

The Revised EU Environmental Crime Directive

Changes and Challenges in EU Environmental Criminal Law with Examples from Sweden



Article

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ABSTRACT

Environmental crime includes wildlife crimes, illegal waste dumping, substance smuggling, and illegal mining. These types of crime lead to habitat loss and species extinction, contribute to global warming, destabilise communities and economies, undermine security and development, and foster corruption. Often transnational in nature, environmental crime has become a lucrative industry for organised crime, which is underpinned by Europol research that has identified numerous criminal networks operating within the EU specializing in waste, pollution, and wildlife crimes. However, there is a lack of comprehensive data, which hampers evaluation and monitoring of measures by policymakers and practitioners. Limited awareness and scarce resource allocation for combating environmental crime is an overarching problem.

The Environmental Crime Directive adopted in 2008 aimed to address some of these issues, but the European Commission's evaluation found that it did not have much effect in practice. In April 2024, a revised directive was adopted. It introduces several new offences, defines concrete types and levels of penalties, and emphasizes resource allocation, cooperation, awareness, and support for environmental defenders. This article describes some of the novelties of the Environmental Crime Directive and provides food for thought regarding the challenges in implementing the directive.

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I. Introduction – EU Environmental Criminal Law

In the European Union (EU), environmental criminal law¹ is established as an autonomous legal field.² The term “environmental crime” covers many areas, for example wildlife crime³ (including forestry and fishery crimes), illegal dumping of waste, smuggling of substances, and illegal mining.⁴

Abuse or vandalism, for example, are criminalised because the actions inflict harm on people or property, and society wants people to avoid causing harm. Environmental criminal law serves to prevent such harm and also aims to ensure the sustainability of natural resource systems and a healthy environment.⁵ Illegal logging, for example, causes habitat loss, species extinction, and landslides and contributes to global warming.⁶ Wildlife trafficking contributes to species extinction, might spread disease,⁷ and causes great suffering to the lives of animals involved.⁸ Above all, natural resources are finite.⁹ About one million species are currently threatened with extinction, at risk of disappearing within decades.¹⁰ Environmental crime also destabilizes communities and economies and has a deleterious impact on security and development; it weakens the rule of law and fosters corruption.¹¹

Environmental crime often has a transnational and trans-criminal character.¹² It has become the third most lucrative industry for organised crime groups, generating up to USD 280 billion per annum. The black market for illegal wildlife products alone is worth up to USD 20 billion per year.¹³ Europol has mapped 821 highly threatening criminal networks operating within the EU. Among these networks, four specialise in waste and pollution crimes, while three focus solely on wildlife crimes. Additionally, 12 networks engage in environmental crime alongside other criminal activities, primarily drug trafficking.¹⁴

Yet, environmental crime cases represented less than 1% of Eurojust’s total casework for the years 2014-2018, a figure that is most likely underestimated. The underestimate may be due to the fact that environmental crime is often linked to crimes like fraud, document forgery, and money laundering. These crimes often take precedence over environmental crime, leading to environmental offenses being inadequately investigated and prosecuted (and even reported).¹⁵ Lack of comprehensive statistical data hampers both the evaluation and effective monitoring of measures by national policymakers and practitioners. Additionally, it leads to limited awareness and resource allocation for combating environmental crime and creates practical challenges and inconsistencies for law enforcement.¹⁶

As part of the Green Deal,¹⁷ the European Commission decided to evaluate the 2008 Directive on the protection of the environment through criminal law and found that it did not have much effect in practice. The number of cases successfully investigated and sentenced had remained at a very low level.¹⁸

Against this background, the 2008 Directive was revised and replaced by Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law (hereinafter: ECD)¹⁹ The ECD covers twenty different types of offences plus has a provision that obligates the Member States to establish qualified offences, which are subject to more severe penalties when the offences defined lead to serious widespread and substantial (i.e., irreversible or long-lasting) damage or destruction of the environment.²⁰ The ECD has added new offences, for example against unlawful ship recycling, water abstraction, and serious breaches of EU laws on chemicals and mercury laws, fluorinated greenhouse gases, and invasive species legislation. The ECD is supplemented by several sectoral Regulations, such as the Regulation on illegal, unreported and unregulated fishing²¹ (aiming at preventing, deterring, and eliminating such practices), and the Wildlife Trade Regulations²².

In the following, I will highlight some challenges in EU environmental criminal law and explain how the 2024 Directive seeks to resolve these issues. These solutions involve the need for clear definitions of criminalised

conduct. The need for clarity, particularly in implementation, is underscored by the application of criminal law principles, including *mens rea* requirements (II), the need to enhance the ability to detect and prosecute environmental crimes (III), and the need to ensure a more equitable “level playing field” for sanctions and other consequences for those who harm the environment (IV). The discussion of these challenges and solutions is supported by examples from Sweden. In section (V), I offer some thoughts on the future enforcement of environmental crime in the EU and provide concluding remarks.

