



Didier Reynders,
European Commissioner on Justice
Virginijus Sinkevicius,
European Commissioner on the Environment, Ocean and Fisheries

13 December 2021

Dear Commissioners,

The Commission will shortly unveil its legislative proposal revising 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.

This legislative amendment comes at a time when environmental crime is on the rise in the Member States and has become in a few short decades the fourth largest criminal sector in the world, as lucrative as drug trafficking. However, while combating environmental crime in all its forms should be afforded priority at European Union level, only 1% of the cases handled by Eurojust concern environmental offences¹. The evaluation conducted by the Commission in 2020 found that *the*

¹ Eurojust, Report on Eurojust's Casework on Environmental Crime, January 2021

*Directive has not fully met its objectives and that – despite some progress – significant divergence remains between Member States*², thus giving rise to de facto environmental dumping between states. These enforcement gaps are directly undermining the effectiveness of all environmental and climate legislation. Efforts to implement the objectives of the Green Deal³ and the Biodiversity Strategy for 2030⁴ are thus being directly thwarted by the ineffectiveness of European environmental criminal law.

With this letter we wish first and foremost to give our full endorsement to the 10 recommendations made by the Commission in its evaluation of the aforementioned directive: better collection of statistics and data on environmental offences, clarification of legal terms used in the directive, standardisation of sanctions and the creation of additional sanctions and cross-border cooperation on, and greater public awareness of, environmental crime.

Over and above these indispensable measures, however, we call on you to address the current mismatch between environmental criminal law, the EU's environmental and climate objectives and the overriding need to '*Bring nature back into our lives*'⁵. Indeed, not only do the existing criminal provisions require improvement, work also needs to be undertaken to help ensure environmental criminal law takes into account the integrity of living beings and their intrinsic value in order to better protect them, and ourselves. In particular, there remains no way for environmental criminal law to consider diffuse pollution, which is however the most common cause of environmental abuse, in the form of asbestos, mine dust, chlordecone and other pesticides. Criminal law also fails to take account of the integrity of ecosystems in and of themselves and their lives in time and space. Lastly, environmental criminal law remains rooted in the Napoleonic era, which integrally linked criminal responsibility to administrative authorisations, making the latter a glass ceiling hindering any conviction under criminal law for environmental offences that can do great harm to ecosystems as well as health and property. We are writing to you with the conviction that it is high time that Europe turns over a new leaf in its history and finally prosecutes attacks on the integrity of living beings.

- *Making environmental criminal law independent of administrative regulations*

We are therefore calling for environmental offences to be established independently of administrative rules, an approach already advocated by many experts⁶. Ensuring that environmental criminal law is independent of administrative law is of the utmost importance not only for symbolic and institutional reasons, but also for practical reasons. Firstly it holds from the principle that the judiciary must be independent of the administrative branch of government, a binding principle for states, that public and private entities should not be exempted from criminal liability on the sole ground that they have official authorisation to carry out an activity that proves to be a source of environmental damage within the meaning of the directive. This principle is thus essential to ensure the impartiality of decisions. Secondly, this independence would make it possible to more effectively dissuade and punish behaviour harmful to the environment, by providing for criminal sanctions complementary to the administrative punishments that remain necessary but are currently insufficient to tackle environmental crime meaningfully. Criminal law's dependence on administrative procedures considerably slows down the prosecution of environmental offences.

Furthermore, experience has shown that the EU's administrative rules do not cover all environmental offences. In its [report](#) on environmental crime and punishment⁷, the European

² SWD(2020) 260 final.

³ COM/2019/640 final.

⁴ COM/2020/380 final.

⁵ COM(2020) 380 final.

⁶ FAURE M. G., *Tackling environmental crimes under EU Law*, June 2021.

⁷ EEB, *Implement for Life, Crime and punishment*, March 2020, 29p.

Environmental Bureau (EEB) cites numerous examples of environmental offences that fall outside the scope of the current directive owing to this dependence on existing administrative rules. The illegal fishing of and trade in blue-fin tuna and the destruction and exploitation of the Doñana nature reserve in Spain, one of Europe's most important wetlands, are two examples among others that show that the environment can still be harmed with impunity in most cases.

In its evaluation of the directive, the Commission moreover recommended reconsidering the directive's current approach of linking its scope of application to the environmental legislation cited in its annexes⁸. The Commission further called for the relationship between criminal and administrative sanctions to be clarified⁹. We strongly urge you to take this procedure to its logical conclusion, drawing in particular on the experience of Italy, where efforts to make this essential decoupling have been under way since 2015. This pioneering example shows that the approach we are advocating is not only possible but also desirable and, most importantly, indispensable to combat environmental crime in all its forms.

- ***Creating offences tailored to the climate and environmental emergency: making ecocide a crime***

The sector-by-sector approach enshrined in the directive is now totally inadequate. The spread of organised crime gangs, also known as 'eco-mafias' and the emergence of a form of 'corporate crime'¹⁰ justify the trend in environmental criminal law towards a more comprehensive and systemic approach that enshrines '*inter-generational responsibility encompassing the protection of present and future generations*'¹¹.

