



Environmental crime is a growing concern and causes significant damage to the environment, citizens' health and the economy within the EU and worldwide.

Environmental crimes are infringements of relevant legal obligations, such as wildlife crimes and deterioration of habitats, illegal shipment or dumping of waste, pollution crimes and illegal trading in hazardous substances.

These crimes, which often have a cross-border nature, are highly lucrative and yet hard to detect, prosecute and punish. Unfortunately, these factors make it highly attractive for organised crime groups.



Relevant EU law

- Water Framework Directive 2000/60/EC (WFD)
- Waste Framework Directive 2008/98/EC
- Environmental Information Directive 2003/4/EC
- Habitats Directive 1992/43 EEC
- Birds Directive 2009/147/EC (replaces 79/409 EEC)
- Environmental Crime Directive EU 2024/1203
- Council Regulation (EC) no 338/97 on the Protection of species of wild fauna and flora by regulating trade therein, (CITES) and its modifications;
- Commission Regulation (EC) no 865/2006 on the implementation of Council Regulation (EC) 338/97



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Nature Protection - Water

Protection of Water Resources
Protection of Water Quality

Protection Against Pollution

- Man made pollution sources
- Industry
- Farming / Agriculture
- Sewage disposal



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Farming and agriculture is a huge source of pollution.



This was a clean down of a factory refrigeration system. They released ammonia. The white color of the water is a product of a chemical reaction. This salts up the river bed and causes damage. It has been sandbagged off but there are indications that the pollution might have progressed. We managed to get a fine.



Water Offences

- **Water Resources Offences: "Water Theft"**
 - Illegal Abstraction
 - Unlawful impoundment
 - Breach of licence or permit
- **Water Quality Offences "Pollution"**
 - Failure to comply with a Discharge consent
 - Making a pollution discharge
 - Causing poisonous noxious or polluting material to enter a river or watercourse
 - Can include surface waters, groundwater and the sea.



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Polluting Discharges are usually managed through a permitting regime. Conditions are imposed to mitigate any harm which might be caused.

Discharges must be in accordance with conditions.

Illegal discharges have no permissions or are outside of consent conditions.



Is this a water offence or a waste offence? How does a prosecutor show that this is one or the other. You need to advise the people to recover these drums, take samples from the water. We would need to know what is in the drums what is in the water and what the impact is.



This might be the result. This is what a fishkill looks like. Water damage is visible but air pollution for example is not visible. We need to respond to collect evidence to the criminal standards which is 'beyond reasonable doubt' which is quite the task.



Nature Protection - Waste Management

Ensuring proper management of waste
Protection against Illegal Waste dumping
Protects land, water and air inc habitats

Protection Against Pollution by waste:

- Man made pollution sources
- Industry
- Farming / Agriculture
- Sewage disposal inc sewage sludge
- Combatting crime associated with improper and inadequate treatment of waste including hazardous waste




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Waste Framework Directive 2008/98/EC

Well established legislation requiring waste treatment and proper disposal.

Waste cases are difficult. You have to look at the CJEU case law on what is and is not waste. This is an area of organised crime.



Wildlife Crime - Protection of species and habitats

- Habitats Directive 1992/43 EEC
- Birds Directive 2009/147/EC (replaces 79/409 EEC)
- CITES Regulation
- Transposition
- Implementation
- Domestic Legislation
- Enforcement
- Regulatory Activity
- Prosecution and, or
- Administrative Sanctions



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The enabling legislation has already been discussed. Again, the transposition of those directives is key. That's where the offense provisions are.



Evidence in Wildlife Crime cases – Domestic

- Details of any relevant licence or permit
- Observation of circumstances of offence
- Witness evidence
- Species citation
- Photos, videos, drone footage
- Interviews & Admissions
- Culpability
- Impact/risks/harm to the species or habitat
- Financial gain to offender

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This is the evidence that you would try to look at as a prosecutor. You need an expert to identify that the species is indeed the illegal species that has been introduced, a 'species citation'. Some of these aspects are similar to any other case.



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Evidence in Wildlife Crime cases – CITES International

- Details of any relevant licence or permit
- CITES certificates
- Import licences
- Species citation
- Status in relation to CITES appendices
- Veterinary expert re condition/viability
- Examination of potentially forged documents
- Impact/risks/harm to the species or habitat
- Value of specimen - note BioVal project
- Financial gain to offender
- Damages claim?

In international cases the approach differs slightly. Most cases have some sort of forged document. BioVal attempts to measure the value to the species. This is very recent and has been used as a 'price list' in the Belgian courts successfully. This sort of crime is financially motivated and heavy fines might act as a deterrent.



Forestry and Illegal Logging

- Ensuring proper management of forestry resources
- Nature protection - value of established forests
- Preventing Deforestation
- Protection against Illegal Felling and Logging
- Protection of birds and habitats
- Protection of markets in sustainably produced timber
- New crime in revised ECD.




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Domestic and International Deforestation

- Obtain import and export licences
- Arboricultural Assessment
- Endangered status or rarity
- Environmental value
- Financial value



Forestry offences and illegal logging

Domestic offences

- What are the domestic protections?
- Do you have evidence of infringement?
- Have you checked licences & permissions?
- Are these protected trees?

International offences

- Obtain import and export licences
- Arboricultural Assessment
- Endangered status or rarity
- Environmental value
- Financial value





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Illegal logging is **the harvest, transportation, purchase, or sale of timber in violation of laws**. It concerns the harvesting of timber in contravention of the laws and regulations of the country of harvest.

Rates and causes of deforestation vary from region to region around the world. In 2009, two-thirds of the world's forests were located in just 10 countries, namely, Russia, Brazil, Canada, the United States, China, Australia, the DR of Congo, Indonesia, India and Peru.

Europe has lost more than half of its forests in the past 6,000 years. This has primarily been due to agricultural expansion and demand for wood for fuel. According to satellite data, the loss of biomass in EU's forests increased by 69% in the period from 2016 to 2018, compared with the period from 2011 to 2015. Deforestation has been noted in Finland, Iceland, Italy, the Netherlands and the UK.

Most logging is now forbidden by statute except as allowed and facilitated under a permit system.



Revision of the ECD

More and better offence provisions

- Environmental Crime Directive as amended
- Requires Member States to ensure certain activities can be dealt with as criminal offences
- Not mandatory that criminal law used
- Secures potential criminality against natural persons
- Legal Entities included
- New offences criminalised, clarification of others
- More serious offences now likely to be dealt with under the criminal law.
- Legal basis – Article 83(2) TFEU
- Unlawful conduct.




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Enhancing application of the existing Union environmental legislation through **criminalisation**, making of criminal law a **tool of enforcement of environmental law**.

A sufficiently deterrent criminal sanctioning system

Through the obligation to impose **effective, proportionate and dissuasive criminal penalties** provided for in **Article 5** of Directive 2008/99/EC, the European institutions and their Member States genuinely believed that the European society would be convinced that the violations of environmental legislation must be taken seriously

Article 3 of the ECD on the offences foresees “Member States shall ensure that the following conduct constitutes a criminal offence, when committed intentionally or with at least serious negligence” .

Radioactive substances

Waste and Hazardous waste

Water Quality

Protected Habitats



Revision of the Environmental Crime Directive New offences:

- Water Resource offending now included. Must be criminalised where behaviour is intentional
- Article 3 Paragraph 1: List of Offences includes:
- k) the abstraction of surface water or groundwater which causes or is likely to cause substantial damage to the ecological status or potential of surface water bodies or to the quantitative status of groundwater bodies;

Unlawful act + Intent



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Further new offence provisions

- Article 3 Paragraph 2:
- Behaviour described at k) must be criminalised where committed with serious negligence.
- Unlawful act + serious negligence



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Other offence provisions

- Article 3 Paragraph 1 and Paragraph 2: articles a) to e) and other paragraphs
- Other behaviour is criminalised where it:
 - “causes or is likely to cause death or serious injury to any person or **substantial** damage to air, water or soil quality...”
- Unlawful act + intent or serious negligence + actual/likelihood of substantial damage




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- placement on the market of products which, in breach of mandatory requirements, cause substantial damage to the environment because of product's use on larger scale;
- serious breaches of EU chemicals legislation causing substantial damage to the environment or human health;
- illegal ship recycling;
- illegal water abstraction;
- source discharge of polluting substances from ships (it is proposed that this offence category is taken over from Directive 2005/35/EC9, to consolidate the legal framework);
- illegal trade in timber;
- serious breaches of rules on introduction and spread of invasive alien species with Union concern;
- serious circumvention of requirements to do an environmental impact assessment;
- illegal production, placing on the market, import, export, use, emission or

release of fluorinated greenhouse gases.



New provisions in the ECD

- Definition of offences clarified
- Dynamic nature of the ECD in relation to new unlawful conduct
- Sanctions in the revised ECD
- Aggravating and mitigating features
- Ancillary sanctions and measures (optional)
- Role of citizens and civil society eg NGOs
- Strengthening the enforcement chain
- National strategies on environmental crime
- Monitor and publish data.
- Support & co operation with Networks/Com.





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- Directive requires effective dissuasive and proportionate sanctions for natural and legal persons.
- The fact that the Directive requires effective, proportionate and deterrent sanctions has resulted in progress towards **a level playing field** by ensuring the existence of sanctions for the crimes concerned in all Member States.
- Some countries have raised their maximum sanction levels.
- Despite this progress, there is still **a significant degree of variation in the levels of sanctions provided for in national legislation.**
- Some EU countries have **such low levels of sanctions that they do little or nothing to deter environmental crime.**
- This could result in the emergence of **‘safe havens’** for environmental crime in the EU.”
- Now minimum maximum levels of imprisonment and fine.

Strengthening the enforcement chain

Objective to strengthen the enforcement chain and facilitate a more effective investigation and prosecution of environmental crime. The provisions 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.



This slide is developed by the European Commission.



Involving environmental experts

List of Factors or elements to be taken into account:

- a) baseline condition of the affected environment
- b) whether damage is long lasting, medium or short term
- c) Severity
- d) Spread
- e) Reversibility




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- Essential for environmental prosecutions
- Investigators prosecutors and judges
- Specialist environmental issues:
 - Species citation
 - Conservation status
 - Endangered Species List
 - Impact of the loss
 - Financial impact on local communities
 - Impact of pollutant on habitat.
 - Bioval project.



Serious and Organised Environmental crime

- Environmental Crime is 4th largest crime type
- Estimated socio economic cost \$247 Billion
- Part of Europol SOCTA since 2017
- European and International level offending
- Multi jurisdictional aspects
- Secure assistance from Eurojust, Europol,
- Environmental networks include IMPEL, ENPE and EnviCrimeNet.
- For Mutual Legal Assistance - EJM website is helpful.




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- Organised environmental crime is a serious crime committed by organized crime groups that often has a transnational dimension that requires the cooperation of the EU institutions and their Member States with Third countries and international organisations.
- This organised environmental crime challenges the traditional definition of organised crime since it is now responding to a new market order.
- Organised crime criminals act as brokers providing highly specialized services to customers throughout the world, communicating through new technologies of information and escaping the traditional forms of crime prevention and repression.
- At the same time, these criminals are easily replaceable and not their structures that are challenging criminal and administrative approaches to dismantle their networks.



Enforcement Guidance on Environmental Crime.

- EU has published materials on enforcement and prosecution of environmental crime.
- <https://op.europa.eu/s/vbur>
- 150 pages of enforcement guidance
- European networks of environmental practitioners exist to share good practice and undertake capacity building.
 - EnviCrimeNet – Police network
 - IMPEL – Inspectors network
 - ENPE – Prosecutors network
 - EUFJE – Judges network




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The EU addresses serious environmental crimes through criminal law and supports national enforcement capacities.

The Environmental Compliance and Governance Forum

The high-level [Commission Expert Group on Environmental Compliance and Governance Forum](#) works to support the effective combatting of environmental crime. In 2021, a Forum sub-group on sanctioning of environmental offences was established. Its work focuses on developing common views and collecting good practices on environmental enforcement and sanctioning.

European networks of environmental practitioners play a crucial role in sharing good practices, developing practical tools for inspections, detection and investigation of environmental crime, and training.



Victim rights

- Victims Directive 2012/29/EU sets out rights, requirement for support and protection of victims: access to information and to justice.
- Victim Impact Statements
- Notice of hearing dates and plea agreements
- May challenge decisions not to prosecute
- Facilitated claims for compensation.



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Enforceable in Domestic legislation

Offence Provisions are established within
individual Member States

Enforceable through domestic legislation.
Know your own civil administrative and criminal
regime(s).

Take steps to get to know your inspectors, your
investigators, prosecutors and judges,
Use the guidance and the networks,
And always, whenever you can, talk to experts.



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