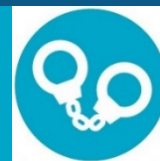




# Environmental Compliance Assurance

## GUIDANCE DOCUMENT

Combating environmental crimes and  
related infringements





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## Abbreviations

<b>CITES</b>	Convention on International Trade in Endangered Species
<b>ECD</b>	Environmental Crime Directive
<b>ECHR</b>	European Convention on Human Rights
<b>EEA</b>	European Economic Area
<b>EFTA</b>	European Free Trade Association
<b>ELD</b>	Environmental Liability Directive
<b>ENPE</b>	European Network of Prosecutors for the Environment
<b>EnviCrimeNet</b>	Network of police and enforcement officers for combating environmental crime
<b>EO</b>	Earth observation
<b>EUFJE</b>	EU Forum of Judges for the Environment
<b>EUROJUST</b>	European Union Agency for Criminal Justice Cooperation
<b>EUROPOL</b>	European Union Agency for Law Enforcement Cooperation
<b>GEOINT</b>	Gespatial intelligence
<b>GIS</b>	Geographic information systems
<b>GPS</b>	Global positioning systems
<b>IMPEL</b>	European Union Network for the Implementation and Enforcement of Environmental Law
<b>INECE</b>	International Network for Environmental Compliance and Enforcement
<b>INTERPOL</b>	International Criminal Police Organization
<b>JIT</b>	Joint Investigation Team
<b>NEPA</b>	Network of the Heads of Environment Protection Agencies
<b>NGO</b>	Non-Governmental Organisation
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>RMCEI</b>	Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States



<b>SEPRONA</b>	Servicio de Protección de la Naturaleza
<b>SIENA</b>	Secure Information Exchange Network Application
<b>SME</b>	Small and medium-sized enterprise
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UNEP</b>	United Nations Environmental Program
<b>WCO</b>	World Customs Organisation
<b>WEEE</b>	Waste of electrical and electronic equipment



## Foreword and disclaimer

### Foreword

The 9-point Commission Action Plan to increase compliance with EU environmental law and improve governance addresses some of the systemic and cross-cutting root causes of poor implementation.

Adopted in January 2018<sup>1</sup>, the Action Plan supports Member States in a number of ways, including through the development of guidance and other documents, which can be further adapted or complemented at national level. The Action Plan is steered by a high-level expert group, the Environmental Compliance and Governance Forum, created at the same time as the Action Plan's adoption<sup>2</sup>.

The document entitled 'Guidance document on combating environmental crimes and related infringements' was prepared through a series of expert workshops in 2018 and 2019. It was made available to the wider interested public for comments in early 2019. Once finalised, the document was submitted to and discussed by the Environmental Compliance and Governance Forum. In accordance with Point 5 of its Rules of Procedure, the Forum adopted a favourable opinion of the document. The Forum recommended publication and encouraged wide use of the Guidance by all national, regional and local authorities involved in combating environmental crime and related infringements. Furthermore, where necessary or appropriate, the Forum members aim to complement the document with other elements of relevance, including in the national context. Having regard to legal, scientific and technical progress and experiences gained in the use of the Guidance, the Forum may assess the possible need to review it.

### Disclaimer

This document has been developed through a collaborative process involving nominated experts, and has received an opinion from the Environmental Compliance and Governance Forum. However, the document does not necessarily represent the position of any of the institutions or organisations which Forum members represent.

Input provided by the European Commission's services does not necessarily reflect the views of the European Commission. Neither the Commission nor any other Forum members are responsible for the use that any third party might make of the information contained in this document.

The document is intended to facilitate the implementation of EU environmental law by providing information of a descriptive or factual nature. It only contains factual information on the existence of EU law provisions and their application or merely paraphrases their contents. It is not legally binding nor a basis for holding any authority to account when addressing environmental crimes and related infringements. Nor does it provide any authoritative reading of the law mentioned in the document. Only the Court of Justice of the European Union is competent to authoritatively interpret EU legislation.

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<sup>1</sup> COM(2018) 10 final.

<sup>2</sup> C(2018) 10 final.



## Brief for policy-makers

### ***'Law without proper enforcement is just good advice.'* Abraham Lincoln**

There are no quick fixes.

To combat environmental crimes, it is necessary to adopt laws defining them and enabling them to be punished.

But adopting laws is not the same as detecting and punishing actual crimes.

This requires an effective chain of intervention involving environmental inspectorates, law enforcement agencies, prosecutors and courts.

If we disregard or neglect the enforcement chain, then laws and law-making become as described in the quotation above.

Experience tells us that, to be effective, the enforcement chain requires our societies to:

- Treat environmental crimes as part of a wider phenomenon of environmental infringements;
- Acknowledge that the infringing of environmental laws can be difficult to counter-act;
- Look to prevention and detection as well as to punishment and remediation;
- Use administrative as well as criminal law;
- Engage multiple skillsets, disciplines and specialisations;
- Ensure a high level of coordination and cooperation between practitioners;
- Ensure effective use of data and information;
- Provide a high level of state organisation and commitment.

Human and financial resources need to be allocated. These should be commensurate with the seriousness of the threat to the fundamental interests of our societies. They should match the wish of people and communities to live in a clean and healthy environment- and the expectation of business that there will be a level playing field across the European Union, with all countries showing an equal determination to confront law-breakers who under-cut their law-abiding competitors.

This Guidance addresses what is at stake.

It shows why policy-makers and law-makers - and societies - cannot credibly say 'job done' when they enact legal provisions on environmental crime.

Rather, the job of combating environmental crime and related infringements needs to stretch into the future *after* legislators have played their part. Otherwise environmental laws - and even specific provisions on environmental crime - can be relegated to the category of good advice.



## Summary of content

### Introduction

The Guidance supports the work of environmental inspectors, police officers, customs officers, prosecutors, judges and others in combating environmental crime and related infringements.

Environmental infringements are contraventions of obligations aimed at protecting the environment. 'Environmental crimes' are environmental infringements that are or can be addressed through criminal law. 'Related infringements' are, first, environmental infringements which are addressed through means other than criminal law and, second, non-environmental infringements, such as fraud, which are connected to environmental infringements.

Combating all of these means: discovering that they have been committed; imposing sanctions on or taking other action against the perpetrators; preventing the infringements from being committed and preventing or limiting the harm that they can cause.

### Three crime scenarios

To help test the content of the Guidance, three fictitious scenarios are presented, covering, respectively, a problematic waste facility, illegal killing of wild birds, and illegal trade in wildlife. Each presents a cluster of challenges that the Guidance seeks to address.

### Looking in more detail at 'environmental crimes', 'related infringements' and 'environmental compliance assurance'

The Guidance links the concept of environmental crimes to European Union environmental legislation. Environmental infringements involve conduct that contravene obligations under this. The legislation is made up of directives and regulations. Obligations can take the form of prohibitions; procedural requirements; permits, development consents and derogations; general binding requirements; and requirements stemming from enforcement actions. Infringements vary according to their nature and impacts, as well as according to the parties responsible, the kinds of conduct involved, and the motivations for that conduct. The most serious infringements can amount to crimes. The Environmental Crime Directive, 2008/99/EC, requires Member States to criminalise certain infringements. 'Environmental compliance assurance' describes all the ways in which authorities combat environmental crimes and related infringements.

### Waste, waste laws and waste infringements

Waste means substances or objects discarded or intended or required to be discarded by those producing or holding them. Under Union waste laws, waste should always be dealt with within a framework of obligations, saving materials and energy where that is required and, as a minimum, avoiding harm to the environment and human health. Obligations apply to those who generate and hold waste, collect and transport it within a Member State, and ship it across frontiers. They also apply to those who operate waste facilities, such as landfills. Waste crimes and infringements can be accompanied by other wrong-doing such as fraud, tax evasion and infringements of employment laws. Factors explaining infringements including the potential for illicit gains and low barriers to market entry. Impacts include environmental damage and loss of government revenues.

### Wildlife, wildlife laws and wildlife infringements

'Wildlife' covers wild animals and plants, together with the natural habitats in which they are found. Under Union wildlife laws, there are obligations to protect the most important European wildlife



sites, and the breeding and resting places of endangered species such as bats and sea-turtles; to safeguard endangered species from illegal hunting, killing, capture and trade; to prevent the introduction of invasive alien species; and to manage wildlife trade with third countries. Factors explaining infringements include economic gain, social acceptance and the low risk of discovery.

### **Challenges for competent authorities**

Challenges concern both the tackling of individual infringements and the gaining of an overall strategic understanding of why infringements occur. For individual infringements, challenges arise at the discovery, assessment and response stages. The discovery stage brings in the geographical dimension, the often clandestine nature of unlawful conduct, possible different kinds of suspects, the gathering of evidence, and external threats to investigation. The assessment stage involves weighing the seriousness of individual infringements and identifying the precise liabilities of individual suspects. The final stage involves acting against suspects. The strategic challenge is one of understanding the drivers for infringing the law, duty-holder attitudes and perceptions concerning the law, and duty-holder attitudes and perceptions concerning compliance monitoring and enforcement.

### **Guiding principles and fundamental rights**

Guiding principles and fundamental rights relate to the main objectives of interventions by authorities, and the limits of those interventions. Environmental compliance assurance is guided by three basic principles: to prevent infringements; to discover and understand them; and to deal effectively with them once discovered. The last principle is supplemented by the following: to end infringements as soon as possible; to apply sanctions effectively, dissuasively and proportionately; to ensure that non-compliance does not bring financial gain; to deter future infringements; and to remedy any environmental harm. Other principles such as acting consistently are also relevant and the Charter of Fundamental Rights qualifies how authorities should intervene when combating environmental crimes and related infringements.

### **Organisation, capacity, EU role and financial support**

Combating environmental crimes and related infringements requires a good organisational framework. This has several aspects. First, it requires the involvement of different public actors – inspectorates, police forces, customs, prosecution services and the judiciary, interacting along a decision-making chain, 'the environmental compliance assurance chain' or 'enforcement chain'. Second, these actors need to have clear formal responsibilities, be independent and free of conflicts of interest, and have adequate powers to act. Third, they need to have the capacity to deliver useful results. Factors that influence capacity include: the scope of the powers that an institution or body enjoys; the human and financial resources it has at its disposal; the extent of specialisation; the quality of training and guidance; and the level of technical support and tools available. A number of EU financial instruments such as the LIFE Regulation can be used to support compliance assurance.

### **Coordination and cooperation**

Coordination and cooperation are important to ensure effective decision-making along the environmental compliance assurance chain. 'Coordination' is best used to describe the interactions between authorities and professionals that are necessary to achieve results in specific cases – for example, interactions between police forces or specialised regulatory bodies on the one hand and prosecutors on the other. 'Cooperation' is best used to describe more general forms of constructive relations. A range of mechanisms exist at national, European and international levels to facilitate coordination and/or cooperation. One example is voluntary European networks of professionals such as IMPEL, EnviCrimeNet, ENPE and EUFJE.



## **Interventions to discover, assess and understand infringements**

These interventions come under the umbrella term 'compliance monitoring'. It covers inspections, surveillance, investigations and other activities aimed at verifying compliance as well as discovering and assessing infringements and identifying and compiling evidence against those responsible. Some forms of compliance monitoring, such as routine inspections, are proactive. Others are reactive and a response to incidents and complaints. Depending on the infringement, monitoring will need to vary in intensity and focus. Authorities have available to them a range of techniques. Private actors such as whistleblowers and NGOs may also play a role.

## **Enforcement measures to respond to infringements**

It is possible to take enforcement measures under administrative, criminal and civil law, or a combination of these. There is a general requirement for all infringements of Union law to be subject to a system of penalties that are effective, proportionate and dissuasive. This applies to administrative and criminal sanctions. Administrative-law enforcement can cover, amongst other measures, the use of fixed penalties, the issue of notices and the withdrawal of environmental permits. Criminal-law enforcement can lead to a fine or imprisonment, as well as other outcomes. Environmental liability provisions oblige those who cause environmental damage to remediate it.

## **Measures to prevent infringements and the harm that they cause**

Measures to prevent infringements are aimed at those who can be persuaded to comply with environmental obligations or need support to do so. They can include compliance promotion activities such as awareness-raising. Measures to prevent or reduce the harm that infringements can cause include requiring those who operate risky installations like waste facilities to provide financial security.

## **Data and information**

Combating environmental crimes and related infringements requires and generates a mass of data and information. Data and information can be used to support compliance assurance interventions, help evaluate the performance of compliance assurance authorities, and communicate with the public and stakeholders. Effective use of data depends on good arrangements for their collection, management, sharing and analysis.

## **Being strategic**

Being strategic in combating environmental crime and wider environmental compliance assurance means putting together the right combination of measures to address challenges. It is possible to be strategic at the structural, organisational and operational level. The structural level relates to constitutional, legislative and institutional frameworks. The organisational level relates to arrangements made by compliance assurance bodies, either individually or collectively, to combat one or more category of infringement – and covers national enforcement strategies. The operational level relates to the strategic choices of individual practitioners when faced with complex crime and infringement scenarios.





## 1. Introduction

### 1.1. What does combating environmental crimes and related infringements mean?

Environmental infringements are contraventions of obligations aimed at protecting the environment. In very simple terms, 'environmental crimes' are environmental infringements that are or can be addressed through criminal law.

'Related infringements' are:

- Environmental infringements which are addressed through means other than criminal law or
- Non-environmental infringements, such as fraud, which are connected to environmental infringements.

Combating environmental crimes and related infringements means:

- Discovering environmental crimes and related infringements that have been or are being committed;
- Imposing sanctions on or taking other action against the perpetrators;
- Preventing environmental crimes and related infringements from being committed and preventing the harm that they can cause.

The concept used to cover all these different interventions is 'environmental compliance assurance'. A more detailed description is set out in Chapter 3 of this Guidance.

