



EUROPEAN COMMISSION

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Brussels, 1.10.2021
SEC(2021) 428 final

REGULATORY SCRUTINY BOARD OPINION

**Proposal for a Directive of the European Parliament and of the Council on
the protection of the environment through criminal law and replacing
Directive 2008/99/EC**

COM(2021) 851 final
SWD(2021) 465 final
SWD(2021) 466 final



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Directive on the protection of the environment through criminal law

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Environmental crime was the fourth largest reported criminal activity in the world in 2016, growing at annual rates of 5-7%. There are many kinds of environmental crime. These include illegal emissions into the air, discharge of substances into water or soil, illegal trade in wildlife or in ozone-depleting substances, and illegal shipment or dumping of waste. Serious crimes often have a cross-border dimension and may involve organised groups.

Directive 2008/99/EC on the protection of the environment through criminal law aims to reduce environmental crime. Since it entered into force, the EU has obtained additional competences in the field of criminal law. Added to this, the evaluation of the Directive identified shortcomings that will be addressed with this revision.

The revision aims to improve the implementation of the Directive. It aims to clarify its scope and definitions, improve cross-border cooperation and the enforcement chain, and gather better statistics for monitoring and evaluation.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report is not sufficiently clear on the choices to be made on the essential elements of the revision of this Directive and if these choices are legal, technical or political in nature. It does not sufficiently explain how coherence between EU sectoral legislation and criminal law will be ensured.**
- (2) The report does not thoroughly justify the selection of the measures under the preferred package of options.**

This opinion concerns a draft impact assessment which may differ from the final version.

Commission européenne, B-1049 Bruxelles - Belgium. Office: BERL 08/010. E-mail: regulatory-scrutiny-board@ec.europa.eu

(3) The report does not assess the cumulative impact of the preferred package of options.

(C) What to improve

(1) The report should provide greater clarity and additional information on the choices to be made for the essential elements, such as the coverage of the Directive, the mechanism for updating the Directive, criminal sanctions to be proposed, and clarification of definitions. It should clearly indicate if these choices are merely legal or technical specifications leaving little discretion or require a genuine political judgement based on real alternatives. It should substantiate the impacts of these choices on the basis of the available evidence. On this basis, it should better explain how coherence between EU sectoral legislation and criminal law will be ensured.

(2) The report should better justify the selection of measures under the preferred option, in particular regarding the mechanism to keep the Directive and its coverage up-to-date. In the case of mandatory training and specialisation, it should be clear from the problem definition that this is expected to play an important role and that the available evidence supports the need for binding measures.

(3) The report should assess the cumulative impact of the best performing package and not only analyse the impact of the individual options. It should clarify whether alternative packages have been assessed.

(4) The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables. However, the report should provide a more precise cost estimation. The report should also elaborate on the simplification and burden reduction in view of the REFIT potential of the preferred option.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Directive on the protection of the environment through criminal law amending Directive 2008/99/EC
Reference number	PLAN/2020/8802
Submitted to RSB on	1 September 2021
Date of RSB meeting	29 September 2021

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

<i>I. Overview of Benefits (total for all provisions) – Preferred Option</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Reduction in all types of environmental crime in the EU due to increased enforcement activity	Indicatively, combined value of illegal revenue derived from environmental crime and losses for legal commerce and tax revenue at between USD 91-259 billion annually	Not possible to quantify the exact amount of environmental crime cases that would be tried and convicted or their distribution across the Member States.
Reduction in types of environmental not previously included in the Directive, such as illegal logging and timber trade and fishery crimes	Indicatively, the worldwide revenue from fishery crimes has been estimated at between USD 11 – 30 billion annually. The EU is responsible for almost EUR 3 billion of losses due to illegal logging, with an import of around 20 million cubic meters of illegal timber every year	As above, it is not directly quantifiable.
<i>Indirect benefits</i>		
Improved state of the environment due to reductions in activity that pollutes, harms species	Citizens and society benefit from a cleaner environment and a reduction in negative health impacts.	Criminal law is only one of many legislative tools aimed at environmental protection and enhancement and criminal law measures are a last resort when other measures are not sufficient.
Reputational and competition benefits for legally compliant businesses	Businesses that comply with environmental law will not face unfair competition from those that do not. The reputation of certain industries will recover if there is less criminal activity.	Not quantifiable, but point was raised by a majority of businesses consulted.

II. Overview of costs – Preferred option (million EUR)							
Policy objective		Citizens/Consumers		Businesses		Member State Administrations (EU27)	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent (per year)
Objective 1 (transposition)	Direct costs	-	-	-	-	0.158 0.475	-
	Indirect costs	-	-	-	-	-	-
Objective 2 (transposition)	Direct costs	-	-	-	-	0.158 0.475	-
	Indirect costs	-	-	-	-	-	-
Objective 3 (transposition)	Direct costs	-	-	-	-	0.158 0.475	-
	Indirect costs	-	-	-	-	-	-
Objective 4 (national focal points and investigative tools)	Direct costs	-	-	-	-	-	0.475 -0.792 Non-quantifiable costs of using investigative tools
	Indirect costs	-	-	-	-	-	-
Objective 5 (harmonised data collection, option 2, MS costs)	Direct costs	-	-	-	-	0.428	0.255
	Indirect costs	-	-	-	-	-	-
Objective 6 (training and national strategies, MS costs)	Direct costs	-	-	-	-	0.864	8.302
	Indirect costs	-	-	-	-	-	-
All objectives (additional staff)	Direct costs	-	-	-	-	-	193.411
Total preferred option						1.766 2.717	202.760 202.443