



Introduction to environmental, economic, social and criminal aspects of wildlife trafficking, deforestation and illegal logging

EU LEGISLATION ON WILDLIFE TRAFFICKING, DEFORESTATION AND ILLEGAL
LOGGING, AND COMBATING ASSOCIATED CRIME

TRIER, 19 SEPTEMBER 2024
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GOAL OF THIS LECTURE

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- ▶ Setting the scene through a general framework
- ▶ Providing a broad picture on policy, less law
- ▶ Using various approaches:
- ▶ The economic approach to crime
- ▶ Data on environmental crime
- ▶ Link between environmental crime and
 - ▶ Organised crime
 - ▶ Money laundering
 - ▶ Corruption
- ▶ Importance of economic instruments

The main aim is to provide a general overview.

1. Introduction: the economics of crime

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- ▶ Why do people commit crime?
- ▶ Nobel Prize Winner Gary Becker: because it creates profits/benefits
- ▶ Criminals also rationally maximize utility by comparing:
 - ▶ $B \leq C$
 - ▶ $p \times S$
 - ▶ Ex
 - ▶ B 5000 p 10% S 5000

- We need to be aware as lawyers, judges, and prosecutors of the economic dimension of crime.
- Someone who wishes to commit a crime will compare the benefits to the costs. Where the potential benefits are higher than the costs, the crime might be committed. The costs are not limited to the sanction, the sanction is a contributing factor. Other important factors are the probability of interception, adjudication, and execution of the sanction.

1. Introduction: the economics of crime

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- ▶ Goal of the criminal law: increasing either p or S ?
 - ▶ Increasing p costly (Stigler)
 - ▶ But increasing S only possible to limited extent:
 - ▶ Insolvency
 - ▶ Discounting
 - ▶ effectiveness

What does that mean at the policy level?

Increasing the detection rate is possible.

Increasing the sanction per se does not necessarily deter. The effective application of the sanction might be more important.

2. Data

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2.1 Environmental crime general

- ▶ Costs of environmental crime are huge
- ▶ Overview of UNEP for the worldwide costs:

Estimates of some environmental crimes by UNEP in 2018	
Illegal trafficking and dumping of toxic and electronic waste	US\$10–12 billion.
Forestry crimes including illegal logging	US\$51–152 billion annually.
Illegal fisheries	US\$11–24 billion
Illegal mining	US\$12–48 billion.
Illegal wildlife trade	US\$7– 23 billion.
Forestry crimes, including corporate crimes and illegal logging	US\$51–152 billion.

Source: Nellemann et al. 2018, p. 15.

- Environmental crime is economic crime.
- The crimes related to illegal trafficking and dumping of waste amount to billions of dollars.
- The costs that are created demonstrate that it is an economic problem both for the EU and internationally.

2. Data

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- Costs of environmental crime also huge in the EU

Year	Estimated cost (in € billion)
2014	11,2
2015	12,3
2016	12,9
2017	14,4
2018	14,7
2019	15,3
2020	15,9

This is really substantial.

2. Data

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- ▶ Not only high costs; also high gains for perpetrators:
- ▶ EUROJUST: annual revenues from illicit waste in the EU: € 4-15 billion/year
- ▶ From illegal eel trade: € 4,7-31,4 million/year
- ▶ So: environmental crime leads to high benefits for perpetrators and high costs for society

The costs for society and gains for potential perpetrators are significant.
We will look at data for specific crimes.

2. Data

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2.2 Wildlife trafficking

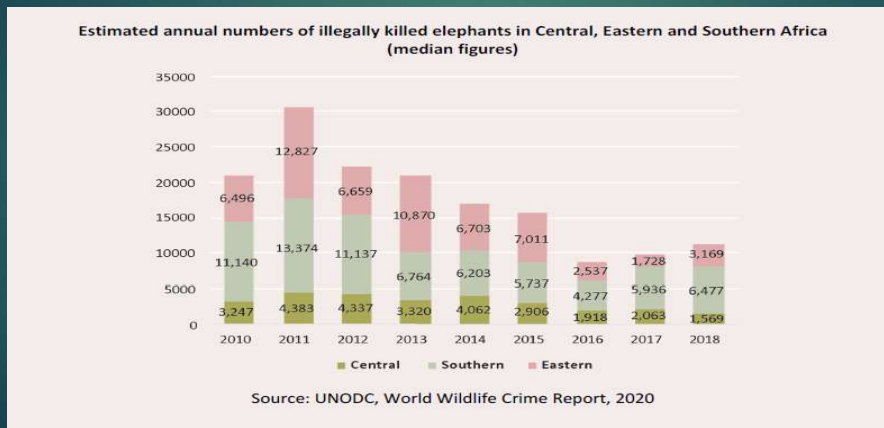
- ▶ Various sources:
- ▶ United Nations Office on Drugs and Crime (UNODC)
- ▶ [Report on illegal wildlife trade and climate change \(2022\)](#)
- ▶ Data on estimated annual number of illegally killed elephants in Africa:

There are many actors in this field. They all draft reports and collect important data. All this is available online.