### 1.2. Character and objectives of the Guidance

The Guidance is *not* a prescriptive document. It is largely descriptive, presenting different considerations and good practices relevant to combating environmental crimes and related infringements and leaving the readers free to make whatever use of them they consider appropriate. This is because the challenges vary considerably from issue to issue and place to place – and over time. It is possible to have different approaches, emphases and priorities, all justified and appropriate depending on the circumstances.

The objectives of the Guidance are to bring together in a single document analysis, insights and good practices collected from practitioners in order to help governments, authorities and practitioners to make the right choices and the best use of the resources available.

### 1.3. Scope, approach and main content

The Guidance has a broad scope, while putting a particular emphasis on waste and wildlife – subject-areas which account for many of the most serious crime-fighting challenges.

The approach of the Guidance is to begin with three concrete scenarios centred on waste and wildlife infringements. Subsequent content explores different facets of environmental crimes and related infringements, and the fight against them. At each stage, the content is 'tested' for relevance against the scenarios.



The different facets include: the conduct that constitutes environmental crimes and infringements; the concept of environmental compliance assurance; details of European waste and wildlife laws; the general challenges that authorities face; principles to guide the fight against environmental crimes and related infringements; the importance of good organisation, coordination and cooperation; interventions to discover, assess and understand crimes and infringements; interventions to respond to them; interventions to prevent them; the importance of data and information; and the ways in which governments, authorities and practitioners can be strategic.

Text boxes provide illustrations and examples from across Europe. A glossary is provided at the end.

The Guidance integrates a summary of content, which is a precis of each individual chapter. It also integrates a standard foreword and disclaimer as well as a general policy brief.

## 1.4. Background to the Guidance

The document is specifically foreseen under Action 4 of the Commission Action Plan to increase compliance with EU environmental law and improve governance, which was adopted on 18 January 2018<sup>3</sup>.

## 1.5. Readership

The envisaged principal readership consists of national authorities, agencies, institutions and practitioners with compliance assurance responsibilities. This includes environmental inspectors, police and other law enforcement officers, authorities imposing administrative sanctions, environmental prosecutors, judges and top administrators who decide on priorities and resources. Many will be familiar with some – but perhaps not all – aspects covered.

The Guidance should also be of interest to others, including all those with a role in fulfilment or supporting fulfilment of environmental obligations – for example, environmental NGOs which monitor the state of the environment.

## 1.6. How the Guidance was developed

The Guidance was prepared under the aegis of the Environmental Compliance and Governance Forum, established in 2018<sup>4</sup>.

Together with its consultants, a consortium of the Ecologic Institute, the Institute of European Environmental Policy (IEEP), and METRO (the Institute of Transnational Legal Research attached to Maastricht University), the European Commission organised three workshops, held over 2018 and 2019. Members of the Environmental Compliance and Governance Forum were invited to nominate experts. Several Member States did so, as did the Network of European Environmental Protection Agencies (NEPA) through its Better Regulation Interest Group (BRIG), the European Network for the Implementation and Enforcement of Environmental Law (IMPEL), the European Network of Prosecutors for the Environment (ENPE), the EU Forum of Judges for the Environment (EUFJE) and EnviCrimeNet.

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<sup>3</sup> COM(2018) 10 final, with accompanying Staff Working Document, SWD(2018) 10 final.

<sup>4</sup> C (2018) 10 final.



The first two workshops focused on establishing the structure and main content, and the third reviewed and refined the text. Progress reports were prepared for each workshop and posted on a publicly accessible website. The Commission also gave an account to a meeting of stakeholders, including environmental NGOs, in November 2018, and the draft Guidance was made available to the wider interested public for comment in January 2019.

During 2019 and 2020, a number of significant developments occurred:

- In 2019, the European Green Deal<sup>5</sup> was launched, signalling reinforced efforts at European level to safeguard the environment.
- 2019 also saw the delivery of the final report of the Eighth round of mutual evaluations by European Union Member States of the application and implementation at national level of international undertakings in the fight against organised crime<sup>6</sup>. This Eight round was devoted to the practical implementation and operation of European policies on preventing and combating environmental crime, and the final report attempts to summarise findings and recommendations made to individual Member States and to draw conclusions.
- In 2020, the European Commission adopted the Biodiversity Strategy, which amongst other things signalled the importance of the fight against wildlife crime.
- 2020 also saw work to evaluate the Environmental Crime Directive<sup>7</sup> and the first steps towards its revision.

It was considered appropriate to take into account these developments, notably the final report of the Eighth round of mutual evaluations, and exchanges continued with nominated experts in early 2021. Given the amount of valuable material collected, it was also considered useful to prepare a separate complementary document with examples of identified good practices in combating environmental crimes and related infringements, as well as references to relevant literature and policy documents. This document is publicly available and is intended to be continuously updated to include recent good practices, relevant literature and policy documents<sup>8</sup>.

The method of preparing the Guidance and the role of the individual experts enabled a wide range of insights to be obtained. The results show that, while there can sometimes be different approaches, there are many shared challenges. They also show that there are common patterns in how different authorities deal with these challenges.

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<sup>5</sup> Commission Communication on the European Green Deal, COM(2019) 640, final.

<sup>6</sup> Final report of the Eighth round of mutual evaluations on environmental crime, Doc. 14065/19, <https://data.consilium.europa.eu/doc/document/ST-14065-2019-INIT/en/pdf>

<sup>7</sup> SWD(2020) 259.

<sup>8</sup> The good practice document is available at the platform CIRCABC.



## 2. Three crime scenarios

### 2.1. Introduction

To help test the content of the Guidance, this Chapter presents three scenarios. These focus on waste infringements, illegal killing of wildlife, and illegal trade in wildlife.

Each scenario presents a cluster of circumstances. The aim is to capture different challenges that competent authorities face when addressing environmental crimes and related infringements. The scenarios are referred to throughout the Guidance in order to demonstrate the practical relevance of the content of individual chapters.

The scenarios are only rough approximations of what may actually arise in practice. They are fictitious and necessarily simplified. Furthermore, they cover only a small selection of possible circumstances. Their demonstration value is nevertheless important for the following reasons:

- Infringements are of **different kinds** and can vary enormously. Drawing attention to different scenarios brings this across;
- Efforts to combat infringements need to be **adaptive**, i.e. be able to adapt to the specific challenges that individual infringements present. Testing different scenarios shows **how** efforts can be adapted;
- Efforts to combat infringements need to take account of the **inter-play** of different actors and requirements. Testing the scenarios shows the ways in which this inter-play can be taken into account.

### 2.2. Scenario 1: Problematic waste facility

A landfill under the responsibility of a private operator (a company) holds a waste permit in Member State A. The waste permit was issued in accordance with EU waste legislation. The waste permit limits the categories and quantities of waste that the landfill is supposed to accept and does not allow hazardous waste.

The permit was issued by a local authority, which also has inspection functions. The local authority carries out inspections which show several infringements of the waste permit, including receipt of and disposal of unacceptable categories of waste. The inspectors are convinced that the landfill has become unsafe and is an environmental risk – in particular, because of landfill fires. The responsible authority is not competent to prosecute any waste or other crimes. This role lies with an independent prosecutor. Furthermore, the police force of Member State A has crime-investigation powers which go beyond the inspection powers of the local authority.

Local residents are very concerned, especially about noxious fumes, and lobby local politicians and the media. They contend that their health is at risk.

Waste industry representatives do not highlight the specific case, but argue more generally that law-abiding waste operators suffer from unfair competition. They are pressing for more effective enforcement.

Some of the unlawful waste in the landfill is found to be the result of illegal waste shipments from Member State B. It is suspected but not verified that the waste includes hazardous waste. The waste shipments were, at least in part, the subject of documentation under the Waste Shipment Regulation, but the docu-



mentation was falsified.

Meanwhile, in Member State C, an illegal waste shipment is identified. The offence is not in itself considered significant but the waste collectors and brokers are found to be the same ones who sent the unlawful waste to the landfill in Member State A. An employee of one of the suspect waste collectors - a whistleblower - indicates that waste has also been delivered to a number of illegally operated landfills in Member State B, but is vague about their location.

With regard to the suspects:

- The company holding the landfill permit claims that the illegal activity was the responsibility of rogue employees (whom it cannot identify) and that in any case it does not have the financial resources to pay for remediation.
- It turns out that there were a series of waste collectors involved, and waste transfer stations. Some of the waste collectors are SMEs.
- Brokers who arranged waste transfers deny responsibility.
- The landowners of any illegal landfills are likely to claim that landfilling took place without their knowledge.

The challenges of this scenario include:

- Ensuring capacities to deal with and co-ordinating on all the aspects of the case within and across Member States, A, B and C;
- Characterising the waste in the permitted landfill in Member State A and adverse effects associated with it;
- Detecting and characterising any illegal landfills (potential role of intelligence as well as earth observation);
- Gathering evidence concerning the involvement, acts and omissions of each party;
- Organised-crime investigation of suspected offenders and the supply-chain connections between them across jurisdictions;
- Investigation of financial gains made by suspected offenders;
- Distinguishing between corporate responsibility and individual responsibility;
- Ensuring that the permitted landfill is made safe;
- Cleaning up the permitted landfill;
- Repatriating waste from the permitted landfill in Member State A to Member State B under the Waste Shipment Regulation;
- Cost recovery for the above and application of the Environmental Liability Directive;
- Preparing for similar interventions with regard to any illegal landfills that are discovered;
- Addressing the concerns of neighbours of the permitted landfill, as well as media interest.

### 2.3. Scenario 2: Illegal killing of wild birds

In Member State A, there are several media reports about unlawful killings of a rare bird of prey. Some birds are discovered poisoned; more are discovered shot. The killings contravene national laws that strictly protect the bird in line with the Wild Birds Directive and the Berne Convention. It is unclear whether the killings are linked. They are spread over time and occur in different localities. Some of the localities are within a Natura 2000 site earmarked for the protection of the species. Some of the locations are on farmland; more are in areas used for hunting.

Some of the birds killed are part of an EU co-financed reintroduction programme under the LIFE Regulation. There have been detailed estimates of how much it costs to introduce an individual bird. These birds also



have radio transmitters. Some landowners claim that the bird of prey takes young livestock and their representative association opposed the reintroduction programme. Similarly, some hunters argue that the bird of prey is an unwelcome predator of huntable wild bird species.

An environmental NGO is active in supporting the re-introduction programme and tries to monitor what is happening on the ground. Following tip-offs from the NGO, wildlife officials discover poisoned bait on a few land-holdings. The landowners claim that it is for the purpose of vermin control. However, the baiting method is non-discriminatory. Furthermore, one of the landowners has used a poison prohibited in Europe, carbofuran.

Nature conservation authorities are initially involved, but they also contact the police. There are forensic questions surrounding the type of poisons and firearms used.

The suspects are landowners and hunters. The landowners discovered to possess poisoned bait are livestock farmers. They claim that they have a legitimate use for the poison, even if they have not complied with the strict prescriptions. They deny any intention to poison the bird of prey. The main hunters organisation is very clear that any illegal shooting of the bird of prey is contrary to its policy and that it in no way condones it.

The challenges presented by this scenario include:

- Ensuring investigation capacities to deal with all aspects of the case, including coordination;
- Ensuring the forensic analysis of each poisoned/shot bird;
- Linking detected infringements to individuals;
- Quantifying the value of each poisoned/shot bird;
- Recovering the costs of the investigation;
- Addressing issues of environmental liability;
- Addressing issues of social acceptance of strict wildlife laws with regard to certain landowners and hunters;
- Use of technology to reduce the likelihood of infringements and increase the likelihood of detection.

## 2.4. Scenario 3: Illegal trade in wildlife

In the African country A, a CITES party, F, an amateur collector of reptiles, buys a large quantity of endangered lizards. The animals are CITES-listed and exporting or importing them without proper documentation constitutes a CITES violation. F and his companion S hide the lizards in small containers in their luggage. They travel from A to their home country B, an EU Member State. At the customs, F and S fill out forms declaring that they have no goods that should be declared. Subsequently, they bring the reptiles to distributor T and they get paid. T forges CITES certificates and sells the lizards to various clients, directly and also via the internet, both to amateurs keeping the lizards and professionals for resale. A wildlife NGO, active in country A, has evidence of illegal trade in lizards involving F and S and alerts the customs in Member State B. The NGO also advises that T is advertising the lizards for sale on an internet platform. It has approached the platform, asking it not to facilitate illegal trade in the reptiles. The platform has replied that it requires traders to confirm compliance with CITES. The authorities in Member State B determine that CITES certificates used by T are forged, and seize a number of lizards still in his possession.

The suspects are the following:

- The seller of the lizards in Africa. However, authorities within the EU are unlikely to take measures against him;
- The reptile collector F and his companion S. They engaged in the illegal export and import of the reptiles;
- Distributor T knowingly purchased the animals and moreover, forged CITES certificates in order to



be able to sell the animals in Europe.

The challenges presented by this scenario include:

- Ensuring capacities to deal with a complicated cross-border case;
- Checking an entire supply-chain, and carrying out investigations in different jurisdictions, one of which is outside the EU;
- Analysing and proving the origin of the reptiles;
- Addressing the possibility that distributor T who purchased the animals could be a legitimate enterprise, thus partially engaged in legitimate sale of reptiles and partially in illegal activities;
- Tracing the distribution of lizards sold via the internet or via other dealers;
- Addressing the possibility that innocent purchasers, relying on forged CITES certificates, may wrongly have assumed that the animals were lawfully introduced into the EU;
- Determining the value of the animals and the illegal profits obtained;
- Establishing whether the infringements were a one-off occurrence or part of an ongoing trafficking enterprise. Did F (and/or his companion S) in fact travel more regularly to Africa and is distributor T in contact with other suppliers?
- Seizure, examination, retention of and possible repatriation of animals;
- Convincing reptile collectors of the importance of CITES compliance;
- Addressing the clandestine nature of trafficking and the risk of a low probability of detection.



