EUCPN
EUROPEAN CRIME PREVENTION NETWORK

PREVENTING ENVIRONMENTAL CRIME

from law into practice

The list of environmental crimes is long and varied: from the illicit trade in live animals to illegal timber collection to breaching EU legislation on chemical and nuclear waste. Environmental crime goes way beyond littering on the streets and are big business. Environmental crime is the fourth largest criminal activity in the world, accounting for between 86 and 246 billion euro in global economic losses in 2016, and it continues to grow.[1] Even in the European Union, organised crime groups are currently involved in large-scale environmental crime.[2]
As a part of its Green Deal, the European Commission wants to modernise and reinvigorate the 'Directive on the protection of the environment through criminal law', better known as the 'Environmental Crime Directive' which aims to tackle environmental crime on an EU-wide scale.

The proposal put forward in December 2021 innovates in several ways, such as increasing deterrence with its penalties, creating a wider variety of offences, and focusing on the prevention of environmental crime. The proposal will mandate action in preventing environmental crimes at the national or regional level. Not sure where to begin? Fortunately, there already is a deep well of knowledge and examples available for you!

WHAT'S ON THE TABLE?

The Environmental Crime Directive aims to establish 'measures relating to criminal law to protect the environment more effectively'.[3] It did so in its original 2008 version and the 2021 proposal intends to do the same, just with a much more holistic and detailed approach.

Updated offences and penalties

The new proposal puts forward a noticeably longer list of offences. Some are already present in the current Directive, for example the killing, possession or trade in protected species. Others, such as illegal water abstraction and illicit timber trade, are being added to the list.
The sanctions attached to them have also been revised thoroughly. The current Directive is very straightforward: penalties must be 'effective, proportionate and dissuasive'. It is up to the Member States to interpret this and set their own penalties. Some stick to fines and prison sentences while others add additional ones such as exclusion from public benefits, revoking permits and 'name and shame' strategies. This makes the map of Europe a patchwork of penalties, with some countries' fines at times not even being capable of matching the gains made by the committed crimes.[4]

The proposal aims to end this situation, with higher minimum penalties for both natural persons and legal entities. It will become possible to send offenders to prison for at least 10 years for the most serious environmental crimes while fines for companies will be based on annual global income, allowing for impactful fines for both small enterprises and multinational conglomerates. On top of these harsher sanctions, the Commission proposes a common list of additional sanctions valid in all Member States. A mandatory statute of limitation is also introduced to ensure greater harmonisation of investigative and judicial standards throughout the European Union. Its duration varies depending on the severity of the alleged offences.

Of course, the proposal sets common minimum standards. Member States are still free to go beyond what is proposed.

When does deterrence work?

Higher penalties by themselves will not solve (environmental) crime. Otherwise litterers would receive a 10-year prison sentence and public parks would be spotless. So when does it work? The most important element is to shift the cost-benefit ratio in favour of the desired (legal) behaviour, or in other words: make crime not worth the risk. This can be achieved under three conditions:

1. The punishment needs to be severe enough, yet still proportionate;

2. It needs to follow the crime fast enough;

3. There needs to be the certainty that this sanction will follow.

The certainty of a sanction is especially important, but the criteria are mutually reinforcing.[5] If you want more information about the dos and don'ts of deterrence, be sure to read our **mythbuster on deterrence**.

Does the proposal hold up?

Firstly, the proposed penalties are (generally) much higher than they currently are. Fines that are lower than the possible gains made by environmental crimes also seem to be a thing of the past and the current median figure for the highest possible prison sentence increases from 5 years to a minimum of 10 for all Member States.[6] However, proportionality is difficult to measure, but considering that environmental crime generates significant sums, the penalties should reflect this too.

The introduced statute of limitation for all crimes falling under the proposal could improve the follow-up. While 'fast enough' may be subjective, having clearly defined periods will not do any harm.

Finally, the application of sanctions. The current Directive does not do much in that regard. Very limited data is available, but in most countries, there are barely any convictions for environmental crimes. In some Member States, the number even went down after the current Directive was implemented in 2008. Only in Spain and Portugal was a clear rise in cases. The main reason why is simple: the countries themselves prioritised environmental crime.[7] The proposal does not contain any articles enforcing a certain level of 'prioritisation', and trying to do so might raise some eyebrows among legal experts. Something that is being done in the proposal, however, is mandating a clear national strategy, training, resources and investigative tools.