2. Data

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Estimated annual numbers of illegally killed elephants in Central, Eastern and Southern Africa

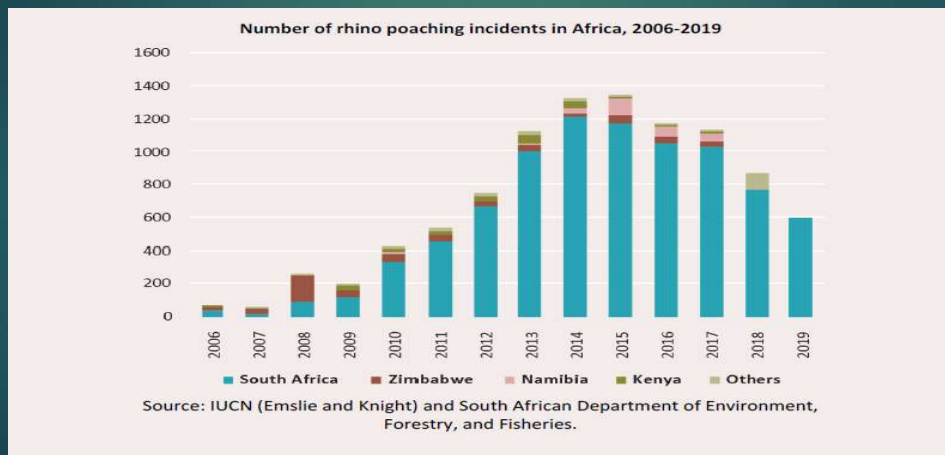


This slide shows the overall evolution of the killing of elephants. The combined data shows staggering numbers of killings.

2. Data

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Number of rhino poaching incidents in Africa, 2006-2019

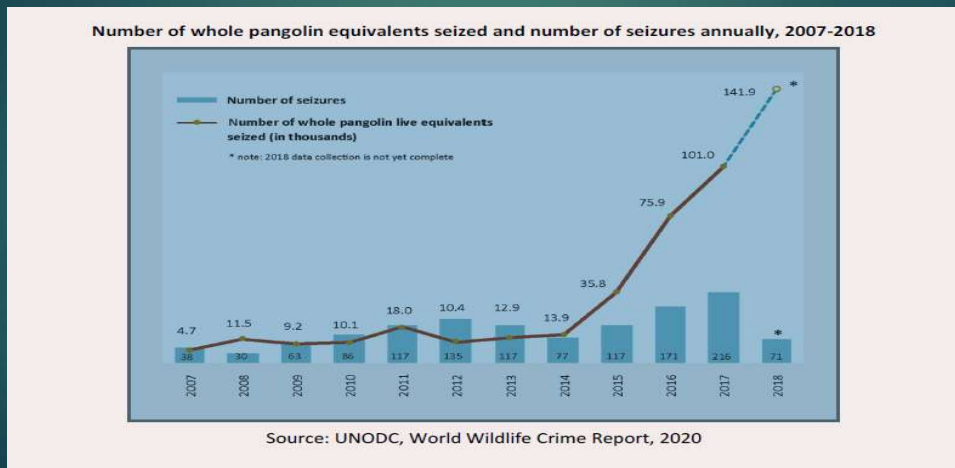


Rhino poaching does not diminish as much as elephant killings.

2. Data

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Number of whole pangolin equivalents seized 2007-2018



Pangolins are extremely popular victims of poaching, their skins are used in China for traditional medicine.

The data shows that as long as there is demand, some actor will be found to harm wildlife.

2. Data

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- ▶ Data also available via Traffic (Worldwide NGO) (Report 2023)
- ▶ Estimation of annual value of wild species trade: USD 1,5 trillion
- ▶ Implementation and enforcement of CITES particularly difficult:
 - ▶ Low priority, lacking capacity and low sanctions
 - ▶ High gains
 - ▶ Weakness of domestic enforcement

Staggering amount of money can be made through these activities.

There are very high gains to be expected here, a gram of rhino horn is more expensive than a gram of cocaine.

