network of Prosecutors for the Environment
EnviCrimeNet	Environmental Crime Network
EMPACT	European Multidisciplinary Platform Against Criminal Threats
EPA Network	Network of Heads of Environment Protection Agencies
ES	Spain
ESTAT	European Statistics
EU	European Union
EUFJE	European Union Forum of Judges for the Environment
EUR	Euro
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
EUTR	EU Timber Regulation

FI	Finland
FR	France
GENVAL	Working Party on General Matters including Evaluations
GNR/SEPNA	Nature and Environmental Protection Service of the Republican National Guard
HR	Croatia
HU	Hungary
IE	Ireland
IFJ	Judicial Training Institute
IMO	International Maritime Organisation
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
Interpol	The International Criminal Police Organization
IPA	Croatia's Instrument for Pre-accession Assistance
IPEC	Intelligence Project Environmental Crime
ISF	Internal Security Fund
ISF-P	Internal Security Fund (Police)
IT	Italy
IUU fishing	Illegal, unreported and unregulated fishing
JHA	Justice and Home Affairs Council
KPI	key performance indicator
LT	Lithuania
LU	Luxembourg
LV	Latvia
Market Abuse Directive	Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive)
MARPOL	The International Convention for the Prevention of Pollution from Ships
Montreal Protocol	Montreal Protocol on Substances that Deplete the Ozone Layer
MS	Member States
MT	Malta
NGO	Non-Governmental Organisation
N/A	not available
NL	Netherlands
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
OLAF	European Anti-Fraud Office
OPC	Open Public Consultation
OWiG	German Administrative Offences Act (Ordnungswidrigkeitengesetz)
Ozone Regulation	Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer
PIF-Directive	Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

PL	Poland
PoPs Regulation	Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants
PSP	Public Security Police
PT	Portugal
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
REFIT	European Commission's regulatory fitness and performance programme
RIA	Regulatory Impact Assessment
RO	Romania
RSB	Regulatory Scrutiny Board
SE	Sweden
SEO/BirdLife	Sociedad Española de Ornitología – BirdLife (Spanish Society of Ornithology – BirdLife)
SI	Slovenia
SK	Slovakia
Stockholm Convention	Stockholm Convention on Persistent Organic Pollutants
SWD	Staff Working Document
TECUM	Tackling Environmental Crime through Standardised Methodologies Project
TFEU	Treaty on the Functioning of the European Union
TFS	Transfrontier Shipment of Waste
UK	United Kingdom
UN	United Nations
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime
US	United States
USA	United States of America
USD	United States Dollar
WEEE	Waste electrical and electronic equipment

1 INTRODUCTION

Directive 2008/99/EC ('the Directive')[1] is the main European instrument for protecting the environment through criminal law. It requires the criminalisation of unlawful conduct that causes or is likely to cause harm to the environment or to flora and fauna, or the death or serious injury of individuals. Conduct is defined as 'unlawful' when it infringes obligations set out in the 72 pieces of EU legislation listed in the two annexes to the Directive or in any act of the Member States giving effect to such legislation.

In 2016, the UN and Interpol[2] estimated the global economic loss related to environmental crimes[3] at USD 91-259 billion, rising by 5-7% annually. Illegal trade in wildlife products alone accounts for USD 7–23 billion[4]. This makes environmental crime the fourth largest criminal activity in the world after drug smuggling, counterfeiting and human trafficking. In the EU, annual revenues from illicit non-hazardous waste trafficking are estimated to range between EUR 1.3 billion and EUR 10.3 billion, and for hazardous waste trafficking between EUR 1.5 billion and EUR 1.8 billion,

Environmental crime negatively affects water, air, soil, habitats, the physical health and well-being of people, and flora and fauna. It transcends regions and national borders. It reduces the economic viability of businesses, which invest in often costly measures to comply with environmental standards and requirements, with job losses as the end result. Environmental crime is often committed by organised crime groups and networks operating transnationally. Some forms of environmental crime, such as illegal wildlife trafficking, can even be a source of funding for terrorist and related activities[5].

Already before the Directive, there were numerous legal acts that defined obligations to protect the environment. These instruments often contained provisions on sanctions for violations, without particularly requiring these sanctions to be criminal ones. Nonetheless, violations of environmental law have constantly grown.

In an impact assessment accompanying the proposal to this Directive[6], the Commission identified the drivers of these developments: (i) the opportunity for significant profits, (ii) a low risk of detection, and (iii) growing international trade. There were also large differences between EU Member States concerning the criminalisation of environmental offences, and the level of available sanctions was often considered too lenient. This can encourage criminals to move their activities to Member States with the least effective law enforcement systems, and hampers judicial cooperation between Member States (see Recitals 4 and 5 of the Directive).

The protection of the environment through criminal law was necessary to express a higher level of social disapproval than what can be achieved by existing administrative or

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1 Directive 2008/99/EC of the European Parliament and of the Council on the protection of the environment through criminal law (Environmental Crime Directive) of 19 November 2008, *OJ L 328, 6.12.2008, p. 28–37* http://data.europa.eu/eli/dir/2008/99/oj.

2 UNEP-INTERPOL Rapid Response Assessment: The Rise of Environmental Crime, June 2016.

3 This includes the loss of legal commerce and the loss of tax revenue. It does not include the economic value of natural ecosystems.

4 UNEP-Interpol Report, see footnote 2.

5 European Environmental Bureau: Implement for Life, Crime and Punishment, March 2020, p. 3; EnviCrimeNet (Environmental Crime Network), Report on Environmental Crime, 2016, p. 7.

6 Impact Assessment accompanying the proposal to the Environmental Crime Directive, COM(2007) 51: final SEC(2007) 161] https://ec.europa.eu/environment/legal/crime/legis_en.htm

civil law, and the Directive was adopted in 2008[7] as a response. Under the Directive, environmental crime comprises a broad range of illicit activities such as the illegal emission or discharge of substances into air, water or soil, illegal trade in wildlife, illegal trade in ozone-depleting substances and the illegal shipment or dumping of waste, as listed in the 72 pieces of environmental legislation contained in the two annexes to the Directive.

Political context of the evaluation

Since the adoption of the Directive, fighting environmental crime has gained importance and became one of the EU's priorities. The EU has stepped up its activities in this field as follows.

- The EU Agenda on Security (2015)[8] highlighted the link between environmental crime and organised crime. It sets out that 'The Commission will consider the need to strengthen compliance monitoring and enforcement, for instance by increasing training for enforcement staff, support for relevant networks of professionals, and by further approximating criminal sanctions throughout the EU', and that the Commission would be 'reviewing existing policy and legislation on environmental crime'. It recognised the link between environmental crime and organised crime, and between environmental crime, money laundering and terrorist financing.
- In 2016, the Council in its Conclusions invited the Commission to monitor the effectiveness of EU legislation in the field of countering environmental crime[9]. In the same year, the Council chose the implementation of environmental criminal law in the EU as the subject for the 8th Mutual Evaluation round[10]. This cycle was finalised in 2019.
- In 2016, an EU Action Plan to combat wildlife trafficking[11] set out the need to review the EU policy and legislative framework on environmental crime, in line with the European Agenda on Security – in particular by reviewing the effectiveness of the Environmental Crime Directive, including the criminal sanctions applicable to wildlife trafficking throughout the EU.

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7 The practical implementation of the Directive has been the subject of many studies and reviews. Most recently, the Working Party on General Matters (GENVAL) of the European Council selected the practical implementation of European policies on prevention and combating environmental crime as the topic of the 8th Mutual Evaluations Round, focusing on the illegal trafficking of waste and the illegal production or handling of dangerous materials. The Council issued its final report in December 2019. In parallel, the Finnish Presidency issued a report on the State of Environmental Criminal Law in November 2019. In December 2019, the European Economic and Social Committee (EESC) adopted an information report on the effectiveness, relevance and EU-added value of the Directive based on a questionnaire to civil society organisations and fact-finding missions to five Member States and a related technical annex (see Annex 9).

8 Available at: https://ec.europa.eu/home-affairs/e-library/glossary/european-agenda-security_en.

9 Doc. 15412/16: Council Conclusions on Countering Environmental Crime of December 2016 http://data.consilium.europa.eu/doc/document/ST-15412-2016-INIT/en/pdf

10 The final report is available at: https://data.consilium.europa.eu/doc/document/ST-14065-2019-INIT/en/pdf.

11 European Commission, 'EU Action Plan against Wildlife Trafficking, 2016. Available at: http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF.

- In 2017, the Council in its conclusions recognised the need to address environmental crime, especially illegal waste exports and wildlife trafficking, as a priority of the EU policy cycle for 2018-2021 (EMPACT)[12].
- In 2018, the Commission adopted an EU action plan to improve environmental compliance and governance[13]. It addresses, inter alia, preparation of guidance documents, including on strategic approaches to combating environmental crime, and activities aimed to reinforcing the capacities of national environmental inspectors, police, prosecutors and judges working on fighting environmental crime and related serious offences, including through improved training and use of geospatial intelligence for environmental compliance assurance[14].
- The recently adopted European Green Deal[15] states that 'the Commission will also promote action by the EU, its Member States and the international community to step up efforts against environmental crime'.

Another development in addition to the political calls for a review of the Directive is that with the adoption of the Lisbon Treaty – i.e. after the 2008 adoption of the Directive – primary EU law was brought in line with the jurisprudence of the ECJ enabling the Union to also deal, subject to certain conditions, with crime categories which are not listed expressly by the Treaty. This would make it possible to include provisions in the Directive that could address its objectives in a more targeted way (see Section 2.1. – 'History'). Moreover, a number of issues and shortcomings regarding the effectiveness of environmental criminal law have been identified in a number of studies and reports by different stakeholders in recent years. There are also evolving trends in environmental crime, such as the growing involvement of organised crime and legal persons. These factors taken together make it necessary to evaluate the Directive with a view to a possible revision.

The scope of the evaluation

Since the period for transposing the Directive into national law expired in December 2010, the evaluation covers the years from 2011 to 2019. It covers all Member States and the UK.

The evaluation considers the legal acts listed in the annexes only in terms of their linkages with the substantive provisions of the Directive, and with regard to the development of an EU framework for environmental crime. This evaluation mainly focusses on the areas of waste and wildlife trafficking (covered by Articles 3(c) and 3(g) of the Directive) to illustrate certain trends. As will be explained under section 3 – 'Methodology' – there is a general lack of statistical data on environmental crime which makes it difficult to monitor developments and trends. Waste and Wildlife crime belong to the largest and best documented sectors of environmental crime; Member States have identified these as areas where criminal activity is particularly frequent and serious. Both areas have strong cross-border impacts, as they involve illegal trafficking inside the EU

12 Council Conclusions on setting the EU-Priorities for the fight against organized and serious international crime between 2018 and 2021 http://data.consilium.europa.eu/doc/document/ST-9450-2017-INIT/en/pdf.

13 https://ec.europa.eu/environment/legal/pdf/COM_2018_10_F1_COMMUNICATION_FROM_COMMISSION_TO_INST_EN_V8_P1_959219.pdf

14 Detailed information: http://ec.europa.eu/environment/legal/compliance_en.htm

15 https://ec.europa.eu/info/publications/communication-european-green-deal_en

but also beyond, with the EU as a point of destination, transit or origin. Both areas attract organised crime. These two areas were also in the focus of the impact assessment to the proposal of this Directive.

Purpose of the evaluation

This staff working document sets out the results of this evaluation from an *ex post* viewpoint. A key goal of the evaluation is to assess whether the objectives of the Directive have been met and contribute to the general objective of improving the protection of the environment by reducing environmental crime. It also examines the efficiency, coherence, relevance and EU added value of the Directive. The staff working document also draws operational conclusions and includes suggestions for possible further action based on analysis of the evidence.

This staff working document aims to provide the Commission with a qualitative and quantitative analysis of the Directive's impact as well as lessons learned. It is to serve as a basis for decision on a possible revision of the Directive.

2 BACKGROUND

2.1 HISTORY

Since the 1970s, a significant number of directives and regulations containing provisions to protect the environment have been adopted under Article 175 and other titles of the EC Treaty. This legislation covers almost all aspects of environmental protection, including the protection of water, soil and air, the handling of hazardous materials and dangerous production, wildlife and waste management.

In 1998, the Council of Europe adopted the Convention on the Protection of the Environment through Criminal Law, obliging Contracting States a.o. to introduce specific provisions into their national criminal law to criminalise a number of acts committed intentionally or through negligence where they cause or are likely to cause lasting damage to the quality of the air, soil, water, animals or plants or result in the death of or serious injury of any person[16]. The G8 Group[17] in March 1999 called for the serious threats posed by environmental crime to be recognised. States should review their domestic legislation and enforcement policies with a view to strengthening them where necessary and to provide effective international cooperation to combat these crimes. The European Council held in Tampere on 15/16 October 1999 asked for efforts to agree on common definitions and sanctions, to be focused as a first step on a limited number of crime sectors with particular relevance, including environmental crime. The Justice and Home Affairs Council on 28 September 2000 agreed that a body of EU law on environmental offences should be established.

In November 2008, the Directive was adopted on the legal basis of Article 175 of the EC Treaty (now Article 192 TFEU), which at the time covered the EC's then environmental policy. This was possible following a ECJ judgment confirming the Community's competence to take criminal law measures where this is essential to ensure full

16 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f3f4

17 The Group of Eight was an international group that consisted of the heads of government rom the G8 nations (Canada, France, Germany, Italy, Japan, the United Kingdom, the United States, and Russia).

compliance with Community legislation in a policy area under its competence (judgment of 13 September 2005, C-176/03, paragraph 48). In a second judgment[18], the Court clarified that the definition of types and levels of the criminal penalties does not fall within the Community's sphere of competence (judgment of 23 October 2007, C-440/05, paragraph 70). This led the Commission to eliminate all references to types and levels of penalties contained in its initial proposal for the Directive. Instead, the adopted final version of the Directive obliged Member States to provide for 'effective, dissuasive and proportionate criminal penalties'[19].

Later, the Lisbon Treaty introduced an explicit legal basis in Article 83(2) TFEU setting out the Union's competence to establish minimum rules with regard to the definition of criminal offences and sanctions in Union policy areas which have been subject to harmonisation measures, provided that this is necessary for effective enforcement. The Market Abuse Directive[20] and the PIF-Directive[21] were adopted on this legal basis.

2.2 DESCRIPTION OF THE DIRECTIVE

The Directive criminalises serious violations of obligations deriving from 72 pieces of legislation listed in the two annexes to the directive and requires effective, proportionate and dissuasive criminal penalties.

More precisely, the Directive:

- defines environmental offences that Member States must criminalise (based on the most serious infringements of rules aiming to protect the environment as set out in legal instruments in the annexes to the Directive)[22];
- requires liability of both natural and legal persons. The liability of legal persons can be of a criminal or non-criminal nature;
- requires Member States to ensure criminal liability also with regard to inciting, aiding and abetting such offences;
- seeks to approximate criminal penalties by obliging Member States to ensure effective, proportionate and dissuasive criminal penalties for environmental crimes. Penalties for legal persons, while required to be effective, proportionate and dissuasive, do not need to be criminal penalties;
- does not contain more detailed requirements on the types and levels of the penalties.
- does not contain provisions on cooperation, data collection and exchange, training, investigation and prosecution tools.

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18 Regarding the Commission's appeal to the ECJ for the annulment of the Council Framework Decision 2005/667/JHA of 12 July 2005 on strengthening the criminal-law framework for the enforcement of the law against ship-source pollution (Case C-440/05).

19 For details of the historical background of the Directive, see under https://ec.europa.eu/environment/legal/crime/docs_en.htm. The adoption of the Directive was preceded by a disagreement between the Commission and the Council which had adopted a framework decision under the third pillar based. The ECJ ruled in favour of the Commission in two ground-breaking judgements.

20 Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse, OJ L 173, 12.6.2014, pp. 179–189. Available at: http://data.europa.eu/eli/dir/2014/57/oj.

21 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law OJ L 198, 28.7.2017, p. 29–41 Available at: http://data.europa.eu/eli/dir/2017/1371/oj.

22 The seriousness of a type of conduct is assessed in the light of the risk of causing a particularly serious result such as a death or serious injury of a person, substantial damage or substantial deterioration to the environment. Article 3a-g of the Directive.

The Directive requires criminalisation of unlawful conduct that causes or is likely to cause damage to the environment, flora, fauna or death or serious injury to a person. The conduct is defined as 'unlawful' when it infringes obligations set out in the 72 pieces of EU legislation listed in the two annexes to the Directive or any act by a Member State giving effect to such legislation.

Article 3 of the Directive lists the conducts that are criminalised when committed 'unlawfully'. In most (but not in all) cases, the conduct must have caused damage or a risk of damage to the environment and/or to human health.

Article 3 offences

(a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water;

(b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare of disposal sites, and including action taken as a dealer or a broker (waste management);

(c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;

(d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used;

(e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances;

(f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species;

(g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof;

(h) any conduct which causes the significant deterioration of a habitat within a protected site;

(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.

The types of conduct under paragraphs (a), (b), (d) and (e) are criminalised if they cause or are likely to cause 'death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants'.

The types of conduct under paragraphs (f) and (g) are criminalised 'except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species'.

The types of conduct under paragraphs (c) and (i) do not require any impact on the environment or people.

Many of the terms used in the Directive, such as 'substantial damage', 'negligible quantity', 'negligible impact', and 'dangerous substances' are not further defined bringing about a risk of diverging interpretations and practice on the ground.

2.3 THE INTERVENTION LOGIC

We will now describe the logic of the Directive: its objectives, the necessary inputs and actions, as well as the outcomes and impacts that should be achieved, and the way these elements are linked to each other.

Need: the Directive came into being as the EU-wide response to the need to tackle an increase in environmental offences and its negative impacts[23]. It is recognised that the negative impacts of environmental crimes comprise harmful effects of very different natures: they can be ecological (such as the loss of species or the destruction of an ecosystem), economic (loss of tax revenues or loss of income by legitimate businesses) or social (health impacts, job loss, well-being)[24]. Impacts can be measured quantitatively (tonnes of illegally traded waste, numbers of elephants killed) or qualitatively (describing negative impacts on health, soil, groundwater, indirect effects such as climate change). Moreover, the approach to quantifying or qualifying the effects differs according to the sector of environmental crime and the geographical area concerned. Existing figures are patchy, and concentrate normally on a particular harmful effect (such as economic losses or number of illegally traded goods), thus not providing for the full picture. There are also different approaches to defining what an environmental crime/offence is: the Directive defines environmental crime as an act that breaches obligations deriving from specific EU legislation listed in the annexes and that causes or is likely to cause significant harm or risk to the environment or human health. Other concepts consider whether an act has actually caused harm or risk to the environment, without requiring a breach of environmental legislation. Still others consider acts as environmental crime that are in breach of environmental legislation irrespective of whether any harm was caused (for example, when the number of illegal shipments of waste is counted).

This evaluation assesses selected environmental areas (wildlife and waste trafficking) for which meaningful data exist, and on this basis identifies trends and possible developments.

General objective: The main objective of the Directive is to improve the protection of the environment by reducing environmental crime. It is perceived that the bulk of environmental crime remains undetected, and the total number of environmental crimes is unknown. Moreover, the role of the Directive in any observed changes is difficult to establish, since, as with any criminal law policy area, external factors and other policies play a significant role in the prevention of crime, or contribute to a rise in crime (see below). Therefore, rather than trying to link changes/no changes directly to the Directive, this evaluation will assess how the Directive has contributed to the general objective and whether there is room for improvement. In this respect, achievement of the specific objectives will be the focus of this evaluation.

As environmental criminal law is never the stand-alone means of achieving the objective of crime prevention, but can only work as part of an integrated approach that includes external factors and related policies, the evaluation will pay particular attention to the coherence of the Directive with other policy areas, and its continued relevance (see Sections 6.3. 'Coherence' and 6.4 'Relevance').

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23 Impact Assessment pp. 6-19, see Footnote 6.

24 In great detail on the different approaches: EFFACE, Synthesis of the Research Project "European Union Action to fight Environmental Crime", 2016, https://www.efface.eu/final-efface-report-environmental-crime-and-eu.

Specific objectives: the specific objectives require specific measures to contribute to the general objective of reducing environmental crime. These specific objectives mirror the problem drivers identified in the impact assessment (see above under Section 1 – 'Introduction').

> *The first specific objective - to create a level playing field with respect to the offences criminalised and the relevant sanctioning systems, and to prevent safe havens – aims to properly address the adverse effects of environmental crime stretching beyond the borders of the Member States.*

A 'level playing field' in this domain should not be understood as a fully standardised body of law with definitions and sanctions of environmental crime applying throughout the Union in the same way. The Commission – at least with regard to sanction levels – has acknowledged that this is neither desirable nor legally feasible, as the Member States' criminal law systems have their own internal coherence. Amending individual rules without regard to the overall picture could risk generating distortions[25].

Therefore, the Directive aims to create an **EU legal framework** for environmental crimes, still leaving considerable leeway for transposition by Member States. The evaluation will assess whether an EU framework has been created, and whether the leeway given has led to diverging national approaches to an extent that could impede legal clarity and cross-border cooperation. Such an EU framework is a prerequisite for improved cross-border cooperation, which is the fourth specific objective (see also Recital 4 of the Directive).

With regard to **sanction levels,** the Commission abandoned its initially more ambitious aim to provide for minimum sanction levels following a judgment by the ECJ (see above under Section 2.1. 'History'). The finally adopted Directive did not contain any provisions dealing with the approximation of sanctions through minimum sanction levels. Instead, the term 'effective, dissuasive and proportionate criminal penalties' is used. This, from the start, limits expectations with regard to the creation of a level playing field regarding sanction levels. In this evaluation, it will be assessed whether, and to what extent, an approximation of sanction levels has been achieved, given that no minimum or maximum levels were defined in the Directive.

Also the prevention of '**safe havens**' comes under the first specific objective. These are jurisdictions with particularly lenient environmental crime legislation, with many environmental offences not criminalised at all or with only very low sanction levels. Although the creation of a level playing field in terms of criminalisation and sanctions described above is related to the prevention of safe havens, the latter also depends on a number of other factors, in particular on effective law enforcement at all levels (administrative controls and monitoring, police investigations, prosecution, court proceedings, civil liability, sufficient resources, cooperation, coordination, data collection and analysis among other things). External factors include the level of corruption in a Member State or the political support for and public awareness of environmental protection, which are necessary if sufficient financial and human resources are to be allocated to combat environmental crime. The evaluation will assess how sanction levels may have contributed to preventing safe havens and how likely it is that safe havens exist in the EU.

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[25] European Commission, Green Paper of 30 April 2004 on Approximation, Mutual Recognition, and Enforcement of Criminal Sanctions in the European Union, COM (2004) 0334, p. 7 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52004DC0334.

The second specific objective is to ensure a system that is a deterrent, through criminal penalties that are effective, dissuasive and proportionate[26].

The Member States' different legal traditions must be taken into account when establishing the types and levels of penalties. The level of a particular penalty could be considered a deterrent in one Member State's criminal law system which generally relies on lower sanctions, but not in that of another where sanction levels might be generally higher. Whether a sanctioning system is considered a deterrent depends also on judicial practice and whether high sanction levels provided by national criminal law are systematically imposed, or if the practice is more lenient. The existence of other complementing administrative or civil sanctioning systems and their relation to and interaction with criminal law, enforcement and sanctioning also play a role. These factors are important but outside the current formal scope of the Directive (see Recitals 10 and 11).

Therefore, Member States have generally a high degree of discretion in what level of penalties they consider appropriate. This evaluation will assess the degree to which sanction levels have been approximated in the Member States and which other factors play a role in an overall deterrent sanction system.

The third specific objective - to protect fair-playing businesses and reduce illegal trade in environmentally harmful products (such as illegal waste shipments) and wildlife trafficking - addresses the situation where compliant operators are put at a disadvantage by those in breach of environmental law.

This objective depends largely on objectives 1, 2 and 4 being reached. As with the general objective to reduce crime, this objective is influenced by a number of external factors and EU policies. This evaluation will assess whether progress has been made in reducing wildlife and waste crime, as these two areas are among the best documented.

The fourth specific objective - to improve judicial cooperation – addresses the need to tackle the cross-border dimension of environmental crime more effectively.

This objective and objective 1 are interlinked. The prerequisites for judicial cooperation are a common understanding of what constitutes an environmental crime, the cross-border use of effective methods of investigation, joint investigations and coordinated criminal law enforcement measures. The Directive could not go as far as to set out specific provisions requiring the harmonisation of investigative tools or fostering specific means of cross-border cooperation. This means that we can expect the positive effects of the Directive to be limited in this area. The evaluation will assess whether the Member States' competent authorities have stepped up cross-border cooperation, on the basis of existing Union instruments, and, if this is the case, whether this is related in any way to the Directive.

Other policies: Other EU policies must be considered, as they can reinforce the Directive or – if not consistent with it – undermine its effectiveness. This will be assessed under Section 6.3 - 'Coherence'. In particular, EU environmental sectoral legislation and parallel administrative law enforcement systems in the Member States are important, as

[26] See European Commission, 'Commission Staff Working Document. Accompanying Document to the Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law. Impact Assessment.' Section 1.3.2., Footnote 6;

they are interlinked with the Directive in several ways and a coherent interplay can contribute significantly to the Directive's effectiveness.

Actions: To achieve these objectives, Member States are required to transpose the Directive's provisions with regard to a) the definition of criminal offences, b) the criminalisation of inciting, aiding and abetting in relation to these offences, c) the introduction of effective, dissuasive and proportionate criminal penalties for natural persons for these offences, d) the criminal or non-criminal liability of legal persons involved in these offences including the introduction of effective, dissuasive and proportionate sanctions.

Input: Any criminal law system is only as effective as its enforcement. Member State action is of major importance in this regard (see Section 5.2.5. – 'Practical implementation'). This requires the allocation of appropriate financial and human resources, in particular to ensure training and specialisation of law enforcement and judicial authorities, an integrated approach of all entities in the enforcement chain from detection, investigation, prosecution to conviction, and appropriate prioritisation by both politicians and law enforcement. Sanction levels provided by law must be consistently and fully applied in practice. The practical implementation of environmental criminal law has been the subject of the 8th Mutual Evaluation Round of the Council that was finalised in December 2019. It concluded that there is much room for improvement in all Member States. It is therefore expected that the effectiveness of the Directive in the Member States is hampered by the quality of its enforcement in practice there. The impact on national budgets and costs are assessed under Section 6.2. – 'Efficiency'.