II. Knowing What Is Criminal

Assuming people generally avoid criminal behaviour, it is essential to know what to refrain from. Authorities must also understand when an act constitutes a crime. In environmental law, the line between legal and illegal behaviour is often blurred and difficult to detect. A reasonable assumption might be that anything causing major damage is illegal, but that is not always the case. In principle, all human actions cause major damage to the environment and ecosystems, yet most of these actions are legal. What is criminalised depends on cultural, temporal, local, and normative assumptions, which are constantly changing.

In most EU Member States, administrative environmental law and criminal environmental law co-exist. Whether or not a conduct is punishable as crime may depend on whether an administrative permit allows the conduct in question.²³

According to the ECD, in order to constitute a criminal offence, a conduct must be “unlawful”, meaning, first, a behaviour that violates Union law adopted to achieve one of the objectives in Art. 191(1) TFEU.²⁴ This covers all EU law contributing to these objectives, *irrespective* of its legal basis.²⁵ Secondly, an “unlawful” act can also constitute a breach of a national administrative regulation or decision, giving effect to Union environmental law. In some cases, a certain consequence of a conduct must follow in order for the conduct to be criminal and sometimes also a *certain effect* (i.e., emissions as a consequence of a conduct and then damage to the environment as an effect of the emissions). A conduct constitutes a criminal offence when committed *intentionally* and, for some crimes, also when committed with *at least serious negligence*. Failure to comply with a legal duty to act can have the same negative effect on the environment and human health as active conduct. Therefore, the definition of criminal offences covers both acts and omissions, where applicable.²⁶

1. Nullum crimen sine lege

In criminal legislation, the principle of legality (*nullum crimen/nulla poena sine lege*) demands foreseeability and precision. Criminal law provisions must be reasonably comprehensible and have a clear and unambiguous legal basis²⁷ to ensure that everyone knows the legal limits: if it is not defined as a crime, it is not a crime; and if no sanctions are prescribed, none can be imposed.

The importance of being precise has long been emphasised by the CJEU.²⁸ Prohibitions of a criminal nature must be clearly worded; it is often necessary to set out precisely the types of conduct that are prohibited.²⁹ Although definitions are more precise in the 2024 ECD than in its 2008 predecessor, most interpretations require a deeper understanding of the underlying environmental law. This is especially since the ECD stipulates that relevant terms used when defining unlawful conduct should be construed in accordance with definitions in EU environmental law.³⁰ This requirement is accentuated by the difficulties of interpretation underlying environmental directives (corroborated by the number of references for preliminary rulings³¹ and infringement proceedings³² in the environmental policy area).

The following example from Swedish case law may illustrate the difficulties described above.

A case from the Swedish Supreme Court (*Högsta domstolen*)³³ concerned the marketing of twelve coyote skins (in Swedish “*präriegvarg*”) under the designation “*vargskinn*” (“wolfskin”).

The alleged offence concerned the marketing of specimens from species listed in Annex A of the CITES Regulation³⁴, namely the wolf (*Canis lupus*). The coyote (*Canis latrans*) is not listed. The defendant explained that he had sold the skins as “wolfskins” at a market stall during a historically themed event (a “medieval market”), since while wolves had once existed in the area, there had never been coyotes. Consequently, although he had labelled them as “wolfskins” for thematic reasons, he had not intended to sell the hide of a protected species.

The Swedish Environmental Code criminalises the marketing of animals, plants, etc. if it is in violation of Art. 8(1) of the CITES Regulation,³⁵ according to which, *inter alia*, the offering for sale of specimens of species listed in Annex A is prohibited. In Art. 2 lit t) “specimen” is defined as follows:

any animal or plant [...] of the species listed in Annexes A [...] as well as any other goods which appear from [...] a mark or label, or from any other circumstances, to be [...] animals or plants of those species.³⁶

Looking only at the English version of the text, the *marketing* as a wolfskin was prohibited, no matter what type of skin it was. The defendant had marketed goods that *appeared to be* from wolves. However, the Swedish text version of the Regulation lacks the word “*appear*”.³⁷

The Swedish Supreme Court held that if the wording of the provision neither provides the text with understandable content nor makes it clear that the act in question is punishable in any other way, a conviction would be contrary to the principle of legality. As a result, the seller was found not guilty. The court thus ruled in accordance with the wording of the Swedish language version of the Regulation and with the principle of legality, which is enshrined in both EU and national law.

