Public Consultation for the Evaluation of the Directive 2008/99/EC on the protection of the environment through criminal law

Fields marked with * are mandatory.

Introduction

According to the UN and Interpol, environmental crime is the fourth largest criminal activity in the world after drug smuggling, counterfeiting and human trafficking. It is worth between USD 91 billion and 259 billion and is rising by 5-7 per cent annually[1]. Serious forms of environmental crime often have a cross-border dimension and involve organised crime groups or corporate actors. The EU is directly affected by environmental crime as an origin (for example for waste trafficking) or destination market (for example for illegal logging) or as a transit point between two regions of the globe (for example between Africa and Asia for wildlife products).

In 2008, the EU adopted Directive 2008/99/EC on the protection of the environment through criminal law[2] ("the Directive"). The Directive's general objective is to ensure a more effective protection of the environment.
The Directive sets out obligations for Member States to:

- criminalise unlawful conduct that causes or is likely or presumed to cause damage to the environment or wildlife or death or serious injury to persons. (The conduct is defined as 'unlawful' when it infringes the EU environmental legislation listed in the Annexes A and B to the Directive, or national acts based on this EU legislation.)
- criminalise inciting and aiding and abetting such offenses;
- ensure that legal persons can be held liable for offences committed for their benefit;
- ensure effective, proportionate and dissuasive criminal penalties for environmental crimes. The Directive does not however contain more detailed requirements on the types and levels of the penalties.

About the evaluation
The Commission is evaluating the Environmental Crime Directive with a view to establishing whether the Directive has achieved its objectives to contribute to better protection of the environment. The evaluation will assess results for the time the Directive has been applicable, 2011 to 2018, and from all Member States. The focus will be on waste and wildlife crimes, as well as on pollution (water/air/soil), as these are the areas that Member States are most concerned by, and where most data and information exists in the public domain.

The evaluation will look at the criteria of effectiveness, relevance, efficiency, coherence/complementarity and EU-added value.

This public consultation is an opportunity for all to provide their views on the Directive. It concerns particularly the public, networks of environmental practitioners dealing with combating environmental crime and compliance assurance, environmental associations and organisations, stakeholders in industry and concerned businesses, hunters' and farmers' associations, relevant international and European bodies and agencies, such as Europol and Eurojust and academia, national, regional and local authorities, defence lawyers and academia. Where questions are addressed to certain stakeholders only, this is clearly indicated. You may answer to this questionnaire in any official EU language.

A summary report on the results of the public consultation will be published on the public consultation website of the Commission soon after its closure. A summary of all consultation activities will be included in the Staff Working Document that will present the evaluation of the Environmental Crime Directive (in the first half of 2020).

[1] INTERPOL-UN Environment (2016). Strategic Report: Environment, Peace and Security – A Convergence of Threats. Available at www.interpol.int and www.unep.org.
[2] 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.
[3] 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
[4] COM(2015) 185 final.
[5] Council Conclusions on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021, adopted on 18 May 2017.

About you

* Language of my contribution
  - Bulgarian
  - Croatian
  - Czech
  - Danish
  - Dutch
  - English
  - Estonian
  - Finnish
  - French
  - Gaelic
  - German
  - Greek
  - Hungarian
  - Italian
  - Latvian
  - Lithuanian
  - Maltese
  - Polish
  - Portuguese
  - Romanian

- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as
  - Academic/research institution
  - Business association
  - Consumer organisation
  - Non-governmental organisation (NGO)
  - Trade union
  - Business/industry association (please specify sector)
  - Business/industry (Please specify sector)
  - National judicial authority (judge/prosecutor)
  - National public enforcement authority (environmental supervisory authority /police)
  - National public enforcement authority (sector specific)
  - Local/regional authority (please specify)
  - Government authority in charge of environmental policy
  - Professional networks (judges, prosecutors, environmental inspectors, police etc.)
  - Other interest organisations (hunters/farmers)
  - Other Public authority
  - Private individual

With regard to the above question, please specify your business sector (if applicable) or "other" if applicable:

* First name

* Surname

* Email (this won't be published)

* Organisation name

255 character(s) maximum

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

Your EU-Member State of residence

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom

Are you familiar with the Environmental Crime Directive?