### 3. Looking in more detail at 'environmental crimes', 'related infringements' and 'environmental compliance assurance'

#### 3.1. Introduction

Chapter 1 introduces the concepts of environmental crimes and related infringements. This Chapter looks at them more closely.

Some crimes such as murder and fraud can be addressed autonomously. This means that it is unnecessary to show that the conduct of the perpetrator has also infringed other obligations. It is possible to create autonomous environmental crimes, but, in practice, environmental crimes tend to be linked to environmental obligations set out in relevant legislation. In fact, they generally represent a sub-category of infringements of this legislation.

The Guidance links the concept of environmental crimes to EU environmental legislation. Environmental crimes and related infringements involve conduct that contravene obligations under this legislation.

The present Chapter therefore begins by examining what constitutes *lawful* conduct under EU environmental legislation.

It then looks at conduct which infringes the legislation, i.e. *unlawful* conduct. It presents a number of parameters that can be used to assess the infringements and the conduct concerned. It shows how some infringements can bring criminal law into play – notably, but not exclusively, by way of the Environmental Crime Directive.

Before testing the scenarios, the Chapter presents the concept of environmental compliance assurance, explaining briefly how it constitutes a framework for combating environmental crimes and related infringements.

#### 3.2. Lawful conduct - obligations that need to be fulfilled

Environmental obligations to be fulfilled by duty-holders derive from both EU and national legislation. Lawful conduct is conduct that is required by or is consistent with these obligations.

In this context, there are two main kinds of EU legislation:

- **Directives** adopted by the EU co-legislators, i.e. the European Parliament and the Council, oblige Member States to adopt national legislation to give effect to the legal objectives and requirements that they contain. This will typically involve Member State governments:
  - Imposing legal (i.e. enforceable) obligations on economic operators and others ('duty-holders');
  - Giving competent authorities the responsibility to check compliance;
  - Establishing national measures for dealing with infringements of the obligations.
- **Regulations** adopted by the EU co-legislators are directly applicable in Member States. Member States do not have to transpose the obligations set out in them, and duty-holders





will be expected to comply with these obligations. Member States may, however, need to take national measures to address infringements.

To understand in detail the content of enforceable environmental obligations, it is therefore necessary to understand any relevant national legislation deriving from EU legislation.

In broad terms, EU or EU-derived environmental measures that create enforceable obligations fall into a number of sub-categories:

- **Prohibitions** render certain types of activity unlawful – for example, a ban on uncontrolled dumping of waste, and on hunting of wild birds during periods of migration or in the breeding season. The rationale for having this type of measure is that the activities targeted are inherently damaging to the environment and must be prevented;
- **Procedural requirements** stipulate that certain activities – for example, degrading protected habitats or shipping waste across borders – can only be approved and should only be carried out once their environmental impacts have been examined or the competent authorities are informed and documentation is prepared. Here the rationale is that the requirements allow potential environmental problems to be identified in advance of decision-taking, enabling environmental harm to be prevented;
- **Permits, development consents and derogations** govern how certain activities are carried out. Examples include:
  - Permits for waste facilities setting conditions for their operation. Permits are often time-limited and need to be reviewed;
  - Development consents for infrastructure or other projects requiring fulfilment of certain environmental conditions in order for the project to be lawfully executed;
  - Derogations setting out limits and restrictions on how an activity is carried out – for example, a derogation related to hunting activities.

The rationale of these measures is that protecting the environment sometimes requires not only prior approval, but also safeguards to be applied on an ongoing basis.

- **General binding requirements** provide that certain activities must be carried out in compliance with specific conditions fixed in general binding rules rather than in individual permits – for example, a requirement to be registered in order to legally collect waste. The rationale for this type of obligation is that protecting the environment requires that safeguards are applied to these activities on an ongoing basis.
- **Requirements stemming from court decisions or other enforcement actions** amount to auxiliary obligations intended to ensure that the other obligations are respected. The rationale is that enforcement action will often require duty-holders to conduct themselves in particular ways – for example, complying with a court order to remove waste from an illegal landfill, or an order to restore habitats unlawfully damaged or destroyed, or an order to stop operating a polluting facility.

Understanding the differences in the nature of these measures is important as infringements of obligations under them may need to be addressed in different ways.

### 3.3. Parameters for assessing infringements and associated unlawful conduct

Unlawful conduct is a conduct that is contrary to the obligations mentioned above. In other words, it involves infringements of these obligations.

Infringements vary according to their nature and impacts, as well as according to the parties responsible, the kinds of conduct involved, and the explanations or motivations for that conduct.

To be able to combat environmental crimes and related infringements, it is important to be able to assess infringements and the associated unlawful conduct. Assessment not only helps to identify those infringements most likely to amount to environmental crimes, it also helps to identify the most effective means of countering them.

Table 1 provides an overview of several parameters and aspects that may be helpful in assessment.

Table 1: Assessing infringements and associated unlawful conduct

Parameters	Aspects
Nature of the infringed obligation(s)	<ul style="list-style-type: none"> <li>▪ Which specific environmental obligations were infringed?</li> <li>▪ Were these environmental obligations of a formal nature, for example non-fulfilment of a procedural requirement, or did they have a substantive content aimed at preventing or limiting environmental harm?</li> <li>▪ Were non-environmental obligations infringed – for example, with regard to fraud, tax evasion, corruption and violence?</li> </ul>
Environmental, economic and social impacts of the infringements	<ul style="list-style-type: none"> <li>▪ Is there a measurable environmental harm resulting from the infringement (for example, the killing of birds or unlawful deforestation)?</li> <li>▪ Did the infringement endanger, but not actually harm the environment?</li> <li>▪ Is it possible to quantify the damage to the environment (for example the costs of clean-up where waste was illegally disposed of)?</li> <li>▪ Did the infringement lead to gains/profits for the perpetrator? Is it possible to quantify them? Was the amount of the illegal benefit significant?</li> <li>▪ Are there direct negative consequences of the breach for competitors (i.e. undermining of legitimate businesses, grabbing market share)?</li> <li>▪ Are there negative consequences for the state and society in terms of loss of state revenues or imposition of costs on the state?</li> <li>▪ Are there negative consequences for neighbours or other members of the public (for example, from illegally burning waste)?</li> </ul>
Duty-holder and perpetrator	<ul style="list-style-type: none"> <li>▪ Is the duty-holder/perpetrator                             <ul style="list-style-type: none"> <li>○ an individual</li> <li>○ a household</li> <li>○ a small or medium-size enterprise</li> <li>○ a large (multinational) enterprise</li> <li>○ a (non-commercial) legal entity</li> <li>○ an employee, contractor or intermediary (for example, a waste broker)</li> <li>○ an organised criminal group?</li> </ul> </li> </ul>



Type of conduct	<ul style="list-style-type: none"> <li>▪ Was the environmental infringement committed in relation to an authorised activity, for example a facility holding a permit, or was it committed in relation to an unauthorised activity, for example waste disposal without a permit?</li> <li>▪ How did the infringement occur, for example was it a deliberate clandestine act or was it related to an accident or unintended event?</li> <li>▪ Was the infringement a one-off occurrence, i.e. happening once and incidentally (e.g. one single illegal import)?</li> <li>▪ Was the infringement continued over a long period of time (e.g. illegal operation of a waste facility)?</li> <li>▪ Was the unlawful conduct structural/systemic (for example traders who systematically traffick protected species)?</li> <li>▪ Was there recidivism or a repeated infringement after a sanction had already been imposed?</li> <li>▪ Is there a link to other (criminal) offences by the same actor?</li> </ul>
Explanations/motivations for infringements	<ul style="list-style-type: none"> <li>• Did the infringement take place involuntarily/negligently (for example an operator of a waste facility accepting particular types of waste, not realising that this violates his permit)?</li> <li>• Did the infringement take place because of ignorance (for example, soon after introduction of a new legal obligation)?</li> <li>• Did the infringement take place intentionally (for example, intentionally dumping domestic waste beside a public highway)?</li> <li>• Did the infringement take place for economic benefit (for example, illegal waste shipments to avoid fees and taxes)?</li> </ul>

### 3.4. What makes conduct criminal?

All crimes involve unlawful conduct but not all unlawful conduct amounts to a crime. Some unlawful conduct will involve infringements that are not crimes.

Which types of unlawful conduct can be sanctioned under criminal law depends on a country's constitutional arrangements, criminal-law concepts and legal traditions.

Two further points deserve mention:

- Formally speaking, an instance of unlawful conduct can be said to definitively amount to an environmental crime only if it is prosecuted before a court and the court convicts the perpetrator(s) of having committed the crime;
- Such a confirmation will only be possible if there is a prior decision to prosecute the instance of unlawful conduct as an environmental crime. However, such a decision is not automatic or inevitable. National laws must have criminalised such conduct<sup>9</sup>. Furthermore, competent authorities may decide that there is an infringement but that they wish to ad-

<sup>9</sup> This is an expression of the so called legality principle – to which all Member States adhere. The principle stipulates that the conditions for criminal responsibility have to be clearly defined by the legislator.



dress it through means other than the criminal law, e.g. through administrative enforcement.

Moreover, criminal responsibility also typically requires that:

- The unlawful act can be attributed to a particular natural person or (in legal systems where that is possible) a legal entity;
- The particular conduct exceeds a threshold of culpability. Typically, it is necessary to show that the act of the perpetrator was committed intentionally or with serious negligence.

In recognition of the serious damage that environmental crime can do, the EU adopted Directive 2008/99/EC on the protection of the environment through criminal law ('the Environmental Crime Directive')<sup>10</sup>. According to the Environmental Crime Directive, Member States must provide for criminal sanctions in response to certain particularly serious infringements of national legislation implementing EU environmental law. The sanctions used must be 'effective, proportionate and dissuasive'. The Environmental Crime Directive has led to a degree of harmonisation of environmental criminal law in Member States, but many differences remain in how Member States tackle environmental crime in practice<sup>11</sup>.

### Box 1: The Environmental Crime Directive

**The Environmental Crime Directive** establishes measures relating to criminal law in order to protect the environment more effectively. It defines a number of serious offences that are detrimental to the environment and requires EU Member States to provide effective, proportionate and dissuasive criminal penalties for these when committed intentionally or as a result of serious negligence.

Article 3 lists the offences, providing that:

*'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 after-care 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;*

<sup>10</sup> Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law, OJ L328 6.12.2008, p 28-37.

<sup>11</sup> At the time of finalisation of this guidance document, the Environmental Crime Directive was subject to a process of revision.



*(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.'*

According to Article 2 (a) and Recital 9 of the Environmental Crime Directive, 'unlawful' conduct means conduct infringing obligations deriving from the EU legislation listed in Annexes A and B of the Environmental Crime Directive or from a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the legislation listed in Annexes A and B. According to Article 4, inciting, aiding and abetting the relevant intentional conduct should also be punishable as a criminal offence.

The Environmental Crime Directive requires Member States to introduce proportionate, effective and dissuasive criminal sanctions but does not stipulate types or levels of penalties<sup>12</sup>.

EU Member States must ensure that legal persons are liable for offences referred to in Articles 3 and 4 of the Directive if the offence was committed for the benefit of the legal person by an individual (either acting independently or within a decision-making body) with a leading position within the legal person<sup>13</sup>. 'Legal persons', for the purposes of the Directive, means any legal entity, with the exception of States, those exercising state authority and public international organizations. Depending on the legal system of the EU Member State, the penalties applicable to liable legal persons may be of a criminal or other nature<sup>14</sup>.

The Environmental Crime Directive sits alongside other important EU criminal legislation – see Box 2. Some of this legislation may also be relevant in the fight against environmental crime.

#### Box 2: Other EU criminal law legislation<sup>15</sup>.

**Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Anti-Money-Laundering Directive)** aims to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing and is relevant for combating environmental crime also because practical evidence shows linkages between these crime categories.

**Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests (Anti-Fraud Directive)** establishes minimum rules concerning the definition of criminal offences and sanctions with regard to combating fraud and other illegal activities affecting the Union's financial interests, with a view to strengthening protection against criminal

<sup>12</sup> Articles 5 and 7.

<sup>13</sup> Article 6.

<sup>14</sup> Article 7.

<sup>15</sup> See also the provisions of Article 82 of the Treaty on the Functioning of the European Union.



offences which affect those financial interests, in line with the *acquis* of the Union in this field.

**Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders** lays down the rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters. Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties, is within the scope of this regulation and belongs to the offences for which freezing or confiscation orders shall be executed without verification of the double criminality of the acts giving rise to such orders, where those acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute one or more of the listed criminal offences under the law of the issuing State.

The importance of fighting organised environmental crime was recognised also by the Council Conclusions setting the 2022-2025 EU priorities for the fight against serious and organised crime through the European multi-disciplinary platform against criminal threats (EMPACT)<sup>16</sup>.

### 3.5. Environmental compliance assurance

Member States are obliged to implement regulations and directives fully and correctly. This includes taking the necessary measures to ensure that individuals and businesses comply with relevant enforceable obligations.

Compliance assurance is a term that encompasses the different kinds of intervention that authorities use for this purpose. It also represents a conceptual framework for combating environmental crimes and related infringements.

There are three broad categories of intervention. They reflect principles explained in Chapter 7.

**Compliance promotion** includes the range of actions that authorities undertake to help businesses and individuals meet their obligations, and to prevent or reduce infringements and the harm that they cause. Actions include providing information and advice on how to comply and trying to 'crime-proof' legislation, i.e. designing obligations in a manner that deters infringements from occurring. Further explanations are provided in Chapter 12.

**Compliance monitoring** includes all forms of inspection, surveillance and investigation that may be undertaken to verify compliance or discover and characterise infringements. Further explanations are set out in Chapter 10.

**Follow-up and enforcement** involves actions by a competent authority to respond to infringements detected. Effective responses are necessary in order to punish, deter, and remediate damage. Responses may include administrative, civil and criminal law enforcement. Further explanations are provided in Chapter 11.