2. Awareness

Given that individuals typically seek to avoid unlawful conduct, it becomes crucial to have clarity on what actions are prohibited. In wildlife trafficking, people often unknowingly commit crimes. For example, Europeans buy souvenirs made of endangered species on trips abroad and then bring them back to Europe: tequila bottles containing endangered snakes, food items, leather goods, shells (also as bracelets or necklaces), ivory, musical instruments, and medicine. To be legal, trade in endangered species, including products made from them, must be sustainable and traceable. This means that all imports, exports, re-exports, etc. of such species must be authorised through a licensing system.³⁸ The species covered (approximately 35,800 animal and plant species) are listed in three categories, depending on the level of protection they require. Trade is only allowed in accordance with the provisions of the CITES Regulation.³⁹ Many of the illegal souvenirs are sold openly, giving the buyer the impression that the products are legal; however, by participating in the trade, the tourist is committing a crime that they likely do not intend to commit.

Awareness of restrictions might not only affect peoples’ actions. It might also affect whether an act is considered intentional or negligent. In the following, I will illustrate the *mens rea* problem regarding awareness of the criminalisation through two Swedish cases. The first example concerns wildlife trade the second example concerns waste trade. In NJA 2012 p. 28, a stuffed Eurasian Goshawk (*accipiter gentilis*) was marketed on an internet buy-and-sell website. The seller claimed he had never heard the word CITES and was unaware of the fact that the Eurasian Goshawk is a protected species and that, if he had known, he would never have sold it. Since knowledge is a necessary prerequisite, the Swedish Supreme Court found the seller guilty of having *negligently* sold the Eurasian Goshawk in violation of Art. 8(1) of the CITES Regulation. The

defendant could easily have asked the Swedish Agricultural Agency whether its sale was permitted or not. The court's verdict means that, to establish intention, the perpetrator needs to have knowledge about everything in the provision, including the content of Art. 8(1) of the CITES Regulation. Acting without this knowledge, yet still acting, was considered as negligent but not intentional behaviour.⁴⁰

In another case,⁴¹ a man transported a container with *inter alia* 80 television sets with cathode ray tubes from a Swedish port with Ghana as the final destination. In Rotterdam, the container was stopped by Dutch authorities and shipped back to Sweden. The man was charged for having attempted, intentionally or negligently, to export hazardous waste from the EU to Ghana,⁴² and thereby violating an export ban according to Art. 36 of the Waste Shipment Regulation.⁴³ The Regulation prohibits the export of *inter alia* hazardous waste for recycling to countries that are not members of the OECD. The man claimed that the goods were not hazardous waste; the intention was to sell them as used goods in Ghana. The Scania and Blekinge Court of Appeal (in Malmö) held that the defendant's statement implied no intention to export "hazardous waste for recycling" on his part. However, in acting as a trader, he should have informed himself and ensured that the export was legal. The waste had not crossed the EU border, and so the offence was not completed. As a result, the Court of Appeal found him negligent and guilty of attempted unauthorized waste transport. In the Court of Appeal, he was thus convicted of attempted unlawful waste transport. The Swedish Supreme Court shared the view that the defendant was negligent. However, it emphasized that, since the transport was stopped in Rotterdam, the act constituted only an attempt. As a general principle of criminal law, the Supreme Court stressed, criminal liability for *attempt* presupposes *intent* to complete the crime. Given that the defendant had no intention to export hazardous waste, he could not have been trying to do so. Therefore, he was found not guilty. Also in this case, acting without knowledge, yet still acting, was considered negligent but not intentional. The problem here was that the transport was discovered just *before* it crossed the border, which was a prerequisite for the crime to be complete. Since then, the provision in Swedish legislation has been changed.⁴⁴ For criminal liability, the transport does not need to cross a geographical border. The crime is now considered consummated when someone organizes or carries out the transport, provided that the other elements of the offence are met; the transport itself does not need to have started yet.

The ECD emphasises and calls for various measures to raise public awareness about environmental crime, which include campaigns targeting relevant stakeholders as well as the development of research and education programmes.⁴⁵ Ultimately, this may complicate claims of a lack of *mens rea* based on ignorance, particularly given that, in cases of doubt, one is required to consult the relevant authority.

In this context, it is important to note that the ECD deems some conducts unlawful even if *carried out under an authorisation by a competent authority*, when the authorisation was obtained by different forms of deception, or if the authorisation is *manifestly contrary to substantive legal requirements*. The phrase "in manifest breach of relevant substantive legal requirements" should, according to the recitals, be understood as referring to an obvious and substantial violation of substantive legal norms and is not intended to encompass procedural breaches or minor aspects of the authorisation. This interpretation does not shift the responsibility for ensuring the legality of authorisations from competent authorities to operators. Furthermore, the existence of a lawful authorisation does not exempt the holder from criminal liability if they fail to comply with all the conditions of the authorisation or other applicable legal obligations that fall outside the scope of the authorisation.⁴⁶ This emphasises the need of awareness for operators. How this will be implemented and how national courts will handle such situations remains to be seen. In the Swedish Environmental Code, for example, the provision on "environmental crime" stipulates that if a competent authority has authorised the procedure, no liability shall be imposed under that section.⁴⁷

III. Detecting Crimes

1. Strengthening awareness, knowledge, and cooperation

Environmental crimes often go unnoticed: they typically harm wildlife and plants, which lack identifiable owners or witnesses to report offenses. Therefore, authorities must be vigilant and proactive.