In its evaluation, the Commission already considered broadening the scope of this directive to encompass more areas of environmental crime. We believe this entails establishing the offences of endangering the environment or harming the safety of the planet – with a view to punishing dangerous behaviour causing serious or lasting damage to the environment – as France has recently done¹². Most importantly, this also requires recognising the crime of ecocide as the most heinous attack on the environment that jeopardises the safety of the planet.

The European Parliament is in favour of establishing ecocide as a criminal offence, and has frequently called for it to be enshrined as such in international law as a tool to safeguard human rights and democracy¹³, biodiversity^{14,15} the climate and environmental defenders¹⁶. The European Parliament has also called for its recognition as an offence in national law¹⁷, in order to accelerate the

⁸ Recommendation 5.

⁹ Recommendation 8.

¹⁰ JAWORSKI V., *Le droit européen au service de la protection pénale de l'environnement*, Revue Justice actualité édition No 25, p. 156.

¹¹ Ibid.

¹² LAW No 2021-1104 of 22 August 2021 on the fight against climate change and strengthening resilience to its effects, Article 279.

¹³ European Parliament resolution of 20 January 2021 on human rights and democracy in the world and the European Union's policy on the matter – annual report 2019 ([2020/2208\(INI\)](#)), §12.

¹⁴ European Parliament resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives ([2020/2273\(INI\)](#)), §167.

¹⁵ European Parliament resolution of 6 October 2021 on the role of development policy in the response to biodiversity loss in developing countries, in the context of the achievement of the 2030 Agenda ([2020/2274\(INI\)](#)), §65-66.

¹⁶ European Parliament resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders on this matter ([2020/2134\(INI\)](#)), § 11.

¹⁷ European Parliament resolution of 20 May 2021 on the liability of companies for environmental damage ([2020/2027\(INI\)](#)), §12.

process of discussion at international level, and to strive to ensure that these crimes, which endanger the safety of the planet for all humanity, cannot go unpunished when committed either on European territory or by European companies, or when Europeans fall victim to them.

In June 2021, a high-level international panel of experts published a definition that met with no major criticism, for the simple reason that it is robust and operational¹⁸. Numerous experts have drawn on it with a view to proposing, in the coming weeks, a European definition, allowing in particular for companies to be held liable¹⁹ (the definition proposed by the panel only concerns individual liability before the International Criminal Court). We, as MEPs committed and dedicated to put an end to crimes against the planet, consider it is high time that the EU enshrined the crime of ecocide in European law, and the review of the directive on environmental crime is a unique opportunity to do so.

The EU has already made great strides in protecting the environment, particularly in developing environmental criminal law with the *Commission v. Council* judgment of 2005²⁰. As much a cause for concern as a wellspring of legal innovation, environmental conservation can and must be a source of innovation for the Union once again. Recognising ecocide would represent a further major step forward for the European Union in the midst of international negotiations on the protection of our planet.

We hope that you will pay due account to these recommendations and we look forward to the Commission's proposal and remain at your disposal.

Best regards,

¹⁸ Independent Expert Panel for the Legal Definition of Ecocide, June 2021.

'Ecocide' means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.

¹⁹ Corporate liability also takes into account the activities of the economic group and their value chain even if they are established outside the EU.

²⁰ CJEU: Case C-176/03 of 13 September 2005.

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Organisations non gouvernementales

ASPAS
Association Jeunesse pour l'Eau et le Climat
BirdLife International - Europe and Central Asia
Bloom
CGT
Coalition Kaya
Collectif Vietnam Dixoxine
Compassion in World Farming EU
Corporate Europe Observatory
Earth Thrive
End Ecocide Belgium
End Ecocide on Earth
Espirito Mundo
European Environmental Bureau
Fashion Revolution
Foundation Conservation Carpathia

Four Paws
Gastivists Collective
Global Alliance for the rights of nature - European Hub
Friends of the Earth Belgium
Friends of the Earth Europe
Friends of the Earth France
Friends of the Earth Sweden
Global Witness
Humane Society International/Europe
International Commission for the Protection of the Alps CIPRA
International Fund for Animal Welfare
Klimataktion
L214
Makesense
MilieuDefensie

No peace without Justice
Notre affaire à tous
One Voice
PARENTS FOR FUTURE ITALIA
ProVeg International
Reclaim Finance
Réseau francophone des droits de la nature
RESES (ancien REFEDD)
Rights of Mother Earth
Rise for climate Belgium
Sherpa
Skydda Skogen - Protect the Forest
So Sweet Planet
SOL
Solidaires
SOLIDAR & SOLIDAR Foundation
Stop Ecocide Foundation
Stop Ecocide International
Valérie Cabanes
Wildlife Conservation Society - Europe
Welfarm
Youth and Environment Europe
Youth for Climate Belgium