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All in all, there are some positive steps being taken in the proposal to strengthen the deterrent effect in relation to environmental crime. The severity of the sanctions and a more clearly defined follow-up, increase its potential. But you can hardly call it a targeted approach; it is a tool that paints in very broad strokes. It sets a broad framework with some potential, but it will depend greatly on the specific application by Member States for it to yield any fruits. It would perhaps be best to see the deterrent effect of the proposal as a very small piece in a very large puzzle.

Exploring new possibilities

The Commission's proposal also delves into as-yet untouched approaches at the EU level by going beyond penalties. The text put forward includes several completely new articles to provide a more holistic framework to increase the Union's efforts in resilience, deterrence, and prevention.

The lack of national coordination is tackled with the requirement for all Member States to form a national strategy. This will state how they will combat offences according to the priorities of the legislation, with a clear description of which authority does what, how they cooperate, and how will they be supported.
Member States will also have to use standardised data collection and publish periodic reports, allowing the national governments and European institutions to monitor environmental crimes more efficiently while providing useful comparisons between countries. As it is currently almost impossible to find comparable data between the Member States on environmental convictions, due to a lack of common definitions and standards, this change is more than welcome.[8]

Member States are also required to invest in the resources of national authorities to achieve 'effective' performance with adequate investigative tools. This would be supported by specialised training for all those working with environmental crime (e.g. judges, police, prosecutors, administrative bodies, etc.) to increase their efficiency.[9]

The proposal also demands 'appropriate action' to prevent environmental crime, raise awareness and strengthen the population's resistance to them. Several actions are suggested, such as awareness-raising campaigns and education programmes, but these are not mandatory. It will be up to the Member States themselves to set up crime prevention initiatives.

PREVENTION, PREVENTION, PREVENTION! (BUT HOW?)

So prevention measures will be mandatory, and all 27 Member States will be required to take action to prevent environmental crime. Easier said than done, of course. Effective prevention initiatives take time, effort, research, and funds to be designed and implemented. Fortunately, a range of examples, tips and ideas are already available to use, inspire or adapt depending on your needs.

Know your audience – illicit wildlife trafficking

This might seem obvious, but there are several key stakeholders and central themes that could greatly amplify the potential impact of any prevention campaign you do. The European Crime Prevention Network (EUCPN) has developed a comprehensive list in cooperation with a number of experts doing exactly this for illicit wildlife trade awareness-raising campaigns.

When looking at the chain of illicitly trafficked animals, several key actors stand out: online trade and offline courier companies are currently important actors in the distribution and trade of smuggled animals. All animals, legal and illegal, need medical attention. Therefore, it is important to make sure veterinarians know which animals are illegal to have in their country and who they should contact when they encounter them. Depending on the type of wildlife, you might want to focus on different end-users. If you focus on snakes, parrots, spiders, turtles or tropical fish, private collectors are an interesting group to target, while monkeys, frogs and medicinal leeches tend to end up in laboratories.
The type of animal to focus on is also a crucial choice, as several species of animals are smuggled much more often than others. The European Union is the final destination for several illicitly trafficked species. Illegal parrots are commonly sold as pets, while reptiles are skinned for the fashion industry. This list is ever-changing, with demand for some species waning and new animals becoming popular, so make sure to research the status quo before jumping into a preventative initiative.
Finally, there is room for raising awareness about the importance of document fraud and corruption in the criminal chain of illegal wildlife trafficking.[10] These are crucial enablers in many crimes used to disguise illicit activities.

If you want to know more about illicit wildlife trade and effective prevention initiatives, be sure to read our monitor on environmental crime.

Many hands make light work – illegal timber trade

According to the World Wildlife Fund (WWF), about a quarter of the timber collected in Bulgaria is done so illegally.[11] To combat this, WWF Bulgaria launched the 'Save the Forest' app in the country. The app shows a map of all the protected forest regions and the areas in which logging is approved. Everyone who downloads it can report logging sites and trucks containing timber in areas, with the support of GPS, photos, video, and audio. This data is displayed online free for all to see on gis.wwf.bg. Reports are sent to the Bulgarian Executive Forest Agency, which follows up on them.

One of the issues with illicit timber production is that it can happen in remote locations where it is difficult to keep an eye out. This campaign tries to solve precisely this issue and aims to increase the chances of illegal loggers of being found out, which is the key element in any crime deterrence.