Outcomes: The outcomes mirror the specific objectives. The extent to which the outcomes are expected to be achieved are outlined under the description of the objectives above.

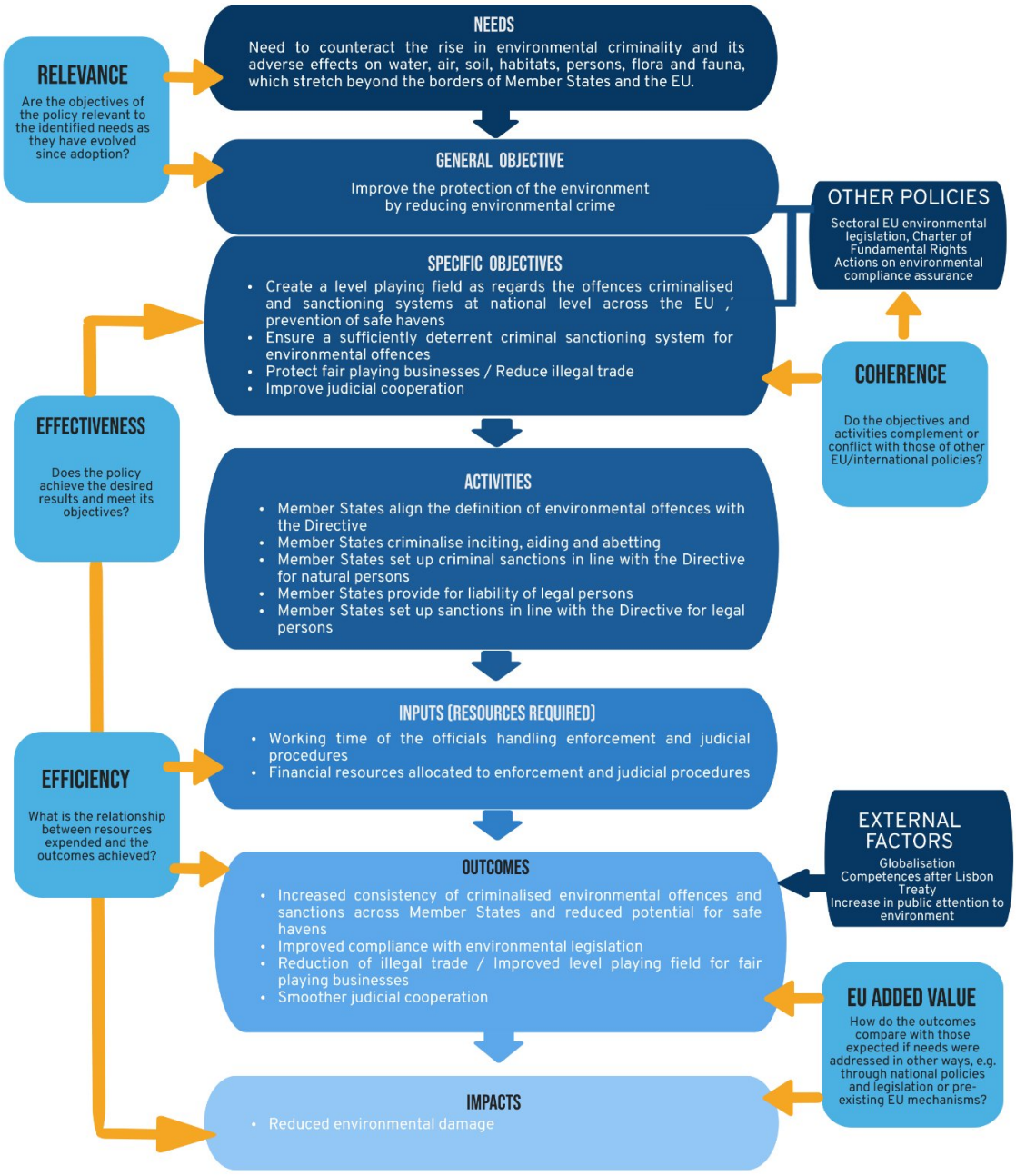
External factors: External factors play an important role in the effectiveness of any criminal law policy. In the context of this Directive, external factors might have influenced trends in environmental crime more than the Directive itself.

One particular external factor in favour of the Directive's general objective is a generally higher public awareness of environmental issues that might lead to more efforts to reduce environmental offences. On the other hand, external factors could also prevent the full achievement of the Directive's objectives. Globalisation and increased international trade might entail more environmental cross-border crime. New technologies might also produce new forms of environmental crime: wildlife trafficking, for example, has been boosted by the possibility of ordering online across continents and even anonymously. In addition, dysfunctional or corrupt political or judicial systems can undermine the effectiveness of criminal law. In this assessment, the influence of external factors will be addressed without a complete evaluation of these areas.

Impact: The impact mirrors the general objective – 'better protection of the environment through reduced environmental crime'. As has been outlined above, the Directive must be understood as one element of a holistic approach to combating environmental crime and its negative impacts on the environment, human health and society as a whole. It is not possible to determine an exact percentage of environmental crime or harm that has not taken place due to the Directive. Therefore, in this evaluation, the impact of the Directive will be assessed mainly through the extent to which its specific objectives have been achieved, and the extent to which the Directive is still relevant and coherent with other EU and international environmental protection policies.

This logic of the intervention as described above is illustrated in the figure below:

Figure 1: Intervention Logic



3 METHODOLOGY

3.1 APPROACH TO INFORMATION GATHERING

Statistical data on environmental crime, detection, investigation, prosecution, convictions, dismissed cases, level of fines imposed, and involvement of legal entities are needed for an examination of the actual extent and seriousness of these forms of crime in the Member States

and the effectiveness of efforts to address them. In most Member States, relevant statistics are fragmented and based on multiple individual statistical sources, as they are collected separately by each individual authority involved in preventing and combating the forms of crime, with no interlinking or integration among them[27]. This results in a lack of robust information on the entire flow of cases over the whole law enforcement chain from administrative authorities to police to prosecution services to the courts. Where data are available, it is important to note that some convictions for environmental crime are not visible because the perpetrators have been prosecuted under other crime categories[28] such as organised crime, fraud, falsification of documents, trafficking of goods or economic crime. In the 'Dieselgate' scandal (see Annex 3 – case study), for example, the former CEO of Volkswagen was charged with unfair competition, fraud, tax evasion and false testimony. Serious environmental wrong-doing is often prosecuted as organised crimes or as crimes against life and individual safety, and the impact they have on the environment is seldom in the focus of prosecution[29].

The issue of a lack of data has been flagged in a number of previous studies in the area, most recently in the aforementioned 8th Mutual Evaluation final report of the Council[30]. It has also been discussed by the Commission Expert Group on Policy Needs for Data on Crime[31].

The lack of reliable and comprehensive statistical data on detection, investigation, prosecution, convictions, dismissed cases, level of fines imposed, and involvement of legal entities was known from the start. The evaluation therefore focusses on qualitative research based on ample existing material from studies, surveys and reports by the Commission, EU level networks of professionals in the field of environmental crime, such as IMPEL, EnviCrimeNet, ENPE and EUFJE, other stakeholders, academic and other research institutions, Member States and international or Union bodies in the field of environmental crime and offences. Interviews with stakeholders and the results of a targeted stakeholder consultation and a public consultation were used to supplement

27 See the findings on statistical data in the final report of the 8th Mutual Evaluations, see Footnote 10.

28 Council of the European Union, Report on Belgium (8th Mutual Evaluations Round).

29 Giovanni F. Perilongo and Emanuele Corn, 'The Ecocrime Directive and Its Translation into Legal Practice', 2017.

30 One of the recommendations in the final 8th Mutual Evaluations report was that Member States should develop methods to collect reliable, updated and comparable statistical data comprising the number of notifications, administrative investigations, prosecutions and convictions.

31 In 2019, the Commission Expert Group on Policy Needs for Data on Crime was consulted regarding the availability, consistency and comparability of environmental crime statistics across the EU. Discussions concluded that data within the EU are often incomplete, and collected by many different national bodies involved in monitoring environmental crime. There is a need of better mechanisms for data collection, analysis and sharing and preparation of statistics in the area of environmental crime at both national and EU level. Statistical data are essential to better target environmental compliance and enforcement work and evaluate its effectiveness. Data are also required to evaluate the effectiveness of EU legislation, and from a law enforcement perspective allow the monitoring of threats and the identifying of trends and analysis of the extent of organised crime activity. The Commission is in the process of completing a study to provide an 'Overview of the Availability, Comparability and Consistency of Administrative Statistical Data on Recorded Crime and on the Stages of the Criminal Justice Process in the EU'. Offences to be assessed in the study include acts involving the movement or dumping of waste and trade in or possession of protected or prohibited species of fauna and flora. Following its completion, it will offer information on which criminal statistics are available and comparable across the EU, and make informed decisions on future data collections and initiatives for ESTAT.

existing information and to verify conclusions drawn[32]. The Commission was supported by the contractor (ICF/Milieu), which issued a separate study on the evaluation of this Directive[33].

The main sources of information used for this evaluation were:

- a **review of existing literature, reports and studies** (including the documents referenced in the evaluation roadmap, as well as stakeholder feedback on the evaluation roadmap), recent publications from the European institutions, information from relevant professional networks such as IMPEL, EnviCrimeNet, EUFJE, ENPE, and organisations, agencies and bodies such as Eurojust, Europol, ENEC, Interpol, UNEP, environmental non-governmental organisations (NGOs), EFFACE reports[34], and academic literature. The contractor conducted desk research at national level through a team of national legal experts in all Member States, resulting in country fact sheets containing comparable information for all Member States;
- the results of the **8th Mutual Evaluation Round** on the practical implementation and operation of European policies preventing and combating environmental crime (country reports and final report adopted in December 2019)[35]. The evaluation round covered two specific areas: illegal trafficking in waste and illegal production or handling of dangerous materials, and excluded other types of environmental crime such as illicit wildlife trafficking, the illicit timber trade, the illicit fish trade and air pollution;
- the **Finnish Presidency report**[36] on the state of Environmental Criminal Law in the European Union, 2019;
- the **information report and its technical annex done by the European Economic and Social Committee (EESC)**[37] in the context of this evaluation, 2019 (see Annex 9);
- the Milieu implementation report on this Directive[38], 2013;
- the results of a **public consultation** organised by the Commission from 10 October 2019 to January 2020[39] (see Annex 4 and 5 and https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/evaluation-environmental-crime-directive_en);

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32 Despite the known lack of statistical data in the Member States, the Commission, in the context of this evaluation, and the Council[32] have independently of each other made efforts to collect statistical data from the Member States, but the response rate was – as expected – low.

33 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/evaluation-environmental-crime-directive_en

34 Produced during a 40-month EFFACE research project on European Union action to fight environmental crime, combining the efforts of 11 European universities and think tanks and funded by the EU. The project ended in March 2016. available at https://efface.eu/.

35 Available at: https://data.consilium.europa.eu/doc/document/ST-7752-2017-REV-1/en/pdf.

36 Available at: https://data.consilium.europa.eu/doc/document/ST-12801-2019-INIT/en/pdf.

37 Adopted on 11.12.2019 Reference: NAT/767-EESC-2019-01597. https://www.eesc.europa.eu/en/our-work/opinions-information-reports/information-reports/evaluation-environmental-crime-directive; see also in Annex 9.

38 Milieu, 'Evaluation Study on the Implementation of Directive 2008/99/EC on the Protection of the Environment through Criminal Law by Member States'. https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/evaluation-environmental-crime-directive_en

39 See results in the Synopsis Report – Annex 4.

- the results of a **targeted online consultation questionnaire**[40] for the purposes of this evaluation, covering all evaluation criteria to collect standardised information and opinions. The questionnaire was disseminated to lawyers, EU/International organisations such as Eurojust, Europol, EU- and national NGOs, academic experts, national authorities and Ministries and business organisations.(see Annexe 6);
- a **consultation of Member States' authorities** for the purposes of this evaluation, aimed at collecting statistical information on the investigation and prosecution of environmental crime, as well as some factual information such as financial and human resources dedicated to combating environmental crime;
- **21 interviews** to collect more in-depth information and opinions or fill in gaps in information were carried out. Interviews were held with national authorities and European networks of practitioners, academics, EU and international organisations including Eurojust, Europol, and NGOs.

To illustrate the findings, Annex 3 to this document contains a number of case studies. Case studies are also included throughout the report to highlight selected issues of the evaluation.

Table 1: Selected case studies see Annex 3)

Case study selected	Relevance to the evaluation questions
1) Illegal trade in glass eels in France	■ Illegal trade in wildlife ■ Organised crime ■ Levels of sanctions ■ Use of accessory sanctions and confiscation ■ Judicial cooperation
2) Dieselgate in Germany	■ Member State opting for administrative liability of legal persons only ■ Levels of sanctions ■ Offences prosecuted under other legislation resulting in distortion of statistics for environmental prosecutions and sanctions
3) Waste offences in Ireland	■ Levels of sanctions ■ Effective, proportionate and dissuasive criminal penalties
4) Illegal waste trade to Romania	■ Offences prosecuted under other legislation resulting in distortion of statistics for environmental prosecutions and sanctions ■ Judicial cooperation
5) Plant protection products in the Netherlands	■ Effective, proportionate and dissuasive criminal penalties

3.2 DEVIATIONS FROM THE EVALUATION ROADMAP

The evaluation roadmap published in March 2019 indicated the first quarter of 2020 as the targeted completion period of the evaluation. The evaluation was actually completed in the second quarter of 2020. This was due to the selection of a contractor taking place later than planned, which delayed the information-gathering phase. Additional delays occurred, as targeted questionnaires were largely not replied to within the given deadline,

40 See results in the Synopsis Report – Annex 4.

Finally, more time was needed to respond to the recommendations by the Regulatory Scrutiny Board to improve the draft staff working document, which came with an overall positive opinion issued on 24 April 2020 (see Annex 1 – Procedure).

3.3 LIMITATIONS AND ROBUSTNESS OF FINDINGS

The consultation strategy to this Directive emphasised the need to collect views from different types of stakeholders across all Member States. However, reaching a fair number of respondents in each stakeholder group and a balance between Member States was difficult, due to a low response rate to the targeted stakeholder questionnaire. The position of all relevant stakeholder groups could eventually be gathered, through either the public consultation or the targeted questionnaire, position papers transmitted by stakeholders, or interviews.

The information collected from existing sources and consultations was triangulated to compensate for the lack of complete, comparable and accurate statistical data, and to identify as much as possible general trends and trends with regard to particular environmental crime areas and Member States. Triangulation has its limits. Data and information gathered from literature and consultations come from different points in time, with differences in the focus and methods used. Information gathered from interviews and targeted stakeholder consultations had to rely on the subjective opinion of the respondent. Information from Member States has to take account of their different legal situations and penal traditions.

However, the information that could be collected is sufficient to allow robust conclusions. This is because it turned out that despite different focuses and methods used, the different sources, studies, reports, and interviews largely come to very similar conclusions with regard to the effectiveness and shortcomings in the protection of the environment through criminal law. This suggests that there is an overall common understanding of the situation of environmental criminal law in the EU and in the Member States. As a result, the findings and conclusions in this report can be regarded as sufficiently sound and supported by evidence.

4 BASELINE AND POINTS OF COMPARISON

This section outlines the approach to criminal environmental offences in Member States before the transposition of the Directive. The Directive came into force on 26 December 2008, with a transposition deadline of 26 December 2010. The baseline considers the situation before the deadline for transposition, 1 January 2008 – 26 December 2010.

Evaluation question:

1. What was the approach to environmental criminal offences in Member States before the transposition of Directive 2008/99/EC?

Before the adoption of the Directive, the Commission had launched a number of studies to compare the criminal and administrative penalties in Member States' environmental law. The studies are published at https://ec.europa.eu/environment/legal/crime/studies_en.htm. Information on the baseline situation can also be found in the Commission's impact assessment accompanying the

proposal for the Directive[41]. For this evaluation, the information in these documents was used to establish a baseline – i.e. the situation in the years preceding the Directive's transposition deadline in December 2010 – as a point of comparison for the effectiveness of the Directive.

The baseline scenario is not a robust one. Especially with regard to practical enforcement (convictions, imposed sanctions, trends in illegal trade in environmentally sensitive goods) there is no or only limited information available for only a few Member States which have collected statistical data according to their own national standards. It was therefore only possible to compare developments with regard to Member States where information is available.

Baseline with regard to the legislative framework in the Member States

In its impact assessment accompanying the proposal for the Directive[42], the Commission demonstrated that although all Member States had sanctions in force for offences violating the rules laid down for the protection of the environment, on the basis of either Community law or purely national environmental protection legislation, there were large differences in Member States' legislation in the definition of the different environmental offences across all environmental areas and sanction levels. The Commission illustrated the disparities between Member States with regard to the implementation in the Member States of Council (EC) Regulation No. 338/97 on the protection of wild fauna and flora and EC Regulation 1013/2006 on shipments of waste.[43] For example, with regard to trade in endangered species, the factor between the maximum fine in PL (EUR 1 293) and the NL (EUR 450 000) was 348. Maximum prison penalties varied from 6 months (LU) to 8 years (LT, CZ, SK).

After adoption of the Directive, the majority of the Member States made changes to their environmental criminal law in the definition of criminal offences, the level of sanctions and the liability of legal persons. The introduction of more severe sanctions by most Member States[44] by 2010 or later suggests that sanction levels before the Directive were insufficient in most Member States.

Most Member States already had criminal liability for legal persons, including for environmental offences. IT, CZ, ES, LU and SK introduced criminal liability of legal persons only in 2010 or later. Some Member States (BG, DE, EL, LV, and SE) did not provide for criminal liability of legal persons before the Directive, and that did not change after the Directive.

Table 2: Changes after 2010 (expiry of transposition deadline of the Directive)

Categorisation	Impact of the transposition of the Directive	Member State
Significant changes	Change in the structure of the legal framework	BE, CY, EL, FR, HU, IT, MT, RO
	Introduction of criminal liability of legal persons	CZ, ES, IT, LU, SK
	Additional offences criminalised	AT, BE, BG, CZ, DE, DK, EE, ES, FR, HR, IT, LV, MT, PT, RO, SE, SK

41 European Commission, 'Commission Staff Working Document. Accompanying Document to the Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law. Impact Assessment.' Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007SC0160.

42 See Footnote 41.

43 see pp. 15–17 of the impact assessment, see Footnote 41.

44 BE, BG, CY, CZ, DE, DK, EL, FI, FR, IT, LT, LV, MT, NL, PT, RO.

	Others (e.g. increase in sanctions, negligence)	BE, BG, CY, CZ, DE, EE, EL, FR, HR, HU, IT, LT, LV, MT, PT, RO
No changes		FI, IE, NL, PL, SI[45]

Baseline with regard to practical implementation of sanctions in the Member States

The table below provides the available baseline data for environmental convictions in 10 Member States. These data are not comparable across Member States, as they are not based on common definitions of environmental crime. The data were collected according to each Member State's own national standards.

Table 3: Available baseline data for environmental convictions

	BG[46]	CZ[47]	DE[48]	HR[49]	IE[50],[51]	LT[52],[53]	LV[54]	PL[55]	PT[56],[57]	ES[58],[59]
2008	0	103	1620		12	10	85		86	527
2009	3	93	1435		19	18	88		60	617
2010	2	36	1411	344	13	24	62	72	75	691

The available data relating to sanctions imposed for environmental crime prior to the transposition of the Directive is also very limited. There are not enough data to provide a baseline for the number of people sentenced to prison across the Member States. They can serve as a point of comparison for those Member States for which data are available.

Table 4: Available baseline data on the number of persons sentence to imprisonment

	BG[60]	CZ[61],[62]	DE[63]	HR[64]	LV[65]	PT[66]

45 SI has amended its legislation post-transposition to include a new offence in relation to Article 3(b) - after-care activities on waste disposal installations. This has been considered as too limited to justify being called a significant change.

46 Member State data sheet provided by the Bulgarian Ministry of Justice.

47 Member State data sheet provided by Czech Ministry of Justice.

48 Member State data sheet provided by German Federal Ministry of Justice.

49 Member State data sheet provided by Croatian Ministry of Justice.

50 www.epa.ie

51 Includes prosecution actions related to waste, water/wastewater, agriculture, air (including odour/dust), noise.

52 Member State data sheet provided by Lithuanian Ministry of Justice.

53 The number of convictions for environmental crime is not collected by the Prosecutor General's Office of the Republic of Lithuania. The data presented in the table are the number of criminal trials for breaches of environmental law.

54 Member State data sheet provided by Permanent Representation of Latvia to the EU.

55 Polish Ministry of Justice data sheet available at: http://orka2.sejm.gov.pl/INT8.nsf/klucz/ATTBA2K5H/$FILE/i29226-o1.pdf.

56 Member State data sheet provided by Portuguese Ministry of Justice.

57 The data include those convicted in criminal cases in the first instance judicial courts. The counting of convicted persons uses the most serious crime for which they were convicted.

58 Council of the European Union, 'Report on Spain (8th Round of Mutual Evaluationss),' 2019.

59 Includes crimes related to environment, town planning and land use planning, historical heritage, flora and fauna, forest fires, and cruelty to domestic animals.

60 Member State data sheet provided by the Bulgarian Ministry of Justice.

61 Member State data sheet provided by the Czech Ministry of Justice.

62 Both unsuspended prison sentences and suspended prison sentences are included. Data on highest, lowest and average sentence were not provided.

63 Member State data sheet provided by the German Ministry of Justice.

64 Member State data sheet provided by the Croatian Ministry of Justice.

		BG[60]	CZ[61,62]	DE[63]	HR[64]	LV[65]	PT[66]
2008			50	64		42	
2009		4	60	49		40	6
2010		1	22	51	201	27	6

Baseline with regard to illegal trade

The Directive's impact assessment[67] stated that the extent of environmental crime was difficult to assess given the broad scope of environmental crime and the unknown number of unreported cases. Therefore, the impact assessment focused on illegal trade in waste and wildlife. These areas of environmental crime were focussed on in this evaluation too, because they belong to the best-documented categories and are considered as being among the most harmful environmental offences. However, the data available were not sufficient to establish a baseline for illegal waste and wildlife trade.

Data provided by a few Member States on conviction of waste and wildlife crime generally do not make it possible to distinguish between trade-related offences and other environmental offences, as 'waste crime' usually includes offences related to illegal waste management. Depending on the Member State, 'wildlife crime' might include not only crime related to protected species, but also crime related to the degradation or abuse of natural resources (hunting, fishing, and logging). More importantly, conviction data do not allow a conclusion on whether or not illegal trade was reduced overall.

With regard to data on detected illegal waste shipments, results from IMPEL's second Enforcement Action related to transfrontier shipments of waste (TFS EA II)[68] provide information on the violation rate of the obligations from the Waste Shipment Regulation. (Violations of environmental law do not imply environmental crimes.)

Table 5: Transport inspection results in IMPEL-TFS Enforcement Action II 2008-2011

	Results
Number of participating countries	27[69]
Number of waste inspections	3,897
Number of violations	833
% of violations	21.4%

Regarding wildlife trade, limited data exist for the period prior the adoption of the Directive. According to the Commission impact assessment for the Directive[70], 'between

65 Member State data sheet provided by the Latvian Ministry of Justice.

66 Member State data sheet provided by the Portuguese Ministry of Justice.

67 European Commission, 'Commission Staff Working Document. Accompanying Document to the Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law. Impact Assessment.' Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007SC0160

68 https://www.impel.eu/wp-content/uploads/2016/11/IMPEL-TFS-EA-II-Project-_Final-report-adopted-v1-4.pdf

69 AT, BE, BG, CY, CZ, DE, DK, EE, FI, FR, HR, HU/RO, IE, LT, NL, PL, PT/ES, SK, SI, SE, UK – including separately England and Wales, Northern Ireland, Scotland – and Norway, Serbia, Switzerland, Turkey.

70 European Commission, 'Commission Staff Working Document. Accompanying Document to the Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law. Impact Assessment.', see Footnote 10.

1996 and 2002 the EU-15 imported approximately 6 million live birds, 1.6 million live reptiles, 10 million reptile skins and almost 600 tonnes of sturgeon caviar'. A report from the NGO TRAFFIC provides data on seizure of illegal wildlife commodities in the EU, gathered from the EU-TWIX database in 2007-2011[71]: during these years, 12,486 seizures were recorded, with relatively constant numbers per year varying between 2,300 and 2,800.

Baseline with regard to cross-border cooperation

Prior to the adoption of the Directive, Europol, the agency designed to facilitate cross-border police cooperation[72], was not active in the area of environmental crime. Eurojust, the EU's judicial cooperation agency, had registered cases of environmental crime as early as 2004, but there were no joint investigation teams in this area prior to the adoption of the Directive. There are no official data available on the extent to which Member States cooperated in cross-border cases on a bilateral or multilateral basis.

Baseline with regard to the number of environmental crimes

The impact assessment found that the extent of unreported environmental offences was considered extremely high. Estimations of this 'dark figure' of hidden or unrecorded crime – the difference between reported crime and the real figures – range from 20% to 40% and even 90% in certain cases. It is believed that the number of unreported cases of environmental crime is significantly higher than in other crime areas, as there are in many cases no direct victims.

In addition, even detected environmental crime is often recorded under other crime categories such as corporate crime, organised crime fraud, economic crime, tax fraud or falsification of documents, as there are no common standards on collecting statistical data in the EU. It is therefore not possible to establish a reliable baseline as a comparison point for the reduction in environmental crime.

Instead, the evaluation assesses whether the specific objectives have been achieved, and, on that basis, concludes whether the Directive contributes to achieving the general objective of reducing environmental crime. As has been outlined under Section 2.3 – 'Intervention Logic', the level of environmental crime and the effectiveness of efforts to combat it depend also on a number of external factors which the Directive cannot necessarily influence with its current scope and content. The Directive can therefore only be a part in a holistic approach on several levels aiming at a better protection of the environment through criminal law and reduction and prevention of environmental crime.

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71 Mundy-Taylor, 'Illegal Wildlife Trade and the European Union. An Analysis of EU-TWIX Seizure Data for the Period 2007-2011.' Report prepared by TRAFFIC for the European Commission, available at: https://ec.europa.eu/environment/cites/pdf/reports/Analysis%20of%20EU-TWIX%20seizure%20data%202007-2011.pdf

72 EnviCrimeNet, 'Environmental Crime Network (EnviCrimeNet) Report on Environmental Crime,', 2016. Available at: http://www.envicrimenet.eu/images/docs/envicrimenet%20report%20on%20environmental%20crime.pdf.

