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EnvCrimeNet

Intelligence Project on Environmental Crime

Report on Environmental Crime in Europe

# Executive Summary

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The **Intelligence Project on Environmental Crime (IPEC)** was launched by the Environmental Crime Network (EnviCrimeNet) and Europol in May 2014. The project's objective is to gain a better knowledge on the types of environmental crimes impacting on EU Member States (MS), their extent, and the obstacles which exist to fight these crimes. The project also aimed at identifying the **involvement of organised crime groups (OCGs)** and **threats to the EU** and at developing recommendations on how to improve the situation.

The results of IPEC are based on a review of existing and available material, **interviews** and **meetings** with experts in the field. However, the **main source** for the project was a **questionnaire** sent to all EU MS and to a number of non-EU jurisdictions and international organisations: 26 EU MS and 11 non-EU jurisdictions have worked together. In total, the IPEC team received **58 responses**.

The area of 'environmental crime including endangered species of flora and fauna' is broad. It includes any illegal action with a negative, harming impact on the environment, starting with water, air, earth and soil and then also including climate, flora and fauna. This is one of the reasons why environmental crimes are often perceived as 'victimless'. Nonetheless, damage to ecosystems and the environment pose the risk to trigger **disease, environmental disasters, irreversible climate change, contamination of the food chain, reduced life expectancy** and ultimately the **death of human beings**. Many species are on the verge of extinction and the continued illegal trade with them (or commodities derived from them) needs to be stopped to avoid unforeseeable consequences on different ecosystems. However, one problem with environmental crime is that damages caused are often part of an accumulative process or not immediately visible.

In addition, social, economic and political systems are threatened to be seriously undermined by environmental crimes. They are indeed primarily undertaken to **gain illicit profits**. Currently, for example, one of the biggest European business areas is the **waste industry**, in which it is particularly easy for criminals to undercut honest competitors. **Criminal proceeds** can be **as high as in illegal drugs trafficking**, but with much lower sanctions (if those are applied at all) and a low detection rate. This enables OCGs to further infiltrate the legal economy. Environmental crimes undermine the rule of law and damage the reputation of the EU and its MS.

Alongside waste and electronic waste related crimes there are a number of other activities with **organised crime involvement**, such as trafficking in endangered species (TES), trafficking in hazardous chemicals/fuels, illegal logging and illegal fishing. In addition, environmental crimes are **linked to other crimes**, such as corruption, money laundering, counterfeiting, fraud, forgery, sometimes even terrorism or drugs trafficking.

Environmental criminality was clearly identified as an "**emerging threat**". This project pointed out a number of reasons why it was assessed as an emerging threat 'only'. There is an overarching **lack of awareness** on the seriousness of the crimes involved, among the public but in particular within law enforcement. Management and law enforcement agencies have **limited financial and human resources**. Combined with a **lack of inter-departmental and international cooperation** and **low sanction levels**, this frequently results in **dismissal** of cases by the judicial authorities. There is also a **lack of reliable statistics** and data. In fact, environmental crimes are "**control crimes**". Consequently their detection rate is directly linked to efficient controls of national, mostly administrative,

agencies, often together with law enforcement agencies (LEA). If the work of all those different authorities is **inhibited or inefficient** or the interface for transferring cases is ineffective, criminal environmental cases will not be identified as such and will not come to the attention of investigating bodies or prosecuting authorities.

In order to better tackle this “**low risk – high profit**” form of criminality, different solutions have been put forward by the respondents. From a legal point of view, it was suggested to **review national and EU legislation**, as the current sanctions and enforcement powers may no longer be suited for combating the threat posed by criminals.

As for organisational matters, it is appropriate to **increase** and adequately **train** LEA staff. Moreover, **inter-agency cooperation** must be fostered, perhaps with the creation of multi-agency platforms or partnerships similar to the National Environmental Security Task Forces (NESTs), which have been set up in a few jurisdictions, as recommended by Interpol. The creation of a central unit or specialised units is another possibility. At European level, the establishment of a **Focal Point on environmental crime at Europol** and the creation of **international investigation teams** have been envisaged, to enhance and improve international collaboration and the sharing of information; for the latter purpose, **international databases or interfaces** between them should be created.

As far as operational aspects are concerned, it is recommended to **follow the money** and **target the profits**, given the mainly economic nature of environmental crimes, and to **prioritise certain areas** such as waste transport or TES, which have been indicated as the most attractive spheres of activity for **OCGs**. Also **special law enforcement techniques** are needed to arm regulators, investigators and prosecutors with the tools necessary to do their job: as in other areas of crime, offenders make extensive use of the Internet and they are highly flexible and able to quickly move operations to other jurisdictions.

Finally, adequate **public awareness** should be raised on the seriousness and **increasing diffusion** of environmental crimes which can seriously hamper the EU’s aim of establishing an area of freedom, security and justice and of promoting peace and the well-being of the European community. Further EU efforts in relation to environmental crimes are vital in order to reduce the damage caused to Europe and its citizens, be it to business, economy or public health.

# IPEC Report

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## Introduction

In 2013 Europol identified environmental crime as an emerging threat to the EU Member States (MS)<sup>1</sup>. At this time illicit waste trafficking was the key focus of concern. Europol then published the “Threat Assessment 2013 – Environmental Crime in the EU”, wherein more in-depth accounts of illicit waste trafficking and trafficking of endangered species (TES) were provided. These were described as ‘the two most widespread offences’. Some attention was given to illegal, unreported and unregulated (IUU) fishing and illegal sand mining, while offences such as fuel oil fraud and the sale of maritime vessels with contaminated loads were mentioned only briefly.

Towards the end of 2013 the EU’s Standing Committee on Operational Cooperation on Internal Security (COSI) tasked the informal Environmental Crime Network (EnviCrimeNet) to report about their activities and to provide a scan in relation to environmental crime in the EU by the end of 2014.

Within the EnviCrimeNet and its Steering Group (SG) discussions were on-going with regards to both the SOCTA 2013 and the Environmental Crime Threat Assessment. Next to the fact that the EnviCrimeNet’s interest covers a much broader area than purely waste trafficking and TES, the assumed under-reporting of environmental crimes in general is seen as a major, if not central problem, obviously influencing the number of investigations and the knowledge of the involvement of organised crime groups (OCGs). The EnviCrimeNet SG wanted to know more about the gaps: What are the problems? Who has them and why? What are possible solutions?

As a result, a current key focus of the EnviCrimeNet is to carry out a dedicated project in order to gain an improved understanding of the issues. This is the first time that law enforcement agencies (LEAs) have been tasked to inform on this phenomenon. As the EnviCrimeNet Secretariat, Europol agreed to coordinate the project and in May 2014 the Intelligence Project on Environmental Crime (IPEC) was launched for a period of one year. The project team consists of the EnviCrimeNet Secretariat and two Dutch law enforcement (LE) officials (Dutch Food and Consumer Products Safety Authority and Dutch National Police), who were seconded to Europol to deliver IPEC. In the final phase the team was supported by a graduate of the University of Catania (Italy).

The project outcomes take the form of a preliminary and a final report. Both will inform the EnviCrimeNet members, COSI and other relevant bodies of the findings. This is the final report.

On 11<sup>th</sup> of December 2014, the project team, represented by the Chair of the EnviCrimeNet, informed COSI on the preliminary findings. The presentation given is attached as Annex 5.

During the drafting period of this final report, the IPEC team received five more contributions from MS and from two additional jurisdictions.

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<sup>1</sup> Europol SOCTA 2013 – EU Serious and Organised Crime Threat Assessment.

## Project Description

The objective of IPEC is to fill the information and intelligence gaps identified by Europol's environmental crime threat assessment and other information sources. An examination of existing knowledge and practices will be carried out allowing for problems and obstacles in the fight against environmental crime to be identified. This also includes gathering intelligence on the involvement of organised crime groups (OCGs) and on vulnerabilities, and the threats to and the impact on the EU and its MS.