- Yes
- No

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- **Anonymous**
  Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

Public
Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the personal data protection provisions

Section on Effectiveness: This section treats the progress of the Directive towards a better protection of the environment.

Question 1a. In your view, did the protection of the environment improve over the last ten years in your **Member State of residence** with regard to:

	Yes, to a large extent	Yes, to some extent	Yes, to a small extent	No	Do not know
Wildlife crime (illegal hunting/logging /trafficking and killing of protected species /damage to habitats)					
Waste crime (dumping, trafficking, illegal handling of waste)					
Pollution crimes (air /water/soil)					
Other (please specify)					

Please specify "other"

Question 1b. In your view, did the protection of the environment improve over the last ten years in the **European Union** overall with regard to:

	Yes, to a large extent	Yes, to some extent	Yes, to a small extent	No	Do not know
Wildlife crime (illegal hunting/logging/trafficking and killing of protected species/damage to habitats)					
Waste crime (dumping, trafficking, illegal handling of waste)					
Pollution crimes (air/water/soil)					

Other (please specify)	☐	☐	☐	☐	☐

Please specify "other"

Question 2. What kind of changes did you observe in your **Member State of residence** with regard to the protection of the environment over the last 10 years? (multiple answers possible)

	Less	More	Do not know
Environmental damage	○	○	○
Resources to fight environmental crime (courts, police, environmental authorities)	○	○	○
Investments and compliance measures by duty-holders (companies/industries /organisations) obliged by environmental law	○	○	○
Detection of environmental crime	○	○	○
Prosecution of environmental crime	○	○	○
Convictions with regard to environmental crime	○	○	○
Severity of sanction imposed for environmental crime	○	○	○
Cross-border cooperation between law enforcement and judicial authorities in EU Member States	○	○	○
Public awareness of the importance of environment protection	○	○	○

Further comments:

Question 3. Are you a duty-holder with regard to environmental law, or do you work for a duty-holder (for example a company/industry/organisation) obliged by environmental law?

If you answer no, you will be forwarded to question 4.

- ○ Yes
- ○ No

Question 3a.
Did you observe that the criminalisation of environmental offences led to duty-holders taking measures to comply with environmental law requirements?

- Yes
- No
- No, environmental compliance measures were taken independently of the criminalisation of environmental offences
- Do not know

Question 3b. If the answer to the above question is yes, which additional measures have been taken in your organisation:

Several answers are possible

- [ ] improvement of monitoring/controls/compliance measures
- [ ] investments in equipment/assets/production sites/specialised staff etc.
- [ ] compliance training/awareness-raising measures for staff
- [ ] additional legal advice
- [ ] external consultancy/advice

Other, please specify:

Question 4. If you think that the protection of the environment through criminal law as provided in the EU Directive might not be fully effective in your Member State of residence or the EU overall, what are in your view the main reasons? Please assess below.

At EU level

	To a large extent	To some extent	To a small extent	No	Do not know
Different criminal sanction levels across the EU makes criminals move their activities to EU Member States with low criminal sanctions or with low risk of detection	☐	☐	☐	☐	☐
Insufficient cross-border cooperation between EU Member State authorities	☐	☐	☐	☐	☐
Insufficient support from EU level (e.g. by bodies such as OLAF, Eurojust) for cross-border cooperation between Member States	☐	☐	☐	☐	☐

At national level - the work of law enforcement and judicial authorities

	To a				

	large extent	To some extent	To a small extent	No	Do not know
Difficulties in finding the criminally liable perpertrator	☐	☐	☐	☐	☐
Practical difficulties to prove that an environmental crime has been committed	☐	☐	☐	☐	☐
The criminal sanctions that are imposed are too low to deter	☐	☐	☐	☐	☐
Insufficient cooperation and coordination between different national authorities responsible for detecting, investigating and prosecuting environmental crime (police, prosecution, judicial authorities, administrative authorities, tax authorities)	☐	☐	☐	☐	☐
Insufficient allocation of financial and human resources to detect, investigate and prosecute environmental crime	☐	☐	☐	☐	☐
Lack of specialisation and training of law enforcement authorities and judiciary	☐	☐	☐	☐	☐
Lack of information sharing between different relevant authorities	☐	☐	☐	☐	☐