2. Data

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2.3 Illegal logging + trade in timber

- ▶ Illegal logging responsible for 15-30% of global timber production
- ▶ Illegal trade of timber: 51-152 billion/year (Interpol 2019)
- ▶ Leads to forest degradation, responsible for 20% of global CO₂ emissions
- ▶ Illegal logging top of environmental crime: value \$ 50-152 billion (driven by corruption and organized crime)

- Illegal logging is important because forests are an important 'sink' absorbing greenhouse gases.
- It is on the top of environmental crime, driven by corruption and a lucrative market.

2. Data

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2.4 Police operations 2018-2021 (EU), illustrating losses due to environmental crime

(Source: European Council, Infographics – How the EU fights environmental crime)

Seizures: EUR 8,3 million worth in total	
167452 tonnes of waste	Between 15 and 30% of waste shipments are thought to be illegal, amounting to EUR 9.5 billion in annual revenue from the illicit waste market in the EU
1174 tonnes of e-waste	1 tonne of smartphones contains 100 times more gold than one tonne of gold ore. E-waste trafficked from Europe is recycled manually, releasing strong toxins
32007 m3 of timber	Illegal logging accounts for 15-30% of global timber trade. Timber is used for construction and wood products
355 reptiles, worth EUR 800.000	Thousands of reptile's species are threatened by trafficking. They are mostly used in the fashion industry or as pets
4.6 tonnes of glass eels	350 million European glass eels, worth EUR 3 billion are trafficked from the EU every year. They are mostly sold in Asia as food
639 ivory items	Elephant poaching increases the risk of extinction. Ivory is mostly sourced from Africa and trafficked through Europe to Asia
829 people arrested	

I provide this data to demonstrate one single point:

- Environmental crime is serious, has huge environmental and economic impact.

3. Need to (also) fight related crimes

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3.1 Organized crime

- ▶ Environmental crime = ideal breeding ground for organized crime
- ▶ Environmental crime attractive for organized criminal networks
- ▶ Organized crime creates specific challenges
- ▶ Transboundary environmental crime often organized (e.g. large-scale trafficking of waste or wildlife)
- ▶ Compared to other crimes (drugs, fraud) environmental crime = high profit, low risk
- ▶ In EU revenues from illicit non-hazardous waste trafficking estimated 1.3-10.3 billion/year; hazardous waste trafficking 1.5-1.8 billion/year

Another important point is:

Environmental crime is not simple, it is often connected to other forms of crime. This is very important for law enforcement.

It is connected to organised crime in general. Illicit trafficking of waste or animals are often combined.

3. Need to (also) fight related crimes

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- ▶ UN Convention against transnational organized crime
- ▶ Art. 2(a) "Organized criminal group" is:
- ▶ "A structured group of 3 or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences (...) in order to obtain, directly or indirectly, a financial or other material benefit"
- ▶ EU Council Framework Decision 2008/841/JHA (24.10.2008) on the fight against organized crime also took this definition
- ▶ OCGs motivated by financial gain, opportunities of high profits, low risks/costs

Definitions of 'organised criminal group' can be found in different instruments.

3. Need to (also) fight related crimes

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- ▶ Transnationality creates complexities for law enforcement, so effective countermeasures necessary
- ▶ European Parliament EU Security Union Strategy (2020): environmental crime main threat to security: need to strengthen efforts against organized environmental crime, especially:
 - ▶ Illicit waste trafficking
 - ▶ Illicit wildlife trade
- ▶ ECD (2008) does not mention organized crime
- ▶ But Art. 83 TFEU (Lisbon Treaty) enables the possibility "to establish minimum rules with regard to the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis" (environmental crime not, organized crime yes!)

The old Environmental Crime Directive from 2008 does not mention organised crime. However, the TFEU does offer this possibility.

3. Need to (also) fight related crimes

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- ▶ Doubts on effectiveness of current legal regime to fight organized crime and environmental crime: organized crime may increase in MS with low sanctions and low capacity
- ▶ Some countries (e.g. France) have aggravating circumstances for organized environmental crime (also Italy)
- ▶ Also in new ECD: Art. 8(b)

3. Need to (also) fight related crimes

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3.2 Money laundering

- ▶ Illicit activities in the EU generate ± € 110 billion in 2010
- ▶ EU loses € 1 trillion/year in tax evasion and tax fraud
- ▶ As a result: a lot of illicit money within the EU
- ▶ Between 2010-2014 only 2,2% of criminal proceeds provisionally seized or frozen
- ▶ Only 1,1% of criminal profits confiscated
- ▶ Environmental crime may also generate large profits (see above)
- ▶ These profits are subsequently "laundered" into the regular economy

3. Need to (also) fight related crimes

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- ▶ Fight against money laundering important in order to remedy environmental crime itself
- ▶ Legal framework:
- ▶ Art. 6 of [Organized Crime Convention](#): state parties should introduce measures to criminalize money laundering "laundering of the proceeds of crime"
- ▶ Predicate offences: Art. 2(h) of Organized Crime Convention: "Any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in this convention"
- ▶ Environmental crime can be predicate offence for money laundering

The profits are laundered into the regular economy.

