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EDITORIAL

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Dear Readers,

This eucrim issue focuses on the link between administrative and criminal law, which is becoming conspicuously manifest in environmental law. An in-depth evaluation of Directive 2008/99/EC on the protection of the environment through criminal law revealed that it has had no noticeable impact on Member State practice in the enforcement of EU environmental law. On 15 December 2021, the European Commission responded by adopting a proposal for a new directive of the European Parliament and of the Council on the protection of the environment through criminal law, intended to replace said Directive 2008/99/EC (COM(2021) 851 final).

The improvements to EU environmental criminal law contained in this proposal extend the scope of the directive to many more areas that affect the environment and natural resources, introduce common and clear definitions of environmental criminal offences in some areas, and include a proposal to specify punishment for inciting, aiding and abetting criminal offences committed intentionally. Of major importance in view of creating an EU-wide level playing field is the proposal to provide minimum maximum sanctions for natural and legal persons, including minimum maximum sanctions not less than 5% or 3% of the total worldwide turnover of the legal person or undertaking in the business year preceding the fining decision. Additional sanctions include the obligation to reinstate the environment within a given time period, disqualification from practicing business activities, closure of establishments of the type used for committing the offence, and the withdrawal of permits and authorisations to pursue activities resulting in commission of the offence. This last sanction illustrates that environmental criminal law today is still largely dependent on administrative law, because the required conduct is often defined in individual or general administrative acts, and thus these acts also define what should be considered a criminal offence. Furthermore, the proposal also provides for aggravating and mitigating circumstances, the freezing and confiscation of the proceeds derived from and instrumentalities used or intended to be used in the commission of or contribution to the commission of the environmental offences referred to in the directive. Other improvements concern the provisions on the protection of persons who report environmental offences or assist their investigation, and the right for members of the public concerned to participate in proceedings, next to the provisions concerning prevention, resources, training, and investigative tools. Given the rise of environmental crime worldwide and throughout Europe as documented by UNEP, Interpol, Europol, and Eurojust, strengthening the criminal law framework to combat environmental crime is needed more urgently than ever.

Not all environmental offences require criminal law enforcement, however, and some crimes can or should be dealt with by means of the administrative sanctioning track. In this respect, it is of course crucial that an integrated enforcement policy take shape that defines in detail the role of both the administrative and the criminal enforcement tracks to close gaps. In this regard, it is very important that the Commission proposal contains a provision to the effect that Member States shall take the necessary measures to establish “appropriate mechanisms for coordination and cooperation at strategic and operational levels among all their competent authorities involved in the prevention of and the fight against environmental criminal offences.” This is also backed by the general approach adopted by the Council on 9 December 2022. Such mechanisms shall *inter alia* be aimed at “ensuring common priorities and understanding of the relationship between criminal and administrative enforcement.” Hence, the need to develop an integrated enforcement policy of EU environmental law, encompassing both tracks, is fully endorsed by the Council. It is now up to the Member States to make it work.

Prof. em. dr. Luc Lavrysen, President (NL) of the Constitutional Court of Belgium

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