To achieve this, IPEC was established as a research project, roughly following the concepts of academic mixed methods research projects. The project team anticipated problems with statistics, as far as availability and comparability are concerned, from the beginning. It was therefore decided that the main focus would be on qualitative research. The research components included the review of existing and available material, such as literature or information on and from other research, a questionnaire distributed to all EU MS and a number of non-EU states and jurisdictions, and conversations and interviews with law enforcement (LE) experts, active in the area of environmental or other crimes.

Initially, various stakeholders were contacted to provide the project with material and further contacts to NGOs, universities and institutes, and also to other networks. Communications were then sent to request support for the project.

With the support of DG Environment and DG Home the team developed a questionnaire for a survey. The questionnaire was sent via Europol channels to all 28 EU MS and a number of non-EU jurisdictions and organisations. It was addressed to LE and other agencies involved in combating environmental crime.

In addition, further information was collected during interviews of experts from several EU MS and non-EU jurisdictions and organisations, for example during the 2013/14 meetings and seminars as follows:

- Conference on Asset Recovery and Environmental Crime (Northern Ireland Environment Agency)
- CEPOL Workshop on Traffic Police and Waste Trafficking (German Police University)
- Seminar on Environmental Crime (Academy of European Law)
- Wildlife Crime Conference (European Commission)
- Workshop on Wildlife Crime and Asset Confiscation (UNODC)
- Environmental Crime Workshops and Conferences (EFFACE Project)
- Environmental Crime Taskforce Conference 2014 (Scottish Environmental Protection Agency)
- Seminar Illegal Wildlife Trade and Enforcement in the European Union (Renforce)
- Meetings of the Enforcement Group (Council Regulations (EC) No 338/97)

- Meetings with Aquapol, Eurojust, Interpol (Lyon and Washington, DC), US Department of Justice, US Fish & Wildlife Service, US National Oceanic and Atmospheric Administration, World Bank
- Meetings and conference calls with Birdlife, EcoJust, Institute for Environmental Security, Regional Environmental Center, TRAFFIC, University of Utrecht

Following initial interviews, additional information was gathered through telephone and email communication.

## Environmental Crimes

Any illegal action with a negative, harming impact on the environment is an environmental crime. The European Commission suggests that this covers acts which “breach environmental legislation and cause significant harm or risk to the environment and human health”<sup>2</sup>. In extension, environmental crime also includes offences in relation to endangered species (fauna and flora), which is often referred to under different names such as wildlife or CITES<sup>3</sup> crime.

Environmental crime covers a wide range of offences. The EnviCrimeNet experts distinguish them by topics such as chemicals, endangered species, energy, pollution, waste and others (e.g. fires, biodiversity, coastal and protected areas, or food safety). While there are other possibilities to categorise those crimes<sup>4</sup>, it is important to realise potential overlaps: illegal dumping of waste will usually put soils and ground water at risk; the use of fuel oil mixed with waste oil will cause air pollution etc.

Next to the vast area of offences, the aforementioned breach of legislation is a problematic factor. Most jurisdictions introduced some sort of legislation to protect their environment. Certain actions are prohibited, or only permissible under particular conditions. Administrative regulations have been put in place to ensure that there is a balance between economic and industrial activities and the protection of nature, environment and ultimately human health. With a view to the above mentioned topics, a multitude of management and supervisory agencies, depending on the size of a country, is needed to ensure compliance with the rules.

Not every infringement of environmental regulation is directly clustered as a crime or covered by the criminal code. In civil law jurisdictions minor infringements are called ‘contraventions’ and most often punished through an administrative procedure, usually a fine. Common law jurisdictions use similar methods to counter such ‘infractions’ or ‘summary offences’.

Most cases of non-compliance or infringements of environmental regulations are below the threshold of a crime and will, like in many other areas of incorrect human behaviour, not come to the attention of LEAs. This, however, causes a problem for the detection of environmental crimes, which usually lack an immediate victim making them so-called ‘victimless crimes’.

In some instances environmental crimes might be detected by members of the public making observations of suspicious behaviour, by NGOs or even media with a particular focus on environmental issues and security. Nonetheless, in general environmental crime as such is a control crime, similar to drug criminality or crimes in relation to red light districts: it might be unnoticed for a long time before potential damage is visible.

## Chemicals

The chemicals of most concern are currently pesticides. They can be divided into two major groups, plant protection products and biocides. In an international context (e.g. Food and Agriculture Organisation – FAO) the definition also includes certain medicinal and veterinary medicinal products,

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<sup>2</sup> <http://ec.europa.eu/environment/legal/crime/>, accessed November 23, 2014.

<sup>3</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora.

<sup>4</sup> Directive 2008/99/EC covers crimes in relation to pollution, waste, use or release of dangerous substances, protected species and habitats. The EFFACE project aimed for soils, waste, pollution, fisheries, CITES, protected areas, chemicals, fires, marine and timber.

which appear under the term "pesticides". The illegal trade and use of pesticides has been detected across Europe, with many criminal networks involved in this activity.

## Endangered Species

Annually, the international trade in endangered species of flora and fauna is estimated to be worth billions of Euro. The trade is diverse, ranging from live animals and plants to products derived from them, such as timber, leather and cosmetic products, food, and so-called 'traditional medicines'. Closely linked to the trade are illegal hunting and poaching of wildlife and illegal logging and associated deforestation. With a view to the protection of renewable natural resources, poaching and logging are not only seen as serious threats to endangered species but also to biodiversity, ecosystems, climate and social and economic development.

Similarly IUU fishing has a negative impact on marine life, ecosystems and the fishing industry.

## Energy

While the production of energy invariably affects the environment in one way or another, energy is vital for modern societies and their industries and economies. Energy production plants are part of the so-called critical infra-structure. Currently illegal or dangerous activities are primarily seen in the production of biogas and the fraudulent mix of waste oil with fuel oil.

## Pollution

The boundaries between pollution, contamination or degradation are not always clear. However, there is little doubt that air, soil and water can be affected. Waste dumping in the sea, marine pollution in general or the contamination of surface water, are causing many problems, affect ecosystems and ultimately the food chain of humans.

Soil contamination puts ground water at risk and can affect human health and the environment. Contamination typically arises from the application of pesticides or the discharge of waste to the soil. Again, current illegal activities are primarily linked to waste management and waste dumping.

## Waste

Waste is a particular problem for modern societies, be it industrial or household waste, or in liquid or solid form. Some wastes are stockpiled, others are burned or full or partially recycled. All wastes, including the less hazardous ones, have a negative impact on the environment. Large amounts of waste are even exported. Rules and regulations are extremely complex and illegal activities in waste industry can provide huge profit margins.

A particular problem is asbestos, the use of which is now virtually banned across the EU. However, there are still large amounts of asbestos found, especially in older buildings. The disposal of asbestos is dangerous and complicated and therefore expensive, allowing illegal disposal to offer high profits.

Two other problems experienced by modern societies are the so-called end-of-life vehicles and electronic waste. Within the EU the recycling of vehicle and e-waste or 'waste electrical and electronic equipment' (WEEE) is, in comparison, strictly regulated, also considering the hazardous substances contained in many cars or electronic products. Exporting such waste into developing jurisdictions where workforce is less expensive and recycling less regulated, became an attractive

business with promising high profit already for legal businesses but even more so for illegal activities.

## **Other Environmental Topics**

Deforestation is not only a problem on other continents but also in Europe. It can lead to land erosion and has a negative impact the eco-system. On a global level it can have an impact on climate change and on societies in developing jurisdictions. Illegal activities are usually linked to logging or arson.

Biodiversity includes diversity within species, between species and of ecosystems. Threats to biodiversity are numerous and include habitat loss and degradation, the introduction of invasive alien species, the over-exploitation of natural resources, pollution, diseases, and climate change. This is closely linked to the protection of particularly defined areas. Threatening illegal activities are usually related to pollution, waste or trafficking of species.

In some jurisdictions crimes in relation to the food chain and to food safety are also considered to be environmental crimes.

## Findings

This part of the report will primarily provide the questionnaire findings. Therefore the structure will closely follow the questionnaire topics. Where relevant, additional information, be it from conversations or interviews or from other sources will be added.

