

Birdlife Position on the Environmental Crime Directive

For external use. Adopted by the Birds and Habitats Directives Task Force on 21 November 2017.

Summary

Environmental crime is one of the biggest challenges of our time. In the EU bird crime is widespread and impacting threatened species. Often significant profits are being made and organised crime is common. The level of criminal penalties vary significantly, hampering uniform enforcement.

In this position, BirdLife asks for the Environmental Crime Directive to be revised. A maximum term of imprisonment of at least five years, and other forms of criminal penalties should be introduced. A reporting obligation should be added to the Environmental Crime Directive and the legislation should be better embedded in other EU legislation on crime. Criminal proceedings are open to NGOs as a party whose interests have been damaged.

BirdLife also asks for specialised Courts, specialised prosecutors and specialised police units to be developed in EU Member States, and the EU should fund research and capacity building. Finally, the European Commission should develop non-binding sentencing guidelines to further harmonise sentencing.

Introduction

1. **Combating environmental crime** is one of the biggest challenges of our time. Criminals are attracted to illegal environmental activities due to the low detection probability and the low penalties, causing irreversible damage to our health, our lives and our natural heritage. The profits of environmental crime worldwide are estimated to be 91 – 258 billion EUR per year funding further criminal activity, war and terrorismⁱ.
2. In particular **bird crime** (criminal activities targeting or affecting birds) is a major threat to the conservation of wild birds in the EU. Examples are the use of poisoned baits that have a major impact on several species of birds of prey and scavengers across the EU, the large-scale trapping of Passerines for food in the Mediterranean, and the shooting and trapping of birds of prey across the EUⁱⁱ.
3. **Enforcement** is a key action to tackle bird crime. It is complimentary to other activities aimed at ensuring compliance with the law, such as awareness raising, and registration and licensing of high risk activities.
4. Criminal penalties are the last part of the **enforcement chain**. The enforcement chain start with surveillance, followed by inspection and investigation, prosecution and sentencing of

perpetrators. Enforcement needs to be complemented by compliance promotion and compliance assurance.

5. In order for the enforcement chain to operate effectively, **all parts of the enforcement chain need to be effective**. There are several known weaknesses of the enforcement chain at the inspection level. The BHDTF Position on Environmental Inspectionsⁱⁱⁱ outlines our asks on this topic.
6. The **EU Environmental Crime Directive**^{iv} was adopted in 2008. The Directive obliges EU Member States to ensure that specific forms of environmental crime are punishable by effective, proportionate and dissuasive criminal penalties. Criminal offences extend to aiding, inciting and abetting, and to legal persons. There are nine different offences in the Environmental Crime Directive, relating to for example nuclear waste or ozone-depleting substances. Three offences are relevant for combating bird crime:
 - a. the **killing, destruction, possession or taking of specimens** of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
 - b. **trading in specimens of protected wild fauna or flora species** or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
 - c. **any conduct which causes the significant deterioration of a habitat** within a protected site;

Significantly, the Environmental Directive introduced thresholds for the offenses. Member States are obliged only to criminalise offenses involving non-negligible quantities of individuals protected species, or offenses with a non-negligible impact on the conservation status.

7. The ability of the EU to legislate on criminal justice was contested heavily before the European Court of Justice. Ultimate the Court ruled that the Commission had the competence to propose legislation on criminal law, as this could be a requirement in order to ensure that the rules which the Community lays down on environmental protection are fully effective^v.
8. The **maximum criminal penalties and the nature of the penalties vary significantly across the EU**^{vi}. Some EU Member States have as a maximum penalty just a fine for some environmental offences. The maximum prison sentences vary from three months until lifelong imprisonment.
9. With the adoption of the Treaty on the Functioning of the European Union, **the harmonisation of criminal sanctions for environmental crime at EU level has become possible**. Article 83 of the Treaty on the Function of the European Union provides that, following a decision from the Council to extent harmonisation to a particular area with consent of the Parliament, the approximation of criminal sanctions can be implemented through a Directive or a Council Decision^{vii}.

10. **Bird crime often taking place as organised crime**, committed by criminal organisations. A criminal organisation is defined in EU legislation as a “*structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences*”^{viii}. Examples of organised bird crime are:
- a. **Trapping passerines** for food, involving trappers, middlemen and restaurants;
 - b. **Trade in protected species** for private collections, involving trappers or egg collectors, local assistants, middlemen and commercial traders, private collectors and/or zoos;
 - c. **Hunting tourism**, involving hunters, hunting tour operators and local hunting guides.
 - d. **Predator control**, involving land owners and game managers.
11. There are **significant profits associated with some forms of bird crime**. For example the illegal trapping of Passerines in Cyprus is estimated to be generating a total profit of EUR 15 million^{ix} and pair of Egyptian Vultures can sell for up to EUR 15 000^x. The significance of the profits can also be relative, for example in low income rural regions a 500 EUR bribe for illicit hunting tourism can also be significant.