5 IMPLEMENTATION/STATE OF PLAY

5.1 DESCRIPTION OF THE CURRENT SITUATION

The Directive was adopted on 19 November 2008 and entered into force on 26 December 2008. The deadline for transposition by Member States was 26 December 2010. In 2013, the contractor Milieu delivered a study on the legal implementation of the Directive in the Member States. The study identified a number of transposition issues. The Commission informally contacted 23 Member States where it had concerns regarding the transposition of definitions of environmental crime and regarding sanction levels considered non-deterrent. As a result, 18 Member States amended their legislation. Four Member States were found to be compliant with the Directive after further explanations. The Commission started formal proceedings against one Member State, in a case which could also be closed after further information was received from the Member State.

Legislative framework – approach to transposition

Member States took four different approaches to transposing the Directive[73]: (a) transposition through the Criminal Code[74]; (b) transposition through environmental legislation; (c) combined transposition through sectoral legislation and the Criminal Code; (d) transposition through a separate act in a quasi-literal or literal manner.

Table 6 – Approach to transposition

Approach to transposition		Member States
Transposition in Criminal Code		BG[75], CZ, EE, ES, FI, HR, HU, LT, LV, PL, PT, SI, SK
Transposition in environmental legislation		BE, DK, FR, IE, LU, SE
Combined approach		AT, DE, IT, NL, RO[76], UK
Specific Act		CY, EL, MT

'Unlawfulness' as a condition for criminalisation of environmental offences

Article 3 of the Directive defines types of conduct constituting criminal offences when unlawful and committed intentionally or with at least serious negligence. The 'unlawfulness' criterion requires a breach of an obligation as set out in the environmental instruments listed in the annexes to the Directive and national transposing law[77].

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73 Michael G. Faure, 'The Evolution of Environmental Criminal Law in Europe: A Comparative Analysis,' in *Environmental Crime in Europe*, ed. Andrew Farmer, Michael Faure, and Grazia Maria Vagliasindi (Oxford: Hart Publishing, 2017), pp. 267–318, https://doi.org/http://dx.doi.org/10.5040/9781509914005.ch-011.

74 The term 'Criminal Code' means the main national criminal framework act.

75 In Bulgaria, while the Directive is mainly transposed by the Criminal Code, provisions related to legal persons are included in the legislation on administrative sanctions.

76 The legislative framework in Romania is complex, as Romania transposed the Directive through the Criminal Code, the environmental framework law and other sectoral legislation, complemented by a specific law, the Law on the Prevention and Sanctioning of Certain Acts Regarding Environmental Degradation, to complete the existing legislation.

77 Or a national rule giving effect to the EU legislation referred to in the annexes.

Member States took different approaches to transposing the term 'unlawful'.

- Many Member States transposed the Directive through their Criminal Code. The term 'unlawful' is typically defined through the use of catch-all terms such as ''contrary to legal regulations[78]', 'contrary to legal provision or a decision of an authority[79]', 'in breach of regulations[80]', or 'in violation of the law'. This approach implies that any update or amendment to environmental legislation in the annexes to the Directive would be covered by this approach of national transposing legislation. Even new EU legislation protecting the environment could be covered, as long as their breach falls under the definitions of offences in Article 3 of the Directive.
- The criminalisation of environmental offences through national environmental sectoral legislation highlights the link to administrative law and often provides a toolbox of tailor-made sanctions responding to the nature and gravity of the particular criminal offence. However, fragmentation across a range of legal acts could make it difficult for law enforcement authorities and the judiciary to identify the relevant criminal provisions. This may result in an increased risk of inconsistencies in the application of environmental criminal law[81]. In FR, for example, numerous sources are relevant along with the Penal Code: the Town Planning Code, the Mining Code, the Forestry Code, and the Public Health Code. The complexity of the legal framework requires specialised knowledge from practitioners, and where they do not have such knowledge it can undermine effectiveness. On the other hand, this sectoral approach could better capture particularities of a specific sector and provide more legal clarity to duty holders, i.e. persons and entities obliged by the legislation, as they are typically familiar with environmental legislation concerning their activities.
- Three Member States transposed the Directive in one separate act, in a quasi-literal way. This approach does not lead to any precision of undefined terms used in the Directive (e.g. 'substantial damage') and in addition may lead to a lack of integration into the national overall legal framework of these Member States. The three Member States are among those where there are no statistical data available for convictions and sanctions. EL and CY define 'unlawful' in their legislative acts by cross-referencing the national transposing environmental legislation. MT is the only Member State that transposed 'unlawful' literally, with a direct reference to the annexes to the Directive, thus creating the risk that its national legislation will become outdated as the instruments mentioned in the annexes are amended or repealed.

5.1.1 UNDEFINED LEGAL TERMS

Article 3 of the Directive defines additional elements which are necessary to constitute a criminal offence. The Article uses a number of general terms that cannot directly be applied in practice, but need interpretation and context. The use of such undefined legal terms in criminal law is accepted practice and confirmed by the ECJ. However, this approach risks diverging interpretations in the Member States in defining the scope of the related criminal offences

Substantial damage

78 Information from the Internal Member State Report – Czechia.
79 Information from the Internal Member State Report – Austria.
80 Information from Internal Member State Report – Slovenia.
81 Faure, 'The Evolution of Environmental Criminal Law in Europe: A Comparative Analysis.', see Footnote 73.

Article 3(a), (b), (d) and (e) specify that the relevant conduct constitutes an offence if it causes or is likely to cause '*substantial* damage to the quality of air, the quality of soil, or the quality of water, or to animals or plants'.

Most Member States transposed 'substantial damage', literally, or with similar wording, typically relying on case-law to define the scope of application.

Several Member States have done more than required by the Directive and have introduced criminal liability without the requirement of substantial damage.

Only a few Member States define the term 'substantial damage' more precisely in their national law or in guidelines.

CZ and SK take account of the financial value of the damage done. Under Czech law, substantial damages are quantifiable at CZK 500 000 (EUR 20 000), an amount calculated on the basis of the financial benefit of the crime for the offender, the cost of remediation and the value of the assets damaged. Similarly, SK focuses on the monetary value of the damage, with substantial damage set at EUR 26 660. However, substantial damage is not a prerequisite for criminal liability in SK.

Other Member States focus on the ecological rather than the financial impact of the damage, considering its duration, irreversibility and/or impact. AT requires a 'long-lasting deterioration of the status of water, soil and air'. RO defines significant damage to the environment as irreversible or long-lasting damage that is quantifiable. CY defines substantial damage as irreversible, irreversible with significant investment, partly reversible with a permanent disturbance of the ecosystem and any damage deemed substantial by the court. Also, PT sets out qualitative criteria to define 'substantial damage'. Polish case-law indicates that 'significant damage' means irreparable damage that has affected vegetation or a large number of animals[82].

FR has issued particularly detailed and illustrative instructions (Circulaire of 21 April 2015[83]) on environmental damage:

'Legal action must be taken in the event of direct damage to the living environment that causes serious or irreversible damage to the environment, repeated behaviour, failure to comply with administrative requirements (formal notices, registration, execution of work, protective measures), obstacles to control by inspectors and failure of alternatives to prosecution'.

The Circular also indicates that:

'The concept of reversibility of environmental damage needs to be made explicit. Three levels can be distinguished:

- irreversible damage to the environment, i.e. damage which leads to clear and irreparable degradation of the environment;
- damage that is reversible only after a long period, which varies according to the regeneration cycles of the environment and nature;
- damage that can be repaired within a reasonable time'.

The Circular specifies that 'the time scale by which damage is likely to be repaired, from a few days to several decades or even centuries' should be taken into account, adding that 'prosecution should be preferred where environmental damage is irreversible or cannot be remedied within a reasonable time'. It

82 Gardocki, L., 'Offences against the state and collective goods' in *Criminal law system* (volume 8) by C.H. Beck, Warsaw, 2018, issue 2.

83 Instruction dated 21 April 2015 relating to the criminal policy directions in the field of environmental offences, (*Circulaire du 21 avril 2015 relative aux orientations de politique pénale en matière d'atteintes à l'environnement) NOR : JUSD1509851C.*

also singles out 'the size of the economic gain resulting from the violation of the environmental rule, as well as the existence of a European issue (Community litigation, violation of European regulations)', as factors to be assessed when deciding to initiate criminal proceedings.

Non-negligible quantity

Article 3(c) covers the shipment of waste, 'undertaken in a *non-negligible* quantity, whether executed in a single shipment or in several shipments which appear to be linked'. This provision allows Member States to limit criminal liability by exempting shipments of negligible quantities of waste from criminal liability.

Most Member States[84] did not link criminal liability to the quantity of illegally shipped waste. These Member States rely on the prosecution's assessment of whether or not a case is sufficiently serious to merit prosecution.

In other Member States[85], 'non-negligible quantity' was transposed literally or almost literally. AT has given guidelines on the interpretation of this term.

Austrian legislation does not define 'non-negligible'. However, the Federal Minister of Agriculture, Environment and Water Management has issued an instruction on what will be considered 'non-negligible' quantities of waste, as follows:

- quantities exceeding 25 kilogrammes in the case of hazardous waste that also constitutes dangerous goods within the meaning of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR);
- quantities exceeding 1,000 kilogrammes in the case of hazardous waste that does not also constitute dangerous goods within the meaning of the ADR;
- quantities exceeding 10 tonnes in the case of non-hazardous waste.

Negligible quantity/impact

Articles 3(f) and 3(g) of the Directive provide for criminal liability in relation to the killing, destruction, possession, taking and trade in protected wild fauna or flora except for cases where the conduct concerns 'a *negligible* quantity of such specimens and has a *negligible* impact on the conservation status of the species'.

A number of Member States[86] did more than required by the Directive, defining criminal liability without the exception of 'negligible quantity'.

In a few Member States, 'negligible quantity' was transposed with the same or similar wording. Several Member States use the concept of 'significant' instead of 'negligible'. PT legislation refers to a quantity or impact that is 'not significant'.

Some Member States provide more specific definitions of 'negligible' quantity and impact. For example the law in CY states:

'For the purposes of subparagraph (f) and (g) of paragraph (1) 'negligible quantity' and 'negligible impact' means a quantity and the impact in the event that –

(a) the number of protected species of flora and fauna that has been damaged by the conduct referred to in the paragraphs above is too small or negligible in relation to the total number of the protected species

84 BE, CY, CZ, DE, DK, FI, FR, HU, IE, IT, LU, LV, NL, PL, PT, SE, UK.
85 EE, EL, ES, MT, RO, SI.
86 BE, DK, EL, FR, HR, IE, IT, LU, LV, NL, SI, UK.

that existed before the exhibition of the conduct, and

(b) the size of the impact that occurred is so small that it does not change the condition of the conservation of the species after the exhibition of the conduct as its result'.

HU and SK define 'negligible' quantity of impact by linking it to the financial value of the specimen and the financial impact of the conduct rather than to numbers of specimen or to the impact on the conservation status of the species. HU undertakes to assign values to species assuming that the value of a specimen of a protected species is 10 times less than the value of a specimen of a species under increased protection. It is unclear what value constitutes a negligible quantity.

Dangerous activity

Article 3(d) of the Directive criminalises – when unlawful - 'the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants'.

Most Member States did not transpose the term 'dangerous activity' as such into their national law[87]. This term is rather defined by the related sectoral administrative law. Other Member States transposed the term literally, or almost literally, but do not necessarily provide for a definition in their national law, leaving it to case-law to interpret it.

Significant deterioration

Article 3(h) of the Directive criminalises unlawful conduct which causes '*significant* deterioration of a habitat within a protected site'. In most Member States, the term significant deterioration has not been transposed literally [88] but through similar wording. Some Member States have a more stringent approach, including less significant deterioration too (BG, FR, HU, IE, and NL). Only a few Member States transposed the notion literally but did not provide any explanations of the term (Flanders in Belgium, CY, EL, LV, PT, SI).

5.1.2 SANCTIONS APPLICABLE TO NATURAL PERSONS

Criminal sanctions are difficult to compare as Member States set them in accordance with their national legal traditions, which differ significantly, e.g. in relation to the type and level of sanctions, the existence of minimum and/or maximum sanctions, whether financial penalties are calculated as a determined lump sum, linked to the offender's income or through daily units and the way different available sanction regimes can be combined with each other. Even the same level of sanction in some Member States are also not all the way comparable with each other. For example, a particular sanction level can be a deterrent in one Member State, but not in another, depending on factors such as the economic situation and income levels in the respective Member States.

Criminal financial penalties

87 AT, BE, BG, DE, DK, EE, FI, FR, HU, IE, IT, LV, LT, LU, NL, PL, PT, SL, SE, UK.

88 AT, Wallonia and Brussels regions in Belgium, BG, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LV, LT, LU, NL, PL, RO, SK, SE, UK.

The table below shows the level of maximum sanctions for each Member State that can be imposed on natural persons.[89]

[89] The table reflects the level of fines in the Member States (converted into EUR where the Member State uses another currency), without adjustment with regard to the value of money and the purchasing power parity in the different Member States.

Table 7: Maximum levels of penalties applicable to natural persons (EUR)

	Article 3(a)	Article 3(b)	Article 3(c)	Article 3(d)	Article 3(e)	Article 3(f)	Article 3(g)	Article 3(h)	Article 3(i)
AT	3,600,000	3,600,000	3,600,000	3,800,000	3,600,000	3,600,000	1,800,000	3,600,000	3,600,000
BE									
FED	56,000,000	N/A	32,000,000	N/A	16,000,000	800,000	16,000	800,000	32,000,000
FL	4,000,000	4,000,000	4,000,000	2,000,000	N/A	4,000,000	4,000,000	4,000,000	2,000,000
WR	8,000,000	8,000,000	8,000,000	8,000,000	N/A	8,000,000	Gap	8,000,000	8,000,000
BR	8,000,000	8,000,000	8,000,000	8,000,000	N/A	8,000,000	8,000,000	8,000,000	8,000,000
BG	25,000	25,000	2,500	15,000	10,000	10,000	10,000	5,000	2,500
CY	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
CZ[90]	1,460,000	1,460,000	1,460,000	1,460,000	1,460,000	1,460,000	1,460,000	1,460,000	1,460,000
DE	10,800,000	10,800,000	10,800,000	10,800,000	10,800,000	10,800,000	10,800,000	10,800,000	10,800,000
DK	No minimum or maximum fine levels are set by law.								
EE	The level of the fine is linked to the offender's income. Maximum fine is 500 daily incomes of the person.								
EL	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
ES	No fine	288,000	216,000	288,000	216,000	288,000	288,000	288,000	288,000
FI	The level of the fine is linked to the offender's income.								
FR	150,000	150,000	75,000	150,000	75,000	300,000	300,000	300,000	75,000
HR	The level of the fine is linked to the offender's income								
HU	809,000	809,000	809,000	809,000	809,000	809,000	809,000	809,000	809,000
IE	15,000,000	15,000,000	500,000	5,000	500,000	500,000	63,486	500,000	500,000
IT	100,000	100,000	26,000	120,000	100,000	4,000	200,000	from 3,000	120,000
LT	156,000	156,000	78,000	156,000	156,000	156,000	156,000	156,000	78,000
LU	750,000	750,000	100,000	500,000	500,000	750,000	750,000	750,000	500,000
LV	860,000	860,000	860,000	430,000	860,000	860,000	430,000	860,000	860,000
MT	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000
NL	87,000	87,000	87,000	878,000	87,000	87,000	87,000	87,000	87,000
PL	270,000	270,000	270,000	270,000	270,000	270,000	270,000	270,000	270,000
PT	300,000	300,000	300,000	300,000	300,000	180,000	180,000	180,000	120,000
RO	31,500	31,500	31,500	31,500	31,500	31,500	25,200	25,200	No fine.
SE	14,220[91]	14,220	14,220	14,220	14,220	14,220	14,220	14,220	14,220
SI	The level of the fine is linked to the offender's income.								
SK	331,930	331,930	331,930	331,930	331,930	331,930	331,930	331,930	331,930
UK	No minimum or maximum fine levels are set by law.								

There are significant differences between Member States. For example, BG sanctions offences under Article 3(a) with a penalty of up to EUR 25,000, whereas, for the same offence, AT provides for a maximum penalty of EUR 3,600,000 and Flanders in BE for a maximum penalty of EUR 4,000,000. BG, SE and BE have particularly low sanction levels – below EUR 20,000 - for Article 3(g) offences, IT for Article 3(f) offences and IE for Article 3(d) offences. RO has sanctions levels not much above EUR 30,000 for all Article 3 offences. In contrast, DE, BE (Federal level) and IE provide for sanction levels exceeding EUR 10 million. Also between these two extremes, a lot of disparity remains.

Prison sentence

The table below provides an overview of the maximum prison sentence for each of the offences in Article 3 of the Directive.

90 A financial penalty is imposed only where the offender sought to secure or secured for themselves or for another person any material benefit for intentional crimes.

91 The amounts in SEK remain the same, SEK 150,000. The revised amounts reflect the current exchange rate (on 14 January 2020).

Table 8: Maximum prison sentence applicable to natural persons[92]

	Article 3(a)	Article 3(b)	Article 3(c)	Article 3(d)	Article 3(e)	Article 3(f)	Article 3(g)	Article 3(h)	Article 3(i)
AT	20 years	20 years	1 year	20 years	20 years	2 years	5 years	2 years	1 year
BE									
FED	10 years	N/A	3 years	N/A	10 years	None	3 months	None	3 years
FL	5 years	5 years	5 years	2 years	N/A	5 years	5 years	5 years	2 years
WR	3 years	3 years	3 years	3 years	N/A	6 months	Gap	6 months	3 years
BR	2 years	2 years	2 years	2 years	N/A	2 years	2 years	2 years	2 years
BG	20 years	20 years	4 years	15 years	15 years	5 years	5 years	3 years	4 years
CY	10 years	10 years	10 years	10 years	10 years	10 years	10 years	10 years	10 years
CZ	3 years	2 years	1 year	3 years	16 years	3 years	3 years	3 years	1 year
DE	15 years	15 years	15 years	15 years	15 years	5 years	5 years	15 years	5 years
DK	6 years	6 years	6 years	6 years	Gap	6 years	6 years	6 years	6 years
EE	5 years	5 years	2 years	5 years	5 years	5 years	5 years	5 years	2 years
EL	20 years	20 years	20 years	20 years	20 years	20 years	20 years	20 years	20 years
ES	12 years	5 years	1 year	5 years	5 years	2 years	2 years	2 years	3 years
FI	10 years	6 years	2 years	10 years	10 years	4 years	4 years	4 years	6 years
FR	3 years	3 years	2 years	3 years	2 years	6 years	6 years	6 years	2 years
HR	15 years	15 years	15 years	15 years	15 years	8 years	8 years	8 years	3 years
HU	20 years	20 years	5 years	20 years	20 years	5 years	5 years	5 years	3 years
IE	5 years	5 years	3 years	1 year	3 years	3 years	2 years	3 years	3 years
IT	10 years	10 years	6 years	10 years	10 years	6 months	2 years	18 months	2 years
LT	10 years	6 years	3 years	6 years	10 years	4 years	4 years	5 years	2 years
LU	5 years	5 years	6 months	1 year	5 years	1 year	1 year	1 year	3 years
LV	10 years	5 years	5 years	2 years	8 years	5 years	2 years	5 years	4 years
MT	Life	Life	Life	Life	Life	Life	Life	Life	Life
NL	Life	15 years	15 years	15 years	Life	6 years	6 years	6 years	6 years
PL	5 years	5 years	5 years	8 years	5 years	5 years	5 years	2 years	2 years
PT	10 years 8 months	10 years 8 months	3 years	10 years 8 months	10 years 8 months	5 years	2 years	5 years	1 year
RO	15 years	15 years	15 years	5 years	20 years	5 years	15 years	15 years	3 years
SE	6 years	6 years	2 years	2 years	2 years	6 years	4 years	None	2 years
SI	12 years	12 years	12 years	12 years	8 years	3 years	5 years	8 years	5 years
SK	10 years	8 years	8 years	10 years	Life	2 years	3 years	5years	5 years
UK	5 years	5 years	2 years	2 years	5 years	6 months	5 years	2 years	None

Also here, sanction levels vary considerably from one Member State to another. An offence is subject to a prison sentence up to 6 months in LU under Article 3(c) and in IT under Article 3(f), while MT provides for a maximum sentence of life imprisonment. Under Article 3(a) for example, the different maximum levels of prison sentences provided by Member States are: 2 years, 3 years, 5 years, 6 years, 10 years, 12 years, 15 years, 20 years, life imprisonment. The same goes for all other categories of Article 3 offences.

Accessory sanctions/confiscation

Unrelated to the Directive, all Member States provide for accessory sanctions such as an obligation to repair the damage caused[93], publication of a judgment[94], or revocation of permits[95]. These sanctions can be very useful in addition to the traditional ones, such as financial fines/penalties and prison sentences. All Member States also have confiscation sanctions available in their legislation. However, the parallel application of accessory sanctions and criminal sanctions is not ensured in Member States where the criminal courts do not have the power to order accessory sanctions.

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92 The term N/A is used in relation to Belgium when a particular jurisdiction is not competent to set a criminal sanction. When the legislation does not provide for imprisonment, the expression 'none' is used. The term 'gap' is used when there is a gap in the transposition of the relevant provision of Article of the Directive.

93 BE in some cases, CY, FR, LU, PL.

94 CZ, FR, EL, NL, PL, PT, RO.

95 AT, BE, BG, HR, CZ, DK, EE, EL; LT, MT, NL, SI, ES.

5.1.3 SANCTIONS APPLICABLE TO LEGAL PERSONS

The Directive requires Member States to provide for the liability of legal persons but leaves it to Member States to decide whether the nature of the liability is criminal or non-criminal.

Criminal liability

Most Member States provide for criminal liability of legal persons, except BG, DE, EL, LV and SE. While the most common form of criminal sanction imposed on legal persons is financial penalties, accessory sanctions are often also available either in criminal proceedings or in complementary administrative proceedings.

Administrative liability

Most Member States do have administrative sanctioning systems in parallel to criminal ones with regard to legal persons. BG, DE, EL, LV and SE rely only on administrative liability for legal persons.

The comparative table of maximum fines available for legal persons under Section 6.1 – 'Effectiveness' shows that considerable disparity remains between the levels of sanctions across Member States. Some provide for unlimited fines (DK, UK), fines over EUR 1 000 000[96] or fines linked to the financial gain of the offender (HU), while others still provide for maximum sanctions that are rather low (BG, CY, EL, FR) for some offences. However, even in Member States providing for high maximum fines, the full range of available sanction levels may not necessarily be applied in practice.

5.1.4 PRACTICAL IMPLEMENTATION

Apart from the legal transposition, the way the Directive is implemented in practice – for example with regard to efforts to detect, investigate and prosecute environmental crime, the level of sanctions imposed and the level of prioritisation of environmental crime in the Member States as compared to other crime – is essential for its effectiveness. Without proper practical implementation, any criminal law provision on paper is useless.

The practical implementation of environmental criminal law and its challenges has been the subject of numerous studies and reports which come to similar conclusions: there are major deficiencies in all Member States and at all levels of the law enforcement chain that prevent criminal environmental law from being effective. The main deficiencies identified are listed below. They are mutually dependent and mutually reinforcing:

- lack of statistical data on environmental crimes at all levels of the enforcement chain including the administrative level;
- lack of awareness of the scale and impacts of environmental crime;
- lack of prioritisation of environmental crime;
- lack of the necessary budgets, human and financial resources for law enforcement authorities;
- lack of specialisation and training of law enforcement authorities, including prosecution and judiciary;

[96] AT, BE, CZ, DE, EE, ES, FR, HR, IE, IT, LT, LU, LV, MT, PL, PT, SE, SI, SK.

- lack of cooperation and communication between all levels of the national law enforcement chain, lack of an overarching strategy to combat environmental crime in most Member States;
- lack of cross-border cooperation;
- low level of sanctions imposed in practice – most crimes are sanctioned with fines rather than imprisonment;
- lack of an EU-wide agreed practice on how to use accessory sanctions, mitigating and aggravating circumstances, confiscation and forfeiture;
- lack of non-binding guidelines concerning prosecution (also with regard to the delineation of administrative procedures) and sentencing;
- lack of EU-wide minimum criteria for inspections and compliance monitoring at administrative level.

Out of the numerous reports arriving at these conclusions only a few should be mentioned here[97]: The 2019 final 8th Mutual Evaluation report of the European Council Working Party on General Matters on the implementation of environmental crime in the EU[98] , the 2019 Finnish Presidency report on the State of Environmental Criminal Law in the EU[99] based on contributions of the Member States, the 2019 information report of the EESC based on a questionnaire to civil society organisations and fact-finding missions[100], the reports and final synthesis report under the EFFACE research project on European Union Action to fight Environmental Crime combining efforts of 11 European universities and think tanks[101].

These findings do not rule out the existence of some positive trends and good practices, as for example set out in the Council 8th Mutual Evaluation Round's country reports and as identified in the context of the framework of the Commission Action Plan to improve environmental compliance and governance[102].

6 ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS

6.1 EFFECTIVENESS

Effectiveness considers the extent to which the objectives of the Directive have been achieved. It assesses the extent to which progress has or has not been achieved, and the significant factors that have contributed towards or inhibited progress.

97 Further sources are reports from Eurojust, Europol, Interpol and the various professional networks. Also stakeholders (mainly NGO) that reacted to the Roadmap on this evaluation and which contributed with separate comments and documents to the public consultation stressed these particular points.

98 Available at : https://data.consilium.europa.eu/doc/document/ST-7752-2017-REV-1/en/pdf

99 Council of the European Union, 'Finnish Presidency Report on EU Environmental Criminal Law,' 2019.

100 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/information-reports/evaluation-environmental-crime-directive; see also Annex 9.

101 Available under https://www.efface.eu.

102 A document compiling good practices on combating environmental crime and other relevant information are available at: https://ec.europa.eu/environment/legal/compliance_en.htm.

Evaluation questions:

2. To what extent has the Directive created a level playing field for the offences criminalised at national level across the EU?
3. To what extent has the Directive created a level playing field for sanctioning systems at national level across the EU?
4. Has the Directive produced a level playing field for environmental enforcement in the Member States and thus avoided safe havens?

6.1.1 LEVEL PLAYING FIELD

As outlined under Section 2.3. – 'Intervention Logic' a level playing field of criminalised offences and sanctions is to be understood as an approximation of Member States' national law in order to create an EU framework of environmental crime which still leaves some leeway to Member States with regard to details.