At national level - the legislator's work

	To a large extent	To some extent	To a small extent	No	Do not know
The criminal sanctions and the levels provided for in the national criminal code do not have enough of a deterrent effect	☐	☐	☐	☐	☐
Lack of an effective system for criminal liability for legal persons	☐	☐	☐	☐	☐
The complexity of enforcement of environmental law (interplay between criminal, civil and administrative law)	☐	☐	☐	☐	☐

Further comments:

Question 5. If you consider that terms in the EU Directive such as “substantial damage”, “dangerous activity or substances”, “negligible/non-negligible impact” are too vague, how could legal clarity be improved? (Several answers are possible)

Several answers are possible

- ☐ At EU level: the Directive should contain clearer and more precise definitions
- ☐ At EU level: the EU should issue non-binding guidelines/best practices on vague terms in the Directive, considering legal traditions and case law
- ☐ At Member State level: Member States should transpose vague terms into their national law in a clear and precise manner taking account of their national legal traditions
- ☐ At Member State level: the judiciary should clarify vague terms in case law
- ☐ In your Member State of residence, there are no such problems resulting from the terms mentioned
- ☐ Do not know

Any other comment:

Question 6. If you consider that the Directive lacks effectiveness, which of the following actions, on particular issues, could have been useful to improve its effectiveness:

	Very useful	Useful	Not very useful	Not useful at all	Do not know
Definition of minimum and/or maximum sanction levels binding for all Member States	○	○	○	○	○
Prison sanctions for serious forms of environmental crime	○	○	○	○	○
Rules on confiscation of proceeds generated through environmental crime	○	○	○	○	○
A system of fines proportionate to the turnover of the legal person or to the economic benefit generated through criminal offences	○	○	○	○	○
Criminal sanctions for legal persons if the crime was committed for their benefit	○	○	○	○	○
Obligation for Member States to criminalise the attempt to commit environmental crime	○	○	○	○	○
Rules on territorial and personal jurisdiction[1] of a Member State with regard to environmental crime. [1] Jurisdiction in this context means the competence of a Member State to apply and enforce its national	○	○	○	○	○

law in a defined geographic area (e.g. the Member State's territory) and with regard to particular persons (e.g. its nationals independent of where the criminal act is committed).					
Obligation of Member States to coordinate prosecution where an environmental crime falls under the jurisdiction of several Member States (for example by having recourse to Eurojust)	○	○	○	○	○
Rules ensuring that effective investigative tools, such as those which are used against organised or other serious crime, are available for environmental crime	○	○	○	○	○
Obligation of Member States to ensure cooperation and coordination between national law enforcement, prosecution and judicial authorities, including information exchange	○	○	○	○	○
Further EU action is not necessary	○	○	○	○	○

Other suggestions:

Section on Efficiency: This section treats the relationship between the costs and benefits generated by the Directive.

Question 7: To what extent would you agree or disagree with the following statement?

"The benefits of increased environmental protection derived from the Directive largely outweigh the costs of implementing the Directive."

- ○ Strongly agree
- ○ Agree
- ○ Neither agree or disagree
- ○ Disagree
- ○ Strongly disagree
- ○ Do not know

Section on Relevance: This section treats the relevance of the Directive and more specifically if the objectives of the Directive still correspond to the needs to improve the protection of the environment.

Question 8. In your view, is criminalisation of environmental offences an effective way to ensure compliance with environmental law?

- No, administrative sanctions (permission withdrawal, cessation of activities etc, compliance monitoring (inspections and other controls) and preventive measures (e.g. awareness raising, certification/compliance programmes) are effective and sufficient
- Criminalisation should complement administrative sanctions and preventive measures
- Do not know

Other, please specify:

Section on Coherence: This section treats the relationship between the Directive and other European instruments in the same area.

Question 9. In your view, to what extent do the following sanctions and measures motivate a duty-holder (company/industry/organisation, natural person) to take measures to comply with environmental law?