As already stated, the line between legal and illegal activities is thin. The same action might be legal with a permit, but criminal without. Illegal profits might be laundered through legitimate businesses and seemingly legitimate businesses may engage in criminal activity. Fraud, exploitation, and corruption are integral elements of the environmental crime infrastructure.⁴⁸

Illustrative examples are trade in endangered species and illegal waste shipments, which both involve tactics like falsifying documents. Species are falsely labelled as non-CITES specimens and legal documents are used for illegal sales. Hazardous waste is classified as non-hazardous. It is estimated that around 25% of all waste shipments are illegal on account of such declassification. Detecting them requires thorough inspection by authorities. Despite being the fourth largest criminal activity globally, combating these crimes lacks adequate resources and political prioritization.⁴⁹

The ECD has also tackled this problem. Member States are obliged to establish national strategies on combatting environmental criminal offences by 21 May 2027. The strategies must outline objectives, priorities, coordination methods, monitoring procedures, resources needed, and involvement in relevant European networks. Minimum criteria concerning resources and enforcement powers must also be established. Subsequently, the strategy needs to be reviewed and updated at least every five years.⁵⁰ In addition, Member States must set up systems to record and provide anonymized statistical data on environmental crime, covering investigations and judicial outcomes, and report annually to the European Commission. The Commission itself must publish a report based on the data every three years.⁵¹ The obligations for statistical data are important, since lack of comprehensive statistical data hampers both the evaluation and effective monitoring of measures by national policymakers and practitioners. The lack of data also leads to limited awareness and resource allocation when combating environmental crime.⁵²

Environmental crime is often of a complex and technical nature; competent authorities with high levels of legal, technical, and financial support, along with extensive training and specialisation are needed to combat them.⁵³ The ECD encourages Member States to strengthen the specialisation of authorities in environmental crime and mandates specialised and regular training for judges, prosecutors, police, and other relevant staff, tailored to their roles. Member States are encouraged to establish specialised units and provide technical expertise to enhance professionalism in handling environmental criminal cases.⁵⁴

The ECD also attaches importance to cooperation. Cooperation mechanisms should be organised between all actors along the administrative and criminal enforcement chains. Member States need to cooperate through EU agencies, in particular Eurojust and Europol, as well as with EU bodies, including the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF), in their respective areas of competence.⁵⁵

In this context, it is worth mentioning that, at the international level, Interpol has four global enforcement teams (Fisheries, Forestry, Pollution, and Wildlife). These teams aim to dismantle the criminal networks behind environmental crime by providing law enforcement agencies with tools and expertise.⁵⁶

2. Threats to environmental defenders

Public awareness is crucial, not only to prevent and detect crimes, but also to define the prioritisation of environmental issues and to allocate necessary resources at national levels.⁵⁷ Hopefully, the more aware people are, the more active authorities are. At the same time, the dangers for individuals who point out the relevant problems must be minimised.

In today's reality, environmental defenders⁵⁸ who point out doubtful (but lucrative) activities such as illegal logging or waste crimes, regularly face threats, e.g., from contract killers or aggressive lawyers.⁵⁹ Many attacks, including fatal ones, go unrecorded. In 2019 alone, 212 land and environmental defenders were murdered, over half in Colombia and the Philippines.⁶⁰ Most confrontations occur in the mining, agriculture, and forestry sectors.⁶¹ According to the EU Commission, two forest rangers investigating illegal timber harvesting were murdered in one EU Member State.⁶² Growing demand for resources to meet consumer needs drives violence globally.⁶³ Due to the transnational nature of environmental crime, global recognition of the crime is essential. Silencing witnesses undermines judicial confidence and threatens democracy. Witnesses who provide information must feel safe.⁶⁴ The ECD states that Member States must implement measures to guarantee that individuals who report offenses, furnish evidence, or cooperate with competent authorities receive support and assistance during criminal proceedings. Member States should consider allowing anonymous reporting of environmental offenses where not already available.⁶⁵

IV. Sanctions

1. Sanction levels

Today's sanction levels are often too low to be dissuasive.⁶⁶ Member States have significant differences in penalties. As an example: regarding the same offenses prescribed under Art. 3 lit. a) of Directive 2008/99, Bulgaria sets a penalty of up to €25,000,⁶⁷ while Austria imposes a maximum penalty of €3.6 million, and Flanders in Belgium a maximum penalty of €4 million. Some Member States have particularly low sanction levels: Bulgaria, Sweden, and Belgium for offenses under Art. 3 lit. g)⁶⁸ and Italy for offenses under Art. 3 lit. f) of the 2008 Directive,⁶⁹ Ireland has low sanctions for offenses under Art. 3 lit. d),⁷⁰ while Romania's sanctions are slightly higher, but still not much higher than €30,000 for the offenses prescribed in Art. 3 of the 2008 Directive. Germany, Belgium (at the federal level), and Ireland have sanction levels exceeding €10 million for some offences. The maximum levels of prison sentences also vary widely across Member States, ranging from 2 years to life imprisonment (Malta), for various categories of offenses under Art. 3 of Directive 2008/99.⁷¹