Generally, Member States have correctly transposed the Directive into their national law. However, diverging approaches exist with regard to:

- the definition of criminal offences
- the liability of legal persons – liability can be either criminal, administrative or both;
- sanction levels applicable to both natural and legal persons - the Directive requires Member States to provide for 'effective, dissuasive and proportionate' sanctions, but it does not define either minimum nor maximum sanctioning levels that must be met in all Member States or any aggravating or mitigating circumstances that must influence the level of sanctions.

Criminalisation of offences[103]

All Member States have criminalised the behaviour described in the Directive in a conforming manner in their national laws. They have thus created an EU framework for what is considered an environmental crime, and in that respect a level playing field.

However, Article 3 of the Directive uses a number of undefined legal terms to define criminal conduct, such as 'substantial damage', 'negligible quantity' or 'significant deterioration' thus opening up space to Member States to regulate the details differently, according to their national penal traditions.

As set out in more detail under Section 5.1.1 – 'Undefined legal terms', the following approaches have been taken to transpose these terms:

- literal transposition, typically relying on judicial authorities to clarify the term on a case-by-case basis;
- not transposing undefined legal terms that typically limit criminal liability for an infringement of environmental law to serious cases. This approach also leaves it up to judicial authorities to determine whether an offence is serious enough to be prosecuted;
- precise description of the 'undefined legal term' in the transposing national law or in guidelines. Only few Member States took this approach, but applied different interpretations.

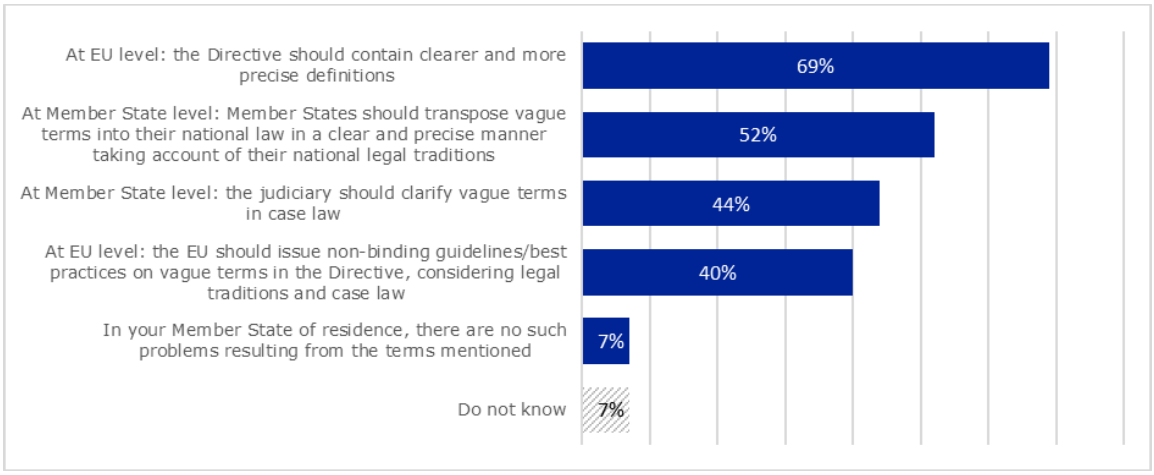
[103] For further details, see above under Section 5.1. –'Description of the current situation' and the 2013 Milieu Implementation Report, see Footnote 38.

All approaches are compliant with the Directive, but led to differences in the definition of criminal offences in practice between Member States. Differences in the understanding of which conduct falls or does not fall under a particular environmental crime category can impact the full effectiveness of the Directive with regard to legal clarity and cross-border cooperation.

Therefore, Member States consulted by the Finnish Presidency of the European Council in the second half of 2019 held that more consensus should be built but remained undecided whether this should be achieved through the Directive itself[104] and/or other measures such as soft law, practical or policy measures, including recommendations at EU level. The recommendations to Member States in the final report of the Council's 8th Mutual Evaluation Round included producing guidelines on undefined legal terms to ensure more clarity and to facilitate the work of the competent authorities in the area. The necessity to provide more legal clarity was also confirmed by the majority of all stakeholder groups – including practitioners and NGOs – consulted on this issue.

The outcome of the public consultation on how to address the issue of undefined legal terms is shown below.

Figure 2: Question 5 of the public consultation: If terms such as 'substantial damage', 'dangerous activity or substances', 'negligible/non-negligible impact' in the legislation negatively affect the effectiveness of the Directive, how could legal clarity be improved? (Several answers are possible) (share of total respondents, n = 134)



Source: public consultation

Extent to which legal persons can be held liable for criminal offences

Generally, all Member States provide for criminal or non-criminal liability for environmental offences by legal persons (see above under Section 5.1.3 – 'Sanctions applicable to legal persons') and are thus compliant with the Directive.

However, given that legal persons are estimated to be responsible for up to 75%[105] of environmental crime, the absence of criminal liability for legal persons in some Member States has the potential to undermine the creation of the level playing field necessary for cross-border cooperation of judicial authorities with regard to legal persons.

Approximation of sanction levels

104 Member States stated that given the wide range of environmental crime covered by the Directive, it would be not feasible to further clarify terms such as 'substantial damage' or 'serious risk' in EU legislation, see Finnish Presidency Report Footnote 36.

105 Interview with ENPE.

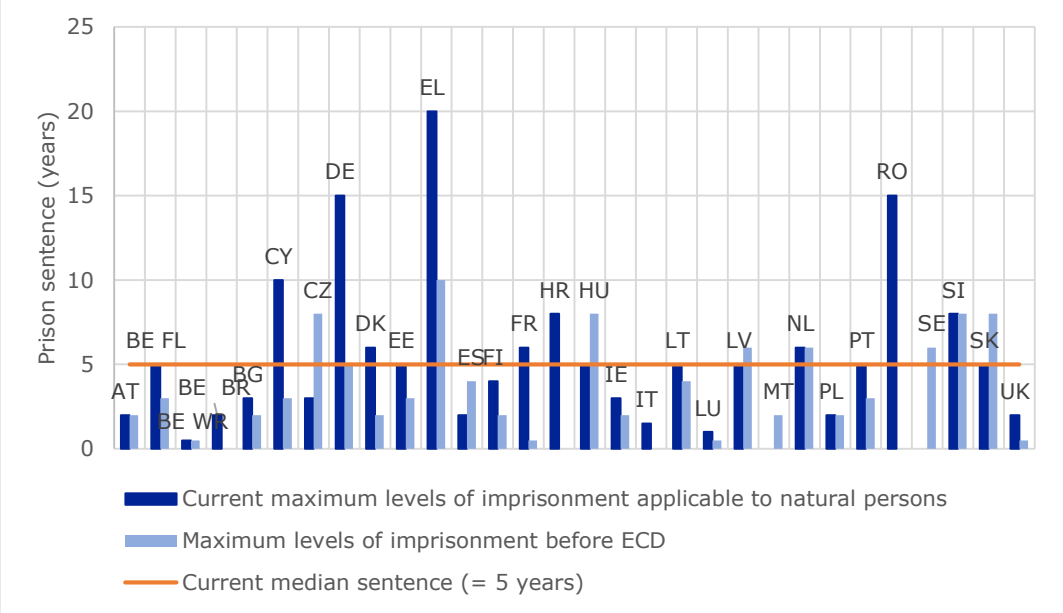
Below, it will be assessed whether the Directive has resulted in progress with regard to the approximation of levels of fines and prison sentences and with regard to sanctions for legal persons. For these types of sanction, the initial proposal of the Directive had contained minimum maximum levels, which had been dropped after a judgment of the ECJ (see for more details above under Section 2.1. – 'History' and 2.3. – 'Intervention logic'). Member States – according to the Directive – only have to provide for effective, proportionate and dissuasive criminal penalties.

- Prison sentences

Prison sentences apply in all Member States, except for Article 3(f) offences in BG (federal level), for Article 3(h) offences in BG (federal level) and SE, and for Article 3(i) offences in the UK.[106].

The graph[107] below illustrates the persisting large differences in maximum prison sentences for crimes covered by Article 3(h) of the Directive in all EU Member States[108]. The median of maximum prison sentences in the Member States is 5 years. The graph also shows that most Member States have introduced higher sanction levels after the Directive.

Figure 3: Maximum levels of imprisonment in Member States for Article 3(h) offences, compared with maximum levels of imprisonment before the Directive



Some Member States provide for maximum levels of imprisonment[109] not exceeding 5 years for certain types of crime, while others prescribe life imprisonment (MT, NL) or

106 Faure, 'The Evolution of Environmental Criminal Law in Europe: A Comparative Analysis.', see Footnote 73.

107 There are no baseline data for BE (Brussels region), HR, IT and RO, as they did not have criminal sanctions before the Directive. BE FL, BE BR and BE WR stand for Belgium Flanders, Belgium Brussels region, Belgium Walloon region. There are no federal-level rules for prison sentences in BE.

108 There are no data for some Member States: the current maximum for MT is life imprisonment and there is no maximum level for SE as imprisonment is currently not provided for crimes covered by Article 3(h).

109 BE, CZ, DK, EE, ES, FI, FR, IE, LU, PL, UK.

sentences of 20 years (AT, BG, EL). It seems that the introduction of higher sanction levels in a number of Member States following the Directive did not lead to an approximation of sanction levels, but rather increased disparities.

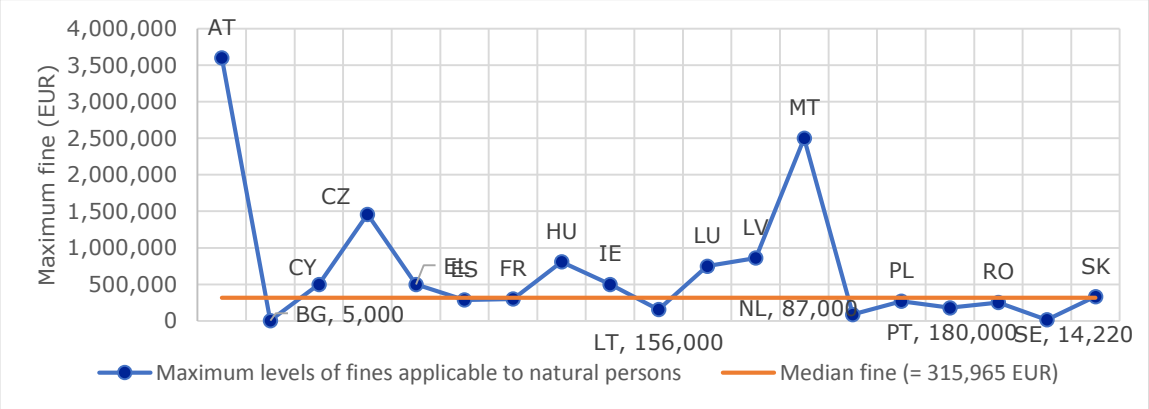
Many Member States have not introduced prison sentences that meet the minimum maximum threshold stipulated in the initial proposal for the Directive (more than 5 years for the most serious types, committed with intent or serious negligence).

- Fines

A number of Member States increased the levels of sanctions after the Directive[110]. This increase is sometimes significant, such as in FR, where prison terms for crimes under Article 3(f)–(h) of the Directive were raised from 2 years to 6 years, and fines from EUR 30 000 up to EUR 300 000.

The figure below illustrates the differences in the maximum levels of criminal fines applicable to natural persons for environmental crime under Article 3(h) of the Directive (i.e. any conduct causing the significant deterioration of a habitat within a protected site).

Figure 4: Maximum levels of criminal fines applicable to natural persons (EUR) in EU Member States for Article 3(h) offences of the Directive, and median fine.



DE and BE are not represented on this graph for technical reasons, as they have very high maximum fines applicable to natural persons (EUR 10 800 000 in DE, EUR 800 000 in BE at Federal level, EUR 4 000 000 in Flanders, EUR 8 000 000 in Wallonia and EUR 8 000 000 in Brussels)[111]. A number of Member States only provide for very low maximum fines, far below the median of EUR 200 000 (BG, LT, NL, PT, SE). Here too, even if levels have been increased by a number of Member States, a level playing field in absolute terms has not been reached. Traditional sanction levels in the overall criminal system in the Member States, differences in wage levels and differences in the awareness of the harmfulness of environmental crime might explain these differences to some extent.

- Legal persons

110 BE, DK, EE, FR, IT, LT, LU, NL, PT, UK.

111 Other Member States are not represented on the graph for the following reasons: in DK and the UK, no minimum or maximum fine levels are set by law; in HR, EE, FI and SI, the level of the fine is linked to the offender's income, and in IT, the law only provides for a minimum fine, not a maximum one.

Regarding legal persons, fines exist in all Member States. They are not necessarily criminal in nature. Several Member States increased their sanction level after the entry into force of the Directive[112]. This is particularly visible in DE, where administrative fines for legal persons increased from EUR 1 000 000 to EUR 10 000 000 for intentionally committed offences, and from EUR 500 000 to EUR 5 000 000 for offences committed through negligence.

The table below illustrates sanction levels with regard to legal persons. BG, DE, EL, LV and SE only have administrative sanctions in place for legal persons. The other sanctions in the table are criminal ones.

Table 9: Maximum levels of fines applicable to legal persons[113]

	Article 3(a)	Article 3(b)	Article 3(c)	Article 3(d)	Article 3(e)	Article 3(f)	Article 3(g)	Article 3(h)	Article 3(i)
AT	EUR 7,200,000	EUR 7,200,000	EUR 7,200,000	EUR 7,200,000	EUR 7,200,000	EUR 7,200,000	EUR 3,600,000	EUR 7,200,000	EUR 7,200,000
BE									
FED	EUR 112,000,000	N/A	EUR 64,000,000	N/A	EUR 16,000,000	EUR 800,000	EUR 96,000	EUR 600,000	EUR 64,000,000
FL	EUR 8,000,000	EUR 8,000,000	EUR 8,000,000	EUR 4,000,000	N/A	EUR 8,000,000	EUR 8,000,000	EUR 8,000,000	EUR 4,000,000
WR	EUR 16,000,000	EUR 16,000,000	Gap EUR 16,000,000	EUR 16,000,000	N/A	EUR 16,000,000	Gap	EUR 16,000,000	Gap EUR 16,000,000
BR	EUR 1,600,000	EUR 1,600,000	EUR 1,600,000	EUR 1,600,000	N/A	EUR 1,600,000	EUR 1,600,000	EUR 1,600,000	EUR 1,600,000
BG	EUR 500,000[114]	EUR 500,000[4][3]	EUR 500,000[4][3]	EUR 500,000[4][3]	EUR 500,000[4][3]	EUR 500,000[4][3]	EUR 500,000[4][3]	EUR 500,000[4][3]	EUR 500,000[4][3]
CY	up to EUR 500,000								
CZ	EUR 58,400,000								
DE	EUR 10,000,000 (intent) and EUR 5,000,000 (negligence)								
DK	Unlimited								
EE	EUR 16,000,000								
EL	EUR 500,000 (intent) – EUR 150,000 (negligence)								
ES	The fine is expressed on number of days, with each day carrying with it a monetary fine. The monetary fine per day varies from EUR 30 to 5,000 for legal persons.								
	EUR 5,400,000 or 2 to 4 times the value of the damage caused	EUR 5,400,000 or 2 to 4 times the value of the damage caused	up to EUR 5,400,000or 2 to 4 times the value of the damage caused	EUR 5,400,000 or 2 to 4 times the value of the damage caused	up to EUR 5,400,000 or 2 to 4 times the value of the damage caused	EUR 5,400,000or 2 to 4 times the value of the damage caused	EUR 5,400,000 or 2 to 4 times the value of the damage caused	EUR 5,400,000 or 2 to 4 times the value of the damage caused	EUR 5,400,000 or 2 to 4 times the value of the damage caused
FI	EUR 850,000								
FR	EUR	EUR	EUR	EUR	EUR	EUR	EUR	EUR	EUR

112 AT, BE, FR, DE, LT, LV, MT, NL, PT, SE.

113 The term N/A is used in relation to Belgium when a particular jurisdiction is not competent to set a criminal sanction. When the legislation does not provide for imprisonment, the expression 'none' is used. The term 'gap' is used when there is a gap in the transposition of the relevant provision of Article of the ECD.

114 But not less than the equivalent of the benefit when it is of financial nature, or if the benefit is not of purely financial nature or its size cannot be determined, a penalty of EUR 2 500–50 000. These are established in the Law on Administrative Violations and Sanctions. Other sanctions are provided for in sectoral legislation and are, as a rule, less severe.

	750,000	750,000	375,000	750,000	375,000	1,500,000	1,500,000	1,500,000	375,000
HR	EUR 1,966,100	EUR 1,966,100	EUR 1,966,100	EUR 1,966,100	EUR 1,966,100	EUR 1,572,800	EUR 1,572,800	EUR 1,572,800	EUR 1,310,374
HU	The maximum level of fine is three times the financial benefit gained or aimed to be gained, but at least HUF 500,000 (EUR 1,500). If the benefit gained or intended to be gained through the criminal act is not financial advantage, the court imposes the fine considering the financial situation of the legal entity, but at least HUF 500,000 (EUR 1,500).								
IE	Fines applicable for natural persons are applicable for legal persons.								
	EUR 15,000,000 (indictment)	EUR 15,000,000 (indictment)	EUR 15,000,000 (indictment)	EUR 15,000,000 (indictment)	EUR 15,000,000 (indictment)	EUR 15,000,000 (indictment)	EUR 15,000,000 (indictment)	EUR 15,000,000 (indictment)	EUR 15,000,000 (indictment)
IT	One quota is between EUR 258 and EUR 1,549								
	EUR 929,400	EUR 929,400	EUR 774,500	No sanction available	EUR 1,239,200	EUR 387,250	EUR 387,250	EUR 387,250	EUR 387,250
LT	EUR 3,900,000								
LU	EUR 1,500,000	EUR 1,500,000	EUR 200,000	EUR 1,000,000	EUR 1,000,000	EUR 1,500,000	EUR 1,500,000	EUR 1,500,000	EUR 1,000,000
LV	EUR 32,250,000	EUR 32,250,000	EUR 32,250,000	EUR 21,500,000	EUR 32,250,000	EUR 32,250,000	EUR 21,500,000	EUR 32,250,000	EUR 32,250,000
MT	EUR 2,000,000								
NL	Pursuant to the Act on Economic Offences, fine up to EUR 870,000. If the offence is punishable by a fine in the sixth category and that category does not permit an appropriate penalty, a fine may be imposed up to a maximum of 10% of the annual turnover of the legal person in the business year preceding the judgment or decision. Currently, these levels of the six categories vary from EUR 435 (Category 1) to EUR 870.000 (Category 6).								
PL	Fine between EUR 250 and 1,250,000, but not higher than 3% of the annual turnover of the entity								
PT	The daily fine unit is set by the court, between EUR 100 and 10,000.								
	EUR 12,800,000	EUR 12,800,000	EUR 12,800,000	EUR 12,800,000	EUR 12,800,000	EUR 12,800,000	EUR 12,800,000	EUR 12,800,000	EUR 12,800,000
RO	EUR 441,000	EUR 441,000	EUR 441,000	EUR 252,000	EUR 441,000	EUR 252,000	EUR 441,000	EUR 441,000	EUR 252,000
SE	EUR 247,400,000[115] (SEK 500,000,000)								
SI	For the offences for which the prescribed punishment for a natural person is under three years of imprisonment, the maximum fine is EUR 500,000. For the offences for which the prescribed punishment for a natural person is over three years, only the minimum fine of EUR 50,000 is prescribed for the legal person, which means that the maximum amount may reach EUR 1,000,000.								
SK	Confiscation of a sum of money up to EUR 1,660,000								
UK	Same as for natural persons								

Approaches on how to determine the fine differ considerably between Member States. Only few Member States link sanction levels to the financial gain of the offender or turnover of the legal person (HU, NL) or the damage caused (ES). PL limits the amount to not more than 3% of the annual turnover. Other Member States calculate on the basis of day units. The highest maximum fine can be imposed in CZ (almost EUR 60 million) and the lowest in EL, RO, CY, BG, FR and LU for some offences and FI (below EUR 1 million, or even below EUR 500 000).

- *Safe havens*

[115] The maximum amount for corporate fines has been increased as of 1 January 2020 from SEK 10 million to SEK 500 million.

The first objective of the Directive includes the prevention of safe havens by means of a level playing field of criminal offences and sanctions. Safe havens are places that criminals find attractive due to good chances of going undetected or unpunished.

In its impact assessment for this Directive, the Commission stated that existing differences in the sanction regimes of the Member States would entail the risk of safe havens for perpetrators and create unequal competition conditions for businesses in the EC. (It did this without identifying particular Member States as safe havens, however). Safe havens can be characterised by a lack of criminalisation or only very low sanction levels that can be imposed on offenders, although a number of other factors play a role, too. Independent of the level of sanctions, safe havens also occur where there is a lack of effective law enforcement (see for details under Section 2.3. – 'Intervention logic').

In fact, in several Member States sanction levels appear low, given that illicit gains from environmental crime can amount to millions of euros. This is certainly the case when the maximum fine applicable to natural persons is below EUR 100 000, or for legal persons below EUR 500 000 (see explanations and graphs under Section 6.1.2. – 'A Dissuasive Sanctioning System' under the headings 'sanctions for legal persons' and 'financial sanctions for natural persons'[116]).

In Member States with higher sanction levels, criminal judges do not always make full use of the available sanction range. Prison sentences may be handed down but suspended in practice[117]. Also – depending on the practice in the Member States – prison sentences may systematically not be fully served. Some states do not provide for prison sentences for environmental crime at all (see below under 6.1.2. – BG, SE and UK for some categories of environmental crime). High criminal sanction levels are also not meaningful in Member States where environmental cases are mainly dealt with under

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116 In Bulgaria, sanctions for natural persons are below EUR 100 000 and for legal persons below EUR 500 000. In Latvia, different information sources also indicated that sanctions might be low. Fines for natural and legal persons in the field of waste are determined proportionately to the harmfulness of the criminal offence and it is not required that fines reflect the economic benefit received by the offence from the non-compliant behaviour, which could potentially affect the deterrent nature of the fines. In LT, sanctions for natural persons are below EUR 100 000. The 8th Mutual Evaluations report on Lithuania indicated that fines for a legal person for violating rules for the handling of chemical substances and for illegal waste disposal were considered to be too low, and therefore not dissuasive and effective. Certain environmental criminal offences (waste crime) are also sanctioned by higher fines for natural persons than for legal persons. The illegal gain is not taken into account in the sanction In LU, the fines for waste offences can range from EUR 25 to EUR 1 000 for natural persons. Regarding legal persons, LU has limitations with regard to the level of penalties. In particular, cases of environmental damage that do not involve injury to persons cannot be punished adequately, even if the risks to the environment, or the damage caused to it, are serious. For RO**,** sanctions for natural persons are below EUR 100 000 and for legal persons below EUR 500 000. Moreover, in the 8th Mutual Evaluations country report sanctions for legal persons have been considered low in RO for waste crime and thus as neither effective and nor dissuasive. Additionally, the possibility of applying confiscation measures is scarcely applied.
The Member States do not correspond, or do so only partially, to the results shown in the graph under the section identifying Member States below the median sanction in the EU. This can be explained by the fact that the graph focuses on Article 3(h) and is not representative of the situation for all offences. The Member States listed here have been selected taking into account all offences defined in Article 3 of the Directive and also taking into account the level of sanctions applicable to legal persons and the results of the Council's 8th Round of Mutual Evaluations.

117 Europol in an interview highlighted that even if certain prison sentences are available in principle, their suspension might impact the effectiveness and dissuasiveness of the sanctions.

administrative law, or where most cases remain undetected or do not make it to the criminal courts.

On the other hand, Member States with low legal penalties might provide for additional accessory sanctions to be imposed in criminal proceedings. These can even be more of a deterrent than the actual criminal sanction. In FR, although the sanctions applicable to natural persons can be rather low for some environmental crime categories, the criminal judge would typically also order the remedy of the environmental damage and confiscation of the proceeds and benefits of the crime.

In addition, confiscation or forfeiture can serve as a very dissuasive tool, as the value of property and assets confiscated can reach amounts surpassing the benefits of a crime. Such measures are regulated as part of national environmental legislation in some Member States[118].

Case study 1 – glass eels (FR)

The Regional High Court of Nantes, in a decision of 7 February 2019, sentenced the traffickers to 2 years imprisonment and to fines of between EUR 5 000 and EUR 30 000.

The Court also sentenced certain offenders to a 5-year ban on carrying out a professional activity related to fishing glass eels. Property, assets and bank accounts of an amount of EUR 700 000 were confiscated, including a boat, a motorbike, a car, a luxury watch and more than EUR 300 000[119]. The imposed financial penalty only amounted to EUR 30 000.

As has been stated above, systematic statistical data on implementation, in particular on the type and level of sanctions imposed, are not available in most Member States.

The prevention of environmental crime and safe havens depends not only on the quality of criminal law enforcement but also on environmental administrative law enforcement. Environmental administrative law contains rules and safeguards to ensure compliance and prevent environmental offences, such as common standards, licensing, controls, inspections and other compliance monitoring. For example, following the big accidents where the seagoing vessels *Erika* (France 1999) and *Prestige* (Spain 2002) caused significant oil pollution of coastal areas, maritime safety rules have been heavily stepped up and more stringent inspection, control and enforcement and control procedures have been put in place. Similar disasters have been able to be prevented.

As with enforcement of the Directive, the quality of administrative law enforcement depends on sufficient resources, training, specialisation, cooperation and information sharing between the competent authorities. However, the assessment of this situation in the different Member States was outside the scope of this evaluation.

Opinions of businesses and industry representatives were sought through several means throughout the evaluation process[120]. Businesses did not report any issues with particular

118 For example, in IE under Section 28 of the Sea Fisheries and Maritime Jurisdiction Act 2006.

119 https://www.ouest-france.fr/pays-de-la-loire/nantes-44000/nantes-trafic-international-de-civelles-9-condamnations-et-de-lourdes-amendes-53b757cf-40d5-3a05-9592-d1b17450e724

120 The European Economic and Social Committee, in its report informing this evaluation, has systematically addressed business organisations and trade unions in five Member States. Business organisations and individual industry organisations were directly be invited to reply to the public consultation and the targeted stakeholder questionnaire. Generally, response rates from businesses were relatively low, See Annex 9.