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<sup>16</sup> See Council conclusions setting the EU's priorities for the fight against serious and organised crime adopted on 26 May 2021 (8665/21) whose Priority 9 aims 'to disrupt criminal networks involved in all forms of environmental crime, with a specific focus on waste and wildlife trafficking, as well as on criminal networks and individual criminal entrepreneurs with a capability to infiltrate legal business structures at high level or to set up own companies in order to facilitate their crimes'.



There are close links between the different categories of compliance assurance, especially between compliance monitoring and follow-up and enforcement.

### 3.6. Testing against the crime scenarios

**Table 2: Testing against the scenarios**

Scenario	Comments
<b>Problematic waste facility</b>	<ul style="list-style-type: none"> <li>• This scenario relates to obligations under a number of directives as well as a regulation;</li> <li>• The relevant obligation categories featuring in the scenario are: prohibition, permit, general binding requirements;</li> <li>• The scenario involves conduct that comes within the scope of the Environmental Crime Directive</li> </ul>
<b>Illegal killing of wild birds</b>	<ul style="list-style-type: none"> <li>• This scenario relates to obligations under a directive and a regulation;</li> <li>• The relevant obligation category featuring in the scenario is prohibition;</li> <li>• The scenario involves conduct that comes within the scope of the Environmental Crime Directive.</li> </ul>
<b>Illegal trade in wildlife</b>	<ul style="list-style-type: none"> <li>• The scenario relates to obligations under a regulation;</li> <li>• The relevant obligation categories featuring in the scenario are: prohibition, general binding requirements;</li> <li>• The scenario involves conduct that comes within the scope of the Environmental Crime Directive.</li> </ul>







## 4. Waste, waste laws and waste infringements

### 4.1. Introduction

To understand waste crime and related infringements, it is important to understand what waste is, and the challenges that managing it presents. It is also important to understand why and how it is regulated under Union waste laws, since these govern the manner in which waste is handled and treated. This Chapter therefore begins with a description of the phenomenon of waste and the waste chain before setting out the objectives of Union waste laws, presenting the main EU laws on waste, and providing an outline of key obligations and corresponding infringements. Factors contributing to waste crimes and related infringements are then described, and the negative impacts of such crime and infringements highlighted. The Chapter closes by testing its content against the waste crime scenario presented in Chapter 2.

### 4.2. Waste and the waste chain

Waste means substances or objects discarded or intended or required to be discarded by those producing or holding them – see Box 3 below.

As a phenomenon, waste can be examined in terms of:

- **Where** it arises;
- **Who** produces and holds it;
- **What it consists of**;
- **What** its economic or other **value** is, and
- **What happens to it and where.**

All these aspects have an important bearing on waste crimes and related infringements.

**Where it arises:** Waste is produced everywhere – in both urban and rural areas. It comes from homes as well as workplaces, from sites where raw materials are extracted or processed, and from sites where products are manufactured, sold or consumed.

**Who produces and holds it:** Waste is generated across the whole of society. Everyone is a waste 'producer': every natural and legal person produces waste. Some persons produce a great deal more than others – a large factory more than an individual householder, for instance. Waste producers may also be the holders of waste. However, if they transfer it, other persons become the waste holder. Waste will often pass from one waste-holder to another along a chain – the 'waste chain' shown in Figure 1.

**What it consists of:** Waste covers a vast array of substances and objects. Some are highly toxic (waste oils, for instance). Others are inert (for example, different kinds of construction rubble). Still others may be polluting if not properly treated (for example, household food-waste).

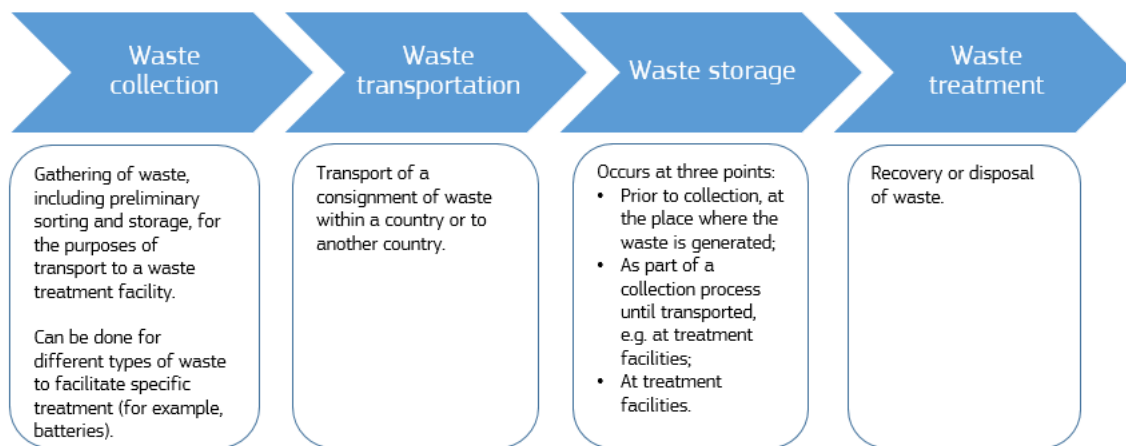
**Its value:** Waste will generally have a negative economic value and cost money to discard in a safe manner. This will not always be the case, however. Depending on market conditions, scrap metal may have significant value, for instance – so much so that criminality may result in metal being stripped from where it is actually still used in order to realise its value as scrap.

**What happens to it and where:** In terms of what happens to it, waste may be subject to re-use, recycling, energy recovery, or final disposal – see Box 3.

All of this means that very different things may happen to particular items of waste. And what happens to waste may happen in different places or at different facilities: at waste recycling facilities, or incinerators, or landfills, for instance.

Some waste-producers treat their waste themselves where they produce it. But more typically waste moves from where it is produced to where it is reused, recycled, recovered or disposed of. This can involve a range of public and private waste-operators, and different categories of middle-men. Some will provide collection services, removing waste from where it is produced to where it is temporarily stored or treated. Some will provide long-distance transport services, as some streams of waste move from one country to another ('transfrontier waste shipments'). Some will provide broker services, putting waste-producers in touch with those who collect and treat waste. All these activities will occur along the waste chain shown in Figure 1.

Figure 1: The waste chain



### 4.3. Objectives of EU waste laws

The objectives of EU waste laws can be described in terms of:

- **A waste pyramid;**
- **The circular economy** and
- **A closed loop.**

For several decades, EU waste laws have reflected a **pyramid** of priorities. As far as possible, waste is to be prevented. If this is not possible, waste is to be subject to, in order of priority, re-use, recycling, recovery and final disposal.

The concept of a **circular economy** is more recent – and more radical in ambition. Under a circular economy approach, the value of products and materials is maintained for as long as possible. Waste and resource-use are minimised, and when a product reaches the end of its life, it is used again to create further value.

The **closed loop concept** means always dealing with waste within a framework of rules, saving materials and energy where that is required and, as a minimum, avoiding harm to the environment and human health.



More concretely, EU waste laws aim to:

- Define what waste is – see Box 3;
- Prevent waste from being unnecessarily generated and encourage it to be re-used and re-cycled;
- Ensure that the producers or holders of waste pay for the costs of dealing with it in line with the polluter pays principle;
- Ensure that producers or holders of waste are responsible for safely dealing with it;
- Prevent waste from being dumped or dealt with in an uncontrolled manner;
- Ensure that the handling of waste does not cause nuisances or harm the environment or human health;
- Control the collection and movement of waste, including when it crosses frontiers;
- Control facilities used for storing, sorting, re-using, re-cycling or disposing of waste.

### Box 3: What is waste? What are by-products? When does waste become a product?

Directive 2008/98/EC on waste, the EU Waste Framework Directive, defines 'waste' to mean 'any substance or object which the holder discards or is required to discard'.

Thus, any substance or object can become waste; its classification as waste or non-waste depends on the specific factual circumstances.

This definition has been interpreted in a broad manner by the Court of Justice of the European Union. The Court has also interpreted additional specific terms such as 'discard', 'substance' and 'object' in a broad manner<sup>17</sup>. For example, discard can involve a positive, neutral, or negative commercial value. No distinction is made based on whether the substance or object is marketable or not. Discard can be intentional or deliberate on the part of the holder or unintentional, involuntary or accidental or even occur with or without the knowledge of the holder. The storage location of a material does not influence whether it is a waste or not.

Certain properties make waste hazardous. For example, substances or preparations that according to specific criteria can be considered 'highly inflammable' or 'carcinogenic' are classified as hazardous waste. More stringent legal requirements apply to such waste.

Article 28 of the EU Waste Shipment Regulation 1013/2006 requires in the case of disagreement between the competent authorities concerned with respect to the classification as waste or non-waste, or its classification as hazardous or non-hazardous, that the more stringent rules apply, i.e. the subject-matter shall be treated as 'waste' or 'hazardous waste'.

The EU Waste Framework Directive draws a distinction between waste and by-products which are not waste. By-products are substances or objects resulting from a production process not primarily aimed at producing this substance or object. For example, sugar or malt production generates substances later used as feed either directly by farmers or the animal feed industry. To qualify as a by-product, a substance or object must meet four conditions:

- Its further use is certain;
- It can be used directly without any further processing other than normal industrial practice;
- Its production is an integral part of a production process;

<sup>17</sup> Guidance of the European Commission, DG Environment has been published on <http://ec.europa.eu/environment/waste/framework/guidance.htm>.

- Its further use is lawful.

Waste can cease to be waste and obtain the status of a product. According to the EU’s end-of waste criteria, this occurs when the waste has undergone a recovery operation. Moreover, the substance or object must be used for specific purposes and there must be a market or demand. The substance or object must be lawful and not constitute a threat to the environment or human health.

#### 4.4. Main EU laws on waste

The main EU waste laws comprise:

- The **Waste Framework Directive**<sup>18</sup>, which sets out the main principles and obligations of waste management;
- A series of instruments focusing on **specific waste streams** such as:
  - **Packaging waste**<sup>19</sup>;
  - **Electrical and electronic waste (WEEE)**<sup>20</sup> and
  - **End-of-life Vehicles**<sup>21</sup>;
- The **Transfrontier Waste Shipments Regulation**<sup>22</sup>;
- The **Landfill Directive**<sup>23</sup>.

These are supplemented by a number of other more general instruments which include provisions regulating waste-treatment processes such as incineration or require waste-treatment projects to undergo prior environmental impact assessment (EIA) with public consultation.

The European Union is a party to a number of international conventions dealing with waste, the most important of which is the **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal**, usually known as the **Basel Convention**. This amongst other things aims to prevent transfer of hazardous waste from economically developed to less developed countries.

#### 4.5. Outline of key waste obligations and corresponding infringements

Table 3 gives a non-exhaustive overview of some key obligations and corresponding infringements:

Table 3: Examples of key waste obligations and corresponding infringements

Type of activity	Obligations	Some corresponding infringements
<b>Obligations on persons generating, holding, collecting and transporting waste within a Member State</b>		

<sup>18</sup> Directive 2008/98/EC on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3–30.

<sup>19</sup> Directive (EU) 2018/852 amending Directive 94/62/EC on packaging and packaging waste, OJ L 150, 14.6.2018, p. 141–154.

<sup>20</sup> Directive 2012/19/EU on waste electrical and electronic equipment (WEEE), OJ L 197, 24.7.2012, p. 38–71.

<sup>21</sup> Directive 2000/53/EC on end-of life vehicles, OJ L 269, 21.10.2000, p. 34–43.

<sup>22</sup> Regulation (EC) No 1013/2006 on shipments of waste, OJ L 190, 12.7.2006, p. 1–98.

<sup>23</sup> Council Directive 1999/31/EC on the landfill of waste, OJ L 182, 16.7.1999, p. 1–19.



Generating and holding waste	Obligation on all persons to respect a prohibition on the abandonment, dumping or uncontrolled management of waste	Littering Fly-tipping waste
	Obligation on all persons to respect requirements to either lawfully treat waste, or transfer to a lawful treatment facility of collector	Operating a waste facility unlawfully Transferring waste to an unregulated waste collector or unregulated waste treatment facility
	Obligation on waste-producers and holders to pay the costs of waste management in line with the polluter-pays principle	Circumventing waste management costs by illegally disposing or transferring waste
Collecting and transporting waste within a Member State	Obligation on waste-collectors to register their activities or obtain a permit	Providing waste collection and transport services without being registered or holding a permit
<b>Obligations in relation to transfrontier movement of waste</b>		
Shipment of waste	Obligation to draft a written contract for shipments with notification requirement	Shipping waste without a written contract or with a falsified one
	Obligation to obtain a permit or to register	Operating without a permit or registration
	Obligation to respect a prohibition on mixing various types of waste during a waste shipment	Illegally mixing various types of waste
	Obligation to complete specific documents	Shipping waste without any documents or using false documents
	Obligation to provide financial guarantee for shipments with a notification requirement	Shipping waste without ensuring a financial guarantee
Import of waste	Obligation concerning prior notification and consent	Importing waste without prior notification and consent
Export of waste	Obligation concerning prior notification and consent	Exporting waste without prior notification and consent
<b>Obligations in relation to waste facilities</b>		
Construction of a waste facility	Obligation on project developers to obtain a prior development consent, including construction permit	Constructing a facility without prior consent
Operation of a waste facility	Obligation on a facility operator to comply with the conditions of the operating permit	Operating a facility in violation of permit conditions

	Obligation on a facility operator to accept only those wastes allowed by the permit	Unlawfully accepting non-permitted waste - for example, accepting toxic waste where only household waste is allowed
	Obligation on a facility operator to keep a waste register	Failing to keep records or falsifying records
	Obligation on all persons to manage waste without endangering human health and harming the environment	Failing to prevent leakage to the subsoil and underground, leading to pollution of ground water
End of operations	Obligation on a facility operator to close the site in accordance with the conditions in the permit	Abandoning the waste facility without proper end-of-life management

#### 4.6. The Environmental Crime Directive, other crime categories and the Environmental Liability Directive

The Environmental Crime Directive requires Member States to treat as criminal two main categories of waste-related infringements – see Box 4 below. The first focuses on illegal waste management and the second on illegal waste shipments. As can be seen, each category covers a potentially wide set of waste infringements.