Establishing a uniform sanctioning system is considered crucial, for example since illegal trade in waste offers substantial profits with comparatively lower sanctions than those for drug trafficking.⁷² Efficiency is linked to the ability to achieve the Union's regulatory target. Proportionality involves determining the appropriate level of sanction necessary to meet the intended objectives. Deterrent sanctions should encourage the perpetrator not to repeat his actions and discourage other persons from doing the same.⁷³ Enhanced coherence between national criminal sanctioning systems and administrative law enforcement and sanctioning mechanisms is believed to generate synergies and promote a unified approach across all components of the law enforcement chain, thereby strengthening efforts to combat environmental crime.⁷⁴ While the 2008 Directive left a very broad discretion to the Member States, the 2024 Directive defines concrete types and levels of penalties for natural and legal persons. This can be considered a huge step forward in ensuring a deterrent effect across the EU.⁷⁵ Nevertheless, Member States are also under a general obligation to take all measures necessary to ensure that EU law is applied and enforced effectively and that

its *effet utile* is achieved. Infringements of EU law, both procedural and substantive, must be penalised under conditions, which are analogous to those applicable to violations of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate, and dissuasive.⁷⁶ In the end, the European Commission monitors whether Member States fulfil their obligations.⁷⁷

2. Complementary sanctions and measures

According to the Commission, accessory sanctions, such as reinstating the environment and withdrawing permits, are often seen as more effective than financial penalties for legal entities and should therefore be made available.⁷⁸ The ECD encourages Member States to implement additional criminal and non-criminal (administrative) sanctions and measures, such as permit withdrawal and urges them to develop alternatives to imprisonment in order to help restore the environment. The sanctions should be tailored to individual circumstances and cover both natural and legal persons.⁷⁹

Most Member States have some complementary sanctions and measures in place, either accessory sanctions within their criminal law or administrative sanctions and measures other than fines.⁸⁰ However, they differ between Member States and their use is not consistent.⁸¹

Finnish law provides an example of good practice in this context with its concept of "forfeiture of value". This term describes a type of compensation that is penal in nature. Given that it is difficult (and inappropriate) to determine a market value for protected species, Finnish law determines the value as a "representative of its species". Concretely: anyone who has committed certain environmental crimes must be sentenced to forfeit to the state the object of the crime (for example the illegally traded goods) *and*, if protected species are involved, the "representative value" of the species affected. The representative values are determined by the Ministry of the Environment.⁸²

The difference between the penal approaches taken by Sweden and Finland can be illustrated by the following case. In February 2009, the British police carried out "Operation Easter," a nationwide project to apprehend so-called "egg dealers". During this operation, a British egg-smuggling ring was uncovered, with worldwide connections, including Sweden and Finland. In Sweden, the infamous "Stekenjokk egg case"⁸³ emerged; in Finland, the defendant was called "the Egg-man from Närpes".⁸⁴ In the Swedish case, the three defendants possessed extensive collections of both bird eggs and fully grown birds. In total, at least 4,000 eggs were involved in the case, but the collections included even more. It is not yet illegal in Sweden to have a collection; however, the taking and trading of eggs are criminal offenses. The indictment against the three defendants included charges of aggravated hunting crime, aggravated dealing, and aggravated species protection offence. The descriptions of the criminal acts covered 105+6 incidents, some of which were later dismissed. In Finland, the "Egg-man from Närpes" was convicted for nature conservation crimes, hunting crimes, and for possessing over 9,000 bird eggs and several stuffed or frozen birds and animals.

In Sweden, three defendants were sentenced; two of them were fined 11,900 SEK (approx. €1,260 in 2015) and 41,400 SEK (approx. €4,390 in 2015), respectively, while the third was sentenced to one year of imprisonment. In the Finnish case, the defendant was sentenced to one year and four months of imprisonment. The Finnish court also asserted the value of each individual animal and egg as a representative of its species, which totaled €561,180. However, considering the defendant's personal circumstances, the fact that the value confiscation is akin to a punishment which, in this case, would have a ruinous effect, and that the egg collection has been forfeited to the state and could likely be used for scientific purposes in the future, the court found grounds to adjust the otherwise unreasonable final amount to €250,000.

