



Proposal for a new Directive on the protection of the environment through criminal law

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Context

Directive 2008/99/EC on the protection of the environment through criminal law provides for common minimum rules on criminalisation of environmental offences

- The Commission **evaluated the Directive** and published its findings in October 2020. The evaluation found that the current Directive did not have much effect on the ground.
- The **Biodiversity Strategy, Zero Pollution Action Plan** and the **European Green Deal** Communication call for a **more effective protection of the environment, also through criminal law**.
- On 15 December 2021, the Commission **adopted the proposal on the new ECD**.

Main novelties

- Architecture of the directive
- The notion of 'unlawful' and environmental offences
- Sanctions
- Role of civil society
- Strengthening the enforcement chain
- Increased ability to monitor application in practice



Architecture of the directive

- Minimum rules to define environmental criminal offences and sanctions in EU policy areas (Art. 83(2) TFEU).
- Removing the Annexes and instead inserting a dynamic reference to relevant sectoral legislation.
- In the future, the European legislator would have to update the Directive through legislative procedure only for crime areas to be added to the Directive's scope.

The notion of 'unlawful' and environmental offences



Unlawful as defined under Article 2(1):

- breach of environmental sectoral legislation as a constituent element of environmental offences;
- even if carried out under an authorisation obtained fraudulently, or by corruption, extortion or coercion.

Refined and new offences under Article 3:

- Update and addition of new criminal offences to reflect the current state of EU environmental law such as: illegal timber trade; illegal ship recycling; serious breaches related to dealing with fluorinated greenhouse gases and illegal water abstraction causing substantial damage to water resources > **Total: 18 criminal offences**
- Strengthening the legal clarity by introducing specific criteria to assess the terms used to define environmental offences: '**substantial damage**'; '**negligible quantity**'; and '**likelihood to cause damage**' to the environment.

Wildlife related offences (1)



Background

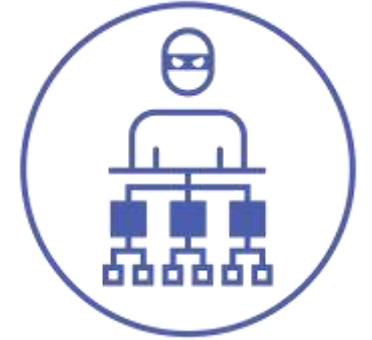
- Lack of compliance with wildlife prohibitions
- The **EU Action Plan against Wildlife Trafficking** aims to improve compliance in the field of wildlife trafficking

Conduct covered by the proposal:

- the killing, destruction, taking of, possession, sale or offering for sale protected wild animal or plant species;
- trading in specimens of wild fauna or flora species or parts or derivatives listed under CITES regulation;
- a significant deterioration of a habitat;
- illegal timber trade.
- + multiple other offences also protect wildlife

Wildlife related offences (2)

Council conclusions set the EU's priorities for the fight against serious and organised crime for EMPACT 2022 – 2025, 8665/21, 12 May 2021. The aim of the priority on environmental crime is: *“to disrupt criminal networks involved in all forms of environmental crime, with a specific focus on waste and wildlife trafficking”*.



Data

- **4.6 tonnes of glass eels** - 350 million European glass eels, worth € 3 billion, are trafficked from the EU every year. They are mostly sold in Asia as food.
- **639 ivory items** - Elephant poaching increases the risk of extinction. Ivory is mainly sourced from Africa and trafficked through Europe to Asia.
- **355 reptiles, worth € 800 000** - Thousands of reptile species worldwide are threatened by trafficking. They are mostly used in the fashion industry or as pets.