##### Box 4: Provisions of the Environmental Crime Directive relevant to waste infringements.

- Article 3 (b): the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care 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;
- Article 3 (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.

Activities constituting infringements of waste laws may at the same time also infringe other laws. Examples include

- Infringements of non-environmental provisions in penal codes - concerning fraud or money-laundering, for example;
- Tax evasion;
- Infringements of employment, anti-slavery and social-security laws;
- Infringements of health and safety regulations.



The Environmental Liability Directive<sup>24</sup> creates obligations to prevent or remediate 'environmental damage' caused by certain occupational activities like waste management. 'Environmental damage' covers damage to protected species and habitats, water and land. Perpetrators of infringements may also be liable for prevention and remediation under the Environmental Liability Directive.

#### 4.7. Factors contributing to waste crime and related infringements

Factors contributing to waste crime and related infringements include:

- The potential for making large illicit profits. These can derive from:
  - Payments for non-compliant waste services that are received from waste producers and holders;
  - Avoidance of compliance costs, such as anti-pollution investments;
  - Avoidance of waste levies;
  - Avoidance of business taxes and levies;
  - Fraudulent use of public money – sometimes called 'eco fraud', as where subsidies for waste recovery are abused.
  
- The lack of serious barriers to market-entry – for example, it is often easy for individuals and companies to register as waste collectors;
- The length of the waste chain, the ease of movement of waste along the chain, and the number of actors involved;
- The potential for waste crime and infringements to co-exist with legitimate-seeming waste operations, for example systematic infringements may be committed by companies holding waste permits;
- The potential to mix waste crime and infringements with other types of crime and infringements in the 'twilight economy' – for example, an unlawful waste facility using an unregistered and exploited workforce ('black labour') and being associated with social security fraud;
- The mobility of waste, and the potential of waste crimes and infringements to occur over a vast territorial area;
- The potential to exploit the definition of 'waste': waste may be misrepresented as by-products, for instance, or unlawfully declassified as waste after a treatment process;
- The potential for exploiting different levels of stringency in the rules applicable to different kinds of waste. For example, construction and demolition waste can benefit from less stringent disposal requirements on the basis that it is inert. However, sites for its disposal may be used for clandestine disposal of other wastes;
- The potential to exploit new opportunities created by changes in waste laws and policy. For example, the circular economy aims to create new markets and opportunities for legitimate businesses, but incentives to recover more materials from waste and market and use these as non-waste to replace primary raw materials may trigger illegal and unsafe recycling processes;

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<sup>24</sup> Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30.4.2004, p. 56–75.

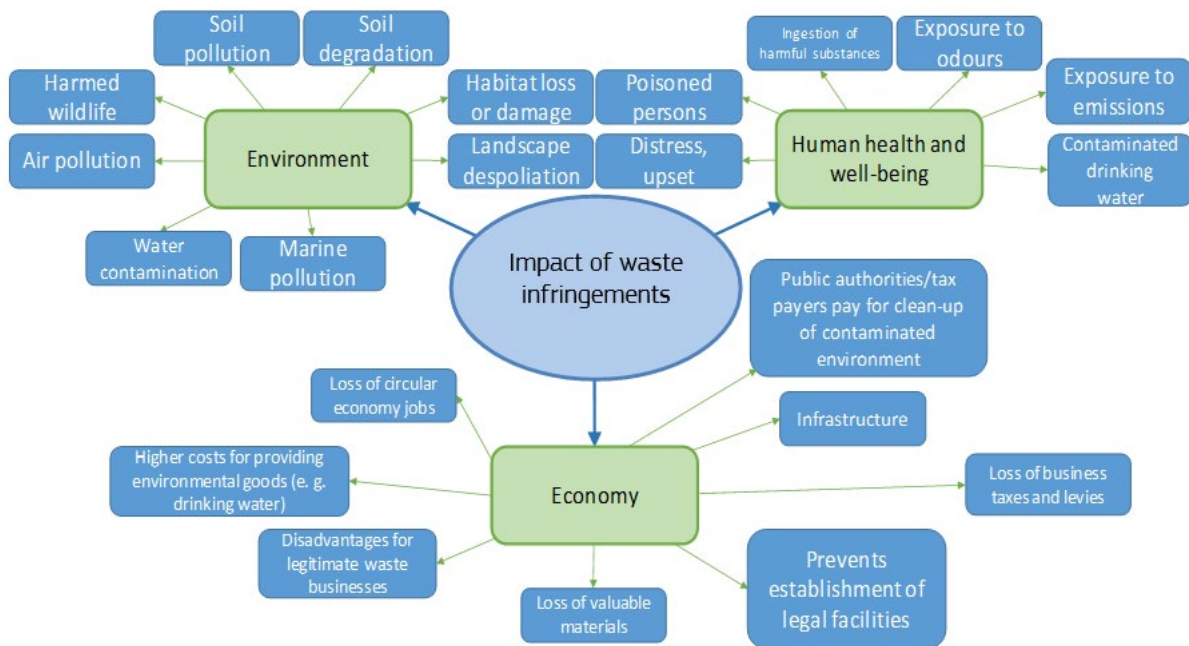


- Weaknesses in environmental compliance assurance.

#### 4.8. The negative impacts and seriousness of waste crime and related infringements

Waste crime and related infringements have negative effects on the environment, human health and well-being, and the economy, which are summarised in Figure 2.

Figure 2: Negative impacts of waste crime and related infringements



Examples showing the seriousness of these negative impacts are set out in Box 5.

#### Box 5: Examples of the seriousness of waste crimes and related infringements

- According to a 2021 study<sup>25</sup>, the annual revenues derived from the illicit waste market in the EU range between €4 and €15 billion (mid-point figure of €9.5 billion). The study identifies a growth in the revenue estimates of the EU illicit waste market for both hazardous and non-hazardous waste and indicates that, without more effective measures put in place, the illegal shipment of plastic waste, end-of-life vehicles and e-waste are expected to further increase.
- According to the Europol's 2021 EU Serious and Organised Crime Threat Assessment, environmental crime, in particular waste crime, continues to be a serious threat. The report indicates that the COVID-19 pandemic has led to a considerable increase in the output of sanitary and medical

<sup>25</sup> Mapping the risk of serious and organised crime infiltrating legitimate businesses, final report prepared for Directorate-General for Migration and Home Affairs of the European Commission (2021), edited by Shann Hulme, Emma Disley and Emma Louise Blondes, p. 40.





waste, posing a significant risk to the environment and public health<sup>26</sup>.

- Important volumes of waste are exported outside the EU, often without sufficient control of the conditions under which these waste are managed in the destination countries, especially in developing countries. This can harm the environment and public health in destination countries and be a loss of valuable resources for the EU industry. IMPEL has estimated that up to 25-30% of the trans-boundary movement of hazardous waste occurs in violation of the European Waste Shipment Regulation No 1013/2006 in the period 2008-2015<sup>27</sup>, while EnviCrimeNet indicates that illicit trafficking in waste roughly amounts to 20 % of all the waste shipments in the EU<sup>28</sup>. Large amounts of waste are unlawfully exported from OECD countries to transition and developing countries, such as China, other Asian and West African countries.
- If illegally shipped waste is detected, the EU Waste Shipment Regulation requires repatriation of the waste. This repatriation has primarily to be paid by those arranging for the shipment. In cases where such persons are not available or insolvent, the country of origin has to pay the costs which can be very high. Repatriation costs are made up of shipment fees, container rental and required treatment activities following on the return of the waste to its country of origin. An example is a case of repatriation of hazardous waste destined for Nigeria via the United States back to the port of Rotterdam, costing €1.2 million.
- The Countering WEEE Illegal Trade project (CWIT) has estimated that mismanagement of discarded electronic equipment within Europe involves ten times the volume of WEEE shipped to foreign shores in undocumented exports<sup>29</sup>. It estimated in 2015 that the then 28 EU Member States exported about 400 thousand tonnes of undocumented WEEE mixed with used electrical and electronic equipment every year. Another EU funded research project estimated that illegal export of waste electrical and electronic equipment (WEEE) from the EU to China caused a loss of 14 900 full-time equivalent jobs within the EU, resulting in an estimated loss of economic value added of around EUR 780 million in 2012<sup>30</sup>.
- During the Operation Green Tuscany coordinated in 2019 by Europol and Eurojust, 96 individuals faced charges because of an alleged participation in an organized criminal group illegally transporting plastic waste from Italy to China via Slovenia. Slovenian companies were found to provide Italian companies with documents attesting that the waste was recycled before being sent to China. 560 illegal plastic waste shipments of a total value of €8 million were detected<sup>31</sup>.

## 4.9. Testing against the waste crime scenario

**Table 4: Testing against the scenario**

<sup>26</sup> Europol, EU Serious and Organised Crime Threat Assessment. A Corrupting Influence: the infiltration and undermining of Europe's economy and society by organized crime (EU SOCTA 2021), p. 54.

<sup>27</sup> See for details IMPEL-TFS Enforcement Actions, [Project Report 2014-2015. Enforcement of the EU Waste Shipment Regulation](#) and IMPEL (2012) TFS Enforcement Actions III Project Report (March–October 2012) as well as Commission Staff Working Document on the evaluation of the Waste Shipment Regulation, SWD(2020) 26 final.

<sup>28</sup> EnviCrimeNet, Report on Environmental Crime, The Hague, 2016.

<sup>29</sup> Countering WEEE Illegal Trade (CWIT), [Final Summary Report: Market Assessment. Legal Analysis. Crime Analysis and Recommendations Roadmap](#), 2015, p. 16.

<sup>30</sup> European Union Action to Fight Environmental Crime (EFFACE), European Policy Brief, Policy Brief 3: Quantifying the Impacts of Environmental Crime, December 2015, p. 8.

<sup>31</sup> Europol, From trash to treasure: the growing illegal waste trafficking market, September 2019; European Court of Auditors, Review No 04/2020: EU action to tackle the issue of plastic waste, p. 44.



Scenario	Comments
<b>Problematic waste facility</b>	<ul style="list-style-type: none"><li>• The following EU legislation is relevant to the scenario:<ul style="list-style-type: none"><li>○ Waste Framework Directive,</li><li>○ Landfill Directive;</li><li>○ Waste Shipment Regulation;</li><li>○ Article 3(b) and 3(c) of the Environmental Crime Directive;</li><li>○ Environmental Liability Directive.</li></ul></li><li>• A contributing factor is the potential for large illicit profits.</li></ul>



## 5. Wildlife, wildlife laws and wildlife infringements

### 5.1. Introduction

For purposes of this Chapter, 'wildlife' has a broad meaning. It covers wild animals and plants, together with the natural habitats in which they are found. To understand wildlife crime and related infringements, it is important to understand why and how wildlife is protected in law at European level. This Chapter therefore begins with a description of the background to wildlife conservation before setting out the objectives of EU wildlife laws, presenting the main EU laws, and providing an outline of key obligations and corresponding infringements. As with waste crime and related infringements, factors contributing to wildlife crime and related infringements are described, and the negative impacts highlighted. The Chapter closes by testing its content against the wildlife crime scenarios presented in Chapter 2.

### 5.2. Background to wildlife conservation

Human societies harm wildlife through habitat destruction and damage; the destruction and over-exploitation of wild plants and animals, including through trade; and the transfer of plants and animals into environments where they become invasive ('invasive alien species').

There are several drivers of these pressures, including:

- The economic incentives to convert natural habitats to different or more intensive land-uses;
- The impulse to remove individuals or populations of certain animal species seen as competing with economic interests – for example, large carnivores such as wolves in livestock-raising areas;
- The economic gains to be obtained from exploiting wild plants and animals for their economic value - for example, elephants for their ivory and tropical hardwoods for their timber;
- The impulse to exploit animals for other purposes, such as recreational hunting.

Conserving wildlife means managing these drivers and pressures. It is at once a local, national, continental and global challenge, since the drivers and pressures inter-act across these different scales – for instance, through trade-flows.

### 5.3. Objectives of EU wildlife laws

Several EU wildlife laws have been adopted since the 1970s. Taken together, the obligations contained in or deriving from them are both inward- and outward-facing – that is, they address drivers and pressures affecting both wildlife found within the European Union and wildlife found elsewhere on the planet.

There are several arguments for having inward-facing EU wildlife obligations. Wildlife has been recognised as a common European heritage requiring common conservation efforts. Furthermore, many European wildlife species are migratory: individual Member States cannot properly conserve them if pressures are not managed elsewhere along the species' migratory routes. Intra-European trade, facilitated by the internal market, can also act as a pressure on species which are vulnerable to exploitation.



As for outward-facing obligations, Europe is a trade bloc, operating a single set of external trade controls, i.e. obligations related to imports and exports. Without wildlife obligations, Europe could harm wildlife elsewhere through wildlife imports that encourage illegal or damaging practices in third countries – poaching and illegal logging being prime examples.

Against this background, the main objectives of EU wildlife laws are to:

- Protect the most important European wildlife sites;
- Protect the European breeding and resting places of endangered species like bats and sea-turtles;
- Protect Europe's endangered species from illegal hunting, killing, capture and trade;
- Prevent the introduction of invasive alien species and manage their spread;
- Manage wildlife trade with third countries.

#### 5.4. Main EU wildlife laws

The following are the main EU wildlife laws:

- **The Wild Birds Directive**<sup>32</sup> requires Member States to establish special protection areas (SPAs) for the benefit of certain wild birds. These form part of the Natura 2000 site network. It also prohibits the killing of wild birds, and trade in wild birds, and regulates hunting. Exceptions – called derogations – are subject to strict conditions.
- **The Habitats Directive**<sup>33</sup> requires Member States to protect sites for certain habitats and animal and plant species as part of the Natura 2000 site network. It also prohibits the killing of certain animal species and trade in them, and prohibits damage to their breeding and resting places. Derogations are subject to strict conditions.
- **The Invasive Alien Species Regulation**<sup>34</sup> sets obligations to prevent the introduction of alien species and control existing occurrences of alien species.
- **The CITES Regulation and regulations implementing it**<sup>35</sup>. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**) restricts wildlife trade and these regulations aim to implement it uniformly in all Member States.
- **The Timber Regulation**<sup>36</sup>. In order to prevent sales of illegal timber and timber products in the EU market, the EU has adopted the Timber Regulation. It lays down obligations for those who place timber and timber products on the market.