The advantage of the Finnish approach: the consequences for the perpetrator's behaviour are much more "noticeable" than "just" a punishment. Moreover, the public gains some awareness of the damage caused to

nature by the offence when attention is drawn to the social costs associated with nature conservation crimes.⁸⁵

V. Concluding Remarks: Hope and Complexity

Directive (EU) 2024/1203 on the protection of the environment through criminal law is largely based on the findings from the evaluation of the 2008 Environmental Crime Directive, which revealed significant enforcement gaps across EU Member States and throughout the law enforcement chain. Furthermore, the complexity and technical nature of environmental law made it difficult for authorities to effectively detect, investigate, and prosecute environmental offenses. As a result, the number of successfully prosecuted cases remained low, making environmental crime a relatively "safe" avenue for financing criminal activity.

The 2024 Directive addresses these issues more comprehensively by providing clearer definitions of environmental crimes and standardising what constitutes unlawful behaviour. It also recognizes the growing complexity of environmental crime and seeks to strengthen cooperation across all sectors of enforcement. The inclusion of new offenses demonstrates the Directive's adaptation to emerging environmental threats. Additionally, it introduces harsher penalties for severe offenses that cause long-lasting and irreversible environmental damage, ensuring that these are met with sufficiently deterrent sanctions.

There is a strong focus on planning and monitoring, which is expected to enhance both the detection and prosecution of environmental crimes. Another significant improvement is the Directive's emphasis on knowledge and the need for specialised training for judges, prosecutors, and law enforcement agencies, ensuring they have the expertise to handle the technical aspects of environmental crime. Together with public awareness and cooperation between national and EU bodies, such as Eurojust and Europol, this knowledge is crucial for the Directive's effective enforcement. Importantly, the Directive also highlights the need for support and protection of environmental defenders. By urging Member States to safeguard these individuals, the Directive recognises the important role they play in exposing illegal activities.

While the Directive marks a notable development, its effectiveness will largely depend on its implementation. It is essential that national governments allocate sufficient resources and develop appropriate strategies to combat environmental crime effectively. The challenges remain substantial, particularly given the diversity of legal systems and varying levels of commitment to environmental protection across Europe. The complex and technically intricate nature of environmental law persists, and, when combined with the necessity of applying fundamental principles of criminal law, it imposes very high demands on implementation. This means that the European Commission still faces considerable work in ensuring that the Directive's objectives are fully realised, with continuous monitoring and adjustments required.

1. Competence expressed in Art. 83 TFEU.⁸⁶

2. Europol, Serious and Organised Crime Threat Assessment (SOCTA) report, 2021, p. 98.⁸⁷

3. For an overview of wildlife crime, see the International Consortium on Combating Wildlife Crime (ICCWC). *ICCWC Indicator Framework for Combating Wildlife and Forest Crime*, 2016.⁸⁸

4. United Nations Environment Programme, *The Rise of Environmental Crime*, 2016, pp. 17-23.⁸⁹

5. ICCWC, Wildlife and Forest Crime Analytic Toolkit, 2012, p. 13.⁹⁰

6. Interpol, "Forestry crime" <<https://www.interpol.int/Crimes/Environmental-crime/Forestry-crime>> accessed 15 October 2024; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *New EU Forest Strategy for 2030*, SWD(2021) 651 final - SWD(2021) 652 final.⁹¹

7. Viruses like SARS-CoV-2 (the virus responsible for the COVID-19 pandemic), UNDOC, *World Wildlife Report*, 2020, p. 19.⁹²

8. European Commission, *Study on the interaction between security and wildlife conservation in sub-Saharan Africa*, 2019. See also preamble of the UNGA resolution A/RES/73/343 adopted by the General Assembly on 16 September 2019, *Tackling illicit trafficking in wildlife*.⁹³