Member States. Overall, businesses were more positive on the effectiveness of the Directive than other stakeholder groups, maybe because they focus primarily on the impact of administrative law and the resulting administrative burden for businesses. NGOs advocating for the protection of the environment were consulted on the particular issue of safe havens. None was aware of individual safe havens in the EU, but all pointed to enforcement deficits in most Member States. We do not have evidence that companies are moving to Member States because of their low sanction levels.

According to the results of the Council 8th Mutual Evaluations, all Member States have shortcomings at one or more points of the criminal law enforcement chain, with each missing point alone leading to inefficiencies in the fight against environmental crime.

As a result, there are no indications that individual Member States can be singled out as 'safe havens'. Even if particular Member States may have particular low sanction levels, there are many other factors regarding sanctioning that play together in creating or preventing a safe haven situation. As statistical data on the sanctioning practice in the Member States is not available, an in-depths comparative analyses could not be done. In any event, as set out in the Council 8th Mutual Evaluations final report, there are many practical implementation issues in all Member States that hinder effective law enforcement. Therefore, efforts in all Member States are necessary to improve the situation.

Conclusion on level playing field – first specific objective

The Directive has created a level playing field, with an EU framework of a common set of criminalised offences.

However, the undefined legal terms included in the definitions of the criminal offences, combined with the leeway given to Member States when it comes to the liability of legal persons, leave much room for different approaches and practices. This does not ensure that Member States always have a common understanding of the kind of conduct that is criminal. Some form of guidance appears to be necessary, to facilitate the work of practitioners and to ensure smooth cross-border cooperation.

Sanction levels have been stepped up in most Member States following the Directive. However, large differences in sanction levels persist.

6.1.2 A DISSUASIVE SANCTIONING SYSTEM

Evaluation question:

5. To what extent has the Directive resulted in a dissuasive criminal sanctioning system in the Member States in practice and a more effective tackling of environmental crime?

Article 5 of the Directive requires that criminal offences are punishable by effective, proportionate and dissuasive criminal penalties. The criteria of effectiveness, proportionality and dissuasiveness have been the subject of much debate. Based on case-law and literature, the following definitions apply:

Effectiveness: criminal sanctions are sufficient to ensure compliance with law. Criminal sanctions should, however, be considered as part of a sanctioning system that also includes administrative and civil sanctions, as well as accessory sanctions.

Proportionality: criminal sanctions adequately reflect the gravity of the violation and do not go beyond what is necessary to achieve the desired objective. Taking account of the

existence of aggravating and mitigating circumstances is essential in this respect, along with other elements that provide the criminal judge with the necessary tools to adapt the actual sanctions to the circumstances of the case.

Dissuasiveness: criminal sanctions prevent the offender from repeating the offence, and prevent other potential offenders from committing a similar offence. It is also important that the sanctions more than outweigh the benefits/gains expected by the offender.

Apart from the definitions, the deterrent effect depends most importantly on stringent practical implementation, high detection rates, effective and timely prosecution and conviction, and sentencing that makes full use of the available range and level of sanctions.

Sanctions for legal persons

A number of factors could be considered to measure the effectiveness, proportionality and dissuasiveness of financial fines, such as their level as compared to the level of fines for other crime categories in a national system, the relation of the level of the available maximum fine to the national minimum wage, or the role which financial fines play in the range of all penalties available to judicial authorities in a national system (financial fine, imprisonment, accessory sanctions).

In this evaluation, the initial proposal of this Directive was consulted, as it contained definitions of minimum maximum levels of sanctions, which can be used as a benchmark for what could be regarded as effective, proportionate and dissuasive. According to the proposal, for legal persons, the criminal or non-criminal minimum maximum sanction levels for the most serious forms of crime – committed intentionally or entailing the death or serious injury of a person – should be EUR 750 000. The initial proposal also suggested linking the amount of the sanction to be imposed to the financial situation of the legal entity or the financial gain it has achieved through the offence.

In several Member States, the maximum level of sanctions for legal persons, either criminal or administrative, is below the benchmark of EUR 750 000 for the most serious cases. This is the case in the following Member States (see table under Section 6.1.1 – 'Level Playing Field' under the heading 'Legal Persons'):

- BG for all Article 3 offences;
- CY for all Article 3 offences;
- EL for all Article 3 offences;
- FR in relation to Article 3(c) offences;
- IE in relation to all offences, except Article 3(a) and (b) offences;
- IT for all Article 3(c), (f), (g), (h) offences, in addition to the fact that no sanction is set in relation to Article 3(d) offences;
- RO for all Article 3 offences;
- SI for Article 3(f) offences.

A number of Member States even remain under the EUR 500 000 threshold for serious cases as defined in the initial proposal – at least for some offences (RO, FR for Article 3(e) offences, IT)

Financial sanctions for natural persons

From a comparison of fines provided for across all Member States, it could be concluded that a maximum fine below EUR 100 000 is, under all circumstances, unlikely to be

dissuasive given that environmental crime can generate enormous profits: the table under Section 5.1.2 – 'Sanctions applicable to natural persons' shows that almost all Member States provide for maximum levels considerably above EUR 100 000. The graph under Section 6.1.1. – 'Level Playing Field' under the heading 'financial fines' illustrating Member States sanctions levels for Article 3(h) offences shows that the median is around EUR 300 000. Moreover, the most lenient minimum maximum fine for legal persons provided for in the initial proposal of the Directive was EUR 300 000.

The following Member States provide for maximum fines not exceeding EUR 100 000:

- BG in general and in particular for Article 3(c) offences;
- FR for Article 3(c), 3(e) and (i) offences;
- IT for Article 3(c), 3(f) and (h) offences;
- LT (except for Article 3(f), (g) and (h) offences);
- NL, RO, SE for all Article 3 offences.

Prison sentences

The initial proposal of the Directive contained a minimum maximum prison sentence of at least 5 years for the most serious forms of Article 3 criminal offence.

Prison sentences are available in all Member States, except

- for Article 3(f) offences in BG (federal level);
- for Article 3(h) offences in BG (federal level) and SE;
- for Article 3(i) offences in the UK.

If the prison sentences contained in the initial proposal for this Directive are taken as a benchmark, the 5-year threshold is not met by several Member States under each Article 3 offence, for which this threshold was required (Article 3(a)–(f) offences).

Stakeholders' opinions

In the public consultation, about 65% of respondents considered that, generally, the criminal sanction levels in their Member State do not have enough of a deterrent effect and only 10% considered that sanction levels are sufficient[121]. Regarding legal persons, the results suggest that the absence of a system of criminal fines proportionate to the turnover of the legal person or the economic benefit generated through criminal offences[122] prevents the Directive from being fully effective[123].

The results of the targeted consultation questionnaire show that respondents considered sanctions for legal persons for waste offences and other environmental offences as a deterrent to only a moderate extent, and not even that with regard to wildlife offences[124].

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121 Results of the open public consultation, Question 4, point c, 68% of respondents considered this the case to a large extent. The answers of businesses only are similar (50% agree, and 16% consider sanction levels to be sufficient).

122 Question 6 of the public consultation questionnaire, see Annex 7.
The vast majority of public authorities and NGOs (95% and 80%) considered a system of fines proportionate to the turnover of the legal person or to the economic benefit generated through criminal offences to be useful. The majority of businesses (41%) agreed with this view, while (only) 16% did not consider such measure to be useful.

124 Targeted consultation questionnaire, Question 5 (Annex 6). Respondents were however quite divided on all offences with an similar number of respondents replying 'to a moderate extent' and 'not at all'.

In its report to inform this evaluation, the EESC points out that most categories of stakeholders consulted (employers, workers and other civil society organisations) hold that to be a deterrent, a sanctioning system must include accessory sanctions such as removing the criminal proceeds and an obligation to repair the environmental damage. Unlike the other stakeholder groups, only business representatives consider that the criminal sanctions in place are effective, proportionate and dissuasive and do not need to be improved. The EESC recommends introducing minimum sanction levels for natural and legal persons.

According to the 2019 Finnish Presidency Report, Member States would rather improve the situation by supporting measures to improve practical implementation rather than further harmonise sanction levels.

Stakeholders from the police and judiciary in particular said that sanction levels in theory were sufficient, but the problem was practical application[125] by the judicial authorities, due to a lack of knowledge of the harmfulness of environmental crime and to specialisation. The deterrent effect is undermined if many cases are dismissed or only very lenient sanctions are imposed even if more severe sanctions are available under national law or where sentences handed down are suspended[126]. In an interview, Europol highlighted the importance of ensuring that offenders actually serve their sentence.

Interplay with other sanctioning systems

As mentioned above, there is an agreement that the effectiveness and proportionality of a criminal sanction system depend not only on the financial penalties and prison sentences, but also on accessory sanctions and the interplay with administrative and civil sanctions in each Member State[127]. In addition, the economic and social situation in each Member State and their respective legal traditions determine what level of criminal sanction can be regarded as a deterrent there. The Advocates-General, with regard to the annulments of two Framework Decisions in the field of environmental law by the CJEU, have expressed that Member States are generally better placed than the Community to 'translate' the concept of effective, proportionate and dissuasive sanctions into their respective legal systems and social contexts[128].

Commission action

Therefore, although there are strong indications that sanction levels are not a deterrent in a number of Member States, especially for legal entities, the Commission has not launched any infringement procedures against Member States. The Commission, following the findings of the 2013 Milieu Implementation Report flagging a number of

125 A practitioner in an interview gave as an example a case on waste crime in a port. The prosecutor had asked for imprisonment of 4 months to 1 year while the costs of cleaning up the waste that was left was estimated at EUR 16 million. The case ended with prison sentences of 2 years, 3 years and 5 years, and fines of EUR 600,000. On the other hand, judges too often impose sanctions that are not at all adapted to the seriousness of environmental crime.

126 IPEC (Intelligence Project on Environmental Crime), based mainly on a questionnaire sent to EU countries, non-EU countries, and international organisations.

127 For example, in France, although the sanctions applicable to natural persons appear rather low for some offences, the judge would typically also order the repair of the environmental damage and confiscation of the proceeds and benefits of the crime. Finally, the sanctions applicable may be different if the offence also falls under other categories, such as money laundering or fraud.

128 Cases C-176/03, *Commission* v *Council* (2005); Opinion of Advocate-General, delivered on 26 May 2005, paragraphs 83- 87 (Environmental Crime) and C-440/05, *Commission* v *Council* (2007); Opinion of Advocate-General, delivered on 28 June 2007, paragraph 103 et seq. (Ship Source Pollution).

Member States for non-compliant sanction levels, did launch informal proceedings against nine Member States. As a result, six Member States raised their sanction levels. For three Member States, the Commission accepted the explanations given. Further action, such as infringement procedures according to Article 258 TFEU, does not appear to have any prospects of success, in the absence of precise minimum or maximum sanction levels defined in the Directive.

Trends in the number of convictions for environmental crime

Also, the levels of detection, prosecution and conviction of environmental crimes can be an indicator of whether a criminal sanctioning system is a deterrent in practice and is effective in tackling environmental crime (see evaluation question No. 5).

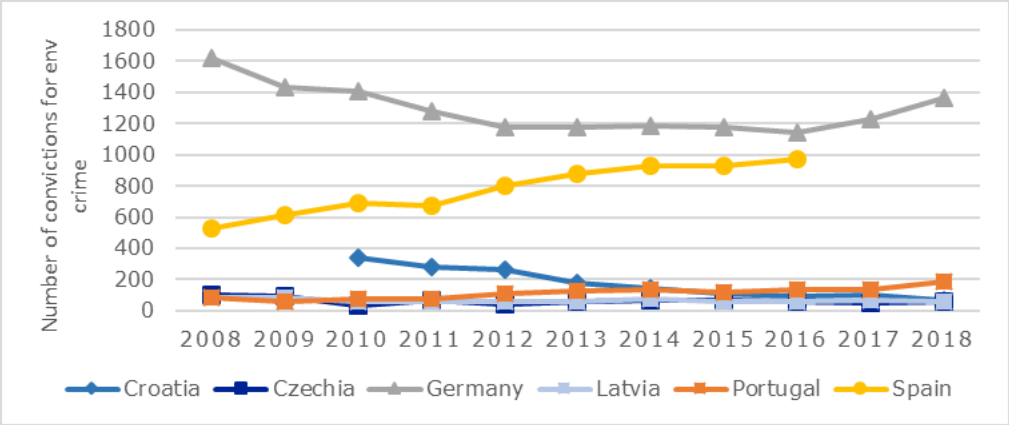
Information on convictions is the most complete type of data that could be collected. Data were available for 17 Member States. Conviction levels – at the end of the enforcement chain – can give some information on the quality of the enforcement chain upstream[129] and whether environmental criminal law is in fact enforced or not.

The graph below illustrates the trends in the total number of convictions for environmental crimes before and after the adoption of the Directive in a sample of six Member States[130]. The Member States selected provided statistical material on conviction data for the period from 2008 to 2010 (the baseline) and for the period afterwards up to 2016 - 2018. The Member States were also selected to demonstrate the variety of trends (most visible upward and downward trends, and stable numbers of convictions over the period) across the EU.

[129] However, there is also information that in some Member States, the detection and prosecution rates are much higher than reflected by conviction rates, as cases are often dismissed at court level, probably due to a lack of awareness of the harmfulness of environmental crime and a lack of specialisation and knowledge on the part of the criminal judge.

[130] It should be noted that the numbers shown in this graph are not comparable across Member States. What is included as 'environmental crime' in the data provided by authorities varies from one Member State to another and the data sometimes include types of crime that are not covered in the Directive (for instance, logging in LV, or forest fires in PT).

Figure 5: Number of convictions for environmental crime in HR, CZ, DE, LV, PT and ES from 2008 to 2018.



Source: Member States data sheet, provided by national ministries for HR, CZ, DE, LV, PT, and, for ES: 8th Round of Mutual Evaluations - 'The practical implementation and operation of European policies on preventing and combating Environmental Crime'. Report on Spain, 2019, p.24.

In two Member States – ES and to a lesser extent PT – the number of convictions for environmental crime has shown an upward trend since the adoption of the Directive, based on the figures provided by the national authorities. In other Member States, such as HR and DE, there has been a decrease in the number of convictions for environmental crime, and in Member States such as CZ or LV, the number of convictions has remained quite stable from 2008 to 2018.

The reasons behind the trends in the individual Member States are diverse, and reflect the uneven level of enforcement and prioritisation of environmental crime across Member States.[131] In PT the upwards trend might be explained by the existence of specialised police bodies, the efficient use of digitalisation, the active participation of NGOs in criminal proceedings, and proactive cooperation with Spain and Brazil. In ES, town planning and land-use planning crimes are considered as priorities and constitute the majority of environmental crimes for which there is a conviction. However, these are not necessarily environmental crimes covered by the Directive. In CZ, where the trend has remained quite stable, the total number of criminal prosecutions of waste crimes is extremely low: the vast majority of cases of environmental violations are dealt with under administrative law (99%). In LV, the number of environmental crime cases is very small and remains stable: most cases are classified as economic crimes or administrative cases. The main types of environmental crime are illegal hunting, illegal cutting and illegal fishing, and there are no specific national programmes with regard to waste crime. In HR, where there is a decrease in the number of convictions, waste crime is not a priority and is often categorised as a misdemeanour. There are no measures to address environmental crime, such as a national strategy, specialisation, budget, international cooperation, and the use of special investigation techniques. However, HR has made an effort in capacity building, but the enforcement chain seems to collapse at the level of judges. In DE, several sources confirm that the number of reported environmental crimes

131 Reports consulted for statistical data collection were country reports from the 8th Round of Mutual Evaluations 'The practical implementation and operation of European policies on preventing and combating Environmental Crime'; Member State responses to the Finnish Presidency questionnaire for the 'Working paper on Environmental criminal law in the European Union', country reports from EFFACE, and other national sources, on a case-by-case basis.

has decreased[132]. The decline was attributed to an enforcement deficit, e.g. ineffective controls, resource constraints, and prioritisation of other issues[133].

In conclusion, there are no common trends in the Member States. Conviction trends appear to be influenced by a number of factors other than the availability of criminal sanctions, such as the quality of the practical implementation of the Environmental Crime Directive in the respective Member State or the extent to which environmental crime is dealt with under administrative law. Some Member States have indicated that they rely on administrative sanctions. These, however, do not contain the same degree of social disapproval as criminal sanctions, and the majority of the stakeholders consulted has confirmed that criminal sanctions are indispensable to complement administrative sanction systems[134].

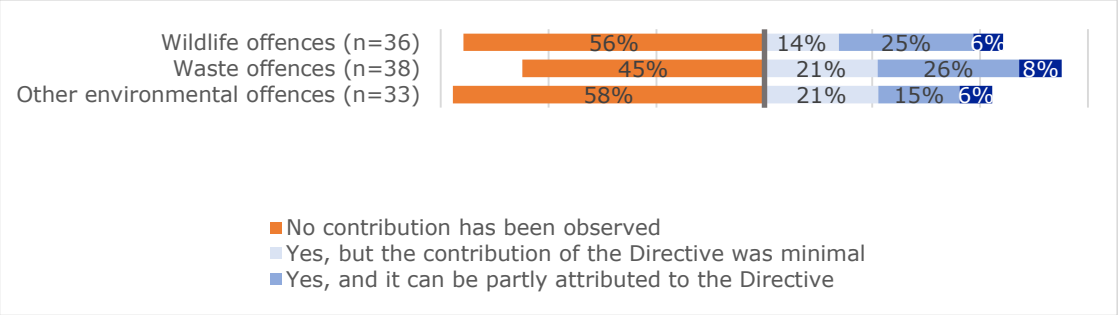
Trends in the liability of legal persons for environmental crime

The manner in which legal persons are held liable for environmental offences is essential for the effectiveness of the Directive. 60% of respondents to the targeted consultation questionnaire observed an increase in the involvement of legal persons in environmental crime, and one stakeholder estimated that 75% of environmental crime is committed by legal persons. This is also in line with the findings of a number of studies and reports in the area from different stakeholders such as NGOs, Europol, EFFACE reports and professional networks.

Although information suggests an upward trend in the imposition of liability on legal persons, the available statistical data cover fewer than a quarter of Member States.

Despite the growing involvement of legal persons in environmental crime, the majority of respondents to the targeted consultation questionnaire considered that the Directive resulted in practice in no, or only a minimal, increase in the imposition of liability for environmental crime on legal persons.

Figure 6: Question 14 of the targeted stakeholder questionnaire. 'In your opinion, has the Directive overall resulted in the increased imposition of liability for environmental crime on legal persons?' (share of total respondents, n=38)

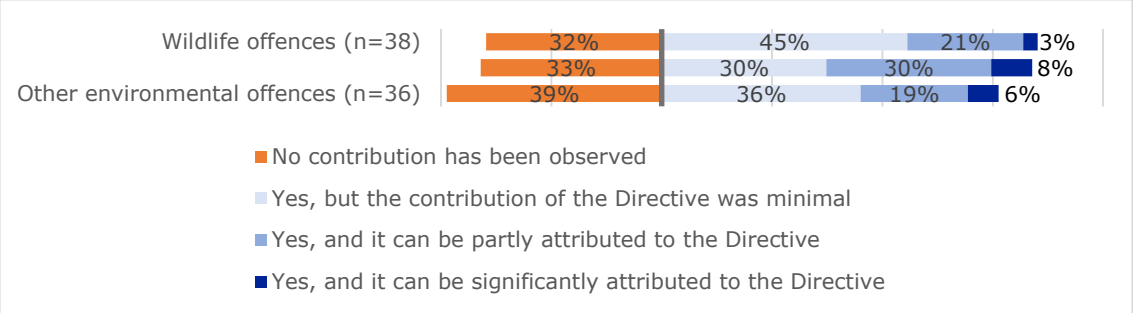


132 8th Round of Mutual Evaluations – report on Germany; EFFACE report; German Environmental Agency (2018) 'Environmental Offences in Germany 2016: a statistical analysis'.

133 Sina, S. (2015). Fighting Environmental Crime in Germany: A Country Report. Study in the framework of the EFFACE research project, Berlin: Ecologic Institute, p.72.

134 See the results of the European Economic and Social Committee information report, the public consultation and the targeted consultation, all undertaken for the purposes of this evaluation. However, 25% of businesses that responded to the public consultation considered administrative sanctions to be effective and sufficient, unlike public authorities and NGOs (0% for both of them).

Figure 7: Question 12 of the targeted stakeholder questionnaire 'In your opinion, has the Directive resulted in an overall increase of criminal trials of environmental crimes in the Member States?' (total number of respondents, n=40)



Conclusion on the creation of a dissuasive sanction system – objective 2

Based on the available data and the views of the stakeholders, it can be concluded that the effectiveness of the Directive with regard to a dissuasive sanction system is dependent on its practical implementation. It must be kept in mind that criminal law can only be part of an overall effective, proportional sanction system also involving administrative law and civil law.

However, in a number of Member States the maximum levels of available financial sanctions are very low, so that even if complemented by sanctions other than fines, their deterrent effect could be doubted. This is true especially for legal persons, where the majority of Member States do not link the financial penalties to the financial situation of the legal person, or the financial gain that was obtained through the criminal offence.

6.1.3 REDUCTION IN ILLEGAL TRADE

***Evaluation question*:**

6. Has the Directive reduced illegal trade?

As explained above under Section 4 – 'Baseline and Points of Comparison' – this evaluation assesses in particular trends in wildlife and waste crime, as they belong to the best-documented and largest areas of illegal trade.

Illegal waste shipment

As part of their reporting obligations[135] to the Commission pursuant to Article 51(2) of the Waste Shipment Regulation, Member States provided their records of illegal waste shipments per year. Reported illegal shipments of waste by Member States show a slightly decreasing trend in the period 2010-2012, followed by a slight increase from 2013 to 2015 (with a peak in 2014). The amount of illegal waste shipments reported varies significantly from one Member State to another. However, the number of detected illegal waste shipments remains in the range of 700-1,000 in the EU from 2010 to 2015. These figures are likely not to reflect the real picture as many cases go undetected.

135 Information is available in the Commission reports on the implementation of the Waste Shipment Regulation, https://ec.europa.eu/environment/waste/reporting/index.htm.

Table 10: Number of illegal shipments of waste recorded by Member State authorities

	2010	2011	2012	2013	2014	2015	Total
Austria	51	115	81	62	85	18	412
Belgium	392	66	56	63	263	318	1,158
Bulgaria	28	8	34	12	10	8	100
Croatia	N/A	N/A	N/A	8	7	12	27
Cyprus	1	0	1	1	3	2	8
Czechia	4	5	5	1	4	5	24
Denmark	3	0	0	16	14	29	62
Estonia	5	3	8	5	5	7	33
Finland	12	18	30	9	7	10	86
France	9	7	0	31	42	35	124
Germany	161	187	161	65	68	54	696
Greece	2	6	14	2	3	5	32
Hungary	25	19	19	20	11	15	109
Ireland	11	14	9	5	4	0	43
Italy	1	0	4	4	4	6	19
Latvia	0	2	0	0	0	0	2
Lithuania	6	10	5	3	1	0	25
Luxembourg	0	0	4	0	0	0	4
Malta	0	0	0	0	0	0	0
Netherlands	145	189	115	167	157	169	942
Poland	15	N/A	15	15	50	81	176
Portugal	1	1	4	5	7	8	26
Romania	0	1	0	0	1	15	17
Slovakia	1	2	1	0	4	7	15
Slovenia	44	19	15	34	34	15	161
Spain	0	0	0	0	0	1	1
Sweden	56	39	31	97	92	98	413
United Kingdom	63	59	61	161	161	63	568
Total	**1,044**	**785**	**673**	**786**	**1,037**	**981**	**5,306**

Source: Commission reports of 17 December 2015 and 22 November 2018 on the implementation of Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste - Generation, treatment and transboundary shipment of hazardous waste and other waste in the Member States of the European Union (2010-2012; 2013-2015).

Results from IMPEL-TFS enforcement actions[136] related to shipment of waste in 2008-2011 (EA II), 2012-2013 (EA III) and 2014-2015 (EA IV) also provide an indication of the Waste Shipment Regulation violation rate. In 2014-2015, 77% of illegal shipments were intra-EU. The proportion was similar in the previous project (70% intra-EU).

Table 11: Transport inspection results in IMPEL-TFS Enforcement Actions II to IV

	Number of participating countries	Number of waste inspections	Number of violations	% of violations
2008-2011 (EA II)	27[137]	3,897	833	21.4%
2012-2013 (EA III)	22[138]	3,162	1,011	32%
2014-2015 (EA IV)	21[139]	4,923	815	16.6%

IMPEL –TFS Enforcement Actions, Project reports 2008-2011, 2012-2013, 2014-2015.

136 The European Regulation (EC) No 1013/2006 on shipments of waste concerns the prevention of the illegal shipment of waste. The Enforcement Actions project under the umbrella of IMPEL-TFS (Transfrontier Shipment) coordinate efforts to monitor, prevent, deter and enforce illegal waste shipments within, into and out of the European Union.

137 AT, BE, BG, CY, CZ, DE, DK, EE, FI, FR, HR, HU/RO, IE, LT, NL, PL, PT/ES, SK, SI, SE, UK – including separately England and Wales, Northern Ireland, Scotland – and Norway, Serbia, Switzerland, Turkey.

138 AT, BE, CY, CZ, DE, DK, EE, FI, FR, HR, IE, LU, NL, PL, PT/ES, SI, SE, UK – including separately England and Wales, Northern Ireland, Scotland – and Norway, Serbia, Switzerland.

139 AT, BE, BG, CY, DE, DK, EE, FI, FR, HU, IE, LU, MT, NL, PL, PT, SI, SE, UK – including separately England, Wales, Northern Ireland, Scotland – and Norway, Switzerland.

However, these figures mainly concern cases of missing or incomplete formalities and/or other violations that do not necessarily constitute environmental crime.

Some Member States have pointed out that there is a correlation between the growth of cross-border legal waste shipments and the number of waste crimes. For instance, in DE, the increase in cross-border waste shipments since the 1990s correlated with an increase of the number of cases of waste trafficking detected[140]. According to Eurostat, exports of all notified waste (hazardous and non-hazardous) tripled between 2001 and 2016, from 6.3 million tonnes in 2001 to 21.6 million tonnes in 2016. Within these, the amount of hazardous waste shipments from EU Member States to either other EU countries or non-EU countries increased by 63%, from 4.0 million tonnes in 2001 to 6.5 million tonnes in 2016, and hazardous waste shipments are largely intra-EU. This increase might indicate, if the correlation between the growth in legal and illegal waste shipments is correct, that criminal waste activities are increasing in the EU.

