



# Proposal for a new Environmental Crime Directive and strengthening enforcement of EU environmental legislation

# Political context



- On 15 December 2021, the Commission adopted a proposal for **new Environmental Crime Directive (ECD)**.
- The new ECD contributes to the **European Green Deal**.
- **Biodiversity Strategy, Zero Pollution Action Plan, Chemicals Strategy** call for better enforcement and more stringent sanctions.
- **Council:** General Approach agreed on 9 December 2022.
- **European Parliament:** JURI leading committee, position adopted in March 2023.

# Why a proposal for a new ECD?



- The existing directive from 2008 is outdated and with a limited scope; lack of proper enforcement; undermining the environmental rule of law
- Need for precision of crime definitions; need for provisions on types and levels of sanctions, coordination and cooperation, enforcement chain
- Environmental crime is the fourth largest criminal activity in the world after drugs trafficking, human trafficking, and counterfeiting, growing at a rate between 5%-7% per year (*Interpol and the United Nations Environment Programme*)

# Main novelties

- Legal basis and technique for scope definition
- Refined definition of offences and introduction of new offences
- Detailed provisions on type and level of sanctions for natural and legal persons
- Provisions on jurisdiction and limitation periods
- Recognition of the role of the civil society
- Provisions on strengthening the enforcement chain

# Legal basis & “Unlawful conduct”

## Legal basis – Article 83(2) TFEU

‘Unlawful’ conduct as defined under Article 2(1) COM ECD proposal:

1. breach of obligations deriving from relevant sectoral EU legislation
2. breach of a law, an administrative regulation or a decision of a competent authority of a Member State
3. conduct carried out under an authorisation obtained fraudulently, or by corruption, extortion or coercion

**Council general approach: clarifies 1 & 2 points; drops 3 point.**

# Definition of offences – conducts to be criminalised

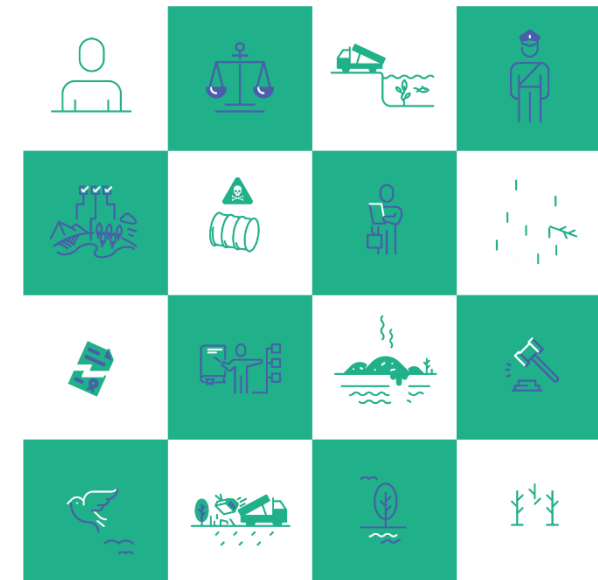
- **Refined definition of offences existing under Directive 2008/99/EC**

Examples: wildlife trafficking, illegal waste management, operation of an installation where dangerous activities are carried out or dangerous substances are stored.

- **Proposed new offences - examples**

- illegal abstraction of surface water or groundwater;
- illegal ship recycling and ship-source pollution;
- illegal timber trade.

→ Council GA - similar approach; updates from EP.



# Definition of offences – clarification of terms used

**Clarification** of terms used to define environmental offences:

- ‘substantial damage’
- ‘negligible quantity’
- ‘likelihood to cause damage’ to the environment
- **Objective:** facilitate work on the ground and ensure consistent application across the EU by providing a non-exhaustive list of factors to be considered for investigation, prosecution and adjudication.
- Council GA – refines the COM proposal

# Sanctions in the ECD proposal

- **Effective, dissuasive and proportionate** sanctions for both **natural and legal persons** (non-criminal sanctions possible for LP):
  1. Minimum maximum levels of imprisonment for natural persons (gradual approach – 4/6 years depending on the offence and 10 years when death or serious injury is caused or is likely to be caused)
  2. Minimum maximum level of fines for legal persons based on legal person's annual worldwide turnover (gradual approach – 5% or 3% depending on the offence category)
- **Aggravating** and **mitigating** circumstances (Articles 8 and 9)
- **Ancillary** sanctions

GA: approach reduces the level of ambition





# Aggravating circumstances

## Highlights

- The gravity of damage; irreversable or long-lasting substantial damage to an ecosystem
- The involvement of a criminal organisation
- False or forged documents were used to commit the offence
- The offence was committed by a public official when performing his/her duties
- The offence generated or was expected to generate substantial financial benefits or avoided substantial expenses (for example with regard to compliance measures)

# Ancillary sanctions and measures

(Articles 5 and 7 ECD proposal)



- Obligation to reinstate the environment !
- exclusion from access to public funding
- permit withdrawal,
- publication of the court decision relating to the conviction

**For national persons:** disqualification from directing companies

**For legal person:** closure of establishments, placing under judicial supervision, obligation to install due-diligence schemes

# Further harmonising provisions

- Limitation periods in Art. 11
- Jurisdiction provisions in Art. 12

# Increasing the ability to monitor application in practice

Obligations of the Member States to:

- **collect and regularly publish statistical data** on scale of environmental crime and efforts to combat it;
- **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.**



# Strengthening the enforcement chain

The proposal is to strengthen the enforcement chain and facilitate a more effective investigation and prosecution of environmental crime. Proposed requirements aim at ensuring:

- ❖ sufficient human and financial resources
- ❖ efficient cooperation and coordination
- ❖ appropriate training for judges, prosecutors, police, inspectors
- ❖ availability of effective investigative tools
- ❖ adoption of a national strategy on combating environmental crime.



# Role of citizens and civil society



Protection of persons  
who report  
environmental  
criminal offences and  
support investigation  
(Article 13)



Rights for the public  
concerned to  
participate in  
proceedings in  
accordance with  
national law (Article  
14)

# Thank you!