9. Interpol, "Environmental crime" <<https://www.interpol.int/Crimes/Environmental-crime>>, accessed 15 October 2024.⁹⁴

10. E. S. Brondizio et al. (eds.), *Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. IPBES-report, 2019, p. XVI.⁹⁵

11. United Nations Environment Programme, 2016, pp. 17-23; and European Commission (2019), *op. cit.* (n. 8). See also preamble of the UNGA resolution, *op. cit.* (n. 8).[←](#)
12. Offences of a transnational nature are defined in Art. 3 of the 2000 UN Convention on Transnational Organized Crime (Palermo Convention).[←](#)
13. Interpol (2023) *Organized crime groups pushing environmental security to tipping point*, <<https://www.interpol.int/News-and-Events/News/2023/Organized-crime-groups-pushing-environmental-security-to-tipping-point>>; Interpol (2023). *Illegal wildlife trade has become one of the world's largest criminal activities* <<https://www.interpol.int/News-and-Events/News/2023/Illegal-wildlife-trade-has-become-one-of-the-world-s-largest-criminal-activities>> both accessed 15 October 2024.[←](#)
14. Europol. *Decoding the EU's most threatening criminal networks*, Publications Office of the European Union, Luxembourg 2024. See also C. Riehle, "Key Features of Most Threatening Criminal Networks in the EU", *eucrim* 1/2024, 31-32.[←](#)
15. European Union Agency for Criminal Justice Cooperation, *Report on Eurojust's Casework on Environmental Crime*, January 2021, p. 9 plus charts 1-3 and 7, Annex 1.[←](#)
16. European Commission, Evaluation report – 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. Commission staff working document, SWD (2020) 259 final, chapter 7.[←](#)
17. European Commission, *The European Green Deal*. COM (2019) 640 final.[←](#)
18. European Commission (2020), Evaluation report, *op. cit.* (n. 16). On the 2008 Directive and its deficits, see M. Faure, "The Creation of an Autonomous Environmental Crime through the New EU Environmental Crime Directive", in this issue.[←](#)
19. Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC, OJ L, 2024/1203, 30.4.2024 (ECD). The Directive entered into force on 20 May 2024 and must be incorporated into Member States' national law by 21 May 2026.[←](#)
20. Cf. Faure, *op. cit.* (n. 18).[←](#)
21. Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, OJ L 286, 29.10.2008, 1; Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ L 280, 27.10.2009, 5.[←](#)
22. Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.3.1997, 1 (the CITES Regulation); Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 166, 19.6.2006, 1 (the Implementing Regulation) and Commission Implementing Regulation (EU) 2023/2770 of 12 December 2023 prohibiting the introduction into the Union of specimens of certain species of wild fauna and flora in accordance with Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, OJ L, 2023/2770, 13.12.2023 (the Suspension Regulation). See also Commission Implementing Regulation [EU] 792/2012, which lays down rules for the design of permits, certificates, and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006, OJ L 242, 7.9.2012, 13 (the Permit Regulation).[←](#)
23. C. Gerstetter et al., *Environmental Crime and the EU*. Synthesis of the Research Project "European Union Action to Fight Environmental Crime" (EFFACE), 2016, p. 30.[←](#)
24. ECD, *op. cit.* (n. 19), Art. 3(1) lit. a) and b) plus Recital (9).[←](#)
25. E.g., acts adopted based on TFEU Arts. 91, 114, 168 or 192, or, under national laws, administrative regulations or decisions giving effect to that Union law.[←](#)
26. ECD, *op. cit.* (n. 19), Art. 3 and Recitals (9) and (26).[←](#)
27. ECJ, 11 July 2002, Case C-210/00 *Käserei Champignon Hofmeister*. See also Swedish Government Official Reports, SOU 2020:13 *Att kriminalisera överträdelser av EU-förordningar* and Swedish government bill, prop. 2011/12:59.[←](#)
28. ECJ, 15 December 2011, *C-585/10 Møller* and *ECJ*, 16. September 2016, *C-304/15 Commission v United Kingdom*.[←](#)
29. Opinion of Advocate General Kokott of 28 February 2019 in Case *C-624/17, Tronex* and Joined Cases C-473/19 and C-474/19 *Föreningen Skydda Skogen and Others*.[←](#)
30. ECD, *op. cit.* (n. 19), Art. 2(1) and Recitals (23) and (73).[←](#)
31. In the last five years (2019-05-28 – 2024-05-28), 103 cases have been filed for preliminary rulings in the field of "environment" (search on Curia.eu). Of these, 17 requests concern Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats directive).[←](#)
32. Infringement cases open at year-end (2018-2022): 2018: 298, 2019:327, 2020:445, 2021:356, 2022:425. See, European Commission, "Environment 2022" <https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2022-annual-report-monitoring-application-eu-law/environment-2022_en> accessed 15 October 2024.[←](#)
33. Published in the legal periodical *Nytt Juridiskt Arkiv* (NJA) 2016, p. 680.[←](#)
34. Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.[←](#)
35. 29 kap. 2 b § miljöbalk (1998:808).[←](#)
36. Emphasis added by author.[←](#)
37. This translation error has been pointed out to the legislator from several authorities, but the Swedish translation has not been corrected, with the withdrawal of charge as the result of several investigations. Edström and Ljung *Förslag på åtgärder för ett stärkt arbete mot arts skyddsbrott*, (2019) Jordbruksverket, Rapport 2019:14, p. 35.[←](#)
38. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), adopted in 1972, and the EU Wildlife Trade Regulations.[←](#)
39. Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.[←](#)
40. For a detailed analysis of the verdict, see, e.g., P. Asp, "Håller den Victorska tesen? Om blankettstraffbud, normgivningsmakt och krav på uppsättsstäckning", *SvJT* 2015, 370.[←](#)

41. Published in *Nytt Juridiskt Arkiv (NJA)* 2016, p. 746. ↵

42. 29 kap. 4a § miljöbalk (1998:808). ↵

43. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, OJ L 190, 12.7.2006, 1. ↵