### The Questionnaire

The IPEC questionnaire was sent to all EU MS and a number of non-EU states (NEUS) or jurisdictions. 26 MS replied providing 46 completed questionnaires<sup>5</sup>; one MS provided an existing report. Eleven non-EU jurisdictions also responded. Interpol and some NGOs provided limited information, as the questionnaire was designed to be filled in by jurisdictions rather than international organisations. In total, the IPEC team received 58 responses from 37 jurisdictions. In addition a small number of local authorities provided information, which was helpful in establishing differences between national and local perspective.

One rather important aspect in relation to the dissemination of the questionnaire relates to communication, a subject that will be highlighted in this report again later. The project was announced in various ways, for example via the previously mentioned IPEC communication, using Europol's SIENA system as well as emails to users of the EnviCrimeNet's website within the Europol Platform for Experts (EPE) and other contacts known to the network. The questionnaire itself was at first only disseminated via the Europol SIENA exchange platform. To increase the initially rather poor response, the team sent out reminders and used contacts provided through other networks or established during meetings and conferences. This suggests that the information flow in relation to environmental crime is either not properly established in a rather large number of jurisdictions or that the subject itself is not considered to be particularly relevant or serious.

### Jurisdictions and Agencies

A list of respondent jurisdictions is attached in the Annex to this report, separated into EU and Non-EU jurisdictions. Most of the respondents were police and customs agencies. However, replies were also received from Ministries (Interior, Justice or Environment), environmental agencies and public prosecutor offices.

In most jurisdictions police (including border guard or gendarmerie like forces) and customs authorities, as well as public prosecutor offices, sometimes specialised police agencies for economic crime and even revenue agencies, are competent for investigating environmental crime. Customs agencies are primarily mandated to investigate crimes in relation to endangered species. In some jurisdictions separate environmental and administrative agencies are investigating environmental crime, either together with the police or with their own law enforcement branches.

Depending on the jurisdictional size, regional or local forces and agencies may also investigate environmental crime cases.

In addition, in almost all jurisdictions, various administrative agencies and inspectorates exist as monitoring and supervisory authorities.

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<sup>5</sup> Some jurisdictions used one questionnaire to answer on behalf of several relevant agencies; others chose to have one questionnaire filled in by each agency concerned.

A number of jurisdictions established specialised environmental crime or wildlife crime units, be it on national or regional level. A few jurisdictions have established a National Environmental Security Task Force (NEST)<sup>6</sup> as recommended by Interpol, others have working groups or similar to improve national cooperation. Most jurisdictions do not have a regular central unit to collect and analyse information on environmental crimes though.

### Crimes in Addition to Article 3 of Directive 2008/99/EC

The questionnaire also asked for environmental crimes not covered by Article 3 of Directive 2008/99/EC. A complete list is attached to this report. For general information the themes and topics mentioned by at least ten jurisdictions are listed below with the number of reporting jurisdictions:

Logging, forest devastation	18
Hunting, fishing	17
Animal welfare	13
Chemicals (pesticides, medicine, quackery)	13
Food/feed safety	10

### Statistics

Statistics are not available in a number of jurisdictions; some did not report on this question, others have databases which can provide partial statistics only. In many jurisdictions the statistics are part of the more general police or crime statistics with the usual difficulties that the value is limited due to limited compatibility. Also, quite often the ‘lead crime’ is used for statistics. Many cases of environmental crime are, however, not prosecuted as environmental crime but rather as ‘conventional crimes’, which can be more easily proven and prosecuted, such as fraud, forgery of documents or OCG activities. This is particularly the case for larger investigations. The statistical figures, if available, include many minor cases. The numbers range from less than a dozen to a few thousand, depending on jurisdiction size or population.

In most cases we received police data only without figures on prosecutions or court sentences. As with other crime areas the amount of detected crime is much higher than the amount of actually prosecuted cases. The same applies to the relation of prosecuted cases to court sentences. However, some of the responses indicate that, for environmental crime, those figures are way below the average of other types of crime.

One of the reasons given is the fact that environmental crimes are usually victimless ‘control crimes’. Supervisory authorities are, in most jurisdictions, the main source for reporting crimes to mandated LEAs. Like other administrations, those managing agencies depend on factors such as available resources, prioritisation, or legislation and might be more or less efficient with their controls and

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<sup>6</sup> See Interpol NEST Fact Sheet 2013.

inspections. This obviously has a direct impact on the number of crimes reported to the investigative agencies or departments.

Also, environmental law comes with a high grade of regulation and criminal behaviour, often linked to (previous) administrative action (e.g. permits), resulting in numerous possible infringements. Together with administrative legislation, which is constantly changed and not sufficiently definite for application under penal law, this can cause legal uncertainty. This also impacts on several aspects of law enforcement, such as willingness, motivation and even ability to investigate.

In some jurisdictions environmental infringements only constitute crimes if they are 'aggravated'. There are further links to allowed or permitted actions and whether any activity is in excess of the permit provided. In some instances, such as waste transport management, abuse can only be detected if volumes are checked, or substances analysed. This needs strict controls and the use of databases, for example to look at the overall amounts transported by or for particular companies, plus the cooperation of various stakeholders.

A quantitative research of environmental crimes with the use of existing statistics is not yielding results. It was reported that indeed statistics on environmental crime are not reflecting the real picture and give, at best, only indications on the real situation in a jurisdiction. Nonetheless, some respondents suggest that the overall figures are growing.

### **Cooperation Problems (between Regulation Authorities and LEAs)**

Three jurisdictions did not fill in anything on this question. In only a few jurisdictions are environmental crimes a priority, in most they are not; in some jurisdictions environmental crimes have a low priority.

Some jurisdictions actually responded that there are 'no problems', or no problems according to the knowledge of the reporting officer or agency. Others said they only experienced minor or occasional problems. One non-EU country stated that there might be overlap regarding workflow and intelligence. Another NEUS indicated that there are no problems in cooperation between regulation authorities and law enforcement, because this is regulated by law. One MS does not experience problems anymore since the introduction of one single agency for the investigation of environmental crimes. In Germany, during the last few years the enforcement of waste legislation and some criminal cases were subject of parliamentary enquiries. However, environmental or waste crimes are not a priority in this MS.

When we received more than one response from a jurisdiction, the answers varied occasionally, obviously depending on the perspective of the reporting agency. Often, customs authorities mandated with combating CITES crimes do not have cooperation issues, or at least to a lesser extent. However, 16 MS and 5 NEUS reported various cooperation problems.

Even if environmental crime is prioritised, jurisdictions face issues. This concerns, in particular, cooperation between regulation and law enforcement authorities. Monitoring and enforcement by regulation authorities is linked to the detection of criminal actions and their investigation, as mentioned before. Enforcement measures, such as inspections or controls, carried out by administrative bodies, are vital and directly linked to the detection of infringements first and, in extension, the detection of crime cases.

In summary the following issues were highlighted:

Cooperation with customs is difficult due to existing financial legislation, which makes the sharing of information complicated or not possible at all. This is similar for cooperation with environmental/regulatory authorities. There is a rather strict separation between regulation and LE authorities and either an absence of legislation for information exchange or legal restrictions inhibiting the sharing of information. Consequently the exchange of information is often incomplete or slow. In some jurisdictions the absence of a legal framework leads to the development of 'spontaneous exchanges of information', which is legally a concern for the colleagues involved. In other jurisdictions one consequence is that there is little or no exchange. In general, the police (or investigating LEA) does not have access to information and data systems of the regulation authorities who, generally speaking, have different tasks and goals and sometimes even conflicting interests. Also, it was mentioned that regulation authorities often lack sufficient capacity for inspections and usually cannot provide a 24/7 service.

Seen as a particular challenge is the fact that many jurisdictions have national and regional, even local, legislation and separate enforcement and inspection authorities with different structures. The often no less complex organisation on the side of LE is adding to the problems and makes it difficult for officers on either side to identify possible cooperation partners. Even MS, where the general situation appears to be comparatively positive, reported that cooperation happens on a case by case basis only and aspects such as mutual assistance can still be improved.

While the main issue is the exchange of information, there are further obstacles to overcome. Regulators, for example, enforce compliance with the rules and are usually not engaged in gathering or preserving evidence, which affects potential LE actions later on in the process. The insufficient enforcement of compliance through environmental administration due to budget constraints and constant reform pressure was also mentioned as a cause for problems.