The European Union is a party to several international conventions dealing with wildlife, including the following:

<sup>32</sup> Directive 2009/147/EC on the conservation of wild birds.

<sup>33</sup> Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

<sup>34</sup> Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species.

<sup>35</sup> Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 061 3.3.1997, p. 1-69.

<sup>36</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, OJ L 295, 12.11.2010, p. 23-34.

- The Bern Convention on the Conservation of European Wildlife and Natural habitats ('the **Bern Convention**') is a binding international convention established by the Council of Europe, and covering most of the natural heritage of the European continent and extending to some African states. It closely mirrors provisions of the Birds and Habitats Directives.
- The Bonn Convention on the Conservation of Migratory Species of Wild Animals ('the **Bonn Convention**' or 'CMS') is a United Nations treaty aimed at providing a legal foundation for internationally coordinated conservation measures throughout a migratory range.

International conventions provide a common framework for EU Member States and third countries to deal with similar wildlife crimes and infringements. They may also include secretariat and other structural arrangements for sharing best practices and assisting in efforts to combat crimes and infringements that involve several countries.

Of interest in the context of this Guidance is work done under CITES and the Bern Convention to combat wildlife crime – see Box 6 below.

**Box 6: Focus of Bern Convention on illegal killing, trapping and trade of wild birds**

Several influential recommendations adopted under the Convention address wildlife crime, see for instance:

- Recommendation No. 155 (2011) of the Standing Committee, adopted on 2 December 2011 on the illegal killing, trapping and trade of wild birds;
- Recommendation No. 164 (2013) of the Standing Committee, adopted on 6 December 2013, on the implementation of the Tunis Action Plan 2013-2020 for the eradication of illegal killing, trapping and trade of wild birds, and
- Recommendation No. 177 (2015) on the gravity factors and sentencing principles for the evaluation of offences against birds, and in particular the illegal killing, trapping and trade of wild birds.

### 5.5. Outline of key wildlife obligations and corresponding infringements

Obligations deriving from EU wildlife laws cover many different types of activities and corresponding infringements can take many forms. The following tables provide a non-exhaustive outline of some of the main obligations, together with examples of corresponding infringements.

**Table 5: Obligations related to protection of European wildlife sites**

Type of activity	Obligations	Examples of infringements
Land-management or construction	Obligation on everyone not to carry out a project damaging to a Natura 2000 site without having obtained a prior authorisation.	Damaging a natural habitat by carrying out an unauthorised project.
Land-management or construction	Obligation on everyone not to cause damage to the breeding or resting place of a protected species	Damaging a breeding site of resting place by carrying out an unauthorised project.



Type of activity	Obligations	Examples of infringements
	without a prior authorisation.	

These obligations mainly derive from the Wild Birds Directive and the Habitats Directive. Some obligations relate to Natura 2000 sites; others to breeding sites and resting places of protected species that are found outside of Natura 2000. The EU laws operate on the basis that damage is prohibited unless there is lawful prior authorisation. The absence of a prior authorisation or contravention of the conditions attached to a prior authorisation will usually be key aspects of any infringement.

Table 6: Obligations related to the killing and capture of wildlife in Europe

Type of activity	Obligations	Examples of infringements
Use of poisons	Obligation on everyone to respect a prohibition on the deliberately killing of wild birds by any method	Killing of wild birds through intentional use of poisoned bait
	Obligation on everyone to respect a prohibition on deliberately killing certain other protected animals by any method	Killing of protected animals through intentional use of poisoned bait
Shooting	Obligation on everyone to hunt only huntable species of wild birds and then only during the hunting season	Hunting of wild birds outside of the hunting season or hunting of species that are not on a huntable list.
	Obligation on everyone to respect a prohibition on deliberately killing protected animals	Poaching of a protected animal species
	Obligation on everyone to respect a prohibition on the use of certain means for killing, such as automatic weapons.	Hunting wild birds during the hunting season with a prohibited weapon
Trapping	Obligation on everyone to respect a prohibition on the deliberate capture of wild birds by any method	Trapping wild birds
	Obligation on everyone to respect a prohibition on the use of non-selective means for capture, such as certain nets and traps.	Trapping wild birds using a non-selective method.

These obligations derive from the Wild Birds Directive and the Habitats Directive. Hunting of wild birds is allowed under certain conditions. Apart from this, the EU laws allow killing and capture to take place only on the basis of a prior authorisation. The absence of a prior authorisation – or contraventions of the conditions attached to a prior authorisation – will usually be a key aspect of the infringement.

**Table 7: Wildlife trade obligations involving third countries**

The relevant EU obligations are found in the CITES Regulation.

<b>Type of activity</b>	<b>Obligations</b>	<b>Examples of infringements</b>
Importing listed species	Obligation to obtain an import permit or submit an import notification for species that can be imported.  Obligation to respect the prohibition on importing certain species.	Importation without prior consent or notification or contrary to prohibition.
Exporting listed species	Obligation to obtain export permit or notify export	Export without prior consent or notification.
Purchasing or selling listed species	Obligation to respect prohibition on purchase, use for commercial gain or selling	Purchasing or selling listed species, for example via the Internet.

**Table 8: Timber-trade obligations**

The main obligations are found in the Timber Regulation.

<b>Type of activity</b>	<b>Obligations</b>	<b>Examples of infringements</b>
Placing timber on the market	Obligation to respect a prohibition to place illegally harvested timber and timber products on the market	Place illegally harvested timber on the market; Use of false documentation.
	Obligation for operators to exercise due diligence in sourcing timber and maintain and evaluate a due diligence system or use the system of a monitoring organisation	Failure by an operator to use due diligence or to use it correctly.
Trading timber and timber products	Obligation to keep 5 years of records showing who supplied the timber and to whom it was supplied	Discrepancies between the different records in a chain
	Obligation to provide the records to authorities on request	Failure to respond to an official request for records
Running a monitoring organisation	Obligation to maintain and evaluate a due diligence system	Failure to operate an adequate due diligence system
	Obligation to verify proper use of	Failure to verify proper use by the operators.

Type of activity	Obligations	Examples of infringements
	the system by operators	
	Obligation to take action when an operator misuses the system	Failure to act on evidence of misuse by operators.

### 5.6. The Environmental Crime Directive, other crime categories, EU Action Plan against Wildlife Trafficking, and the Environmental Liability Directive

The Environmental Crime Directive requires Member States to treat as criminal three main categories of wildlife infringements – see Box 7 below. Article 3(f) relates to crimes of the kind featuring in the scenario 'Illegal killing of wild birds' in Chapter 2 and Article 3(g) relates to crimes of the kind featuring in the scenario 'Illegal trade in wildlife'.

#### Box 7: Provisions of the Environmental Crime Directive relevant to wildlife infringements

- Article 3 (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;
- Article 3 (g) the 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;
- Article 3 (h) any conduct which causes the significant deterioration of a habitat within a protected site.

Within and outside the European Union, wildlife infringements are sometimes linked to other types of infringements not specifically aimed at protecting wildlife. Examples include infringements of:

- Cross-compliance conditions under the Common Agricultural Policy (CAP) – which may be relevant to cases of habitat destruction;
- Laws prohibiting the use of certain chemicals - which may be relevant in cases of illegal wildlife poisoning, for instance;
- Animal health laws;
- Criminal provisions prohibiting forgery and the falsification of documents – for example, the illegal trade in wildlife can involve a falsification of documents in order to hide the nature of the traded objects;
- Rules relating to online sales;
- Rules concerning corruption or money-laundering.





In 2016, the Commission adopted an Action Plan against Wildlife Trafficking<sup>37</sup>. It set out a comprehensive set of measures against wildlife crime inside and outside the EU. It was built around three pillars – prevention, stronger enforcement and global partnership. The first pillar, prevention, included measures to reduce demand for and supply of illegal wildlife products, both within the EU and globally. The second pillar was focused on better implementation and enforcement of existing instruments and stepping up the fight against organised criminal groups. The third pillar was aimed at strengthening the global partnership of source, consumer and transit countries against wildlife trafficking<sup>38</sup>.

The Environmental Liability Directive – already mentioned in Chapter 4.6 – creates obligations to prevent or remediate damage to protected species and habitats caused by certain occupational activities. Perpetrators of wildlife crimes and infringements may therefore be required to take preventive and remedial measures under this instrument.

### 5.7. Factors contributing to wildlife crime and related infringements

The following factors contribute to wildlife crime and related infringements:

- The economic gain to be made from the infringement;
- The social acceptance of certain infringements. For example, in some parts of Europe, capturing wild birds, either for food or to keep them in captivity, has been a traditional practice and some people do not agree with its prohibition and criminalisation;
- Ignorance or insufficient awareness of the illegality. For example, tourists returning from abroad do not always realise that importing souvenirs containing wildlife derivatives such as ivory or the skin of reptiles constitutes an infringement of EU wildlife rules;
- The perceived (or real) low risk of detection and low penalties. The probability of detection and penalties are substantially lower for wildlife crimes than for drug trafficking, for instance.

### 5.8. Negative impacts and seriousness of wildlife crimes and infringements

Compliance with EU wildlife obligations is important not only in order to achieve the aims of EU wildlife laws, but also to prevent or minimise wider adverse impacts on the environment, human health and the economy.

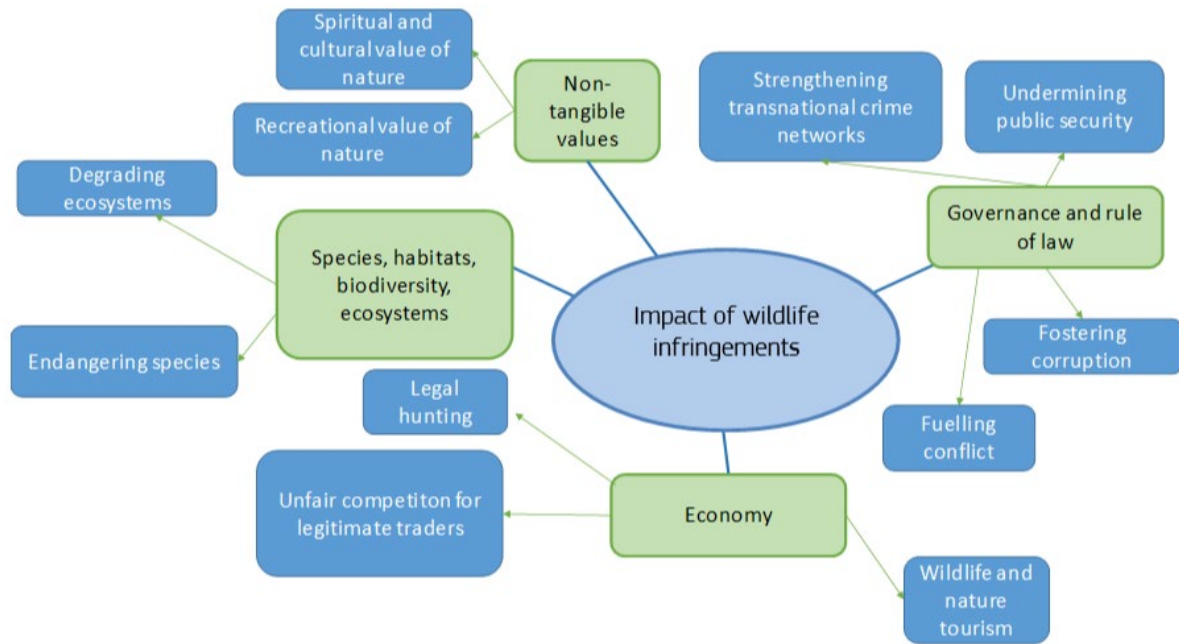
Figure 3 shows the types of impacts that wildlife crime can have.

Figure 3: Negative impacts of wildlife crime

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<sup>37</sup> COM/2016/087 final.

<sup>38</sup> At the time of finalisation of this guidance document, the Action Plan against Wildlife Trafficking was subject to an evaluation and revision process.



Illegal killing and capturing of birds is still a serious pan-European problem, with clear regional patterns and a considerable negative impact on biodiversity across the continent. Birds are illegally killed or captured for sport and food purposes as well as for predator/pest control<sup>39</sup>.

The EU is a market, transit and source region for wildlife trafficking<sup>40</sup>:

- The EU is a major end-market for illegal wildlife products imported from third countries. The EU's significance as a market for illegal wildlife products is evident from large seizures at the EU borders;
- The EU is also a region through which significant volumes of some of these products transit, particularly between Africa and Asia. Illegal wildlife products are moved through the EU via its ports, airports and, increasingly, mail centres. They include ivory, rhino horns, pangolin scales and dead seahorses;
- To a lesser degree, the EU is also a source region for wildlife products exported illegally to non-EU countries. One problem the EU currently faces as a source region for illegal export of wildlife is the large-scale smuggling of European eels. Furthermore, ivory items originating in the EU also feature among the items illegally exported to Asia. Finally, there are serious concerns about trade in bird species in the EU.

<sup>39</sup> Brochet, AL et al., "Illegal Killing and Taking of Birds in Europe Outside the Mediterranean: Assessing the Scope and Scale of a Complex Issue.", *Bird Conservation International*, 29(1), 10–40, 2019, [Illegal killing and taking of birds in Europe outside the Mediterranean: assessing the scope and scale of a complex issue | Bird Conservation International | Cambridge Core](#).