44. SFS 2019:496. ↵

45. ECD, *op. cit.* (n. 19), Art. 16 and Recital (59). ↵

46. ECD, *op. cit.* (n. 19), Art. 3(1) and Recital (10). ↵

47. 29 kap. 1 § miljöbalk (1998:808). ↵

48. Europol, Environmental Crime in the age of Climate Change, (2022), p. 7. ↵

49. European Environmental Bureau *Crime and Punishment*, 2020, p. 4; Europol (2022), *op. cit.* (n. 48), pp. 4-8. ↵

50. Cf. ECD, *op. cit.* (n. 19) Art. 21. D ↵

51. ECD, *op. cit.* (n. 19), Art. 22 and recital (66). ↵

52. European Commission (2020), Evaluation report, *op. cit.* (n. 16), chapter 7. ↵

53. European Commission (2020), Evaluation report, *op. cit.* (n. 16), p. 83. ↵

54. ECD, *op. cit.* (n. 19), Arts. 17 and 18 plus Recital (61). ↵

55. ECD, *op. cit.* (n. 19), Art. 20 and Recital (63). ↵

56. Interpol, "Our response to environmental crime", <<https://www.interpol.int/Crimes/Environmental-crime/Our-response-to-environmental-crime>> accessed 15 October 2024. ↵

57. European Commission (2020), Evaluation report, *op. cit.* (n. 16), p. 83 and chapter 7. ↵

58. The UN defines environmental human rights defenders as "individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna". See <<https://www.unep.org/topics/environmental-law-and-governance/who-are-environmental-defenders>> accessed 15 October 2024. ↵

59. Global Witness (2019) Enemies of the State? How governments and business silence land and environmental defenders. ↵

60. Global Witness (2020) *Defending Tomorrow*. Notwithstanding, available figures are likely underestimated. ↵

61. Naturskyddsföreningen (2019). Miljöförsvarare under attack – om hoten mot dem som skyddar vår natur. ↵

62. European Commission, Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, COM (2021) 851 final, p. 6. ↵

63. Global Witness (2019), *op. cit.* (n. 59). ↵

64. Dir. 2022/141, Investigation directives for the government committee on *Anonyma vittnen*, p. 2. ↵

65. ECD, *op. cit.* (n. 19), Art. 14. ↵

66. European Commission (2020), Evaluation report, *op. cit.* (n. 16), 7. See also opinion of AG Geelhoed, 18 November 2004, Case C-304/02 *Commission v France*. ↵

67. The discharge of materials or ionizing radiation into air, soil, or water that causes or is likely to cause death, serious injury, or substantial damage to air, soil, water, animals, or plants. ↵

68. Trading in specimens of protected wild fauna or flora or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity and has a negligible impact on the conservation status. ↵

69. The killing, destruction, possession or taking of specimens of protected wild fauna or flora, except for cases where the conduct concerns a negligible quantity and has a negligible impact on the conservation status. ↵

70. The operation of a plant in which a dangerous activity is carried out or in which dangerous substances are stored and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the environment, or to animals or plants. ↵

71. European Commission (2020), Evaluation report, *op. cit.* (n. 16), p. 31f. ↵

72. Milieu, Study to supply the Impact Assessment of the Directive 2008/99/EC on the protection of the environment through criminal law, JUST/2020/JACC/FW/CRIM/0122, 2020, p. 57. ↵

73. See, e.g., Case C-494/01 *Commission v Ireland*. ↵

74. European Commission (2020), Evaluation report, *op. cit.* (n. 16), p. 65. ↵

75. European Commission, 20 May 2024, "New Environmental Crime Directive comes into force", <https://environment.ec.europa.eu/news/new-environmental-crime-directive-comes-force-2024-05-20_en> accessed 15 October 2024. ↵

76. Opinion of AG Geelhoed in Case C-304/02, *op. cit.* (n. 66). ↵

77. Art. 17 TEU. See also Commission *Enforcing EU law for a Europe that delivers*, COM (2022) 518 final. ↵

78. European Commission (2020), Evaluation report, *op. cit.* (n. 16), p. 42 ff. ↵

79. ECD, *op. cit.* (n. 19), Arts 5 and 7 plus recitals (4), (8), (9), (45), (47), and (62). ↵

80. For this "toolbox approach", see also Faure, *op. cit.* (n. 18). ↵

81. European Commission (2020), Evaluation report, *op. cit.* (n. 16), p. 80. ↵

82. Finnish Nature Conservation Law (1996/1096) 8 kap. 59 §, Governmental bill (Finland), RP 79/1996 rd., p. 45. ↵

83. Court of Appeal of Nedre Norrland, verdict of 24 April 2015 in case B 276-14. ↵

84. Vasa Court of Appeal, verdict of 1 July 2016 (the verdict was kindly forwarded to the author but in a blackened version, including the case file number). See also Elin von Wright, *Vackra ägg ledde till det största naturskyddsbrödet i Finland - här är historien om "äggmannen" från Närpes*, YLE, 15.1.2018, <<https://yle.fi/a/7-1269588>>, accessed 15 October 2024. ↵

85. As described in the verdict of 1 July 2016 from Vasa Court of Appeal. ↵

* Author statement

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