There is a further lack of coordination and alignment between the competent authorities. Synergies between regulation (environmental) authorities and police/law enforcement authorities plus, in extension, public prosecutor offices are insufficient. This seems to be especially valid for bigger jurisdictions with even more diverse work flows and organisational structures.

A number of jurisdictions highlighted the lack of experienced staff or what was referred to as 'institutional experience'. This is of particular relevance in a highly regulated and complex area such as environmental crime.

As far as crimes regarding endangered species and biodiversity are concerned, one MS pointed out that efficient action should involve joint efforts of all departments concerned. In fact, it was stated that cooperation between regulation authorities and LEAs is often happening on a low level only (if at all) and that a joint strategy to organise and manage activities in the area of environmental crime is missing.

Some respondents indicated that they are having difficulties caused by the 'formulation of law'. Phrases such as "large extent", "wide area" or "danger to human lives" are not very specific and are open to interpretation – until specified by courts or guidelines that is. The absence of definitions makes it difficult to determine whether a particular case is already a crime or merely an

infringement. Also, as highlighted by agencies previously, judicial organs are in general not sufficiently familiar with the complex environmental regulations.

## Sanctions

Nine of the 58 respondents did not answer the two questions related to sanctions. In five cases the answer was refused, based on the fact that this is an out of mandate subject. Twenty respondents were satisfied with the sanctions available. However, almost all of them pointed out application issues in practical terms.

It would appear that all jurisdictions have implemented similar sanctions, ranging from fines to various degrees of imprisonment. In several cases the possibility of confiscation was mentioned as well as tax measures. In some jurisdictions legal persons can be prosecuted for environmental crimes. Compensation for damage caused was also mentioned, even though it is technically not really a sanction.

A few NEUS suggested that their sanctions were not severe enough and would like to see their national legislation harmonised with EU standards.

Some jurisdictions reported that the imposed sanctions were not having the intended results, because not all environmental crimes are proportionally sanctioned. A few contributors pointed out that the foreseen sanctions influence investigation possibilities, be it legal measures or simply justification for large long-term investigations. More of a concern to many, however, is the practical application.

A large number of proceedings are already stopped and dismissed at the level of public prosecution agencies (PPAs). Several explanations were provided. The dependency on numerous and complex administrative regulations and their constant changes, influence the application of penal law and therefore the sanctions. Some respondents referred to the previously mentioned links to administrative action and uncertainty in a highly complex legal environment. Also, proving the causality between a particular action and damage to the environment or the link between such action and the risks for health or environment is difficult. The challenges in producing evidence were also mentioned.

Only a few PPAs focus or are specialised on environmental crime. Many prosecutors have a high work load already, even without environmental crimes. The early dismissal of environmental crime cases by PPAs is not satisfactory seen as this often includes large cases, difficult to investigate and in need of many operational measures. This obviously also has an influence on the number of actual sentences, which is generally considered as being too low.

Another aspect mentioned was that sentences are often too mild or limited. In some MS an influencing factor for low sentences is rather long handling times, which have an effect on the sanction. In many instances sentences are achieved by prosecuting other, more general offences such as fraud or forgery of documents. Aggravated circumstances are not always reflected in court decisions. Prison sentences appear to be very rare.

The majority of environmental crimes are sanctioned with fines. For companies fines are often lower than costs for compliance. In combination with lenient sentences and cost pressure this might encourage some to enter into illegality where they were once running legitimate businesses.

Other imposed sanctions are often suspended or appealed by the defendant and repealed by court authorities. However, it was also stated that court cases and decisions can already have a preventative effect, regardless of the outcome.

There is also a feeling that prosecutors and judges, like many LE officials and even the public, have a lack of awareness as far as environmental crimes are concerned. They still see environmental crimes as minor offences compared to other crimes of the criminal code and are generally underestimating the extent and potential threats of these crimes.

## Operational Problems

Seven respondents did not provide an answer; one country refused to answer this question due to a lack of mandate. Eight respondents did not see any significant operational problems. As before, responses could be different, if more than one questionnaire was returned by a country. Problems were highlighted for both LE and management agencies.

Firstly, a lack of personnel was mentioned. The number of inspectors and investigators is sometimes still reduced, while effectively an increase would be needed. Occasionally rotation was identified as a problem, due the loss of expertise. There is also a lack of financial investigators, who can engage in environmental crime cases.

There are not enough dedicated environmental crime units or organisational structures which can provide analysis particularly for environmental crimes. Without analytical support it is more difficult to identify problems or to develop effective plans for implementing improvements. Even if specialised units are available: lack of resources leads to internal prioritisation, where the focus is put on the more immediate danger or threat.

Police officers are not sufficiently trained to detect environmental crimes and the supervising authorities are not trained to detect suspicious illegal activities below the 'crime threshold'. Supervising authorities are often not suspicious enough and might even rely upon the cooperation of companies.

Budgets are frequently too low to use effective investigative techniques, *e.g.* infiltration or the interception of communication. Related problems were already mentioned earlier in this report: the use of special investigation techniques is generally restricted and needs to be legally qualified.

Budget problems are also seen in relation to expensive forensic services, be it as specialised forensic units within LEAs or outside. Some jurisdictions even lack suitable laboratories. High storage costs, or small storage capacity, for seized animals were also reported as causing problems.

No or a low priority for environmental crimes, sometimes linked to lack of resources, were reported by many. Additionally, priorities in other areas of crime regularly lead to the shift of resources away from environmental crime. Even if environmental crimes, or rather some of them, are a priority in a jurisdiction, it can happen that this is not properly implemented. Some reporters had doubts about the willingness and motivation of (law) enforcement officers. There appears to be a general lack of awareness about the consequences and causes of environmental crime.

Again, cooperation with regulatory or environmental bodies was mentioned as being problematic, *e.g.* for giving advice and expertise. Reporting mechanisms are inadequate or people do not know

how to use them. There is also a lack of standard procedures and there are no proper contacts and information exchange instruments, not only in relation to regulators but also horizontally across the investigative units. In general it was implied that the strengths of the various organisations are not used, for example by exploiting expertise and intelligence from one agency to conduct investigations by another.

Several respondents pointed out that national police or LE databases are not suitable to combat environmental crime. Particular issues are the use of codes and ID numbers or the possibility to store suspicious incidents in relation to environmental crime. These problems were also confirmed in interviews with several experts.

### **Challenges in Cross-Border Cooperation**

Only eleven respondents out of 58 did not answer this question. As crimes with a perceived cross-border dimension, pollution of air and water, trafficking of endangered species (incl. hunting of protected animals), forest fires and the international transport of (hazardous) waste were mentioned in particular. It was also suggested that many cases have an international dimension.

As main challenge, the lack of an established communication system was highlighted. Respondents also feel that there is no network of contact points to exchange intelligence and information between different LE and (non-LE) management authorities and to find the right partner for cooperation. Most cooperation is achieved informally via various existing networks. While some jurisdictions seem to use the Europol or Interpol channels for some information exchange, there seems to be room for improvement through provision of more staff and other resource, also at national level. Nonetheless, international cooperation is seen as poor, sometimes with hardly any cooperation even with neighbouring jurisdictions. However, it was also stated that insufficient national analysis to find patterns to be shared internationally might be a problem.

Exchange of information and cooperation is often inhibited by data protection and privacy regulations or tax secrecy laws, sometimes even because of the involvement of judicial authorities, which is counterproductive for the investigations of crimes. The official legal exchange of information and cooperation is, if happening at all, very slow and bureaucratic, whilst facing dynamic criminal networks. So far there are no joint inspections, *i.e.* action days focusing on different environmental crimes in cooperation with other agencies.

In part some of the problems are caused by different, not harmonised legislation or different implementation of existing EU Directives. Different or no sanctions for the same activity, which is legal in country A and illegal in country B, create opportunities for criminals.

Offenders tend to be more active, but not exclusively, in less policed and most profitable areas. Some criminal networks have taken advantage of existing structures and knowledge gained from trafficking in drugs, arms or human beings to commit environmental crimes. Legal and illegal activities are used, and often mixed, to conceal environmental crimes, such as the export of legal or stolen vehicles. Proceeds from environmental crimes are then invested in other areas of crime, such as drug trafficking.

