

Evaluation Report on Environmental Crime Directive



Thomas Wahl

News

On 28 October 2020, the Commission provided a comprehensive evaluation of [Directive 2008/99/EC](#) on the protection of the environment through criminal law. The Directive is the EU's main instrument seeking effective protection of the environment and full application of the existing environmental EU legislation through criminal law means. Member States must approximate the criminalization of environmental offenses and ensure deterrent sanction levels. Through the evaluation (from an ex-post viewpoint), the Commission has taken stock of the state of implementation after the end of the transposition period (December 2010), as to whether the Directive has fostered cross-border cooperation and as to its relevance, effectiveness, efficiency, coherence and EU added value. The evaluation integrates the results of the public stakeholder consultation, which was held from 10 October 2019 to 2 January 2020. The [evaluation documents](#) include the following:

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- A Commission Staff Working Document setting out the results of the evaluation and including, *inter alia*, conclusions and suggestions for revision ([SWD\(2020\) 259 final, part 1](#));
- A Commission Staff Working Document with 11 Annexes, including case studies, the results of the public consultation and a table on convictions and sanctions ([SWD\(2020\) 259 final, part 2](#));
- An executive summary of the evaluation ([SWD\(2020\) 260 final](#)).

The evaluation shows that, although the Directive has been implemented by all Member States, its objectives have only been partially achieved. The reasons for this are, among others, a too small scope of application of the directive, partly unclearly formulated legal terms, but also too little prosecution and punishment of environmental crimes in the Member States. The Commission sees room for improvement and suggests the following:

- Gathering statistics and data on environmental crime in a consistent manner throughout the EU;
- Taking measures to facilitate the interpretation of several legal terms;
- Standardising the level of sanctions across the Member States;
- Considering additional sanctions and sanctions linked to the financial situation of legal persons;
- Refining the legal technique used for defining the scope of the Directive (currently by references to environmental legislation listed in the Annexes of the Directive);
- Extending the scope of the Directive to cover more or new areas of environmental crime;
- Strengthening cooperation between enforcement authorities within Member States, in particular with those that fight money laundering, fraud, and organised crime, in order to better address the illicit profits of environmental crime;

- Taking measures to improve practical implementation (e.g. specialisation of law enforcement practitioners);
- Increasing public awareness of environmental crime, improving prioritization of environmental issues in the EU Member States;
- Clarifying the relationship between criminal and administrative sanctions, and possibly integrating a reference to the ne bis in idem principle in the Directive, in order to avoid dual sanctioning in line with CJEU case law.

The Commission stressed that the findings and recommendations do not prejudice a potential review of the Directive. They should be considered food for thought for further discussions.

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