3. Need to (also) fight related crimes

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- ▶ EU: first Anti-money Laundering Directive (1990):
 - ▶ Obligated entities: apply customer due diligence: KYC
- ▶ Meanwhile 5th Anti-money Laundering Directive (2018/843)
- ▶ Directive 2018/1673 on combatting money laundering by criminal law:
 - ▶ Approximation of the criminal offence of money laundering
 - ▶ Minimum rules concerning definition of criminal offences
- ▶ Art. 2(1) of Directive 2018/1673: criminal activity means “any kind of criminal involvement in the commission of any offence punishable, in accordance with national law, by deprivation of liberty or a detention order for a maximum of more than 1 year or, as regards Member States, that have a minimum threshold for offences in the legal systems, any offence punishable by deprivation of liberty or a detention order for a minimum of more than 6 months”

The EU has been active in this domain.

The important thing to remember is that there is an obligation of due diligence to KYC, which means ‘know your customer’, imposed on lawyers, banks and other important actors.

3. Need to (also) fight related crimes

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- ▶ 2021: new package of legislation anti-money laundering and countering financing of terrorism rules:
- ▶ Result: 6th Anti-money Laundering Directive (2020):
 - ▶ Higher responsibility on regulated entities to fight financial crime
- ▶ Environmental crimes included as a predicate offence

3. Need to (also) fight related crimes

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► Improvements brought by 6 AMLD

Harmonized definition and predicate offences: The 6th AML Directive aims to harmonize the definition of predicate offences against money laundering by all Member States. The 22 predicate offences for money laundering now includes cybercrime and environmental crime.

Expanded regulatory scope: The new Directive defines initiators, facilitators and inciters of crimes as accomplices, "aiding and abetting" and self-laundering now also constitute criminal acts.

Extended criminal liability: the 6AMLD will extend criminal liability to allow for the punishment of legal persons, such as companies or partnerships. Companies may be criminally liable for the actions of employees who engage in criminal activity.

Tougher punishment: The sentence for money laundering crimes increased to minimum of 4-year imprisonment.

Member States' cooperation: 6AMLD addresses the issue of dual criminality, requiring EU Member States to criminalize certain predicate offences whether they are illegal in that jurisdiction or not.

Source: REFINITIV, Anti-money laundering Directives

Some of the changes in the latest version of the Anti-Money Laundering Directive.

3. Need to (also) fight related crimes

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- ▶ Mutual recognition of freezing and confiscation orders (Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders)

Environmental crime and related money laundering does not know borders, mutual recognition is important as a result.

3. Need to (also) fight related crimes

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3.3 Corruption

- ▶ Corruption = misuse of entrusted power for private gain
- ▶ Clear relationships between corruption and environmental crime:
 - ▶ Corruption of permitting authorities can increase pollution but (seemingly) reduce crime
 - ▶ Corruption of supervising authorities can reduce visibility of crime
 - ▶ Corruption of enforcing authorities can reduce effectiveness of enforcement
 - ▶ Corruption identified as huge driver of wildlife and timber crime
- ▶ Clear relationship between corruption and organized crime
- ▶ Many legal action against corruption at different levels

Several forms:

- Enterprises are getting favourable treatment by corrupt authorities
- Corruption of supervising authorities. It results in less detection and less effective enforcement of the legislation.
- Corruption of enforcing authorities.

3. Need to (also) fight related crimes

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- ▶ UN Convention against corruption (2003):
 - ▶ Prohibits bribery
 - ▶ Abuse of functions
 - ▶ Passive bribery (e.g. acceptance of bribes)
 - ▶ States have to criminalize corruption broadly
- ▶ EU:
 - ▶ 2011 Communication on fighting corruption in the EU
 - ▶ EU Anti-corruption Report (monitoring of MS efforts)

3. Need to (also) fight related crimes

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- ▶ Framework Decision 2003/568/JHA on combatting corruption in the private sector
 - ▶ Transposition problematic
- ▶ 2014 Directive on the freezing and confiscation of the proceeds of crime
- ▶ Corruption (and money laundering): euro crimes according to Art. 83 TFEU (e.g. serious crimes with cross-border dimension)

4. Economic instruments to fight environmental crime

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4.1 Importance of a toolbox approach

- ▶ Applying appropriate sanction for specific perpetrator and specific crime
- ▶ “Smart” enforcement
- ▶ Smart mix of:
 - ▶ Civil penalties
 - ▶ Administrative remedies/fines
 - ▶ Criminal sanctions

Sometimes you can have committed individuals who commit organised crime, those should be treated differently than those who commit smaller scale crimes out of ignorance. These require a toolbox of different approaches.