In particular the waste industry is seen as an inter-connected, global industry and the trafficking of illicit waste has been identified by both Europol and Interpol as one of the key crime areas exploited

by organised crime at an international level. The challenge is constructive exchange of intelligence and practical tasking and co-ordinating of resources across borders.

At EU level there is no coordination in particular for waste shipment incl. e-waste (WEEE) and crimes related to endangered species (incl. timber and the trade in domestic animals). There is no international or European electronic system or database, not even for waste movements. A common EU system for illegal conducts below the threshold of a crime is absent. There is no international multi-agency approach for this area of crime, no official (EU) body. Even more so, environmental crime is not an international or European priority, which might encourage more jurisdictions to focus on this crime area or to establish suitable specialised police or LE forces EU wide.

Achieving effective controls while there is a free movement of goods with basically administrative borders only is a challenge. As in other areas of crime, offenders are highly flexible, able to quickly move operations to other jurisdictions and make extensive use of the Internet.

It was criticised that investigators and inspectors have insufficient understanding of the situation and organisation in neighbouring jurisdictions, which is linked to a general lack of communication. There is insufficient awareness, also about the fact that environmental crime is the 'next' area where OCGs are and will be active (high turnover, low detection risks) and that this affects many different legitimate areas such as employment rates, competitiveness etc.

## Possible Solutions

Solutions to some of the previously identified problems and issues are obvious, even if not easy to achieve. Suggestions provided by the respondents will now be highlighted. Some of the proposed solutions have been already introduced in jurisdictions or are planned.

Several of the reported problems and challenges are outside of the sphere of LE and need political solutions, be it nationally or on a European or international level. This primarily concerns national or European legislation. Jurisdictions should consider conducting national gap analyses, if they have not already done so. They should recognise that the regulator and prosecutor both need enhanced tools to combat environmental crime and that current sanctions and enforcement powers may no longer be suited to combating the threat posed by criminals. This requires a fundamental review of existing legislation and recognition that the role of the regulator must also change, leading to the introduction and ongoing implementation of new powers. Some jurisdictions achieved this by developing a national enforcement action plan. This should cover legislation, the revision of permit regulations and legal agreements with other jurisdictions and organisational changes. This cannot be done, though, without a fundamental assessment of what the problem really is and what can be done to tackle it using all available tools. It has also to be recognised that not only traditional but also special law enforcement techniques are needed to arm regulators, investigators and prosecutors with the tools necessary to do the job.

It was further suggested to deliver proposals, guidelines and requirements at EU level to the MS. One MS asked for more guidance and oversight from a central (European) environmental agency. Another proposed the extension of offences listed in Article 3 of Directive 2008/99/EC to the protection of forests as a specific component of the environment from harvesting forest crop or other negative interventions in forests and the protection of animals from maltreatment. Also suggested was the creation of an EU Public Prosecutor's Environmental Office. It was requested to

provide EU funding for environmental crime investigations and to recognise environmental (and wildlife) crime as a threat at European level and an EU priority.

The reorganisation of administrative, non-LE agencies was requested, which is, however, also outside the reach of LE. The same goes for establishing national administrative units or specialised departments within the judiciary. Also, more of a political problem is the need for an increase of staff, which was requested for all parties concerned, to reflect the level of (real) demand: administrative authorities, specialised LE officers and prosecutors.

National and international cooperation needs to be strengthened, also with a view towards border controls. This could be achieved by creating or empowering international regional cooperation offices. Permanent working groups, meetings and seminars, also internationally, to combat environmental crime are another measure. There was an appeal towards more cooperation with other serious crime areas, which would include money laundering and proceeds of crime in general. It was actually stated that the main motivation for environmental crime is profit and that the threat towards or damage to the environment is the secondary product.

Implementing a national central intelligence hub or multi-agency unit was another suggestion by several respondents. Such a unit could be centrally responsible for the collection and analysis of data from all types of environmental authorities and NGOs and ideally has investigative powers. The creation of multi-agency platforms or partnerships similar to an Interpol National Environmental Security Task Force (NEST) with embedded representatives from all relevant agencies was suggested as an alternative. Such central units would also enhance international cooperation.

One respondent gave a more in-depth account on the advantages of a central unit in relation to waste crime, where its analytical products would be useful to develop an intelligence gathering strategy and to create market diagnostic or scanning tools to understand competitive business behaviour and market trends. It should also allow for more financial analysis to detect and identify non-sustainable business models.

Another respondent pointed out some additional issues to be considered for the creation of a central unit or multi-agency task force. Recruiting the right people into the right roles is, for example, seen as a critical success factor. There needs to be a good mixture of experienced officers from all relevant agencies. Also, “it is not enough to develop an intelligence capability in the hope that individual cases can be farmed out to police. Such are the complexities of the offending that a technical ability concerning the subject matter needs to be entwined with an investigative capability.” Similar opinions were provided by experts from other jurisdictions.

In general the prevention, detection and investigation of environmental crime should be carried out by specialized units. This could be achieved, for example, through reform of LEAs, or more specifically the police. One MS offered its positive experience of creating larger police districts which provided possibilities to establish specialised (environmental crime) units. One NEUS is using a risk-based approach for planning and adopted an intelligence-led enforcement business model, which of course requires sufficient data first. Nonetheless, intelligence-led policing as a way forward was mentioned by others too. In addition prioritisation and the identification of key areas and targets for activities was seen as critical. This links back to the national action plans mentioned before.

At European level the establishment of a Focal Point on Environmental Crime at Europol as well as the creation of international investigation teams was requested, both to enhance and improve international collaboration and the sharing of information. Similarly the further development of partnerships or networks, such as EnviCrimeNet, is seen as helpful, also to organise *ad hoc* meetings. Those networks should ideally also provide police contacts on a 24/7 base. However, any initiatives in relation to networks and cooperation should not be limited to EU MS only; they need to include, even focus on, jurisdictions and organisations outside of the EU.

Adequate training for customs and police staff, starting already at police academy level, but also for members of the judiciary, with joint training exercises and courses (internationally) is needed as well as adequate equipment. Such trainings and seminars should ideally be supported by jurisdictions with best practice experience. Standard operational procedures and practices should be developed and implemented. A better understanding of international perspectives and possibilities could be achieved through seminars. This could also support a closer, improved cooperation between LEA, inspectors and experts, and public prosecutors, nationally and internationally.

Activities to raise public awareness are needed, which should also increase reporting of environmental crimes. It may be helpful to use successfully prosecuted cases highlighting the involvement of other crime areas when doing this. Most importantly, though, inspections and controls should be increased to improve detection rates. In, training for inspectors is considered as useful, which may also lower the reporting threshold.

Conducting joint border operations was proposed to facilitate enhanced cooperation. The development of networks or a network for the control and prevention of environmental crime was recommended. One MS recommended liaison officers in other jurisdictions as a successful measure to overcome some of the mentioned issues.

Communication systems need to be improved or established, ideally including shared and international databases. The proceeds of crime need to receive more attention and statistics need to be improved.

The use of 'species sniffer dogs' at airports was recommended as best practice for combating CITES related crimes or the innovative use of tracking devices for waste crime. For improving LE actions against waste trafficking the use of a distinct 'waste transport' sign, analogous to the German 'A' (*Abfall*) sign on heavy goods vehicles was suggested, to make lorries and containers with waste more visible.

Interestingly, jurisdictions where environmental crime is a priority or who have experience in this area were more likely to report problems and were able to suggest more detailed solutions.

### **Involvement of Organised Crime Groups (OCGs)**

Of 58 responses, seven did not answer this question. In only nine cases no information was available confirming the involvement of OCGs.

There are again definition problems here. Some MS have a rather narrow definition of OC, more oriented towards 'traditional OC' such as Mafia. Italy for example reported OCG involvement and pointed out definition problems. However, the Italian Threat Assessment on Waste Trafficking does not particularly highlight the known current involvement of Mafia-style organisations in the illegal

waste trade. Another example is Germany, where the official statistics for 2011 show 7 and for 2012 only 8 environment-related OC cases as being investigated, applying the rather strict German definition. During the same periods of time in the neighbouring Netherlands 34 and 42 environment-related OC cases were actually prosecuted. Many environmental crimes seem to be committed by organised criminals including gangs, OC networks or even corporate OC structures. Many jurisdictions reported only to have intelligence or suspicions relating to OCG activities but no hard evidence.