Wildlife trafficking

The data compiled by the NGO TRAFFIC of CITES[141]-related seizures reported by Member States[142] show an upward trend in the number of seizures taking place in the EU and at EU external borders from 2011 to 2017[143]. Although the number of reporting Member States has increased over the years, the largest share of seizures affects a relatively constant group of Member States. This suggests that the increase is not only due to more reporting Member States but also indicates an increase in the number of seizures for the period 2011-2016.

Table 12: Number of CITES-related seizures reported by Member States (2011-2017)[144]

Year	Number of seizures[145]	Number of Member States reporting	Member States with highest number of seizures
2011	667	14	75% of seizures from DE, IT, UK
2012	967	17	75% of seizures from DE, IT, UK
2013	1468	15	72% of seizures from DE, ES, IT, UK
2014	1567	19	94% of seizures from AT. DE, ES, FR, IT, NL, UK
2015	3190	20	97% of seizures from AT. DE, DK, ES, FR, NL, UK
2016	2268	22	94% of seizures from AT, DE, ES, FR, NL, UK

140 Council of the European Union, 8th Round of Mutual Evaluations, country report on Germany, 2018, p. 20.

141 The **Convention on International Trade in Endangered Species of Wild Fauna and Flora** (CITES) is administered through the United Nations Environment Programme (UNEP). A Secretariat, located in Geneva, Switzerland, oversees the implementation of the treaty and assists with communications between countries.

142 Data on illegal wildlife trafficking in the EU is collected within EU-TWIX, which stands for European Union Trade in Wildlife Information eXchange. It is managed by the NGO TRAFFIC. Introduced in 2005, EU-TWIX is a database of information on wildlife seizures in the EU and an associated mailing list that allows quick and efficient information sharing between designated enforcement officers from all 27 EU Member States, plus Croatia, Montenegro, Norway, Serbia, Switzerland and Ukraine.

143 For 2011-2016, the data were gathered by TRAFFIC based on reports of significant seizures submitted by EU Member States to the European Commission. For 2017, the data were gathered from the EU-TWIX database.

144 In particular, the main commodity groups are broadly the same every year – medicinal, coral and ivory. Other commodity groups continuously traded include live reptiles, European eels, or live birds. TRAFFIC, See overview of seizures of CITES-listed wildlife in the European Union, 2011-2017. Available at: https://ec.europa.eu/environment/cites/reports_en.htm#seizures_annual_illegal

145 The total number of seizures reported here contains both international (i.e. at EU external border) and internal (inside the EU) seizures.

2017	5644	28	79% of seizures from DE, ES, FR, NL, UK

Source: Traffic, 2011-2017[146]

An earlier report from TRAFFIC for 2007-2011[147] provided higher seizure records per year compared to those in the above table for the year 2011 and subsequent years (i.e. 12,486 seizure records for the period, with relatively constant numbers per year varying from 2,300 and 2,800 records). This report gathered data from EU-TWIX, i.e. the same source as the 2017 data in the table above. It is striking that data coming from EU-TWIX provide higher seizure records than those provided in the seizure reports submitted by EU Member States to the European Commission. Data from the EU-TWIX (2007-2011 and then 2017) also tend to show an upward trend in seizures between the end of the 2000 and 2017.

Those involved in trafficking of waste and endangered species are mainly organised crime. The most profitable transnational criminal activities linked to environmental crime include illicit wildlife trafficking, illicit timber trading, and illicit fish trading.

Involvement of organised crime in waste crime and wildlife crime[148].

Another indicator for the negative development of waste crime and wildlife crime is the persisting and increasing interest of organised crime groups.

The EU is a transit and destination region for the trafficking of endangered species, which are moved on to destination countries in Asia and North America. These species include glass eels, reptiles, exotic birds, pangolin, fish, narwhal meat, shells, corals, date mussels, timber and ivory[149]. According to Europol, the number of organised crime groups involved in the trafficking of endangered species is low, but increasing and highly specialised[150].

Although many Member States indicated in their national report for the 8th Round of Mutual Evaluations that the involvement of organised crime was low or non-existent, several noted increasing involvement of organised crime groups in waste crime. In IT, the illegal management of waste is considered a growing activity, with an increasing transnational dimension, in part as a result of the involvement of organised crime groups. The UK 'Independent review into serious and organised crime in the waste sector' also noted a 'steady rise in organised, large-scale waste crime', mostly coming from existing organised crime groups that are already involved in other types of crime and are now getting involved into the waste and recycling markets[151]. SI has also indicated that the involvement of organised groups committing environmental crime is increasingly visible since 2017[152].

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146 Overview of seizures of CITES-listed wildlife in the European Union. Available at: https://ec.europa.eu/environment/cites/reports_en.htm#seizures_annual_illegal.

147 Victoria Mundy-Taylor, 'Illegal Wildlife Trade and the European Union. An Analysis of EU-TWIX Seizure Data for the Period 2007-2011,' 2013.

148 EnviCrimeNet, 'Environmental Crime Network (EnviCrimeNet) Report on Environmental Crime,' 2016. Available at : http://www.envicrimenet.eu/images/docs/envicrimenet%20report%20on%20environmental%20crime.pdf.

149 Europol, 'Serious and Organised Crime Threat Assessment: Crime in the Age of Technology,' 2017, 60, https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017 p.41.

150 *ibid.*

151 C. Noel, L., Church, C., Mulligan, J., Naylor, 'Independent Review into Serious and Organised Crime in the Waste Sector,' 2018.

152 Council of the European Union, 'Report on Slovenia (8th Round of Mutual Evaluations)', p. 22.

IT has noted that in many cases, legal businesses are involved in waste crime, making it an 'anomalous form of serious organised crime'[153]. Sources from Belgium and the UK confirmed this finding, although they also stated that criminal organisations involved in other types of crime are now moving into environmental crime. BE indicated in its response to the Finnish Presidency questionnaire that environmental crimes are committed by legitimate businesses that increase their profit through fraud[154]. The UK review indicated that organised criminals in the waste sector are more likely to operate behind legal businesses than organised crime groups involved in other types of crime[155]. Several other sources confirm the permeability between legal and illegal waste activities[156].

Impact of the Directive on coordinated action against illegal trade

The exact number of waste and wildlife crimes, and its development over the years, is unknown. Conclusions on effectiveness can only be drawn from indirect information and trends. Upward trends in seizures or detection of illegal activities could point to an increase in wildlife and waste crime rather than a reduction. This interpretation is also supported by growing global trade and internet trade fuelling forms of illegal trade. This interpretation is further supported by the interest of organised crime in these sectors (see above). Therefore, it might be concluded that the Directive did not achieve its objective to reduce environmental crime. However, stakeholders stressed on the positive impacts of the creation of a common legal framework on environmental crime by the Directive, and the resulting facilitated cross-border cooperation.

In the targeted consultation, respondents[157] have confirmed that the approximation of the regulatory framework has generally facilitated success in fighting illegal trade.

153 Council of the European Union, 'Report on Italy (8th Round of Mutual Evaluations)', 2018.

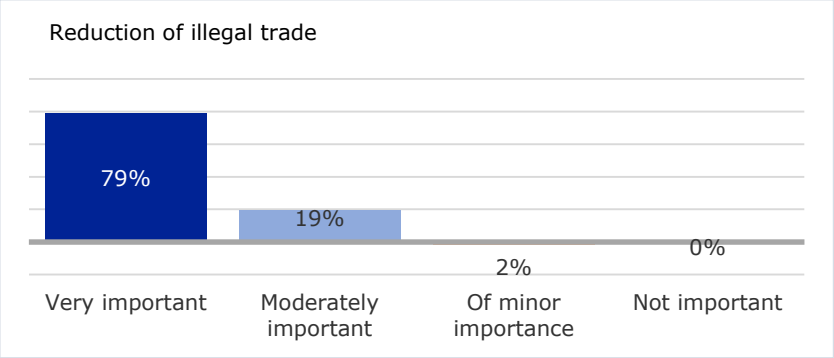
154 Council of the European Union, 'Belgium Reply to Discussion Paper by the 2019 Finnish Presidency on the State of Environmental Criminal Law in the EU'. Final Report of the Finnish Presidency see Footnote 36.

155 Noel, L., Church, C., Mulligan, J., Naylor, 'Independent Review into Serious and Organised Crime in the Waste Sector', 2018, https://www.gov.uk/government/publications/serious-and-organised-waste-crime-2018-review.

156 EFFACE, Illegal e-waste shipments from the EU to China Quantitative and monetary analysis of illegal shipments and its environmental, social and economic impacts . Available at: https://efface.eu/sites/default/files/EFFACE%20D3.2e%20Quantitative%20and%20monetary%20analysis%20of%20the%20impacts%20of%20illegal%20e-waste%20shipments%20from%20the%20EU%20to%20China.pdf; Europol, 'Use of Improvised Illegal Waste Disposal Sites by Criminals and OC Groups in the EU - Scan Policy Brief,' 2011. Available at : https://www.europol.europa.eu/newsroom/news/europol-warns-of-increase-in-illegal-waste-dumping .

157 Respondents were practitioners from all levels of the law enforcement chain, defence lawyers, one business, national ministries and an industry organisation. They were not divided in their replies.

Figure 8: Question 49 of the targeted stakeholder questionnaire. 'How important are the following benefits of having the same legislation in relation to environmental crime in all EU Member States? Reduction of illegal trade' (share of total respondents, n=42)



This result was also confirmed in interviews with practitioners who said the Directive had enabled coordinated action against illegal trade by providing a common framework, although they attribute improved coordination in the first place to a generally higher awareness regarding the need to fight environmental crime.

Success stories can be identified with regard to specific cases. For example, with regard to glass eel trafficking, although glass eels are marked as 'critically endangered' on the IUCN Red List, the European population of glass eels appears to show signs of recovery which might indicate that illegal trade in this specific species has been reduced. The extent of glass eel trafficking was identified as one of the main threats to the eel population. Transnational enforcement actions, such as Operation LAKE initiated by Europol, aimed at the reduction of eel trafficking can therefore be an important factor in protecting the glass eel population.

Conclusion

In conclusion, there is little evidence that illegal trade in wildlife and waste is being reduced through the Directive. Nonetheless, the Directive helps combat these forms of environmental crime by providing an EU framework for such crime, facilitating cross-border cooperation. As outlined under Section 2.3. – 'Intervention Logic', given the many trends outside the Directive that influence criminal activities, the Directive was not expected to cause a reduction in environmental crime by itself, but to play its role as criminal law instrument in an approach to combating environmental crime that must be more comprehensive.

6.1.4 IMPROVEMENT OF JUDICIAL COOPERATION

Evaluation question:

7. Has the Directive facilitated judicial cooperation?

UNEP and Interpol's assessment of the rise of environmental crime noted that 'the sheer financial scale and sophistication of environmental crimes now require an entirely different scale of coordinated responses and international collaboration, working across ministries and jurisdiction at the national level, to international cross-UN and trans-border collaboration'[158].

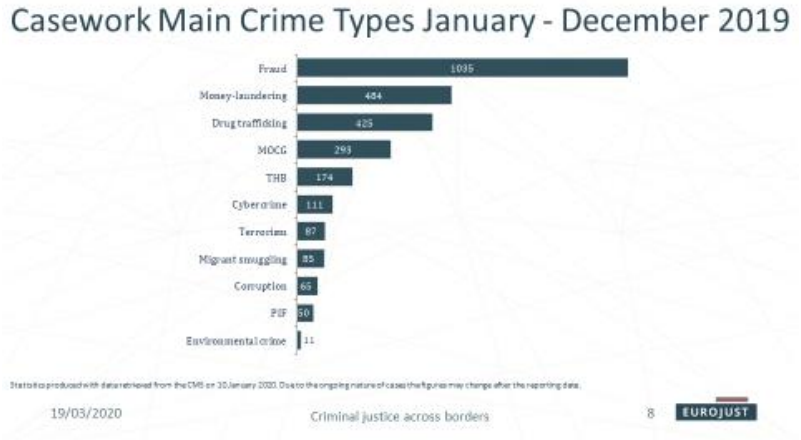
[158] UNEP, 'The Rise of Environmental Crime, a Growing Threat to Natural Resources, Peace , Development and Security. A UNEP- INTERPOL Rapid Response Assessment. United', 2016, p.11.

At EU level, in particular Europol and Eurojust are both mandated to facilitate cross-border cooperation with regard to crime, including environmental crime. These cases systematically involve at least two EU countries or an EU country and a non-EU country. However, both EU agencies depend on Member States requesting their support, and have no independent investigatory or prosecutorial roles. OLAF (the European Anti-Fraud Office) also works with national authorities in EU and non-EU countries to prevent illicit products from entering the single market. This contributes to the enforcement of the Timber Regulations and the CITES regulations.

Eurojust

From 1 January 2004-30 April 2017, Eurojust dealt with 64 cases of environmental crime out of a total of 18,777 cases[159]. The number of cases fluctuated between two and nine per year over the reporting period. The most frequently involved Member States in such type of cases were DE (26) and NL, followed by the UK (22) and FR (21). In 2018, Eurojust opened 24 new cases, and in 2019, 11 new cases, based on requests from Member States. Environmental crime is the crime category for which Eurojust's support is least requested. According to Eurojust, many cases involving environmental crime have been registered under other crime categories.

Figure 9:



In addition, Eurojust's involvement in environmental crime cases shows only a slight upward trend, as illustrated by the tables below.

Table 13: The use of joint investigation teams for environmental crime

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019
Number of joint investigation teams[160]	1	0	0	0	0	0	2	2	2

Table 14: The use of coordination meetings for environmental crimes

Year	2015	2016	2017	2018	2019
Number of coordination meetings[161]	1	0	4	6	8

159 Data provided by Eurojust.
160 Data provided by Eurojust
161 Data provided by Eurojust

Table 15: The use of coordination committees for environmental crime

Year	2015	2016	2017	2018	2019
Number of coordination committees[162]	0	0	2	0	1

By contrast, Eurojust confirmed that the number of European arrest warrants and joint investigations related to environmental crime has increased since the adoption of the Directive. However, Eurojust attributed this to the implementation of the EU Action Plan against Wildlife Trafficking[163] rather than to the Directive. However, such action would not be possible without the harmonised criminal offences and sanctions as required by the Directive.

Europol

The operational analysis of data from national law enforcement authorities, including data on ongoing investigations, is one of Europol's core missions. In this context, it is highly dependent on information provided by Member States. Europol has supported some operations aimed at tackling environment crime in recent years[164]. It also coordinates the activities of EnviCrimeNet, an informal network of law enforcement authorities active in the field of environmental crime, which was set up in 2011. However, despite some positive examples, the number of cases in which Member States have requested support from Europol remains low, and no official statistics are available.

In May 2017, the Council included environmental crime as a priority for the EU policy cycle on organised crime for 2018-2021, seeking to disrupt organised crime groups involved in environmental crime, more particularly wildlife and illicit waste trafficking. The cycle applies a multidisciplinary approach and involves non-EU countries, external stakeholders and a variety of parties in the EU Member States. Therefore, Europol has set up a focal point specifically dealing with environmental crime and has developed a multi-annual strategic plan (EMPACT - European multidisciplinary platform against criminal threats) and an operational action plan covering this new priority, facilitating cooperation in this area. This has led in the Member States to an improvement in cooperation and in awareness of the need to put in place multidisciplinary cross-border cooperation to tackle environmental crime.

The tables below show a sharp increase in Europol's environmental cases and messages exchanged through SIENA[165], since the first operational year 2018 under the EU policy cycle.

Tables 16: Europol environmental cases and messages

YEAR	Cases		Year	Total messages received
2017	**23**		2017	273
2018	**261**		2018	1778
2019	**208**		2019	2148

[162] Data provided by Eurojust.

[163] https://ec.europa.eu/environment/cites/trafficking_en.htm.

[164] E.g. the international law enforcement operation COBRA III (https://www.europol.europa.eu/activities-services/europol-in-action/operations/operation-cobra-iii) and the recent glass eel case (https://www.europol.europa.eu/newsroom/news/17-arrested-for-smuggling-glass-eels-worth-eur-10-million).

[165] Europol's secure information exchange network application enabling swift and user-friendly exchange of operational and strategic crime-related information between Member States and third parties).

Grand Total	**492**		**Grand Total**	**4199**

Although these activities cannot be directly attributed to the Directive, the improved cross-border cooperation through the creation of a common framework of EU environmental crime has facilitated these actions.

Professional networks

At Member State level, a number of practitioners' cross-border networks have been established representing all levels of the enforcement chain. Networks focussing on combating environmental crime are the European Network of Prosecutors for the Environment (ENPE) and EnviCrimeNet for the police. IMPEL and EUFJE also do relevant work on tackling environmental crime. The networks are growing, delivering reports on selected issues, sharing learning and best practice, establishing good case-law and developing training opportunities in relation to fighting environmental crime across the EU. Their expertise and knowledge is substantial. The networks are members of the Environmental Compliance and Governance Forum established under the 2018 action plan to improve environmental governance and compliance. The development of these professional networks cannot be directly attributed to the Directive. These networks, however, play a role in facilitating cross-border cooperation in investigating and prosecuting environmental crime, and thus have been supporting the Directive's overall effective implementation

Stakeholder opinions

The majority of the respondents to the targeted consultation questionnaire took the view that the Directive has resulted in increased cooperation between Member States. With regard to the public consultation, a large proportion of the respondents to it thought that insufficient cross-border cooperation between Member State authorities could be improved, and a significant minority of respondents (31%) identified a lack of support at EU level from bodies such as Eurojust. The impact of the professional networks was more visible to stakeholders. More than 60% of the respondents to the targeted consultation agreed that more cross-border cooperation has been established, but did not attribute this to the Directive. Interviews with practitioners supported the limited influence of the Directive.

Conclusion with regard to improved judicial cooperation – objective 4

Although there is progress towards cross-border cooperation, the Directive has not proved to be a decisive element in boosting cross-border cooperation in practice. This cannot be a surprise, as the Directive does not contain any specific provisions to directly encourage and foster cross-border judicial cooperation. The creation of an EU framework for environmental crime through the Directive is a necessary factor for such cooperation, but – as shown - it is not sufficient to make a clear difference.

6.1.5 General Objective – Reduction of environmental Crime/Causality of the directive

8. To what extent can achievements be credited to the Directive? What other factors have influenced possible achievements observed? Which factors hamper or reduce the Directive's effectiveness?

With regard to the general objective to reduce environmental crime, no direct effect could be measured due to the unknown amount of environmental crime and the many factors outside the Directive's scope that influence the level of crime (see under

Section 2.3. – 'Intervention Logic'). The growing international trade in environmentally sensitive goods and the high level of organised crime involved in environmental crime rather suggest that the level of environmental crime has been increasing.

However, an overall majority of the respondents to the public consultation, the targeted consultation and the stakeholders consulted by the EESC felt that the criminalisation of environmental crime does help protect the environment. It was, however, difficult to link any improvements in environmental protection to the Directive. Respondents to the public consultation confirmed improvement in the EU overall, rather than in their respective Member State. This suggests that stakeholders perceive a general higher awareness and willingness to combat environmental crime rather than concrete improvements in their neighbourhoods. Positive impacts observed concerned individual cases rather than the overall picture. Practitioners have pointed to improved trans-border cooperation (in individual cases) facilitated by a common understanding of what conduct can constitute environmental crime, Generally, police officers and inspectors were more positive about the impact of the Directive than judges and prosecutors. NGOs and business representatives did not think that the Directive made any difference.

As explained under Section 2.3. – 'Intervention Logic', the Directive must be considered as an element in a broader range of concerted measures that contribute to fighting and reducing environmental crime. The achievement of its specific objectives is most important in this regard.

6.1.6 KEY FINDINGS

There is evidence of progress towards the achievement of the objectives of the Directive:

- creation of an EU-wide legal framework of environmental criminal offences;
- introduction of liability regimes for legal persons for breaches of environmental law;
- overall higher sanction levels than before the Directive in the law of the Member States, at least with regard to natural persons;
- slight upward trends in cross-border cooperation.

However, significant disparities between Member States persist. This is because the Directive uses legal terms for environmental criminal offences that risk to lead to different interpretations to the Member States, and only requires sanction levels that are 'effective, dissuasive and proportionate', without giving any further orientation.

There is no evidence that the Directive has reduced illegal trade in environmentally sensitive goods. Growing numbers of detections and seizures of illegal trade are likely to reflect the overall growth in international trade and increasingly efficient administrative controls. On the other hand, growing numbers of detections of illegal trade and individual success stories are also positive developments which can be built on further.

There are indications of more cross-border cooperation, but this is not directly attributable to the Directive, which does not contain any specific provisions addressing cross-border cooperation in particular. However, the criminalisation of environmental offences through the Directive has contributed to attract higher public awareness and enabled more effective cross-border cooperation by creating an EU-wide set of environmental crimes that can be prosecuted in all Member States.

Progress towards the achievement of the objectives of the Directive has been supported by increased public awareness and concern about environmental issues, as well as the creation and development of practitioner networks, while shortcomings in enforcement,

in particular a lack of resources and prioritisation, are still an obstacle. The reduction of crime as a general objective does not depend only on the Directive, which has to be considered as only one element in a holistic approach to reducing crime.

6.2 EFFICIENCY

Efficiency considers the relationship between the resources used to implement the Directive and the changes observed. This part of the report aims to provide an understanding of the extent to which the benefits of having and implementing the Directive justify the costs.

Evaluation questions:

9. What are the costs and the benefits of the Directive – in the individual Member States and overall?
10. What have Member States done as a result of the Directive to prevent and tackle environmental crime?
11. Are the costs justified and proportionate?
12. Is there potential for the EU and Member States to simplify or reduce the administrative burden without undermining the intended objectives of the intervention?

6.2.1 COSTS

Costs incurred by businesses

The Directive itself has not generated significant additional costs for businesses or the public, as the duty to comply with environmental obligations does not stem from the Directive as such, but from compliance with the underlying administrative environmental legislation to which the Directive refers. Even if the results of the public consultation indicate that the Directive may have helped improve duty holders' compliance[166] with environmental law and reduced illegal trade (of waste, wildlife, dangerous material), those costs are not primarily related to the Directive, but to the underlying environmental legislation as such.

Costs incurred by public authorities

Publicly available information on budgets allocated to the protection of the environment is very limited and no comparison is possible between the period before and after the entry into force of the Directive. Moreover, where budgets related to the protection of the environment could be identified, such budgets could not be fully attributed to the implementation of the Directive. Typically, both administrative and criminal law enforcement measures are covered by such budgets, including inspection and monitoring activities. It was not possible to obtain details on the share of the budget allocated to investigate, prosecute or litigate criminal activities related to the environment specifically.

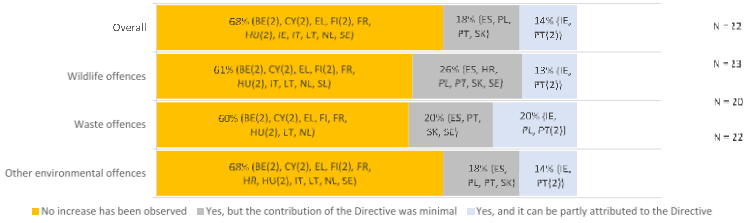
Staff costs for public authorities

Almost 70% of respondents to the targeted consultation felt the Directive did not bring about any change in the number of staff involved in enforcing the protection of the

[166] According to the results of the public consultation, 33% of businesses considered that the criminalisation of environmental offences did not lead duty-holders to better compliance (they considered that compliance measures were taken independently of the criminalisation).

environment through criminal law. This includes Member States that introduced additional environmental criminal offences into their national law when transposing the Directive (e.g. CY, EL, IT). An increase in such staff has been observed in seven Member States.

Figure 10: Question 5: In your opinion, has the Directive resulted in an increase in the number of staff in your country involved in enforcing environmental crime?



Source: targeted stakeholder questionnaire

Interviews with stakeholders from Member States where an increase in staff was observed were not able to determine the level of such increases or confirm that the increase had been caused by the Directive.

Training costs

Interviews with practitioners from across the Member States[167] suggest that in some of them more training has been provided since the introduction of the Directive, in particular in relation to wildlife and waste criminality. However, the data provided indicate that training costs per individual involved in environmental crime enforcement are not significant. According to the interviewees, only a small proportion of those costs could be attributed to the Directive. It could not be demonstrated that, where training was stepped up, it was due to the Directive.

Specialisation costs

Although some Member States have put in place specialised units or staff within their law enforcement authorities or other public authorities and judiciary for dealing with environmental crime, in most cases this did not happen due to the Directive.

Substantial changes in capacities and structures following the EU acquis, including the Directive, have been identified in HR, where a project was conducted as part of the country's accession to the EU, aimed at training local authorities and practitioners, fostering cooperation and developing material to facilitate the enforcement of environmental crime legislation. The total cost of the project was EUR 1.1 million.

Case study 2 – implementation costs (HR)

In the context of its accession to the EU, Croatia started a project in 2008 aimed at strengthening enforcement of the new Environmental Protection Act, harmonised with EU legislation for criminal offences against the environment. Although criminal offences against the environment were already punishable under the Criminal Act and tackled by the new Environmental Protection Act, the project aimed to 'improve the overall system of environmental protection with special focus on enforcement (inspections, misdemeanour and criminal cases) by setting up the administrative structures necessary

167 Fourteen interviews were conducted in total with practitioners from the following Member States: Belgium, France, Germany, Poland, Portugal, Slovakia, Spain, Sweden. See Annex 2 for more detail on the profiles of interviewees.

for the implementation of the Directive', 'increase enforcement capacity of the administrative bodies, including inspection services, related to misdemeanour and criminal offences against the environment', and 'improve cooperation among key stakeholders'. The total cost of the project was EUR 1 100 000, 95% financed by the European Commission under the 2008 instrument for pre-accession assistance (IPA) programme and co-financed by the Republic of Croatia.

As part of the IPA 2008 project, training was given to environmental protection inspectors and to staff in other ministries, as well as judicial, police and customs authorities. Information toolkits were created for prosecutors and judges. Standardised methods were created for cooperation between environmental protection inspectors and other authorities, to make it easier to mount prosecutions, and a manual now lays down guidelines for coordinated enforcement.

In the aftermath of the project, the role of 'investigator' was created following changes in the Croatian Criminal Procedures Act. The investigator is appointed by the State Attorney to perform certain actions. Environmental inspectors can also be appointed as investigators within their jurisdiction and competence. Furthermore, a National Environmental Security Task Force was created, on the initiative of Interpol, to coordinate preventive action at national and international level.