4. Economic instruments to fight environmental crime

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4.2 Efficient enforcement

- ▶ If possible increasing probability of detection (but costly)
- ▶ Or efficient sanctions
- ▶ To provide deterrence ex ante (Becker)

4. Economic instruments to fight environmental crime

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4.3 Moving beyond traditional criminal penalties

- ▶ Given relation between environmental crime, organized crime, corruption and money laundering
- ▶ Penalties cannot merely consist of fine or imprisonment
- ▶ Environmental crime may continue if source of pollution is not remedied
- ▶ Therefore penalty should also aim at:
 - ▶ Reducing pollution caused in the past
 - ▶ Preventing further pollution
 - ▶ Removing the proceeds from crime (restitution ad integrum; crime should not pay)

For environmental crime, you need to go beyond traditional measures.

The penalty should aim at reducing pollution, preventing further pollution, and apply the principle of 'crime cannot pay' by removing the assets and enrichment resulting from criminal activity.

4. Economic instruments to fight environmental crime

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4.4 Conclusions EFFACE

- ▶ Project European Union action to fight environmental crime (EFFACE) conclusions and recommendations inter alia:
- ▶ Rules on the confiscation and forfeiture of the proceeds of environmental crime should be adopted at the EU level
 - ▶ Restoration of harm done in the past is crucial
 - ▶ Crime should not pay
 - ▶ Illegally deposited waste removed
 - ▶ Penalties should be “dissuasive, effective and proportional”
 - ▶ Forfeiture of proceeds adds to effectiveness of sanctions

4. Economic instruments to fight environmental crime

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- ▶ Introduce and use complementary sanctions and measures:
 - ▶ Restoration and prevention core features of environmental criminal policy
 - ▶ Complementary sanctions to be included in sanctioning toolbox
 - ▶ For example: forfeiture of illegal profits

In the Netherlands, there is a legal possibility to ask for a percentage of the profits made by the company.

This way a company can pay much more than the maximum amount given by the relevant provisions.

In the Flemish region, most fines were around 5000 Euro. This is obviously not enough to deter a company from causing environmental harm.

4. Economic instruments to fight environmental crime

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4.5 New ECD 11.4.2024

- ▶ Introduces toolbox approach!
- ▶ Recital 22: MS should have at their disposal a range of criminal sanctions and other measures to address different types of criminal behavior in a tailored and effective manner
- ▶ Sanctions for legal persons (Art. 7) inter alia:
 - ▶ Obligation to re-instate the environment
 - ▶ Withdrawal of permits and authorizations
 - ▶ Temporary or permanent closure of establishment

4. Economic instruments to fight environmental crime

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- ▶ Penalties for natural persons (Art. 5) inter alia:
 - ▶ Obligation to reinstate the environment
 - ▶ Temporary or permanent exclusion from access to public funding
 - ▶ Disqualification from directing establishments
 - ▶ Withdrawal of permits
- ▶ Art. 10: freezing and confiscation:
- ▶ MS shall take necessary measures so that the competent authorities may, in line with the AMLD, freeze or confiscate the proceeds from environmental crime

For natural persons we have a variety of penalties.

5. Concluding

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- ▶ Environmental crime = economic crime
- ▶ Environmental crime can generate large profits
- ▶ Benefits high; risks (probability of detection x \$) small
- ▶ Becker: environmental crime therefore likely
- ▶ Data confirm: environmental crime generates large profits and creates huge social costs
- ▶ Environmental crime also often related to organized crime, money laundering and corruption
- ▶ Law enforcement should therefore be geared towards combatting those 4 problems simultaneously
- ▶ Newly adopted ECD (November 2023) recognizes this

Closing remarks:

Environmental crime is economic crime. It can generate high profits with low risk and huge social costs. This is confirmed by the data.

The good news is that the new Environmental Crime Directive takes this into account and provides a toolbox with many instruments to combat environmental crime.

5. Concluding

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- ▶ Provides a smart toolbox with effective instruments
- ▶ This smart mix of instruments absolutely necessary:

5. Concluding

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To fight environmental crime in an effective manner!