Typically OCG involvement is seen with

- Illegal collection, (cross-border) transport and storage including dumping of (hazardous and electronic) waste and recycling,
- Illegal shipping of (hazardous and electronic) waste,
- Illegal logging,
- Illegal hunting/poaching,
- Illegal trade in endangered species and related products (the most apparent area of OCG involvement) also on the Internet,
- Trade in counterfeit pesticides,
- Illegal activities in relation to fuel oil,
- Illegal fishing activities (reported by three jurisdictions only, one of them landlocked),
- Forest fires (reported by two jurisdictions only).

One country mentioned illegal mining activities causing pollution in relation to OCG activities. Another country mentioned that OCG members were charged with environmental crime related misdemeanours such as littering, obviously as a tactical measure. A third country pointed towards clandestine dog and cock fights.

Some contributions referred to corporate or organisational crime in relation to OCGs, which are sometimes suspected of being also involved in money laundering and illegal construction activities, or rather economic and financial crimes in general, including corruption. There are reports on OCGs also involved in drugs crimes, trafficking of human beings (THB) and other serious and violent crimes. One contribution mentioned a 'black economy' with "all the elements in place" to attract OCG activities like in Italy. Another country highlighted OC activities in related emission trading schemes.

One country provided a particularly notable observation in relation to OCG involvement: "it is becoming more and more common that the offenders, that are not normally big criminals, start to organise in a similar way to traditional criminal groups."

It was stressed again, that OCGs can act very flexible and move operations quickly to different jurisdictions to avoid LE detection or measures. OCGs involved in environmental crimes in the EU are not necessarily based within the Union. For most jurisdictions there is no question that OCGs show a clear interest in environmental crime and the 'high profit – low risk' opportunities.

## Particularly Serious Crimes and Threats

Eleven respondents chose not to answer (mostly NEUS). One MS does not see any serious threats; one NEUS only sees national threats but none for the EU. Most participants chose to highlight a few crimes as being particularly threatening. However, in many cases more distinct threat scenarios were provided also. The findings indicate that environmental crimes are considered to be a threat on many levels. These threats can be grouped into the following areas:

Environment, particularly forests and protected areas of particular ecological importance: illegal dumping and shipping of waste particularly hazardous solid wastes; fraudulent declaration of waste; arson in forests; illegal logging and deforestation causing soil erosion and landslides; illegal biocides; illegal exploitation of natural resources, any form of illegal pollution and contamination, also through illegal mining or processing of hydrocarbon; TES in general and the introduction of non-native species through TES; IUU fishing; illegal mining; pollution of air ground and surface water; illegal (parallel) import of pesticides and other chemicals; crimes related to land planning;

Economies, incl. agricultural and tourism sectors: illegal dumping, shipping of waste and e-waste, fraudulent declaration of waste; food related crimes; waste streams involving recycling products; illegal use and mixing of liquid wastes such as oils; introduction of diseases connected to TES or illegal wildlife trade; IUU fishing; indirectly by loss of taxes, through criminal profits and the distortion of competition in different markets; damage caused for example by illegal waste disposal and deforestation; illicit activities involving farm animals and veterinary pharmaceuticals; crimes related to land planning;

Populations of endangered species: possible extinction through trafficking and poaching activities; introduction of non-native species through TES also with a view to diseases; IUU fishing;

Public health: food related crimes including counterfeit food and the impact of illegal hazardous waste streams on the food chain and illicit activities involving farm animals and veterinary pharmaceuticals; asbestos waste; TES with a view to diseases; illegal use of liquid wastes such as oils; introduction of diseases connected to TES or the illegal wildlife trade; illegal mining causing pollution of air and ground water; illegal (parallel) import of pesticides and other chemicals; fraudulent declaration of waste;

Society and security of citizens: indirectly by allowing crime and black economies to grow; huge profits from ivory, rhino horn and other wildlife products enable militant groups, terrorists and OCGs particularly in Africa to finance their other activities, often overlapping with drugs smuggling, arms trafficking and money laundering; organised crime influence within and outside of the EU;

Reputation of the EU and its MS: illegal waste and e-waste shipments and effects on environment in other jurisdictions, particularly through the export of toxic waste; indirectly by being a destination country and increasingly becoming a transit country mainly for CITES related goods and possibly for waste and by allowing crime and black economies to grow;

One respondent gave a particularly detailed account:

“It must be underlined that environmental crimes are a broad catalogue of different types of offences. Therefore a minor activity can, under the right conditions, cause severe damage to the environment and human health.”

A few examples were given, such as the wrong or an inadequate coupling of substance in water treatment plants, the handling or illegally dumping of battery acid or the introduction of small quantities of petroleum products into water basins.

### **Additional Comments and Recommendations**

30 participants decided not to respond to this question. Almost all additional information is already included into previous sections though and therefore does not need to be listed separately. However, two comments did not fit completely and are therefore cited here:

“It is reasonable to expect that there will be a multi-agency effort against organized criminals once an intelligence case has been subject of proper investigative development, but it is not realistic to imagine that the burden of investigation and prosecution can be avoided. It cannot. Law enforcement agencies all now operate against a matrix of threat, harm and risk - the threshold for police action is high and the threshold for unilateral police action is extremely high.”

“The industry itself plays a key role in this also, and while the authorities and government can do much to influence through compliance and enforcement activity, real differences can only be achieved by changing behaviours of those working within the industry.”

## Case Examples

During interviews, meetings and conversations several practitioners provided insights in their day-to-day problems. Some of them are summarised in the following case examples.

### Case 1: Lack of Prosecutions in the Transport of Hazardous Waste

As part of its traffic and road safety mandate, the German Traffic Police regularly stop and check heavy goods vehicles (HGVs). They reported that they regularly find HGVs loaded with leaking barrels of battery acid or other chemical substances, using a risk-based approach to identify particularly dangerous appearing vehicles. HGVs and barrels containing toxic and hazardous waste are (temporarily) confiscated to deal with the immediate danger. However, the case reports are rarely accepted by the competent criminal police unit or public prosecutor agency as the incident is not high enough a priority. A competent HGV management authority cannot be identified easily, as the HGVs are in transit. There are no fines issued and the police are often left to pay for the waste disposal. Cases are not stored in national data systems; the origin or destination of the HGV is not investigated, nor is the business structure which may be behind the hazardous waste transport.

There is a neighbouring MS with a national database which actually would cover such cases. However, the coding system in use is too complicated for an untrained patrol or traffic officer to systematically use.

### Case 2: Lack of Effective Cooperation - Italian Waste Trafficking

Italian authorities are particularly active in combating waste related crimes. Officials regularly provide presentations at conferences and meetings, point at the various problems and often conclude that large amounts of waste are trafficked from Italy to other countries. Similar conclusions can be found in media reports.

Interviews and conversations with many LE practitioners however suggest that LEAs in the MS do not (officially) know about this. In some MS a few important cases were investigated. Most practitioners, though, are still wondering where all those potential cases might be and what the results of presumed inspections are.

### Case 3: Lack of Effective Inspections and Use of this Data by Law Enforcement

Law enforcement officers from a Western European MS complained that they do not have access to the inspection data of competent management agencies. They do not have the mandate to conduct their own controls. At the same time, the inspection authorities appear to be obliged to announce inspections in advance; random inspections are not foreseen.

### Case 4: Lack of Financial and Human Resources

Officials from a Central European MS reported that chemical analysis of suspicious substances is very expensive and that, depending on the type of analysis needed, one case can easily exceed their annual budget for examinations. At the same time, law enforcement in the same country holds intelligence about ongoing OC activity but lacks the human resource capacity to launch investigations. The interviewed officials are convinced that this situation is not unique and that neighbouring countries suffer from similar problems.