A follow-up project (EU IPA 2011 Twinning Light Project) was launched in 2011 to improve 'capacity building of the environmental inspection and other relevant authorities and institutions for preventing, recognizing, investigating and prosecuting offences against environment'.

6.2.2 CONCLUSION

Overall, no considerable increase in costs attributable to the Directive could be established across the EU or in particular Member States. Where investments have been stepped up, this was attributed to a generally higher awareness of the need to better protect the environment rather than to the Directive itself. However, one can conclude from the information gathered that the Directive – and thus the criminalisation of environmental offences through EU law – contributes to this overall higher level of awareness and may have led to more efforts and investments with regard to law enforcement and judicial follow-up of environmental offences.

As no considerable costs for implementing the Directive could be identified, the evaluation questions on benefits and cost/benefits analysis are not relevant.

6.3 COHERENCE

The coherence criterion is used to assess how the Directive interacts with other relevant areas and instruments of EU policy, and whether there are significant contradictions or conflicts that stand in the way of their effective implementation or which prevent the achievement of their objectives. The following section presents the assessment of the extent to which the Directive is coherent internally, with other relevant EU criminal and environmental legislation and policies, as well as with the EU's international obligations.

Evaluation questions:

15. To what extent is the Directive coherent with other criminal legislation and policy such as financial crime, terrorism, organised crime, confiscation or freezing of proceeds

of crime, Charter of Fundamental Rights, market abuse, counterfeiting and ship-source pollution?

16. To what extent is the Directive coherent with other environmental legislation and policy? To what extent is the Directive and its horizontal approach coherent with the otherwise sectoral approach in the area of environmental legislation?

17. To what extent is the Directive coherent with the international obligations of the EU and/or Member States?

6.3.1 INTERNAL COHERENCE

The evaluation reviews how key provisions of the Directive are interlinked and how the Directive functions as a whole. The main issue in this respect is whether the legal technique of the Directive to define its scope by referring to a set of legislation in its annexes has worked in practice and has ensured the internal coherence of the Directive.

Approach to link criminalisation to a breach of environmental legislation listed in the annexes to the Directive

The Directive criminalises certain types of conduct only if committed 'unlawfully' (see above Section 2.2. – 'Description of the Intervention'), i.e. if obligations deriving from legislation in the two annexes to the Directive have been breached.

Recital 15 of the Directive states:

'Whenever subsequent legislation on environmental matters is adopted, it should specify where appropriate that this Directive will apply. Where necessary, Article 3 should be amended.'

However, new EU legislation, such as the Regulation on invasive alien species[168] or the REACH Regulation does not make such reference to the Directive.

The annexes do not contain all environmental legislation that existed at the time of the adoption of the Directive, leading to the situation that not all environmental offences are treated the same way. For example, fishery or illegal logging/timber trade offences are not covered by the Directive.

In other cases, sectoral criminal law provisions were introduced later to pre-existing environmental legislation. The 2005 Ship-Source Pollution Directive[169] was amended in 2009[170] to introduce criminal law provisions similar to the ones in the Directive regarding illegal discharges of polluting substances from ships, based on international rules [171].

Moreover, out of the 72 pieces of EU legislation in the Directive's annexes, 46 have been repealed and/or replaced since the entry into force of the Directive. Although, where new

168 Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, OJ L 317, 4.11.2014, pp. 35–55.

169 Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements, OJ L 255, 30.9.2005, pp. 11–21.

170 Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements, OJ L 280, 27.10.2009, pp. 52–55.

171 The International Convention for the Prevention of Pollution from Ships (MARPOL) is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. It was adopted on 2 November 1973 at IMO (International Maritime Organisation) and modified by the Protocol of 1978.

legislation repeals a previous act, it usually determines that references to the old act should be read as referring the new one, it could be doubted whether this approach meets the requirements of legal clarity and transparency in a criminal law context.

This illustrates that the legal technique used for the definition of the scope of the Directive, which criminalises only conducts that breach obligations deriving from legislation listed in the annexes, is complex and appears to be rather impracticable. From the start, the Directive only covered a part of existing legislation containing provisions to protect the environment. New legislation has not been systematically included under the Directive. This has led either to some environmental areas not being protected by criminal law at all or to sectoral criminal law being developed at EU level independent of the Directive (the Ship Source Pollution Directive). These inconsistencies tend to grow over time as environmental sectoral legislation change.

Ultimately, the approach of protecting the environment through criminal law only if the harm caused is linked to a breach of legislation could in itself be considered as not coherent with the EU policy goal of protecting the quality of the environment[172]. An alternative could be to define conduct that has caused particularly serious damage to the environment as criminal, independently of whether or not other legislation has been breached[173]. In any event, the identified inconsistencies make it difficult for duty holders and law enforcement authorities to recognise the behaviour that would constitute a crime, thus undermining legal clarity and equal application of environmental criminal law.

The role of environmental administrative law

Historically, the protection of the environment has been addressed by administrative law in most Member States. The Directive pays tribute to this history by only criminalising conduct harmful to the environment if there is a breach of environmental legislation. Consequently, after the transposition of the Directive in the Member States, two parallel sanctioning systems exist for environmental offences. The Directive does not rule on the interaction between these two systems. Recital 11 explicitly states that the Directive 'is without prejudice to other systems of liability for environmental damage under Community law or national law'.

Member States have taken different approaches to determining how administrative and criminal sanctioning systems should interact:

- parallel applicability of criminal and administrative sanctions in general;
- combination of criminal sanctions and administrative sanctions other than fines;
- administrative and criminal sanctioning systems are mutually exclusive.

Independent of the approach taken, in many Member States the delineation and interplay of the two systems is unclear, with no clear criteria or guidelines. Therefore, conflicts of competences, legal uncertainty and delays in proceedings that hamper effective law

172 The impact assessment to the proposal to the Directive (see Footnote 6) mentions the following example: 'For example, an installation has a permit in accordance with administrative legislation. Despite complying with this permit the installation causes substantial harm to the environment or to persons by emitting certain substances. In such a case criminal responsibility cannot be automatically ruled out. Depending on the circumstances of the case, such behaviour can still be considered criminal, even if no breach of administrative legislation has been determined'.

173 For example in the Council of Europe Convention on the Protection of the Environment through Criminal Law of 1998, see also Synthesis report of the Research Project 'European Union Action to fight Environmental Crime' by EFFACE (page 29).

enforcement are likely to occur[174]. Procedural safeguards to prevent double sanctioning are not always in place. Some Member States have communicated that in practice environmental criminal law in not applied in their country, but environmental offences are rather dealt with through the existing administrative sanction systems. The reasons are national systems where administrative sanction levels are higher than criminal ones, lower requirements with regard to evidence, and less complicated and time-consuming procedures. Administrative sanctions, however, do not contain the same degree of social disapproval as criminal sanctions, and the majority of the consulted stakeholders have confirmed that the availability of criminal sanctions is indispensable to complement administrative sanction systems[175].

By contrast, a well-balanced and clearly regulated interplay of the two regimes can be mutually reinforcing and enhance the effectiveness of law enforcement with regard to environmental crime: the possibility to use administrative and criminal enforcement tools provides for flexibility and a tailored approach to different categories of offences; administrative accessory sanctions can complement criminal sanctions to create a sanctioning system that is a deterrent overall (at least in national systems, which do not provide for accessory sanctions under criminal law). In many Member States, minor environmental cases are dealt with through administrative law only, thus relieving the criminal justice system (where proceedings are typically lengthier, more complex and more demanding with regard to the level of proof required for a conviction) and leaving space for the most serious cases.

With regard to prevention and detection of crime, administrative environmental law contributes to a large extent by provisions on stringent and frequent administrative monitoring, controls and inspections. In some Member States, administrative environmental authorities are mainly responsible for identifying environmental offences. In most Member States, administrative authorities, law enforcement authorities and prosecutors collaborate in either a formal or an informal manner in order to detect and investigate environmental crimes. However, informal cooperation may be insufficient, as it usually depends on the attitude of those in charge.

In conclusion, coherence between national criminal sanctioning systems according to the Directive and administrative law enforcement and sanctioning systems could be improved, to create synergies and foster an overarching approach among all parts of the law enforcement chain to effectively combat environmental crime[176].

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174 8th Mutual Evaluaitons country reports on Slovenia. Austria and Croatia

175 See the results of the EESC information report, the public consultation and the targeted consultation, all undertaken for the purposes of this evaluation (in the annexes). However, in the public consultation 30% of duty holders consider that administrative sanctions and preventive measures are effective and sufficient, whereas 100% of judges and prosecutors believe criminalisation should complement administrative sanctions and preventive measures.

176 The development of overarching national environmental crime strategies was also a recommendation in the final report of the 8th Mutual Evaluations, see Footnote 10.

6.3.2 COHERENCE WITH EU CRIMINAL LAW AND POLICY

Comparison with other criminal law instruments

Below, the Directive is compared to other and more recent EU criminal law, namely the Euro Counterfeiting Directive (2014)[177], the Anti-money laundering Directive[178] and the Market Abuse Directive (2014)[179].

The Directive contains fewer and less detailed provisions regarding a number of elements, as illustrated in the table below:

Table 17: Similarities and differences with other EU law instruments

Rules contained in the Directive	Additional rules contained in other EU criminal law instruments
■ Definition of criminal offences ■ Criminalisation of inciting, aiding and abetting ■ Liability (criminal or non-criminal) of legal persons ■ Sanctions to be effective, proportionate and dissuasive	■ Minimum-maximum levels for criminal sanctions for natural persons (contrary to the Market Abuse Directive, Combating Terrorism Directive) ■ Criminalisation of attempt (Market Abuse Directive) ■ Harmonisation of available investigative tools (Eurocounterfeiting Directive, Combating Terrorism Directive) ■ Obligation of Member States to report to the Commission criminal statistical data (Anti-money laundering Directive, Eurocounterfeiting Directive). ■ Rules on jurisdiction (Eurocounterfeiting Directive) ■ Provisions concerning the (voluntary) use accessory sanctions (Market Abuse Directive) ■ Provisions on jurisdiction

The differences are due to the pre-Lisbon character of the Directive, with only limited competences of the EC with regard to criminal law under the first pillar. After the entry into force of the Lisbon Treaty, the Article 83 (2) TFEU regulates explicitly the EU competences with regard to approximating criminal laws including environmental criminal laws to ensure the effective implementation of a Union policy.

Links with neighbouring criminal law policies

The EU Agenda on Security (2015)[180] highlighted the link between environmental crime

177 Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law and replacing Council Framework Decision 2000/383/JHA, OJ L 151, 21.5.2014, pp. 1-8. https://eur-lex.europa.eu/eli/dir/2014/62/oj.

178 Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance), *OJ L 156, 19.6.2018, p. 43–74*, https://eur-lex.europa.eu/eli/dir/2018/843/oj.

179 Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse, OJ L 173, 12.6.2014, pp. 179-189, https://eur-lex.europa.eu/eli/dir/2014/57/oj.

180 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/basic-documents/docs/eu agenda on security en.pdf.

and organised crime. It sets out that 'The Commission will consider the need to strengthen compliance monitoring and enforcement, for instance by increasing training for enforcement staff, support for relevant networks of professionals, and by further approximating criminal sanctions throughout the EU', and that the Commission would be 'reviewing existing policy and legislation on environmental crime'. It recognised the link between environmental crime and organised crime, as well as the link between environmental crime, money laundering and terrorist financing.

However, there is a lack of links between the Directive and neighbouring criminal law instruments, which prevents synergies.

Framework Decision on Organised Crime[181]

The Directive could be more coherent with the EU's policy aim to fight and disrupt organised crime groups and networks connected to environmental crime. These aims have been stressed by the 2016 Council conclusions and in the current EU policy cycle.

Although the link between environmental crime and organised crime is well established, the Directive does not contain any reference to organised crime, for example by defining its involvement as an aggravating circumstance requiring higher sanction levels, by including rules on coordinated prosecution, or by harmonising the use of special investigative tools in case of the involvement of organised crime. In turn, the Framework Decision does not refer to environmental crime. Its Article 1 only defines offences punishable by a maximum of at least 4 years' imprisonment as falling under its scope. This excludes environmental crime in Member States where this threshold is not met.

Anti-Money Laundering Directive[182]

The 5th Anti-money laundering Directive is aimed at preventing the financial system from being used for criminal activities. Among other things, it enhances the powers of Member States' financial intelligence units and facilitates their cooperation. Contrary to the recommendations of the Financial Action Task Force of the Organisation for Economic Co-Operation and Development[183], environmental crime is not expressly mentioned as 'criminal activity' in Article 3(4) of the Anti-money laundering Directive, and is therefore only covered if punishable by a minimum prison sentence of more than 6 months or a maximum of more than 1 year, depending on the case (see Article 3(4)(f) of the Anti-money Laundering Directive). Not all Member States meet this threshold.

Confiscation Regulation[184]

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181 Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime; OJ L 300/42, 11.11.2008, pp. 42-45.

182 On 19 June 2018 the 5th Anti-money laundering Directive (Directive (EU) 2018/843, which amended the 4th Anti-money laundering Directive, was published in the Official Journal of the European Union. The Member States had to transpose this Directive by 10 January 2020. Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, O*J L 156, 19.6.2018, pp. 43–74* https://eur-lex.europa.eu/eli/dir/2018/843/oj

183 See page 32 under point 4 and under the definition of 'designated categories of offences', https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

184 Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders; OJ L 303, 28.11.2018, pp. 1–38.

Freezing and confiscating property that has been acquired through a criminal offence is a crucial means of combating crime, including organised crime. It is also a way to stop the proceeds of crime being laundered and reinvested in legal or illegal business activities. The Confiscation Regulation applies to environmental crime (Art, 3 (1) cif.12), but only if the environmental crime is punishable in the respective Member State by a custodial sentence of a maximum of at least three years. Not all Member States meet this threshold.

6.3.3 COHERENCE WITH EU ENVIRONMENTAL POLICY INSTRUMENTS

The Directive is part of a broad EU-approach to protecting the environment and strengthening compliance with existing EU legislation. Actions on different levels complement and reinforce each other, thereby contributing to raise awareness and accelerate efforts in the Member States to tackle environmental crime. Some examples of related developments in the EU's environmental policy are set out below.

- In the 2016 **Council Conclusions** on countering environmental crime[185], the Council recommended a number of measures to ensure effective law enforcement with regard to environmental crime, including close cooperation between relevant authorities, information gathering and exchange, and the allocation of sufficient resources.
- On 27 March 2017, the Council decided to continue the **EU policy cycle**[186] for organised and serious international crime for 2018-2021. This multi-annual policy cycle aims to tackle the most important threats posed to the EU by organised and serious international crime in a coherent and methodological manner by improving and strengthening cooperation between the relevant services of the Member States, EU institutions and EU agencies as well as third countries and organisations, including the private sector. One of the priorities is to fight and disrupt organised crime groups involved in environmental crime, more particularly wildlife and illicit waste trafficking[187].
- In February 2016, the European Commission adopted a Communication on the EU **action plan against wildlife trafficking**[188]. It sets out a comprehensive set of measures against wildlife crime inside and outside the EU. The action plan runs until 2020 and is being implemented jointly by the EU and its Member States. In October 2018, the Commission adopted a progress report[189] and the overall results are being evaluated.
- The EU Biodiversity Strategy for 2030[190] provides that the Commission will take a number of steps to crack down on illegal wildlife trade, including by revising the EU action plan against wildlife trafficking in 2021.
- In 2018, the Commission adopted an **action plan on environmental compliance assurance**[191]. The new Environmental Compliance and Governance Forum[192]

185 Doc. 15412/16: Council Conclusions on Countering Environmental Crime of December 2016 http://data.consilium.europa.eu/doc/document/ST-15412-2016-INIT/en/pdf

186 More details on the impact of this policy cycle on environmental crime and cross-border cooperation can be found under Section 6.1.4 – 'Improvement of Judicial Cooperation'.

187 https://www.europol.europa.eu/empact.

188 COM(2016) 87 final.

189 COM(2018) 711 final.

190 https://ec.europa.eu/environment/nature/biodiversity/strategy/index_en.htm

191 COM(2018)10 final and SWD(2018) 10 final.

established under this action plan brings together Member State representatives and representatives of practitioner networks, such as IMPEL and ENPE. Several actions focus on the development of tools to support environmental enforcement on the ground, such as the preparation of guidance documents, complaint handling, compliance assurance in rural areas, combating environmental crime with a focus on waste and wildlife crime, use of geospatial intelligence, and training and capacity-building activities at all levels of the enforcement chain. The various activities under this action plans contribute to the Directive's effectiveness which depends on the practical efforts on the ground concerning detection, investigation, prosecution and adjudication and on good cross-border cooperation among Member States.

- **EU level networks of environmental practitioners**, such as ENPE (prosecutors), IMPEL (inspectors), EUFJE (judges) and EnviCrimeNet (police and other enforcement officers) facilitate sharing good practices, developing practical tools for detection, and investigation and training. These networks now work together with the Commission's support.

- **The Environmental Liability Directive (ELD)**[193] aims to ensure that certain types of damage to the environment are remedied by the company that caused the damage. Currently, new Commission guidelines on the interpretation of the term 'environmental damage' under the ELD are in preparation,

  The EFFACE Research Project[194] identified differences with regard to the conditions under which liability emerges. For example, in the ELD, strict liability is not dependent on breaches in obligations of administrative legislation, but it is connected to an activity that is dangerous for human health or the environment (such dangerous activities which establish strict liability are listed in Annex III of the ELD). The EFFACE report concludes that the ELD and the Directive are considered 'sister directives' complementing each other.

- In 2020, the EU has adopted **a new Circular Economy Action Plan** setting norms for circularity and sustainable products, at all stages of the value chain. It also supports consumers' information and responsible consumption, as well as the sustainable and safe disposal of hazardous materials, therefore helping tackle environmental crime and notably illegal waste discharge, within and outside Europe.

- Through its **Internal Security Fund (Police),** the Commission supports law enforcement actions and research projects which are complementary to achieving the Directive's objective of improving protection of the environment by reducing environmental crime. Previously supported projects focused on illicit waste trafficking, illegal management and trade in waste, tackling environmental crimes through standardised methodologies and environmental crimes against water. The latest ISF-P 2018 on the fight against environmental crime supports cross-border law enforcement operational activities to fight environmental crime in support of EU policy cycle actions.

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192 For more information about the action plan and the work of the Forum see: http://ec.europa.eu/environment/legal/compliance_en.htm.

193 Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

194 See Synthesis report of the research Project 'European Union Action to fight Environmental Crime' (EFFACE), page 39; document available on www.efface.eu.

6.3.4 COHERENCE WITH INTERNATIONAL OBLIGATIONS

International Conventions

The Directive applies to infringements of the legislation listed in its annexes. This legislation reflects the obligations stemming from key international conventions to which the EU is a party. These international conventions include:

- the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, implemented by the Waste Shipment Regulation, adopted 1989;
- the Rotterdam Convention on Hazardous Chemicals and Pesticides in international Trade, effective since 2004;
- the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), implemented by the CITES Basic Regulation and implementing regulations;
- the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention) implemented by Regulation (EU) 2019/1021 (the PoPs Regulation)[195];
- the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) implemented by Regulation (EC) No 1005/2009 (the Ozone Regulation)[196].

An analysis of the coherence of the Directive with international obligations is therefore also a question of coherence with other EU environmental law (see above). The inclusion of other legislation/areas under the scope of the Directive (some of which might relate to other international obligations not currently reflected in the legislation included in the annexes to the Directive) is dealt with under Section 6.4.2 - 'Evolving needs and objectives since the adoption of the Directive'.

UN Resolution

The UN General Assembly in 2016 adopted a resolution[197] which, for the first time, recognised environmental crime as part of other transnational organised crimes. The Directive does not meet the particular challenges posed by the links between organised and environmental crime, nor does it contain any provisions addressing organised crime.

6.3.5 KEY FINDINGS FOR COHERENCE

- The legal technique used in the Directive to define its scope, by referring to environmental instruments in its annexes, leads to unclarity, as the many of the referenced pieces of legislation are outdated. New legislation does not systematically reference the Directive, thereby falling outside its scope. Over time, these inconsistencies may even grow, as environmental legislation is constantly changing. Inconsistencies could also occur where serious ecological damage goes unpunished

195 Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants, OJ L 169, 25.6.2019, pp. 45–77.

196 Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer, OJ L 286, 31.10.2009, pp. 1–30.

197 Resolution adopted by the General Assembly on 21 November 2016, 71/19. Resolution on the Cooperation between the United Nations and the International Criminal Police Organization (INTERPOL).

by criminal sanctions, because it was caused without violating any environmental legislation listed in the annexes to the Directive.

- The Directive does not address the interplay between environmental criminal sanction systems and environmental administrative sanctions systems in the Member States.
- As a pre-Lisbon instrument, the Directive could benefit from the possibilities offered by the Lisbon Treaty to introduce more detailed provisions similar to those in other EU criminal law instruments, for example on sanction types and levels, the use of investigative tools and data collection.
- The Anti-money laundering Directive and the Confiscation Directive are not applicable to all environmental crime, as their application depends on the penalty levels in the Member States. The fight against environmental crime, therefore, does not in all instances and in all Member States benefit from the approaches and tools provided in these Directives to combat crime more effectively.
- The Directive does not address the challenges and severity of environmental crime committed within the framework of organised crime. This is not coherent with the acknowledged links between organised and environmental crime, especially as regards wildlife crime. The UN has recently (2016) officially acknowledged this connection in a Resolution.

6.4 RELEVANCE

Under this criterion, the evaluation assessed whether the original objectives of the Directive are still relevant in relation to current and future needs. This part looks into whether or not the measures included in the legislation remain necessary and appropriate, and if the objectives and requirements set out in the Directive are still valid in protecting the environment by reducing environmental crime.

Evaluation questions:

16. To what extent have the (original) general and specific objectives proven to be appropriate in view of the needs?
17. To what extent are the general and specific objectives of the Directive still appropriate?

6.4.1 Continued Relevance of the objectives

Relevance as compared to sectoral legislation

As shown under Section 6 – 'Analysis and answers to the evaluation questions' there is only little evidence that the Directive might have had an impact on the reduction of environmental crime. The question might arise whether the Directive has had any added value over the 72 sectoral pieces of EU legislation which already regulated the areas covered by the Directive before its entry into force.

The 72 sectoral EU instruments are a source for obligations for duty holders whose activities may have an impact on the environment (plant operators, ship-owners, individuals, companies, industry, and businesses). These sectoral instruments sometimes include general obligations for the Member States to provide for appropriate sanctions if these obligations are disregarded. These sanctions need not necessarily be of a criminal nature.

The Directive adds value by defining criminal offences requiring criminal sanctions for serious violations of all these 72 instruments. Criminal law expresses social disapproval of a qualitatively different nature than administrative penalties or a compensation mechanism under civil law.

The relevance of fighting environmental offences through criminal law cannot be measured only against conviction data or reduced environmental crime numbers. The Directive has raised the visibility and awareness of environmental crime in many Member States, which is a prerequisite for the necessary political support and allocation of resources needed for effective law enforcement. The criminalisation of environmental offences required by the Directive sends a strong signal of social disapproval to the general public and duty holders, thus helping to prevent crime.

One of its main practical achievement was the definition of an EU framework of environmental crimes, which is necessary for cross-border cooperation, although, as many stakeholders and practitioners have repeatedly stressed, more can be done.

These impacts could not have been achieved through the 72 individual and unrelated pieces of sectoral legislation containing sector-specific provisions and different levels of detail with regard to sanctioning breaches of environmental obligations. Stringent law enforcement at all levels of the law-enforcement chain is, however, indispensable if the Directive is to reach its full potential. Here, there is still much room for improvement.

Relevance as compared to other categories of crime

Similar observations apply with regard to the Directive's added value over environmental crime being dealt with under other crime categories such as fraud, tax fraud, trafficking, organised crime or falsification of documents. In addition, where environmental crime is dealt with under different crime categories, the dimension and inherent harm of environmental crime is not captured and remains invisible.

Case study 3 – Dieselgate (DE)

When the 'Dieselgate' – scandal came to light in 2015, Volkswagen had to admit that it illegally fitted special software on 11 million cars to trick emission tests before putting the cars on the market[198]. The scandal affected many countries where Volkswagen sold

[198] Thus violating Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and

its cars. The case has been treated under different crime categories in different countries. While in the US the matter was considered as an environmental crime, in Europe, charges concentrated on economic crime, fraud, tax evasion and false testimony. In some European countries, the case was dealt with by administrative law (for example under unfair competition) and/or by civil action. This example shows that the same action might have particularly adverse environmental effects in more than one Member State, but that uneven approaches under different crime categories potentially lead to wrongdoings going unpunished in some countries or resulting in only small fines, depending on the crime category applied in the Member States. An overarching approach with coordinated prosecution in the Member States concerned would not be possible under such circumstances. Moreover, the environmentally harmful impact as such is not captured by any of the traditional crime categories[199].

Stakeholder opinions

The continued need to protect the environment by means of criminal law has been confirmed by the large majority of all stakeholder groups. Also, the separate assessment undertaken by the EESC[200] to inform this evaluation[201] showed that an overwhelming majority of consulted stakeholders (business and industry organisations, trade unions, NGOs, municipalities, law enforcement practitioners and other civil organisations) believe the Directive is still relevant, either to a large extent (57%) or to some extent (35%), even if the majority of these stakeholders sees large room for improvement, in particular as regards the practical implementation of the Directive.

6.4.2 EVOLVING NEEDS AND OBJECTIVES SINCE THE ADOPTION OF THE DIRECTIVE

This section assesses whether needs may have evolved and whether the objectives of the Directive still correspond to these needs. This requires an analysis of the trends in environmental crime since the adoption of the Directive, and in particular whether areas of environmental crime not covered by the Directive so far have become a growing source of concern or whether new types or patterns of environmental crime have emerged.

Areas not covered by the Directive:

Stakeholders, Member States, professional networks and academia[202] have particularly pointed to the areas listed below, but this list is not exhaustive:

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commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, contained in Annex A to the Directive.

199 The EESC recommends developing a methodology allowing for joint prosecution or a single prosecution procedure where several Member States are affected by similar or identical environmental crime.

200 EESC, Information Report: Evaluation on the Environmental Crime Directive. Technical Appendix, see Annex 9.

201 The EESC report draws on reports compiled during fact-finding missions to a sample of five EU Member States (France, Czechia, Hungary, Portugal and Finland), and a questionnaire targeting civil society organisations in the same five Member States.