For applications such as these, it is, however, very important to increase the network value. This means that the more users the platform has, the larger its potential impact is. Cooperation with official institutions is also crucial. It is essential to receive follow-up on submissions to the app; if people find out nothing happens when they send a report, they are very likely to stop doing so.

Use proven frameworks – the barrier model

Several analytic frameworks exist that can help build a foundation for larger long-term plans of action in crime prevention. One of these is the barrier model, which aims to identify priorities and divide a complex criminal process into smaller, more manageable steps. In each of these segments, preventative measures can be developed, to respond to the issues at hand. These actions often involve competences beyond the scope of law enforcement agencies. Therefore, an administrative approach is advised. This puts other actors such as public administrations, NGOs and companies in a central position. They complement the traditional crime prevention actors of the police and judiciary to achieve a more comprehensive approach.

The barrier model analyses all of the identified steps of the criminal process through its five building blocks; the first being facilitators. These are people or parties who knowingly or unknowingly support criminals in their efforts (e.g. ICT, real estate, delivery services, etc.).
The second is opportunities: crime does not happen in a vacuum. Certain circumstances encourage crime, such as poor security, a large demand for (illegal) goods or easy access to firearms. The goal is to identify what they are so you can negate/diminish their influence.

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The third building block is the indicators; criminal activities have recognisable manifestations. These can vary from a frightened child being accompanied by a suspicious adult or a small company having a disproportionate income. If people or institutions can recognise these signals, this would increase the chance of getting caught noticeably.

There are also partners that can help to prevent the crime. These can include traditional law enforcement, but there are many others that can contribute depending on the criminal process. Public authorities issuing approvals/documentation are often relevant partners.
And finally the barriers, they are potential obstacles you can set up to hinder, stop and annoy criminals.[12] These can be confiscations of property, enhancing information exchange, blocking bank accounts, and much more. However, it is important that they are proportional and not too disruptive for legitimate actors.

If we apply the barrier model to the illegal dumping/disposal of waste in commercial quantities (waste crime) we might get something like this:

First, you formulate the steps in the criminal business process:
Advertising services → Seemingly legitimate business operating as a front → Buying waste → Storage of waste → Transporting waste → Processing/disposing of waste → Spending illicit gains.
You should prioritise and choose some steps to focus on. This might be on the actions that are most manageable, important or disruptive to the criminals. This could also depend on your resources, jurisdiction or the complexity of some steps.

Secondly, you determine all relevant facilitators, opportunities, signals, partners and barriers in cooperation with your relevant stakeholders. If we focus on advertising and the processing/disposing of waste, we get the following:

	Criminals advertise services via normal channels	Processing/disposing of waste
Facilitators	Online, billboards, TV etc. advertisements	Corrupt officials
Opportunities	Competitive industry Waste sellers do not recognise illegal disposal activities Easy access to online advertisements	Mixing of legitimate and illicit waste is very hard to detect Insufficient border checks for exported waste
Signals	Very low prices Unprofessional ads	Large volumes being exported Improperly processed waste Falsified documentation
Partners	Sellers of advertisement space Legitimate waste disposers	Waste inspection Border control Third countries importing waste
Barriers	Requiring advertisement providers and waste disposers to indicate suspicious advertisements Monitoring advertisements on specific websites	Increasing checks on documentation Adapting documentation to increase difficulty of falsification Increasing on-site inspections of large volumes

In the end, you use the information collected in the previous phase to take a joint decision with your partners regarding which barriers you want to focus on and how you will implement them in practice.

If you want to know more about the barrier model with more detailed examples, you can read the Handbook on the administrative approach in the European Union developed by the European Network on the Administrative Approach (ENAA).

CONCLUSION

If the Commission's proposal is adopted it is sure to have a noticeable influence on how the European Union handles environmental crime. The European environmental crime policy will undergo a significant overhaul with the goal of a more unified and impactful European response to this growing problem. Not only are central elements such as the list of offences and their penalties being fleshed out, but the proposal also addresses wider needs such as preventative action.

The proposal puts the ball in the court of the Member States. Making the European environmental crime legislation a success will depend on its implementation by the Member States, especially when it comes to prevention. It is challenging to develop prevention initiatives that are effective and capable of responding to changing circumstances and needs. This paper has given a few good examples. The proposed Directive offers policy-makers and practitioners the opportunity to get a head start by committing to effective prevention of environmental crime.

Endnotes

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