### **Case 5: Lack of Effective International Cooperation - Links to Other Crimes**

In a large investigation of mass market fraud EU police forces analysed money flows involving underground banking systems. Some of the money was traced to China, where it was used to purchase chemical waste to be delivered to an EU MS. Law enforcement in this particular MS has no knowledge about any waste streams coming from China and suspects further illegal activities.

## Conclusions and Recommendations

Environmental crime is a broad area of criminality, primarily undertaken to gain (illicit) profits, which damages or puts at risk the environment and in extension human health. Within the EU, the most common environmental crimes are listed in Directive 2008/99/EC. However, EU MS are tackling additional environmental crimes, which they might want to see included in a possible revision of the Directive.

The available statistics are not productive. Next to the usual problems of comparing EU crime statistics, the main issue is different in this case. Environmental crimes are control crimes, where the number of cases are in direct correlation to the number of (efficient) controls. As pointed out by many respondents and experts, the detection rate for environmental crime is directly linked to the activities of national, mostly administrative management and supervisory agencies in charge of monitoring compliance with a multitude of highly complex regulations linked to almost all areas of modern day life. If minor infringements are detected, those agencies and authorities can use fines as sanctions. If the threshold is reached qualifying the incident as a crime, be it through particularly serious or accumulated activities, they have to report this to LEAs, typically the police. If the work of all those different authorities is inhibited or inefficient or the interface for transferring cases is ineffective, criminal environmental cases will not come to the attention of investigating bodies or prosecuting authorities. This is reportedly the case in the majority of EU MS and makes an in-depth analysis of available statistics practically obsolete.

For the comparatively few cases that remain the following circumstances were criticised. Many cases are dismissed and only a few properly, but leniently, result in a sentence. Respondents and experts identified many problems on an operational and investigative level, ranging from national challenges such as limited financial and human resources, to a lack of international and inter-departmental cooperation.

This is even more concerning as most experts believe that, firstly, environmental crimes are on the rise. Secondly, for most, there is no doubt about the attractiveness of environmental, crime to OC structures and networks, be it traditional OC or more modern OC networks, organised corporate structures or organisational businesses. It offers extremely high profits on the one hand and a negligible detection risk accompanied by low or no sanctions at all on the other. While this is, at least outside of Italy, practically impossible to prove, most experts assume that OCGs are either already active in their countries or would be able to (ab)use already existing structures and opportunities quickly. Existing intelligence and assumptions on profit margins and future developments indicate that the most attractive areas of activity for OCGs are waste transport and TES.

The multitude of identified problems in detecting and combating environmental crime within and around the EU allows the authorities to avoid dealing with yet another problem. To some extent this is understandable as they tackle terrorist threats and foreign fighters, illegal immigration, drugs crime, or mobile OCGs involved in property crimes. Then again, with the exception of drug related crime, all those offences are more or less directly visible, reported, and dealt with.

Environmental crime is a “hidden crime” and is not easily visible. It is not noticed as a threat or a ‘real’ crime. Criminal profit is quickly accrued and by the time the damage becomes apparent the offenders are long gone. Most of the serious damage is not immediate but mid- to long-term.

In relation to endangered species and wildlife, risks within the EU primarily focus on mid- to long-term issues such as deforestation, the extinction of rare domestic species or the fishing industry. More concerning, though, are developments outside of Europe, specifically in Africa, Latin America and South East Asia. Illegal logging in the latter two regions is starting to have an effect on the globally available surface of forest area with a potential impact on climate change, in addition to pollution problems, and on biodiversity, important for pharmaceutical industries.

In Africa the situation is worse. There are strong indications that OCGs, as well as insurgents and terrorist groups, use poaching, trafficking of wildlife products and illegal timber trade to gain influence and to finance the purchase of firearms and other criminal activities. This is not only a problem for local governments but also for the economical and political interests of the EU.

Questionnaire respondents suggest that the risks to the EU through waste related crimes are of a more direct nature. Next to the general threats to agricultural or tourism industries, and to public health, there is already economic damage visible. Waste and the recycling of it, will continue to be one of Europe’s biggest businesses. As the Italian examples perfectly illustrate, criminals have already used the current financial crisis, with a high cost pressure on many businesses, to their advantage. In the waste industry, it is particularly easy for criminals to undercut honest competitors, which is affecting the important market of waste and recycling. Criminal proceeds can be as high as in illegal drugs trafficking and enable OCGs to further infiltrate into the legal economy.

It should be stressed that the respondents also provided possible solutions for the described problems. While changes in national or international legislation will most likely only happen over a longer period, there are additional measures which could be utilised, such as developing action plans or establishing multi-agency platforms on environmental crime or central units. Internationally, organisations and authorities should already assess now how they could each contribute to improve approaches to combating environmental crime, in order to achieve some quick wins. Trying to improve communication and cooperation between regulators and law enforcement is one suggestion. Even in times of human resource shortages and budget cuts, improvements are possible. Nevertheless, there might be need for incentives or encouragement, for some to actually move towards a more realistic view on environmental crimes.

Currently, there is tremendous public interest regarding wildlife and environmental crime in general. Media coverage is wide. The United Nations, the World Bank, Interpol, NGOs and the US government are focusing on these crimes, investing extensive resources to tackle environmental crimes globally.<sup>7</sup> Many European stakeholders are also involved, globally as well as with an EU focus, working on various projects on an academic, policy or practitioner level, sometimes also in partnership with the private sector. Many of their findings, in particular those from the Eurojust

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<sup>7</sup> See for example UNEP and Interpol Report “*The Environmental Crime Crisis*” (2014).

Environmental Crime Report<sup>8</sup> and the European Commission Staff Working Document on the wildlife crime stakeholder consultation<sup>9</sup>, are complementary to the findings of this report.

The SOCTA 2013 and Europol's threat assessment suggest that environmental crime is an 'emerging threat'. It has to be assumed that the threat is already here, what is emerging though, and will continue to be further, is the damage caused to Europe and its citizens, be it to business and economy or public health.

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<sup>8</sup> Strategic Project on Environmental Crime – Report; Eurojust, 21.11.2014.

<sup>9</sup> Commission Staff Working Document – Summary of the Responses to the Stakeholder Consultation on the EU Approach against Wildlife Trafficking; European Commission, 26.11.2014.

## Annexes:

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**Annex 1: IPEC Questionnaire**

**Annex 2: Article 3 of Directive 2008/99/EC**

**Annex 3: List of Contributing Jurisdictions**

**Annex 4: List of Supporting Organisations**

**Annex 5: Presentation to COSI, 11.12.2014**

# Annex 1: IPEC Questionnaire

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## Introduction

This questionnaire is part of the Intelligence Project on Environmental Crime (IPEC). For further information on IPEC or the questionnaire please read the accompanying “IPEC letter” or contact the IPEC Team directly.

IPEC started with some general research on environmental crime in Europe, using open source information as well as material provided by practitioners, academics and members of NGOs and national and European agencies. Information from this, still on-going, first phase was used to design this questionnaire, which we tried to keep as short and simple as possible. Once we received the responses of this second, questionnaire phase, we intend to interview a number of law enforcement practitioners in phase 3.<sup>10</sup>

The questionnaire was also sent via the Europol National Units (ENU), even though we do not ask for operational information or personal data. It was sent to all EU Member States and Third Parties, including international organisations. We kindly ask the ENUs to forward the questionnaire to all competent central units as far as environmental crime is concerned.<sup>11</sup>

If the receiver of the Questionnaire is working on a few particular offences/crimes only and does not have an overview on other environmental crimes, please just provide the information you have.

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<sup>10</sup> Ideally the interviews will be conducted in English. However, we can also offer Dutch and German as ‘interview languages’. We will try to have direct interviews as much as possible, for example during meetings at Europol or elsewhere or by combining interviews with other trips. Nonetheless, the majority of interviews will have to happen by telephone.

<sup>11</sup> Just to illustrate this: We would expect, for example, that the IPEC Questionnaire was forwarded by the ENU UK to the Environmental Protection Agencies in England, Northern Ireland, Scotland and Wales as well as to the national Wildlife Crime Unit. The German BKA might want to forward the Questionnaire to other national agencies such as ZKA or the CITES Agency and, if necessary, to other authorities in the 16 German Länder.