Position on the Environmental Crime Directive

12. **The Environmental Crime Directive should be revised.**
13. Offences under the Environmental Crime Directive should be punishable with a **maximum term of imprisonment of at least five years.**
14. Offences under the **Environmental Crime Directive should be punishable with other criminal penalties**^{vii} such as
- a. the obligation to restore the environment
 - b. exclusion from entitlement to public benefits or aid;
 - c. temporary or permanent disqualification from the practice of recreational or commercial activities;
 - d. placing under judicial supervision;
 - e. judicial winding-up;
 - f. temporary or permanent closure of establishments which have been used for committing the offence
 - g. the publication of the judicial decision relating to the conviction or any sanctions or measures applied
15. The fact that environmental crime has been committed in the context of **organised crime** should be considered an aggravating circumstance in the Environmental Crime Directive^{vii}. An explicit link should be made to Council Framework Decision 2008/841/JH of 24 October 2008 on the fight against organised crime.
16. The European Commission should be tasked to issue an **implementing or delegated act to define the threshold** under the Environmental Crime Directive that specifies the interpretation

significant effect on the conservation status, the non-negligible quantity of protected species and the significant deterioration of a habitat within a protected site.

17. The fact that the offender has previously been convicted of **offences of the same nature** should also be considered an aggravating circumstance.
18. A **reporting obligation** should be introduced in the Environmental Crime Directive. Member States should provide data on the number of violations, prosecutions and imposed sanctions for violations of criminal offences under the Environmental Crime Directive^{vii}.
19. The scope of the Environmental Crime Directive should also cover **significant deterioration of a habitat of a protected species within a protected site, as well as significant disturbance of a protected species within a protected site**, in addition to deterioration of habitat types within a protected site.
20. The proceeds of **environmental crime should be allowed to be frozen, and confiscated following a confiscation order**^{vii}. The Environmental Crime Directive should therefore be included in 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.
21. The Environmental Crime Directive should ensure that **criminal proceedings are open to NGOs as a party whose interests have been damaged and that NGOs are allowed to bring action to ensure enforcement**. NGOs and citizens should also be able to challenge a lack of action of enforcement authorities^{vii}.

Position on the broader policy framework

22. Member States should develop **specialised Courts, specialised prosecutors and specialised police units** for environmental crime^{vii}. These institution should be fully dedicated to environmental crime, ensuring their experience and knowledge of forms of environmental crime. Member States should also designate forensic institutes and research institutes to assist with the collection and examination of evidence.
23. Member States should develop **guidelines for the police units or other institutions responsible for investigating environmental crime**. The guidelines should cover all the aspects of criminal investigation (securing the crime scene, collecting and storing evidence, chain of custody, and cooperation with the forensics and research institutes).
24. The European Commission should commission **research on the criminal economy chain and on effective and dissuasive penalties**. The research should be funded through the Criminal Justice Programme, Horizon 2020 and LIFE.
25. The European Commission should invest in training, capacity building and technological support to national environment, wildlife and law enforcement agencies, including inspectors, police, prosecutors and judges.

26. Finally **non-binding bottom-up sentencing guidelines**^{vii} should be developed by the EU Member States prosecution and judiciary concerning prosecution and sentencing policy that can be applied throughout the EU.

ⁱ Nellemann, C. (Editor in Chief) 2016. The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security. A UNEP/INTERPOL Rapid Response Assessment. United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses.

ⁱⁱ Brochet, A.-L., et al. (2016) "Preliminary assessment of the scope and scale of illegal killing and taking of birds in the Mediterranean." *Bird Conservation International* 26.1 (2016): 1-28.

BirdLife Europe (2011) Review of the illegal killing and trapping of birds in Europe - A report by the Birdlife Partnership. European Conference on Illegal Killing of Birds Larnaca, Cyprus, 6-8 July 2011.

ⁱⁱⁱ BHDTF (2013) BirdLife Position on Improvements Needed to Environmental Inspections Regimes in the European Union.

^{iv} Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law

^v Case C-440/05

^{vi} Torres Rosell, N, Marquès Banqué, M et al (2015) Study on the implementation of Directive 2008/99/econ the Protection of the Environment Through Criminal Law. SEO/BirdLife.

^{vii} EFFACE (2016) Environmental Crime and the EU. Synthesis of the Research Project "European Union Action to Fight Environmental Crime" (EFFACE). Ecologic, Berlin, Germany, and EFFACE (2016) Conclusions and recommendations. Deliverable No. 7.4 of the Research Project "European Union Action to Fight Environmental Crime" (EFFACE). Ecologic, Berlin, Germany.

^{viii} Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime

^{ix} Game and Fauna Service (2010). Position paper presented at the Committee of Environment of the Cyprus House of Parliament during a discussion to change the legislation on the protection and management of wild birds and game species.

^x Vandenberghe (2016) CITES Case. Court of Appeal Ghent, 18 March 2016.