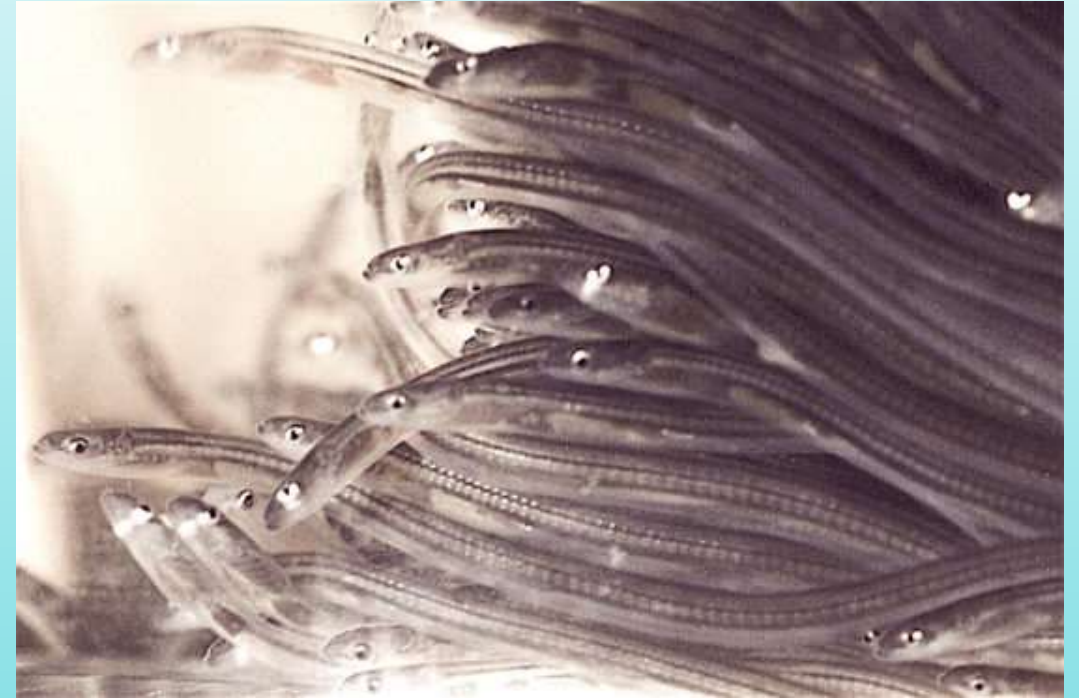
Source: Council of the European Union, General Secretariat, EMPACT 2018- 2021

Case example – glass eels



The Regional High Court of Nantes, in a decision of 7 February 2019:

- sentenced the traffickers up to 2 years imprisonment and to fines;
- 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.
- financial penalties amounted from EUR 5,000 to EUR 30,000 only (reform);
- adjudicated to compensate for moral and ecological damage.



Sanctions



- **Effective, dissuasive and proportionate** sanctions for both, **natural and legal persons**:
 - Minimum maximum levels of imprisonment for natural persons;
 - Minimum maximum level of fines for legal persons based on legal person's turnover.
- **Ancillary sanctions and measures** for both, natural and legal persons;
- **Aggravating** and **mitigating** circumstances (Articles 8 and 9);
- Introducing specific **limitation periods** for criminal offences (Article 11);
- **Harmonisation of rules on jurisdiction** (Article 12).

Role of civil society



Recognise and strengthen **the role of citizens and civil society**:

- Protection of persons who report environmental criminal offences/assist in their investigation (Article 13), and
- Rights for the public concerned to participate in proceedings in accordance with national law (Article 14), for example as a civil party.

Strengthening the enforcement chain

- **prevention** (information and awareness-raising campaigns and research and education programmes);
- **resources** (staff and sufficient financial, technical and technological resources);
- **targeted and regular training** of judges, prosecutors, police, judicial staff and competent authorities' staff;
- **effective investigative tools**;
- **coordination and cooperation** between competent authorities within a Member State;
- **adoption of national strategies** aimed at mobilising efforts to combat environmental crime.

Increased ability to monitor application in practice

Obligations of the Member States to:

- **collect and regularly publish statistical data** on environmental crime-related proceedings;
- **annually transmit** to the Commission the relevant statistical data.



Obligations of the Commission to:

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

Thank you!