## Nominal Data

- A Country:
- B Agency/Organisation:
- C Contact email/phone number:
- D Member of EnviCrimeNet: YES  NO
- E If a member of staff is willing to participate in the interviews (see footnote 1), please indicate her/his name, email address and phone number:

## IPEC Questions

### Environmental crime(s)

1. What is considered as environmental crime in your country beyond the offences listed in Article 3 of Directive 2008/99/EC (see Annex 1 to this questionnaire)? Please list the specific crimes (a list with indicative examples is included in Annex 2).

### Competencies

2. Which authorities and agencies in your country are tasked to deal with investigation and prosecution of environmental crime?
3. Is there a central unit for analysis, coordination or investigation in relation to environmental crime in your country? If yes, please indicate the unit and describe briefly its functions.

## Statistics or other data

4. Do you have recent/current statistics related to environmental crime (e.g. number of detected offences, prosecution rate, conviction rate; number of identified suspects; nationalities of suspects) and could you please share them with us?

## Problems and possible solutions

5. Are there any cooperation problems between regulation authorities with compliance assurance tasks and (investigative) law enforcement agencies and, if so, what causes the problems?
6. What do you think of
  - a) the sanctions that can be imposed for environmental crime in your country and
  - b) the sanctions that are applied in practice in your country?
7. Do you experience any significant operational problems in combating environmental crime (e.g. lack of staff resources, problems with the use of special investigative techniques; no reporting mechanism; nor prioritisation or implementation thereof)? Please explain briefly.
8. What are in your view the most important challenges as regards cross-border cooperation in combating environmental crime (within the EU)?
9. What would or could solve the problems you mentioned?

## Serious and organised crime

10. Do you know or suspect that organised crime groups (OCGs) are involved in your cases and which areas of environmental crime are affected?
  
11. Which environmental crimes have to be seen as particularly serious and threatening in your country and within the EU in terms of, for instance, spreading, impacts on environment, human health and economy? Please explain.

## Recommendations and remarks

12. Please note anything else you consider important in relation to environmental crime and this project including possible recommendations to improve the fight against environmental crime:

## Annex 2: Article 3 of Directive 2008/99/EC

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### 'Offences

Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

(a) the discharge, emission or introduction of a quantity of materials or ionising radiation into **air, soil or water**, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;

(b) **the collection, transport, recovery or disposal of waste**, including the supervision of such operations and the aftercare of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;

(c) the **shipment of waste**, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;

(d) the **operation of a plant** in which a **dangerous activity** is carried out or in which **dangerous substances or preparations** are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;

(e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of **nuclear materials or other hazardous radioactive substances** which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;

(f) 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;

(g) **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;

(h) any conduct which causes the significant deterioration of a **habitat within a protected site**;

(i) the production, importation, exportation, placing on the market or use of **ozone-depleting substances**.'

## Annex 3: List of Contributing Jurisdictions

	Austria		Slovak Republic
	Belgium		Slovenia
	Bulgaria		Spain
	Croatia		Sweden
	Cyprus		United Kingdom
	Czech Republic		Albania
	Denmark		Bosnia and Herzegovina
	Estonia		Canada
	Finland		Colombia
	France		Former Yugoslav Republic of Macedonia
	Germany		Kosovo*
	Greece		Principality of Liechtenstein
	Hungary		Montenegro
	Ireland		Norway
	Italy		Republic of Serbia
	Latvia		Russian Federation
	Luxembourg		
	Netherlands		
	Poland		
	Portugal		
	Romania		

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

## Annex 4: List of Supporting Organisations

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Aquapol  
Birdlife Europe  
Council of the EU (Customs Cooperation Working Party)  
Department of Justice (US)  
EcoJust  
Ecologic Institute  
EU Forum of Judges for the Environment  
Eurojust  
European Commission (DG Environment & DG Home)  
European Union Action to Fight Environmental Crime (EFFACE)  
EU-TWIX  
Institute for Environmental Security  
International Fund for Animal Welfare (IFAW)  
Interpol  
Organisation for Security and Co-operation in Europe (OSCE)  
Regional Environmental Center for Central and Eastern Europe (Themis 2)  
University of Utrecht  
Wildlife Trade Monitoring Network (TRAFFIC)  
World Bank

## Annex 5: Power Point Presentation to COSI, 11.12. 2014

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## **European Network for Environmental Crime (EnviCrimeNet)**

Who:

- Environmental crime investigation services / competent authorities in Europe (33 jurisdictions)

What:

- Developing a vibrant network of experts, exchanging best practices and enhancing effectiveness in the fight against organised environmental crime

How:

- Exchange of information and experiences related to best practices in dealing with environmental crime

Based on:

- EU Council Resolution 10291/11 d.d. 09-10 June 2011



### **COSI meeting 17 December 2013**

- Environmental crime is an emerging threat
- Not a recommended EU priority
- Lack of relevant information - data

#### Tasks:

- Europol: Interim SOCTA 2015
- **EnviCrimeNet: report end of 2014**



## Intelligence Project Environmental Crime

### **IPEC**

European scan on environmental crime to identify:

- Types
- Extend
- Threats
- Recommendations

Project Team:

EnviCrimeNet and Europol



## Hypothesis

- EU priority level on environmental crime is too low as a result of lack of awareness of (unidentified) threats, caused by insufficient availability of trustful data.

“If you don’t shoot you will not score!” (Cruijff)

“If you don’t search you won’t find!” (IPEC)



# Approach

## Positioning

- Letter
- Meetings

## Survey

- Open source research
- Questionnaire

## Interviews

- Experts, partners
- NGO's



# Environmental Crime

## Victimless?

### **Humans**

Diseases, death.

### **Environment**

Earth; water, air, soil; animals, endangered species; biodiversity.

### **Undermining Systems**

Disrupting the balanced or levelled 'playing field' of economies, depleting law and order, damaging European and national reputations, human environment.



### **Typically OCG involvement was reported for cases of:**

- Illegal trade in endangered species and related products also on the Internet;
- Illegal collection, (cross-border) transport and storage including dumping of (hazardous and electronic) waste and recycling;
- Illegal shipping of (hazardous and electronic) waste;
- Illegal logging;
- Illegal hunting/poaching;
- Trade in counterfeit pesticides;
- Illegal activities in relation to fuel oil;
- Illegal fishing activities;
- Forest fires.

	Waste	Logging	Poaching; endangered species	Pesticides; chemicals	Fuel	IUU fishing	Forest fires
Environment	x	X	X	X	X	X	X
Economies	x	-	x	X	X	X	-
Endangered species	x	X	X	X	-	X	X
Public health	x	-	X	X	X	-	-
Society and security of citizens	x	-	X	X	-	x	-
Reputation of the EU	x	x	X	X	x	x	-

## Impact and Damages

- (Un) polluted Environment; climate
- Disruption of economical balances , creation of black markets
- Extinction of species; biodiversity; spreading of diseases
- Public health; poisoned citizens, diseases; reduced life expectancy
- Society and security of citizens; food chain
- Reputation of the EU

## Conclusions

- Environmental crime: broad area of criminality
- Primarily undertaken to gain (illicit) profits
- Statistics are not productive
- Number of registered crime correlates with number of controls
- Correlation between information and ... is a result of the selective approach of the management authority's
- No investigations if different authority's work is inhibited or inefficient, or the interface for transferring cases to law enforcement is ineffective - This is the case in most of Europe and that is why it is impossible to make an analysis.
- Many criminal cases are dismissed and only a few result in a sentence
- Limited financial and human resources
- Lack of national, international and inter-departmental cooperation
- Environmental crimes are on the rise
- Attractive to organised crime structures and networks
- High profit, low detection risk and low or no sanction at all
- Most attractive areas are: waste, endangered species and dangerous chemicals/pesticides

## Recommendations

(wish list)

- Target the profit
- Prioritise certain areas
- Training of staff
- Work internationally, more cooperation
- Achieve cooperation also with management agencies
- Revision of Directive(s)
- Central unit/agencies (multi-agency or NEST)
- Intelligence-led law enforcement

Environmental crime is not an emerging threat because the crimes are happening already!

Emerging, though, is the damage caused by these crimes.



Thank you!

Questions please...