

ClientEarth's response to the Commission roadmap: revision of the Environmental Crime Directive

ClientEarth favours the Fourth Option proposed in the Commission's Roadmap. In particular, we favour revising the Directive to ensure that environmental crime is a self-standing concept, to avoid a situation where the Directive becomes obsolete as legislation evolves.

We also recommend that the "causes or is likely to cause" standard Article 3(a), (b), (c), and (d) be revised to read "causes or may cause". This wording will ensure that those who negligently or intentionally engage in acts of environmental harm are not able to rely on the difficulty of proving beyond a reasonable doubt the likelihood that their actions will cause harm in order to escape criminal sanctions. This is particularly important in an increasingly complex context in relation to certain activities, such as the production or use of harmful chemicals.

Regardless of the approach the Commission takes in its proposal, we note the following important legislative developments and other factors that should be taken into account in respect of fisheries and forest crimes in particular:

Fisheries and seafood markets

To ensure serious fisheries and seafood market infringements (including illegal, unregulated, and unreported (IUU) fishing) are included in Article 3 of the Environmental Crimes Directive, it is important that the revised Directive takes into account the legislative work underway regarding the revision of Regulation No1224/2009 (the so-called Fisheries Control Regulation) and Regulation No1005/2008 (the so-called IUU Regulation). In the interest of general legislative consistency, as the adoption of these regulations is scheduled for early 2021, it is crucial that amendment of the Directive is consistent and aligned with the revised European legislation in the area of the Common Fisheries Policy (CFP).

ClientEarth would welcome the inclusion of serious infringements to CFP rules in Article 3 of the Directive. However, it is necessary that Member States are also able to apply, where appropriate, administrative sanctions in lieu of criminal sanctions. The former are often faster and therefore more effective and dissuasive. Criminal procedures are sometimes too long and not adapted to quickly halt an offence and limit environmental damage.

Moreover, the level of sanctions must be related to the nature and seriousness of the infringement, based on pre-defined, precise and listed criteria (such as the number of repetitions).

While ClientEarth recognises the importance of harmonising the level of sanctions, it is imperative that the nature of the infringement itself be carefully considered and redefined, since the definition of an "infringement"/"serious infringement" is currently subject to different interpretations depending on national legal systems and practices. It is detrimental to the level playing field in EU waters. A more precise definition of the notion of infringement is therefore an indispensable prerequisite for putting all EU fishers on an equal footing.

Forests

In addition, to ensure the roadmap is complete and comprehensive in its approach, ClientEarth would suggest that the European Commission take into consideration the ongoing review of both the FLEGT Regulation and the EU Timber Regulation, combined with the upcoming Commission legislative proposal to address deforestation and forest degradation.

ClientEarth also urges the Commission, when conducting its review and drafting the upcoming public consultation, to take into consideration the 8th Mutual Evaluation Round on the practical implementation and operation of European policies preventing and combating environmental crime (which also includes CITES). The conclusions from this are key in making the review of the Environmental Crime Directive relevant.

ClientEarth would also like to direct attention to the need to review:

- the term 'organised crime' (as to include different types of environmental based traffics, including timber);
- the annexes, as their current standing does not contain all existing environmental legislation, thus limiting the scope of the directive.

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