202 Business views, however, differ from the views of the other stakeholders. On the question whether more acts should be criminalised by the Directive, businesses are the only ones who responded no in a substantial manner (41% against 4% and 0% in the other stakeholder groups). However, individual businesses have contacted the Commission outside the consultation to require to that the scope of the Directive be extended to include new environmental crime legislation, to protect them as fair playing business against illegally acting competitors.

- **Illegal fishing**[203]: the United Nations Office on Drugs and Crime (UNODC), refers to a range of illegal activities in the fisheries sector, which are often transnational and organised in nature, such as illegal fishing, related document fraud and money laundering. Organised crime often engages in fisheries crime due to low risk, high profit, and uncoordinated, ineffective domestic and cross-border law enforcement[204]. According to the EnviCrimeNet, illicit fish trade is one of the most financially rewarding transnational criminal activities, generating between USD 4.2 and 9.5 billion per year[205]. In the EU, which is the world's largest single market for fisheries and aquaculture products, the illegal import of fishing products has been estimated to be worth EUR 1.1 billion per year[206]. Illegal fishing crime may have substantial adverse environmental, social and economic impacts. Large-scale illegal fishing depletes valuable fish stocks and threatens the long-term marine sustainability and food security of the most vulnerable countries. It further deprives EU countries of economic revenue, while illegal operators benefit from a competitive advantage, creating unfair economic conditions and pushing law-abiding businesses out of the market[207]. Global annual losses due to illegal, unreported and unregulated (IUU) fishing have been estimated at around USD 10-23.5 billion. In view of this situation, the EU common fishery policy establishes an elaborate sanctioning system including a regulatory frame for the fight against IUU fishing[208], a list of serious infringements, provisions on administrative and criminal sanctions, minimum levels of sanctions and a point systems for fishing licence holders and masters of fishing vessels[209]. The Commission is proposing [210] to further strengthen the EU fisheries sanctioning system by bringing further harmonisation in particular concerning serious infringements and minimum sanctions.

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203 European Commission (DG MARE), 'Study on the State of Play Regarding Application and Implementation of Council Regulation (EC) NO 1005/2008 of 29 September 2008, Establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU Regulation),' 2014; European Parliament, 'Report on Combating Illegal Fishing at the Global Level - the Role of the EU,' 2011.

204 UNODC, 'Fisheries Crime'; https://www.unodc.org/unodc/about-unodc/campaigns/fisheriescrime.html; EFFACE, 'Understanding the Damages of Environmental Crime. Review of the Availability of Data', 2015.

205 EnviCrimeNet, 'Environmental Crime Network (EnviCrimeNet) Report on Environmental Crime,' 2016.

206 EnviCrimeNet, see Footnote 209.

207 UNODC, 'Fisheries Crime'; https://www.unodc.org/unodc/about-unodc/campaigns/fisheriescrime.html; EFFACE, 'Understanding the Damages of Environmental Crime. Review of the Availability of Data', 2015.

208 Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ L 286, 29.10.2008, p. 1.

209 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, OJ L 343, 22.12.2009, p. 1.

210 Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control (COM(2018) 368).

- **Illegal logging and timber trade**[211]: illegal logging refers to the harvesting, processing, transporting, buying or selling of timber in contravention of national and international laws[212]. It is closely connected to the illegal timber trade and the illegal trade in endangered species[213]. Illegal logging is an important source of concern. Around the world, every two seconds, an area of forest the size of a football field is clear-cut by illegal loggers. In some countries, up to 90% of all logging is illegal. Estimates suggest that illegal logging generates approximately USD 10–15 billion annually worldwide[214]. According to the EnviCrimeNet, illicit timber trade is one of the most financially rewarding transnational criminal activities, generating an estimated USD 7 billion[215]. In the EU, an analysis of available statistics shows that illegal logging is a common environmental crime in some countries, including RO, HU, LV, and LT[216].

Case study 4 – illegal logging (RO)

In 2015, the Environmental Investigation Agency (EIA) revealed that illegal logging is destroying Romania's ancient forests and national parks, including Natura 2000 areas. An Austrian timber company, Holzindustrie Schweighofer, profits from these illegal activities. The Romanian police raided Schweighofer's facilities and suppliers as part of an investigation into illegal logging, tax evasion and links to organised crime in May 2018, estimating the damage caused to be at EUR 25 million. In early 2020, illegal logging in Natura 2000 areas and UNESCO buffer zones appears to be continuing. Data from November 2019 reveals that more than 20 million m^3 are logged illegally each year, estimated to be worth at least EUR 4 billion over the past 4 years. As a result, nearly two-thirds of Romania's Carpathian Mountain forests have been lost in the past decade alone.

- **Man-made forest fires:** illegal forest fires – meaning forest fires induced by humans – are an increasing source of concern around the world, especially in the context of climate change (there are recent examples in the Amazon rainforest and in Australia)[217]. They also constitute a serious problem in the EU[218], particularly in Mediterranean countries where there has been an increase in forest fires over the past

211 European Commission, 'Feedback on Evaluation Roadmap 2019,' 2019; EFFACE, 'EUTR, CITES and Money Laundering. A Case Study on the Challenges to Coordinated Enforcement in Tackling Illegal Logging,' 2015; Interview with national judge (BE judge).

212 EU FLEGT Facility, What is illegal logging? Available at: http://www.euflegt.efi.int/illegal-logging.

213 EnviCrimeNet, 'Environmental Crime Network (EnviCrimeNet) Report on Environmental Crime, 2016.

214 Marilyne Pereira Goncalves et al., 'Justice for Forests. Improving Criminal Justice Efforts to Combat Illegal Logging,' 2012, https://doi.org/10.1596/978-0-8213-8978-2.Goncalves et al.

215 EnviCrimeNet, 'Environmental Crime Network (EnviCrimeNet) Report on Environmental Crime, 2016.

216 See also Council of the European Union, "HR and HU Replies to Questionnaire 10954/19 on the State of Environmental Law in the EU."

217 'Fires in Amazon forest rose 30% in 2019', *Reuters*, 9 January 2020. Available at: https://www.reuters.com/article/us-brazil-amazon-fires/fires-in-amazon-forest-rose-30-in-2019-idUSKBN1Z804V; 'Bushfires rage out of control across southeast Australia', *Reuters*, 3 January 2020. Available at: https://www.reuters.com/article/us-australia-bushfires/bushfires-rage-out-of-control-across-southeast-australia-idUSKBN1Z2270.

218 Fantina Tedim, Gavriil Xanthopoulos, and Vittorio Leone, *Forest Fires in Europe: Facts and Challenges*, *Wildfire Hazards, Risks, and Disasters* (Elsevier Inc., 2015), https://doi.org/10.1016/B978-0-12-410434-1.00005-1.

25 years[219]. Between 2003 and 2012, forest fires resulting from deliberate actions and negligent behaviour accounted for 66% of the total number of forest fires in Italy and 64% in Spain[220]. In Poland, between 2003 and 2012, forest fires due to deliberate actions and negligent behaviour accounted for 57% of the total number of forest fires. In 2019, the Finnish Presidency of the Council included forest fires as one of the areas which Member States considered as particularly frequent and serious[221].

Organised crime and cross-border crime

Academics and stakeholders have argued that environmental crime committed by, or with the involvement of, organised crime groups and networks remains an important issue that needs to be more effectively addressed[222]. Eurojust, in its November 2014 report on the Strategic Project on Environmental Crime stated that environmental crime is often linked to organised crime, in particular illegal trafficking or dumping of waste and trafficking in endangered species. The EnviCrimeNet along with Europol in 2015 issued a report on its Intelligence Project on Environment Crime with particular focus on the involvement of organised crime groups. The 2015 European Agenda on Security also identified serious and organised cross-border crime as one of its three key priorities, pointing out that 'serious and organised cross-border crime is finding new avenues to operate, and new ways to escape detection. There are huge human, social and economic costs – from crimes such as […] environmental crime'[223].

The need to cover organised crime is supported by the results of the public consultation. Only 12% of respondents believe that the Directive ensures that the challenges of tackling the involvement of organised crime are met, against 55% who believe that the Directive lacks provisions to oblige Member States to treat environmental crime committed in the context of organised crime as an aggravating circumstance,

Finally, and closely linked to organised crime, the cross-border dimension of environmental crime remains an important challenge[224]. The Directive does not contain any particular provisions to facilitate cross-border cooperation by law enforcement authorities, although the creation of an EU framework of common environmental offences has been an important step forward. However, there is a lack of explicit rules such as an obligation to provide for investigative tools available in Member States to investigate serious crime.

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219 EFFACE, 'Synthesis Report. Environmental Crime and the EU', 2016; https://efface.eu/sites/default/files/publications/EFFACE_synthesis-report_final_online.pdf; EFFACE, 'The Quantitative and Monetary Impacts of Forest Fire Crimes', 2015.

220 EFFACE, 'The Quantitative and Monetary Impacts of Forest Fire Crimes', 2015.

221 Council of the European Union, 'Finnish Presidency Report on EU Environmental Criminal Law'.

222 Interview with Interpol; Grazia Maria Vagliasindi, 'The EU Environmental Crime Directive', in *Environmental Crime in Europe*, ed. Andrew Farmer, Michael Faure, and Grazia Maria Vagliasindi (Oxford: Hart Publishing, 2017), pp. 31–56, https://doi.org/http://dx.doi.org/10.5040/9781509914005.ch-003; Shirleen Chin Sing and Wouter Justus Veening; EUROPOL, 'Threat Assessment 2013: Environmental Crime in the EU'; EnviCrimeNet's submission to the targeted consultation.

223 European Commission, 'Communication on the European Agenda on Security' (2015), https://www.cepol.europa.eu/sites/default/files/european-agenda-security.pdf, p.12.

224 Andrew Farmer, Michael Faure, and Grazia Maria Vagliasindi, 'Environmental Crime in Europe: State of Affairs and Future Perspectives', in *Environmental Crime in Europe*, ed. Andrew Farmer, Michael Faure, and Grazia Maria Vagliasindi (Oxford: Hart Publishing, 2017), pp. 319– 332, https://doi.org/http:// dx.doi.org/10.5040/9781509914005.ch-012; Elliott, L. 'Fighting transnational environmental crime', *Journal of International Affairs,* 2012, pp. 87-104.

In this context, the dimension of environmental crime beyond EU-borders should be noted Illicit traffic especially in wildlife and waste outside the EU is also due to an increase in demand from European consumers and to the expansion of global value chains. This would require cross-border cooperation with countries outside the EU.

6.4.3 KEY FINDINGS FOR RELEVANCE

- The original specific objectives of the Directive are still relevant to needs.
- Objectives are not always supported by provisions in the legislative text. There are no provisions directly fostering cross-border cooperation, neither are there provisions addressing the threats by organised crime.
- Stakeholders have identified areas of environmental crime that have gained importance, such as a.o. illegal fishing, illegal logging and timber trade, and man-made forest fires. Although these areas can be regarded as covered by the needs, and general and specific objectives, they are not listed in the Directive's annexes and are thus not within the scope of the Directive.

6.5 EU ADDED VALUE

This section focuses on the value resulting from EU-level actions compared to what could reasonably have been expected from action at national level only. It also considers whether EU action is still necessary, and what would happen if action on environmental crimes at EU level stopped.

Evaluation questions:

18. What has been the added value of the Directive compared to what could be achieved by Member States at national and/or regional levels, and to what extent do the issues addressed by the Directive continue to require action at EU level?
19. To what extent is EU action still necessary to stimulate, complement, leverage and create synergies with national actions?
20. What would be the consequences of stopping targeted EU action on environmental crime?

6.5.1 RESULTS OF EU-LEVEL ACTIONS COMPARED TO MEMBER STATE ACTION ONLY

Overall, the consulted stakeholders consider that action at EU level has provided added value, above and beyond what could have been achieved at national level, for the creation of a minimum level playing field, including a common minimum sanctions regime, to address breaches of environmental legislation.

The majority of consulted stakeholders agreed that the criminalisation of breaches of environmental law and liability of legal persons would have been likely even without the Directive. However, the analysis shows that before the Directive entered into force, Member States had very different approaches to prosecuting environmental criminal offences, and many of them introduced adaptations to their legal framework to implement the Directive. For example, some Member States (e.g. CZ, IT, LU, SK and ES) introduced criminal liability for legal persons.

Consulted stakeholders do consider that the Directive has played a role in establishing a deterrent regime to address breaches of environmental legislation. The Directive established a minimum level playing field for environmental offences and affirmed the

role of criminal sanctions. Nevertheless, any implementation of the notion of a 'deterrent regime' relies on the national sanctioning system and in particular on the interplay between, and complementarity of, criminal and administrative sanctions for environmental crimes. The absence of stated minimum and maximum levels of sanctions applicable to these crimes leaves systems open to significant disparities between Member States on levels of fines and imprisonment applicable to natural persons, and the types of fines applicable to legal persons. A large share of the respondents identified this discrepancy as a major cause of the limited effectiveness of the Directive.

6.5.2 NEED FOR ACTION AT EU LEVEL TODAY

The consulted stakeholders agree that environmental crime is continuing and evolving, and pointed to an increase in the involvement of legal persons and organised crime and to a growing number of crimes with a cross-border dimension.

This evaluation shows that the Directive has not fully achieved all its objectives. In particular, there is room to improve the level playing field with regard to sanctions that have a deterrent effect, but also regarding the definitions of environmental crime in Article 3 of the Directive[225]. This is supported by the vast majority of the respondents to the public consultation, although only 33% of responding businesses considered further EU action to be necessary.

This points to the need for a continued and strengthened EU approach to the fight against environmental crime.

6.5.3 CONSEQUENCES OF STOPPING ACTION AT EU LEVEL

There is consensus among consulted stakeholders that stopping EU-level action on the topic would be likely to have negative effects. It would remove the general framework for approximation of laws, and national legislation, without the need to be aligned with an EU framework, would become increasingly divergent over time.

Considering the persisting differences between Member States on investigation, prosecution and conviction systems for environmental crimes, the different legal frameworks and traditions, and the different sensitivities to environmental issues, it is very likely that breaches of environmental legislation would be dealt with in a very uneven manner across Member States. Such a change would negatively affect the cross-border dimension of combating environmental crime. As was confirmed by the consulted stakeholders, cross-border cooperation is crucial for successfully fighting environmental crime.

Stopping EU action would also create problems for the level playing field for companies and protection against safe havens. Uneven levels of criminalisation of environmental offences could lead to safe havens for criminals, because certain types of behaviour might not constitute a criminal offence in all Member States or because sanction levels would differ considerably between them. Although this evaluation found that there was still a risk of safe havens even with the Directive, this does not contradict the EU added value of the Directive, but rather calls for more EU action in this regard.

These findings are confirmed by the results of the public consultation: Nearly all (95%) respondents consider that EU action is important to provide a framework for effective cross-border cooperation with regard to environmental crime, and 75% agree to a large

[225] See Section 6.1.1 – Level playing field.

extent with that statement. Furthermore, 44% believe that the Member States could not have reached the same result by national criminal legislation if there was no EU action on environment crime, or would have done so to only to a small extent (24%).

7 CONCLUSIONS AND LESSONS LEARNED

Lessons learned and some possible actions are set out below. They should not be understood as exhaustive or binding. These recommendations should be understood as food for thought based on the findings of this evaluation and should not prejudge any decision to review the Directive.

1. Consistent statistics and data in relation to environmental crime could be gathered across the Member States, made publicly available and possibly reported to the Commission

Data and statistics on environmental crimes and enforcement actions in Member States are very limited and, when available, they are often fragmentary and are neither consistent nor comparable with data in other Member States. It was therefore difficult to establish whether the Directive had achieved its specific objectives, in particular whether it resulted in a level playing field in relation to investigation, prosecution and sanctioning across Member States, or whether national enforcement and sanctioning systems are a deterrent in practice. The lack of information on the scale of environmental crime may also result in a lack of awareness about this type of crime and its scale and impact, its prioritisation, and the allocation of necessary resources.

Possible action:

- ✓ *In order to address the lack of consistent data,* ***specific provisions on data collection, publication and/or reporting*** *could be included in the Directive. These provisions could require Member States to gather, analyse and use for enforcement purposes annual statistics on the investigation, prosecution and sanctioning of individual categories of environmental crime, committed by individuals or legal persons. Furthermore, such a requirement could specify or, at least, indicate the exact nature of data to be collected, analysed and reported to the wider public and possibly to the Commission. This would ensure that the data and statistics are consistent and comparable across the Member States.*
- ✓ *An alternative would be to explore synergies with possibly existing reporting obligations for Member States under the EU sectoral legislation listed in the annexes to the Directive.*

2. Undefined legal terms to be clarified (effectiveness – level playing field)

Although the Directive was successful in creating an EU-wide common set of definitions of environmental crimes, these definitions include a number of legal terms such as ‘substantial damage’, ‘non-negligible quantity’, ‘negligible quantity’ and ‘negligible impact’, ‘dangerous activity’ and ‘significant deterioration’ which need further clarification in practice. They are often seen by stakeholders as an obstacle in practice because of the differences in interpretation in individual Member States and authorities, which may lead to inconsistencies and negatively impact cross-border cooperation. These undefined terms may need further clarification.

Possible action:

- ✓ **More explicit definitions** could be inserted in the Directive's recitals or provisions.
- ✓ The Commission could provide **guidance on the interpretation**. This guidance could draw on relevant case law, best-practices and support tools existing in the Member States, work of environmental compliance assurance networks, and academic literature.
- ✓ Finally, Member States could also be encouraged to share their environmental prosecutions and judgments in **databases**. By providing examples and insights into the interpretation of undefined terms in the different Member States, such databases can become a useful tool for practitioners such as judges, prosecutors and police officers.

3. Sanction levels still differ greatly across the Member States (effectiveness – level playing field/deterrence)

There are still significant differences as to the level of sanctions for the same environmental offence in different Member States and, in some instances, sanctions appear very low. Although penalties and sanctions have to be considered in the context of other available sanctioning types and systems (accessory sanctions, administrative sanctions, and civil sanctions), penalties and sanctions according the Directive must offer sufficient scope to judges and other decision-makers if they are to play their role in the overall approach.

Possible action:

- ✓ Minimum maximum sanctions could be set out in the Directive.
- ✓ The criteria to be taken into account for the level of sanctions imposed could be harmonised. These could include a provision linking the amount of the fine to the profit made or losses avoided as a result of the offence and/or the extent of environmental damage or cost of remediation. Given that environmental crime is often committed by legal persons, the level of fines could be linked to the annual turnover or take the financial situation of the legal persons into account.

  A requirement to take account of aggravating and/or mitigating circumstances, also providing options for Member States, could also be considered. Aggravating circumstances could for example address the role of organised crime.

  The development of EU guidance on the level of criminal sanctions imposed in the Member States could be considered based on existing guidance and practice in the Member States. Such guidance could give examples and best practices for criteria ensuring the effectiveness, proportionality and dissuasiveness of sanctions.

4. Accessory sanctions (effectiveness – level playing field/deterrence)

Most Member States have some complementary sanctions and measures, either accessory sanctions within their criminal law or administrative sanctions and measures other than fines. These sanctions have the potential to improve the deterrent effect of traditional criminal sanctions i.e. fines or imprisonment. The sanctions available, and their use, are not consistent across the Member States.

Possible action:

- ✓ **Accessory sanctions** required by the Directive could improve the level playing field in relation to the types of sanction available to the judiciary in EU countries. Such provisions could be prescriptive or optional. They could be extended to legal persons responsible for infringements committed by the offenders, e.g. to mother companies using the infringing company as a shield, and to "partners in crime". They could also be extended to mother, daughter or sister companies indirectly taking profit from the infringement. Among others, the following accessory sanctions and measures could be considered:
    - remedy of damage;
    - cancellation or suspension of permit;
    - exclusion from public tenders or grants;
    - ban from certain (internet) trading platforms (ideally accompanied by the empowerment to request the trading platforms to eliminate the offender);
    - confiscation of profits, rights and items obtained directly or indirectly on the basis of the infringement;
    - temporary or permanent closure of a certain facility or of activities in total;
    - publication of court judgements or summaries of them or of administrative decisions concerning infringements;
    - naming and shaming also of those natural or legal persons who were in conscious cooperation with the infringing natural or legal person, e.g. by administering profits gained by crime.

- ✓ Member States could be encouraged to take account of synergies and complementarity with administrative sanctions other than fines within their own national legal frameworks and traditions.
- ✓ With regard to confiscation and freezing measures, the inclusion of a **provision cross-referencing the Confiscation Directive** could be considered. This would reinforce the importance of confiscation and freezing measures within the context of environmental crime.

5. The legal technique used for defining the scope of the Directive

The Directive's approach to make criminalisation dependent on breaches of the underlying EU legislation listed in its annexes leads to a number of practical problems and inconsistencies. New relevant legislation is not automatically covered, not all infringements of environmental Union law is criminalised, and conduct that has caused substantial environmental harm is not covered if the conduct has not breached EU legislation listed in the annexes.

Possible action:

- ✓ Assess possibilities to refine and improve the legal technique used for defining the scope of the Directive

6. Cross-border cooperation could be improved (effectiveness - judicial cooperation)

Cross-border cooperation seems to have increased since the adoption of the Directive, it is difficult to see this as a direct effect of the Directive but it has in any event provided for a common legal framework regarding environmental crime and has created new political impetus. In addition to formal cross-border cooperation through European arrest warrants and joint investigation teams, and the actions taken under the EU policy cycle, practitioner networks such as IMPEL, ENPE, EnviCrimeNet and EUFJE have developed

and are active in the area of combating environmental crime. These networks have, to some extent, increased the degree of specialisation of practitioners in environmental crime. These networks also complement the more formal mechanisms of Eurojust and Europol by providing immediate contact points within Member States, thus facilitating informal cross-border cooperation. There is, however, still room for improvement.

Possible actions:

- ✓ **Training or guidance** on the role of Eurojust, Europol and OLAF in coordinating Member State enforcement actions on environmental crime could be provided by the Commission, Eurojust, OLAF or Europol itself, EU-level training bodies such as Cepol, EJTN, EU-level networks, or national training bodies or networks.
- ✓ **Specific provisions on cooperation** could be added to the Directive, requiring competent authorities to cooperate with each other on environmental crimes with a cross-border dimension. The degree of prescription of such provisions should be considered. They could include requirements on sharing information, collaborating on the investigation of environmental crime or cooperation in relation to which Member State should prosecute. This provision could include a specific reference to the role of Eurojust and OLAF. OLAF already works with national authorities in EU and non-EU countries on mutual administrative assistance cases of illicit imports/exports, and prevents illicit products from entering the single market. In the same way, OLAF contributes to the enforcement of the Timber Regulation and the CITES Regulations and has conducted coordination cases that have prevented illicit trade of protected species into the EU.
- ✓ Cross-border cooperation can also be facilitated by an approximation of **investigative tools** available for environmental crime[226].
- ✓ A cross-reference to the Anti-money-laundering Directive could be inserted into the Directive, to make available financial investigation tools for combating environmental crime in the whole EU.
- ✓ Finally, the work of the **practitioner networks** in providing informal contact points in Member States for immediate cooperation could be further supported.

Practical implementation ('Input', see Section 2.3. – 'Intervention Logic') is essential for the Directive to be effective. Numerous studies (see Section 5.1.4. – 'Practical Implementation') have identified much room for improvement at all levels of the enforcement chain in the Member States. Based on these findings, the lessons learned and possible actions are set out below under point 7 to 11:

7. Cooperation between enforcement authorities within Member States could be strengthened.

The challenge faced by the relevant environmental, judicial and other control and enforcement authorities to successfully work together has had an impact on the achievement of the objectives of the Directive. Cooperation with authorities working in other areas such as financial investigations and money laundering could also help the

[226] The approximation of investigative tools was for example required in the Eurocounterfeiting Directive (http://data.europa.eu/eli/dir/2014/62/oj) and the Market Abuse Directive (http://data.europa.eu/eli/dir/2014/62/oj).

environmental and judicial authorities within the Member States to effectively address financial elements of environmental crime.

Possible action:

- ✓ The Commission could encourage Member States to **improve cooperation between the different national authorities involved in enforcement**. Cooperation between judicial, environmental and other relevant authorities (such as customs authorities and police) is essential to address environmental crime. This cooperation should also extend to competent authorities working in the area of money laundering, fraud and organised crime. This would ensure that investigations benefit from expertise in environmental law, criminal justice and finance. This is particularly important where profit is often the sole motivation for committing an environmental offence.
- ✓ The **role of the networks at EU level** in improving cooperation across different practitioner groups through memoranda of understanding, joint conferences and training should also be supported. Practitioner networks could be encouraged to consider collaboration with practitioners in the field of financial crime.

8. Specialisation by law enforcement practitioners could be encouraged and facilitated

The investigation, prosecution and sanctioning of environmental crime requires expertise in both environmental issues and criminal justice.

The **specialisation of practitioners** could be encouraged and facilitated. This could be done, *inter alia*, by providing training on the specificities of environmental crime at EU level, encouraging or requiring Member States to provide training at national level, or by supporting the practitioner networks to provide training to their members.

9. Public awareness of environmental crime could be increased

Public awareness has an impact on the prioritisation of environmental issues and the allocation of necessary resources at national level. This is particularly important where the lack of prioritisation of environmental crime has restricted its effective enforcement in some Member States.

10. The relationship between criminal and administrative sanctions could be clarified

Many Member States rely on administrative sanctions in addition to criminal sanctions to address environmental offences, but this is often done without clear criteria on choosing one of the two systems. This results in overlapping regimes, unclear competences, and a risk of violating the *ne bis in idem* (double jeopardy) principle prohibiting an offender from being penalised twice for the same offence or a risk of ineffective proceedings due to a lack of coordination and clarity on the use of different types of sanctions.

Possible actions:

- ✓ Member States could be encouraged to clarify the relationship between administrative and criminal sanction systems. The EU could assist Member States facilitating the collection of best practices, leaving discretion to the Member States to accommodate national legal structures and traditions.

  Guidance could describe synergies and complementarity of administrative and criminal sanctions, and provide criteria for deciding when conduct is criminal in

nature and should be prosecuted. It could also address *ne bis in idem* issues. Such guidance could draw on ECJ case-law and guidance or details in legislation at national level.

- ✓ A **reference to the *ne bis in idem* principle could be included directly** in the Directive and thus exclude dual sanctions under certain circumstances, in accordance with CJEU case-law.