	To a large extent	To some extent	To a small extent	Not at all	Do not know
Risk of imprisonment	☐	☐	☐	☐	☐
Risk of criminal financial penalties	☐	☐	☐	☐	☐
Risk of administrative fines	☐	☐	☐	☐	☐
Risk of reputational damage	☐	☐	☐	☐	☐
Restauration costs/private settlement costs to make good environmental damage	☐	☐	☐	☐	☐
Other sanctions such as withdrawal or suspension of a licence/authorisation to operate an establlishement, the shutdown of an establishment, judicial winding up, removing access to public aid, judicial supervision	☐	☐	☐	☐	☐
Preventive measures (certification, compliance programmes, information campaigns)	☐	☐	☐	☐	☐
Effective controls (including environmental inspections, custom controls)	☐	☐	☐	☐	☐
Concern for the environment	☐	☐	☐	☐	☐

Question 10. The EU Agenda on Security (2015) highlighted the link between environmental crime and organised crime. In your view, does the Directive ensure

that challenges from the involvement of organised crime are met? (Several answers are possible.):

- [ ] Yes, the Environmental Crime Directive's provisions are sufficient to meet challenges stemming from involvement of organised crime.
- [ ] No, the Environmental Crime Directive lacks provisions to oblige Member States to treat environmental crime committed in the context of organised crime as an aggravating circumstance in court procedures.
- [ ] No, the Environmental Crime Directive lacks provisions on minimum or maximum sanctions if environmental crime is committed in the context of organised crime
- [ ] No, the Environmental Crime Directive lacks provisions on investigative tools to be made available if environmental crime is committed in the context of organised crime.
- [ ] No, the Environmental Crime Directive lacks provisions to oblige Member States to criminalise environmental offences if committed in the framework of a criminal organisation independent of whether the offence has caused serious damage or not.
- [ ] Do not know.

Other:

Question 11. In your view, should more acts be criminalised by the Directive (Art. 3)?

- ○ Intentional or negligent actions which did not violate environmental law but caused serious environmental damage
- ○ Environmental offences independent of whether they actually caused serious damage.
- ○ No.
- ○ Do not know.

Section on EU added-value: This section treats the question whether EU action is necessary to stimulate and complement national action.

Question 12. Currently, breaches of EU fisheries legislation are generally not criminalised. Do you find it justified and coherent that breaches of fisheries legislation should be criminalised?

- ○ Yes
- ○ No
- ○ Yes, for certain serious breaches
- ○ Do not know

Question 13: In your view, has the Directive contributed to:

In the EU as a whole

	To a large extent	To some extent	To a small extent	Not at all	Do not know
More compliance of duty holders with environmental law	○	○	○	○	○
Prevention of “safe havens” for criminals in the EU	○	○	○	○	○
Reduction of illegal trade (of waste, wildlife, dangerous materials etc.)	○	○	○	○	○
Increased awareness of the importance of environmental protection	○	○	○	○	○
More cross-border cooperation between Member State law enforcement and judicial authorities	○	○	○	○	○
More resources allocated to Member State law enforcement and judicial authorities	○	○	○	○	○
Better training and specialisation of Member State law enforcement and judicial authorities	○	○	○	○	○
More deterrent sanctions imposed by Member State courts with regard to environmental crime	○	○	○	○	○
More environmental crime prosecuted in Member States	○	○	○	○	○

In your Member State of residence

	To a large extent	To some extent	To a small extent	Not at all	Do not know
More compliance of duty holders with environmental law	○	○	○	○	○
Prevention of “safe havens” for criminals in the EU	○	○	○	○	○
Reduction of illegal trade (of waste, wildlife, dangerous materials etc.)	○	○	○	○	○
Increased awareness of the importance of environmental protection	○	○	○	○	○
More cross-border cooperation between Member State law enforcement and judicial authorities	○	○	○	○	○
More resources allocated to Member State law enforcement and judicial authorities	○	○	○	○	○

Better training and specialisation of Member State law enforcement and judicial authorities	○	○	○	○	○
More environmental crime prosecuted in the Member States	○	○	○	○	○

Question 14. To what extent do you agree with the following:

	To a large extent	To some extent	To a small extent	Not at all	Do not know
If there was no EU action on environmental crime, Member States would have reached the same result by national criminal legislation.	○	○	○	○	○
EU action is important to have a framework for effective cross-border cooperation with regard to environmental crime.	○	○	○	○	○

Question 15. Are there any other issues with regard to the Directive to which you would like to draw our attention? Please feel free to upload a relevant document, such as for example evidence supporting your replies or a position paper. Please note that the uploaded document will be published alongside your response to this questionnaire. The maximum size of an uploaded file is 1 MB.

Please upload your file

The maximum file size is 1 MB
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed