

The background of the page is a solid green color. In the upper half, there are faint, light green silhouettes of a monkey on the left and an elephant on the right. The monkey is shown in profile, facing right, with its tail curved upwards. The elephant is shown in profile, facing left, with its trunk hanging down. The text is overlaid on this background.

Eurogroup for Animals' position on the revision of the Directive on the Protection of the Environment Through Criminal Law (2008/99/EC)

Position Paper

May 2022

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Summary

On December 15, 2021, the European Commission published a [proposal for a new Directive on the protection of the environment through criminal law](#). **Eurogroup for Animals and its member organisations warmly welcomes the new proposed legislation and calls on Members of the European Parliament (MEPs) and Member States to support this strong proposal and the necessary improvements.** In the following, Eurogroup for Animals and its member organisations provide a position on this proposed law which concerns the offences related to the taking, trading, and killing of wildlife.

Background

The European Commission adopted the [Directive on the Protection of the Environment Through Criminal Law \(2008/99/EC\)](#) in 2008, which defines a number of serious offences that harm the environment and requires EU countries to introduce effective and proportionate penalties constituting a deterrent for such offences.

Ten years after its adoption, the Commission has carried out an [evaluation of the Directive](#). Although the Directive has been implemented by all Member States, its evaluation concluded that its objectives have only been partially achieved. In particular, the results highlighted that the number of successfully prosecuted environmental cases was low, sanctions were insufficient to be a deterrent and cross-border cooperation was weak.

The Commission decided to revise the Directive and integrated it into its 2021 Work Programme. Eurogroup for Animals' member, FOUR PAWS, welcomed this commitment and provided feedback to the [Inception Impact Assessment Roadmap](#) and the [public consultation](#).

On December 15, 2021, the Commission adopted a [proposal for a new EU Directive on the protection of the Environment through criminal law](#). The proposal intends to increase environmental protection and requires Member States to implement stronger criminal provisions more likely to dissuade potential criminals.

The new law proposes a wider range of offences with more specific and clear descriptions of criminal offences; sets a minimum for maximum sanctions and additional penalties; protects environmental activists, defenders and civil parties who report environmental offences; proposes special training for police, prosecutors and at all levels of the supply chain and includes a reporting obligation to the Commission.

We are pleased to see that the proposal includes some of our recommendations:

- Member States shall raise awareness and carry campaigns against environmental crime;
- Member States shall ensure that national authorities have sufficient resources, capacity, and qualified staff to effectively prosecute environmental crime;
- Member States shall ensure that judges have the expertise and specialised knowledge to successfully investigate and prosecute criminals through training;
- Member States shall establish appropriate mechanisms to increase cooperation, exchange of information and best practices among them;
- Member States should collect statistical data to monitor the effectiveness of their system to combat environmental crime offences and submit them to the Commission, which will be communicated publicly afterwards;
- The adoption of implementing acts establishing the standard format for the transmission of statistical data.

What is missing in the new proposal?

Although we consider the recently published proposal as a solid basis to fight environmental crime, we have identified some important issues that are not included:

- Species listed under Annex C to Council Regulation (EC) No 338/97, the illegal capture of wild species from its country of origin to the EU market, and illegal online wildlife trade are not included in the list of offences;
- There is no provision for updating the Directive in due course, although this would ensure the inclusion of new environmental legislation in a systematic and in a timely fashion;
- Provisions on minimum levels for maximum sanctions as well as sanctions against legal persons are still not sufficiently dissuasive;
- The proposal does not include provisions on the confiscation of live wild specimens from wildlife trafficking.

Why it matters?

... Because wildlife crime has adverse impacts in Europe

Wildlife crime is often underestimated, although its impact on the world and society, its role in pandemic diseases, in economic losses, and in loss of biological diversity is profound. It has become the fourth largest crime sector¹ and intersects with other transnational organised crimes such as drug smuggling, counterfeiting and human trafficking.

This transnational criminal activity involves well-organised, innovative, and connected criminal networks. The poor legislative framework, low risks of detection, low penalties and high financial rewards make this activity extremely attractive.

¹ UNEP-INTERPOL Rapid Response Assessment: The Rise of Environmental Crime, June 2016.

Europe is not spared, as it is one of the main global markets for wildlife trade. It is a source region, a transit, and a destination market for live wild animals and their parts and derivatives. The 2020 UNODC report² documented that 18% out of 180,000 global wildlife seizures occurred in the European Union from 1999 to 2018.

It is vital that the EU with prominent wildlife trafficking implement laws and regulations to decrease the illegal wildlife trade.

... Because wildlife crime is a low risk and high reward crime

Wildlife crime is one of the most under-prosecuted serious crimes. Most people prosecuted for offences in contravention of wildlife legislation, escape with fines that are meagre in comparison to the profits accrued and the damage done.

Both imprisonment and fines act as deterrents to wildlife crime. Fines are a significant tool of the judicial arm to deter crime. Imposing significant fines, in addition to imprisonment, shows that the consequences are severe. If these are enhanced to be significantly costly to criminals, it would change the perception of wildlife crime as low-risk and high-reward.

... Because wildlife sanctuaries and rescue centres have a crucial role in enforcing legislation

The management of confiscated wild animals represents a major challenge for the competent authorities. Firstly, confiscating authorities often seize or confiscate animals without a clear plan to provide proper long-term care for confiscated wildlife resulting from wildlife trafficking. Secondly, it is often problematic to find facilities which can provide adequate housing and expertise for confiscated animals.

National lack of rescue and sanctuary capacity seems to be a reason for different Member States not to enforce regulations and/or to merely sanction individuals with administrative sanctions such as administrative seizures which are not in the best interests of the seized wildlife and which hardly result in dissuasive signals to individuals/groups trafficking wildlife.

The EU has a clear role to play to set up constructive collaborations and exchanges between governmental (where existent) and non-governmental sanctuaries and rescue centres to secure long term and species-appropriate solutions for seized wildlife.

² UNODC, World Wildlife Crime Report 2020: Trafficking in Protected Species, https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf

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Recommendations

Eurogroup for Animals and its member organisations believe that the following issues should be addressed:

Scope

- Include the trading in specimens of wild fauna and flora species, or parts or derivatives listed under Annex A, B and C to Council Regulation (EC) No 338/97 in Article 3 (m).
- Take into account the illegal capture of wild species from its country of origin to the EU market as well as the illegal online wildlife trade in the Directive.
- Include a provision for updating the Directive in due course when a new environmental law is adopted, which should go beyond the current statement where the Directive “should be amended in order to add to the categories of criminal offences also the new serious breaches of Union environmental law” to state how this should happen in a systematic and timely way to ensure inclusion of all updates. In that sense, we recall our support for the adoption of an EU Positive List of allowed pet species, which is a mechanism through which animal species are objectively and scientifically assessed on their safety and suitability to be traded and kept as pets. If such a law were to be proposed and adopted, the Environmental Crime Directive should be updated accordingly and in a timely fashion.

Penalties

- Assign higher penalties to offences involving particularly endangered species such as tigers;
- Increase the maximum limit of fines for legal persons, to not less than 15% of the total worldwide turnover of the company;
- Include the offence causing destruction or irreversible damage to threatened or protected species in the provision on aggravating circumstances. For more information, the UNODC, Guide on Drafting Legislation to Combat Wildlife Crime (United Nations, 2018) provides more details on aggravating factors in relation to wildlife trafficking³.

³ UNODC, Criminalization of wildlife trafficking, September 2019, <https://www.unodc.org/e4j/en/wildlife-crime/module-3/key-issues/criminalization-of-wildlife-trafficking.html>

Collection of data

- Make information and data collected by Member States available to the public with immediate effect. This information could not only potentially deter individuals from getting involved in environmental crime but would also assist environmental organisations in providing relevant information.

Wildlife sanctuaries and rescue centres

- The EU should encourage Member States to develop national action plans on how authorities can manage confiscated wild animals and strengthen cooperation between Member States;
- The EU should establish an EU-wide list of appropriate sanctuaries and rescue centres (with a no breeding policy) and make it available to Member State enforcement authorities.

For more information, please contact:

Nicholas Clark, Wildlife Programme Leader at Eurogroup for Animals,
n.clark@eurogroupforanimals.org

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Eurogroup for Animals
Rue Ducale 29 – 1000 Brussels
Tel: +32 (0)2 740 08 20

info@eurogroupforanimals.org
eurogroupforanimals.org