<sup>40</sup> Nellemann, C. (Editor in Chief); Henriksen, R., Kreilhuber, A., Stewart, D., Kotsoyova, M., Raxter, P., Mrema, E., and Barrat, S. (Eds). 2016. *The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security*. A UNEP-INTERPOL Rapid Response Assessment. United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses, p. 7.

Limited data mean that the full scale of the problem is difficult to quantify. Box 8 provides some indications.

**Box 8: Quantitative estimates on the extent of wildlife crime**

- It is estimated that 11–36 million birds per year are killed/captured illegally in the Mediterranean region, many of them while on migration<sup>41</sup>. For Northern and Central Europe and the Caucasus, Birdlife International puts the figure at 0.4 -2.1 million birds killed or captured illegally annually<sup>42</sup>.
- The global illegal wildlife trade is estimated at 7–23 billion USD per year<sup>43</sup>.
- It is estimated that between 10–30% of the global timber trade is conducted illegally<sup>44</sup>.
- Research by the NGO International Fund for Animal Welfare on online wildlife trade in protected species in France, Germany, Russia and the United Kingdom, showed that 11,772 endangered and threatened wildlife specimens were offered for sale over a period of six weeks via 5,381 advertisements and posts on 106 online marketplaces and four social media platforms. They were worth almost 4 million USD<sup>45</sup>.
- Between 2007 and 2016, Belgian authorities reported a total of 1,264 seizures related to illegal wildlife trade in the EUTWIX database. 69% of these seizure records involved species of fauna, and 31% involved species of flora. 92% of the countries of export were African countries. The main commodity groups seized in Belgium were reptile bodies, parts and derivatives, ivory, medicinals, live plants and mammals. 94% of the seizures were reported as specimens<sup>46</sup>.

**5.9. Testing the content against the two wildlife crime scenarios**

**Table 9: Testing against the scenarios**

Scenario	Comments
<b>Illegal killing of wild birds</b>	<ul style="list-style-type: none"> <li>• The following laws are relevant:                             <ul style="list-style-type: none"> <li>○ Wild Birds Directive</li> <li>○ Bern Convention;</li> <li>○ Article 3(f) of the Environmental Crime Directive;</li> <li>○ Legislation on chemicals;</li> </ul> </li> </ul>

<sup>41</sup> Brochet, A. et al., “Preliminary assessment of the scope and scale of illegal killing and taking of birds in the Mediterranean, Bird Conservation International”, 26(1), 1-28, 2016.

<sup>42</sup> Brochet, AL et al., “Illegal Killing and Taking of Birds in Europe Outside the Mediterranean: Assessing the Scope and Scale of a Complex Issue.”, Bird Conservation International, 29(1), 10–40, 2019, [Illegal killing and taking of birds in Europe outside the Mediterranean: assessing the scope and scale of a complex issue | Bird Conservation International | Cambridge Core](https://doi.org/10.1016/j.bci.2019.01.001), p.29.

<sup>43</sup> Nellemann, C. (Editor in Chief); Henriksen, R., Kreilhuber, A., Stewart, D., Kotsoyova, M., Raxter, P., Mrema, E., and Barrat, S. (Eds). 2016. The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security. A UNEP-INTERPOL Rapid Response Assessment. United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses, p. 7.

<sup>44</sup> See <https://www.traffic.org/what-we-do/species/timber>.

<sup>45</sup> International Fund for Animal Welfare (IFAW), Disrupt: Wildlife Cybercrime. Uncovering the scale of online wildlife trade, 2018, [https://d1jyxxz9imt9yb.cloudfront.net/resource/1/attachment/regular/IFAW\\_-\\_Disrupt\\_Wildlife\\_Cybercrime\\_-\\_English.pdf](https://d1jyxxz9imt9yb.cloudfront.net/resource/1/attachment/regular/IFAW_-_Disrupt_Wildlife_Cybercrime_-_English.pdf), p. 8.

<sup>46</sup> Musing, L., Norwicz, M., Kloda J. and K. Kecse-Nagy, Wildlife trade in Belgium. An analysis of CITES trade and seizure data, TRAFFIC and WWF report, October 2018, p. 52-56.



Scenario	Comments
	<ul style="list-style-type: none"><li>○ Environmental Liability Directive.</li><li>● A contributing factor is the competition between species protection and land-use.</li></ul>
<b>Illegal trade in wildlife</b>	<ul style="list-style-type: none"><li>● The following are relevant:<ul style="list-style-type: none"><li>○ CITES Regulation;</li><li>○ CITES;</li><li>○ Article 3(g) of the Environmental Crime Directive;</li><li>○ EU Action Plan Against Wildlife Trafficking;</li><li>○ Rules on forgery and falsification of documents;</li><li>○ Rules on online sales;</li></ul></li><li>● Third countries are involved;</li><li>● A contributing factor is economic gain made from the illegal trade.</li></ul>

## 6. Overview of challenges for competent authorities

### 6.1. Introduction

This Chapter looks at some of the main general challenges confronting competent authorities in the fight against environmental crime and related infringements. The challenges, which are summarised in Table 10 below, concern the tackling of individual infringements as well as the gaining of an overall understanding of why such infringements occur.

The challenges regarding individual infringements are presented in terms of three stages:

- The first, **discovery**, covers the confirmation of whether infringements have occurred and the identification of those responsible. It brings in the geographical dimension, the often clandestine nature of unlawful conduct, the possible different kinds of suspects, the gathering of evidence, and external threats to investigation;
- The second, **assessment**, involves weighing the seriousness of individual and linked infringements and identifying the precise liabilities of individual suspects;
- The third focuses on the challenges of acting against **individual suspects**.

Finally, the challenge of understanding why duty-holders act unlawfully is relevant for the framing of **general strategies** to combat environmental crime and related infringements.

Table 10: Challenges for authorities in dealing with infringements

<b>Stage (1): Discovering infringements</b>	<b>Stage (2): Assessing infringements</b>	<b>Stage (3): Acting against identified suspects</b>	<b>Strategic: Understanding why duty—holders act unlawfully</b>
<ul style="list-style-type: none"> <li>▪ Taking geography into account</li> <li>▪ Dealing with the clandestine nature of infringements</li> <li>▪ Dealing with multiple suspects</li> <li>▪ Evidence-gathering</li> <li>▪ Taking account of external challenges to</li> </ul>	<ul style="list-style-type: none"> <li>▪ Assessing the footprint and impacts</li> <li>▪ Examining individual obligations and corresponding liabilities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Need to follow legal procedures</li> <li>▪ Need to coordinate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Identifying drivers for infringements</li> <li>▪ Understanding attitudes and perceptions concerning the law</li> <li>▪ Understanding attitudes and perceptions concerning compliance monitoring and enforcement</li> </ul>



investigation			
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## 6.2. Challenges in discovering infringements

### 6.2.1. Taking geography into account

The geographical dimension relates to the locations where infringements are committed and where they have their effects.

Infringements may occur entirely within the territory of a single Member State, or they may involve a chain of illegality stretching across several Member States, or they may involve wrong-doing in third countries.

Competent authorities need to have the capacity to discover environmental crimes and related infringements across a Member State's entire territory, including physically remote areas – since infringements can occur anywhere. They also need to be able to take account of possible geographical distances between where infringements are committed and where they have their effects. Sometimes the effects will be noticed first, as where a river suffers a fish-kill from an illegal toxic discharge. It will then be necessary to trace the location where the infringement was committed.

Competent authorities also need to be able to discover infringements that straddle borders between EU Member States. Waste might, for example, be illegally exported from Member State A to Member State B, where it is illegally dumped. As a result, discovery will often require co-operation between authorities in different Member States.

Likewise, authorities need to be able to discover infringements involving third countries. Reptiles might, for example, be shipped from a third country to a Member State within the Union in violation of CITES, thus infringing both Union and third-country wildlife laws. Again, co-operation between states is likely to be important.

The geographical challenge extends to cyber-space. For example, use of the Internet may be a significant feature of wildlife trafficking, as where species prohibited to be sold under CITES are traded online.

### 6.2.2. Dealing with the clandestine character of infringements

Environmental crimes will generally have a clandestine character, i.e. be committed in secret and be intended to go undetected. However, the extent of the clandestine character may vary and some crimes and infringements are not committed in a clandestine manner at all:

- **Entirely illegal and clandestine:** An example is when duty-holders make no attempt to seek the required formal approval for an activity – by operating a clandestine illegal landfill, for instance. This is a 'needle in a haystack' challenge: not knowing whether a problem exists and where and how to detect it. The challenge for authorities is to learn about clandestine activities, detect offenders and secure evidence. Upstream intelligence may be important – for example, knowing about criminal waste enterprises and the scale of the waste they illegally handle, and being able to track their activities in space and time. Geospatial intelligence may be highly effective in detecting certain types of environmental infringements such as illegal landfills or illegal deforestation – see further below at 10.4.6;



- **Apparently legal but with clandestine illegality involved:** This situation arises when formal requirements appear to be observed, but cheating takes place through false representation and mis-reporting. An example would be misrepresentation of the amounts of waste being received at a permitted landfill. As a key formal requirement appears to be observed (i.e. the landfill holds a permit), it may not be obvious that there is any cheating. Collusion or corruption cannot be excluded, as where an authority grants a waste permit without ensuring that legal safeguards are in place, or turns a blind eye to detected problems. To counter this risk, it is important to have independent routine compliance monitoring, such as environmental inspections;
- **Openly illegal but tolerated or left unaddressed:** In such situations, there is no particular effort to hide the illegality, but the illegality is either tolerated by the competent authorities or the competent authorities, while wishing in principle to address the illegality, consider it impracticable to do so, because of lack of resources or for other reasons. One example would be an illegal landfill operated by a municipality or other public body, without any enforcement action being taken;
- **One-off unreported incidents:** It is possible that a generally law-abiding business will choose not to report a serious pollution incident that arose through negligence or carelessness.

### 6.2.3. Dealing with possible multiple suspects

Environmental crimes can be perpetrated by a range of offenders, including individuals, small groups, companies and other corporations, corrupt government officials, organised criminal networks, or combinations of all of these:

- **Individuals** can commit a wide range of minor and serious infringements and may play a range of roles in a chain of criminality - of poacher, smuggler, broker, exporter or importer in the case of the illegal wildlife trade, for example. Some individuals may be driven to commit environmental crimes and related infringements as a result of poverty and intimidation. Some may see activities such as hunting as a traditional customary entitlement, even when practised illegally;
- **Corporate bodies** such as private companies may exploit and damage the environment in order to generate more profit or reduce their costs, including through unauthorised natural resource exploitation, pollution crimes and illegal hazardous waste disposal. Investigating corporate crime poses particular difficulties as it is often unclear what the chain of command within the corporation is, which individuals played a role in the crime and what were the particular drivers;
- **Officials** of national governments and public bodies may commit environmental infringements either directly - by infringing environmental duties or omitting to act in conformity with them - or by facilitating infringements committed by other entities, such as private companies;
- **Organised criminal networks** are often involved in the most profitable environmental crimes, including illegal waste shipments and wildlife trafficking. They may sometimes act through corporate bodies.

Competent authorities need to be able to:

- Identify the different roles exercised in relation to the infringement: multiple offenders may be involved, including along a chain of transactions, as in waste trafficking;





- Take account of legal persons (companies) as offenders;
- Take account of public authorities as possible offenders;
- Be aware of the role of illegal networks and organised criminality.

#### 6.2.4. Evidence-gathering

Discovery is not only a matter of identifying clandestine and other illegal activities and of finding out where and by whom infringements have been committed. It also involves gathering evidence, i.e. factual elements to support criminal prosecution or some other form of enforcement. This means making records and carrying out analyses and keeping them for future use. Strict protocols may need to be followed to ensure that different pieces of evidence can be adduced in subsequent criminal proceedings or other interventions.

Evidence is necessary amongst other things to:

- Clarify the circumstances that point to an infringement;
- Identify the legal obligations that have been infringed;
- Establish the seriousness of the offence, including aspects such as culpability, harm or risk of harm and financial gain;
- Clarify the resulting liabilities;
- Establish the parties potentially responsible and
- Clarify aspects relevant to specific types of follow-up and enforcement.

Evidence-gathering may require technical expertise. That could be the case, for example, where the operator of a waste facility accepts toxic waste when only household waste is permitted. Authorities will require technical expertise to provide evidence of the toxic nature of the waste.

Differences between administrative and criminal proceedings will also have to be considered. Depending on the nature of the proceedings, there may be different burdens of proof on the authorities and different rules on the admissibility of evidence.

Investigators may be unfamiliar with certain technical requirements. Hence the need for specialised knowledge and training.

#### 6.2.5. Taking account of external challenges to investigation

The discovery of environmental crimes and related infringements needs to take into account several possible external hindrances to investigation.

Some challenges have to do with the frequent absence of human victims to report the crimes and infringements. Indeed, environmental crimes and infringements are sometimes described as 'victimless'. This is not always true, of course: there will sometimes be human victims, as is noted in Chapter 10.7.3.

Other challenges have to do with the physical environment. There may be special difficulties with carrying out physical checks on trains, for instance.

Further challenges relate to conduct by duty-holders, including:

- **Use of intimidation and violence.** Many inspectors report that they have been confronted with threats during the exercise of their inspection or investigative functions. There have even been instances in Europe of environmental law enforcement officials being murdered





in the course of their duties. Intimidation and violence may also be used against crime victims and witnesses in order to deter them from reporting or giving evidence;

- **Corruption**, as where duty-holders try to bribe officials involved in compliance assurance.

## 6.3. Challenges in assessing infringements

### 6.3.1. Assessing the footprint and impacts

It is important to understand:

- Where and at what scale infringements occur;
- When and with what persistence they occur, and their duration;
- What effects infringements have on the state of the environment and what impacts arise from those effects, as well as the intensity of these. The environmental damage caused should be assessed as accurately as possible. Proving the significance of the damage may be very important - for example, to convince a court of the seriousness of the crime committed.

There may be mass infringements. For example, an organised crime network may arrange for a large number of items of electronic equipment to be transported to third countries via different illegal shipments. Or organised illegal waste streams within and between Member States could take on a systemic character, resulting in a massive scale of illegality. This will increase the magnitude of the effects on the state of the environment and their impacts. Identifying the patterns of mass infringements is also important in terms of understanding the economic drivers of infringements (see Section 6.5 below).

The temporal aspects of infringements are also important. A one-off occurrence is not the same as an infringement which is continuing or periodically recurrent. The latter presents the authorities with an additional challenge – to make sure that the infringement is brought to an end and is not repeated.

### 6.3.2. Examining individual obligations and corresponding liabilities

It may be challenging to identify individual obligations and the corresponding criminal-law, administrative-law and civil-law liabilities that arise.

Competent authorities need to identify accurately the applicable individual obligations and to verify whether the suspected infringements amount to a violation of those obligations.

For the choice of enforcement response, it matters whether the liable act is a formal infringement not causing actual environmental damage or a substantial infringement resulting in serious environmental impacts.

Determining the precise nature of the liability of the suspect for the infringement and its impacts is also important. The suspect may be liable to face a variety of consequences. Some liabilities are strict – for example, provisions on strict liability for environmental damage under the Environmental Liability Directive do not oblige the authorities to demonstrate that the duty-holder acted deliberately or negligently: it is sufficient for them to show a causal link between the duty-holder's activities and the harm. For other liabilities, however – notably criminal liability, authorities need to prove the fault of the duty-holder. This can mean proving intent to commit the infringement.

Complications can arise where multiple suspects with different roles are involved in environmental crime and related infringements. Identifying their specific roles may be challenging but it is im-



portant in order to determine the culpability of every party involved and the appropriateness of subsequent enforcement actions.

## 6.4. Challenges in acting against identified suspects

### 6.4.1. Need to have followed strictly defined procedures

When acting against identified suspects, authorities must ensure that they have complied with legal rules that define their competences and the procedures to be observed. A failure to adhere to these rules and procedures can render the evidence collected legally unusable. For example, the conditions for enforcement officials to enter a private home or premises of enterprises, or seize particular objects are laid down in legislation and need to be strictly followed.

### 6.4.2. Need to coordinate between different enforcement professionals

Many professionals act along the compliance assurance chain: environmental inspectors, police, customs officers and prosecutors, to name just some. These will work for different authorities and institutions. Taking action against individual suspects is often likely to require close coordination between different authorities and different professionals. Sometimes coordination will need to extend across Member States and may even need to involve third countries - for example, in a case of illegal shipment of waste to a third country or illegal imports of animals violating CITES requirements.

## 6.5. Understanding why duty-holders act unlawfully

Identifying the reasons for infringements is important for defining appropriate strategic responses.

According to the very informal Chester Bowles model<sup>47</sup>, 20% of businesses will naturally comply with obligations, 5% will naturally infringe them, and 75% will comply depending on what they see the competent authorities do with the 5%. These percentages are debatable, but the model highlights the range of attitudes and perceptions that can be expected from duty-holders<sup>48</sup>.

The challenge of understanding why duty-holders act unlawfully is essentially one of understanding the drivers for infringing the law, duty-holder attitudes and perceptions concerning the law, and duty-holder attitudes and perceptions concerning compliance monitoring and enforcement. Drivers, attitudes and perceptions will vary according to the specific economic, social and cultural context.

### 6.5.1. Identifying the drivers for infringing laws

The drivers for infringing the law are those economic and other forces that induce duty-holders to commit infringements. Most infringements are the result of economic drivers.

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<sup>47</sup> Chester Bowles was a 20<sup>th</sup> century American regulator who offered the pithy opinion that: '20% of the regulated population will automatically comply with any regulation, 5% will attempt to evade it, and 75% will comply so long as they think that the 5% will be caught and punished.'

<sup>48</sup> See also an analysis of the economic rationale for companies externalizing environmental costs set out at section 2.2. of a study on the environmental liability of companies completed by Professor Michael Faure in 2020 for the European Parliament (PE 651.698- May 2020): [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/651698/IPOL\\_STU\(2020\)651698\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/651698/IPOL_STU(2020)651698_EN.pdf).



The drive for economic gain is especially important. Non-compliance may lead to substantial economic benefits for the duty-holder. The costs of compliance may be perceived as burdensome and devoid of benefits.

Sometimes, the driver is a quest for 'black money' (i.e. money that cannot be traced to a particular source or transaction). In order to counter this driver, the recovery of assets and a 'follow-the-money' approach are important.

Related to the drive for economic gain are factors such as poverty and lack of financial resources. Poverty may facilitate the recruitment of low-level perpetrators, for instance.

A lack of financial resources may translate into a lack of investment. In some situations, compliance with specific duties requires investments. For example, compliance with the conditions of a landfill permit may require the duty-holder to invest in the infrastructure of the landfill in order to avoid pollution of the subsoil and groundwater. Limited financial capacity (or a simple unwillingness to invest) may lead to a lack of investment which subsequently causes infringements. Unfortunately, cost-cutting often targets environmental investment.

The overall patterns of infringements may shed light on economic drivers. For example, drivers may be related to changes in legislation in countries outside of the Union or changes in prices or other economic factors that drive a particular type of criminality.

Economic gain and lack of financial resources are not, however, the only drivers of environmental crimes and related infringements. Some forms of wildlife crime are driven by a desire to conduct illegal recreational activities, hunting by using forbidden methods for instance.

To understand drivers, it is important for authorities to examine trends in infringements over extended periods of time and on a wide scale.

### 6.5.2. Understanding duty-holder attitudes and perceptions concerning the law

Attitudes and perceptions concerning the law may vary widely. At the positive end of the spectrum are duty-holders who perceive compliance with the law as delivering important benefits for their local communities and society at large – as where it safeguards local amenities and the health and well-being of the inhabitants. Also at this end are duty-holders who see the law as aligned with their business models or general standards of conduct. For example, a business model may regard sound waste management as desirable on economic grounds, and not just in order to comply with the law. Some business models are actually based on a 'beyond compliance' approach, i.e. they are aimed at achieving better environmental outcomes than would result from compliance.

At the negative end of the spectrum are criminal enterprises and networks who seek to break the law on a systematic basis, usually for financial gain. Also at this end of the spectrum are duty-holders who do not socially accept the law and hold it in contempt. This may be the case, for instance, with duty-holders who wish to practice hunting without respect for restrictions laid down in Union nature laws.

In between these ends of the spectrum are duty-holders who are:

- Uninterested in environmental laws or poorly informed about what compliance entails. Ignorance of the law is not an excuse, but it may explain why some infringements arise.
- Susceptible to committing opportunistic infringements. Circumstances may create an opportunity or a duty-holder may see one – for example, because it appears easy to falsify particular documents.

The attitudes and perceptions of the main duty-holders are not the only ones that matter. Those of the wider community, government and officialdom matter too. For example, if corruption of, and the

exercise of undue influence over, government and officials is a problem in a society, it is likely to be reflected in environmental crimes and related infringements. Even where there is no outright corruption, environmental crimes and infringements may be perceived as having a low importance, and this may contribute to poor levels of compliance.

The way in which the law itself is framed and communicated may be a contributory factor in infringements. Lack of clarity of legal definitions, for instance, may give rise to ambiguities which are exploited.

### 6.5.3. Understanding duty-holder attitudes and perceptions concerning compliance monitoring and enforcement

Attitudes and perceptions concerning the law are only one side of the coin. Attitudes and perceptions of how compliance is monitored and enforced are also important, especially if duty-holders lack a strong sense of the inherent value and purpose of obligations. Especially important are perceptions of the probability of infringements being discovered, prosecuted and made subject to sanctions. These perceptions may vary depending on the obligations, the community of duty-holders and the extent of the involvement of organised crime.

Attitudes and perceptions have several dimensions:

- Duty-holders' respect for authority;
- Non-governmental control: will third parties detect and disapprove of infringements;
- Perceived risk of being reported;
- Risk of inspection or other checks;
- Risk of detection;
- Selectivity in inspections or other checks: risk of being targeted;
- Risk of sanctions;
- Severity of sanctions;
- Perceived existence of free riders.

These dimensions mainly relate to how credible authorities are in the work they do to secure compliance.

The reference to 'free riders', i.e. those who feel free to infringe the law because most other duty-holders will bear the burden of compliance, touches on the fact that attitudes and perceptions are not only relevant with regard to duty-holders' assessment of the risks they run if they are non-compliant themselves. Attitudes and perceptions are also relevant with regard to how the infringements of others are perceived. A perception by duty-holders that there are free riders acting with impunity will undermine respect for both authorities and obligations. It is therefore essential that competent authorities can demonstrate a fair and credible system of responses to infringements.

## 6.6. Testing the content against the three crime scenarios

**Table 11: Testing against the scenarios**

Scenario	Comments
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<p><b>Problematic waste facility</b></p>	<ul style="list-style-type: none"> <li>• <b>Discovery:</b> <ul style="list-style-type: none"> <li>○ There is a transfrontier geographical dimension;</li> <li>○ There is a mix of infringing activities that are entirely illegal and clandestine and infringing activities that are apparently legal but with clandestine illegality involved;</li> <li>○ The suspects include individuals, corporate bodies and organised criminal networks;</li> <li>○ Evidence-gathering needs to take account of possible criminal and administrative-law liabilities, as well as environmental liability.</li> </ul> </li> <li>• <b>Assessment of individual infringements:</b> <ul style="list-style-type: none"> <li>○ The impacts are severe at the site of the waste facility, and extended in time. The footprint and impacts may concern other locations;</li> <li>○ Administrative law, criminal law and environmental liability are all potentially relevant;</li> <li>○ A broad range of suspects need to be taken into account;</li> <li>○ There is a need to involve different compliance assurance professionals along the enforcement chain.</li> </ul> </li> <li>• <b>Understanding the unlawful conduct:</b> <ul style="list-style-type: none"> <li>○ In terms of attitudes and perceptions of <b>law</b>, the duty-holders show a low regard for legal obligations;</li> <li>○ In terms of attitudes and perceptions of <b>compliance monitoring and enforcement</b>, the duty-holders are likely to recognise, at least in part, the risks of discovery, but also likely to perceive the risk of sanctions as low.</li> </ul> </li> </ul>
<p><b>Illegal killing of wild birds</b></p>	<ul style="list-style-type: none"> <li>• <b>Discovery:</b> <ul style="list-style-type: none"> <li>○ The geographical dimension is spatially large but limited to one Member State;</li> <li>○ The infringements are entirely illegal and clandestine;</li> <li>○ The suspects are all individuals;</li> <li>○ Evidence-gathering is likely to be mainly focused on criminal-law liability as well as on environmental liability.</li> </ul> </li> <li>• <b>Assessment of individual infringements:</b> <ul style="list-style-type: none"> <li>○ There is a severe biodiversity impact; also indirect economic damage through harm to a LIFE investment;</li> <li>○ Criminal law elements and environmental liability elements need to be assessed;</li> <li>○ A broad range of categories of individual have to be looked at as suspects;</li> <li>○ The focus on criminal law enforcement is likely to involve police and prosecutors, whereas environmental liability is likely to involve administrative law authorities;</li> </ul> </li> <li>• <b>Understanding the unlawful conduct:</b> <ul style="list-style-type: none"> <li>○ In terms of attitudes and perceptions of <b>law</b>, there appears to be a low regard for legal obligations amongst certain duty-holders, and an issue of social acceptance of non-compliant behaviour;</li> <li>○ In terms of attitudes and perceptions of <b>compliance monitoring and enforcement</b>, the repeated pattern suggests that duty-holders are likely to perceive a low risk of discovery and a low risk of sanctions.</li> </ul> </li> </ul>



<b>Illegal trade in wildlife</b>	<ul style="list-style-type: none"><li>• <b>Discovery:</b><ul style="list-style-type: none"><li>○ There is a global geographical dimension and a transfrontier EU dimension ;</li><li>○ Infringements involve activities with a false veneer of legality (forged documentation);</li><li>○ Suspects are individuals;</li><li>○ Evidence-gathering likely to be focused on criminal law liability.</li></ul></li><li>• <b>Assessment of individual infringements</b><ul style="list-style-type: none"><li>○ There is a serious biodiversity impact ;</li><li>○ Law-enforcement authorities likely to have the lead role.</li></ul></li><li>• <b>Understanding the unlawful conduct:</b><ul style="list-style-type: none"><li>○ In terms of attitudes and perceptions of <b>law</b>, the facts indicate a low regard for legal obligations;</li><li>○ In terms of attitudes and perceptions of <b>compliance monitoring and enforcement</b>, duty-holders are likely to perceive a low risk of discovery and a low risk of sanctions.</li></ul></li></ul>
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## 7. Guiding principles and fundamental rights

### 7.1. Introduction

When dealing with environmental crimes and related infringements, competent authorities need to take decisions. It is important that they are guided by appropriate general principles and respect for the law.

General principles and respect for the law relate to the main *objectives* of interventions by authorities, and the *limits* of those interventions. Having a clear set of objectives helps to ensure that interventions are purposeful, coherent and predictable. Recognising that interventions have limits helps to ensure that they are not arbitrary, unfair or disproportionate.

This Chapter looks first at the general principles governing environmental compliance assurance. It then looks at the role of other principles and of fundamental rights before testing the content against the scenarios of Chapter 2.

### 7.2. Guiding principles of environmental compliance assurance

Typically, environmental crimes and related infringements involve harm to public goods, i.e. water, air, land and biodiversity. They also often represent harm to human health and well-being, and the economy.

The guiding principles of compliance assurance aim to prevent such harm (to the extent that this is possible), discover it when it arises, end it as soon as possible, remediate it, and impose sanctions on those who cause it.

Crime-fighting will generally focus on discovering and sanctioning the most serious infringements, but it is important to have an integrated approach that also pursues the other objectives. Otherwise the harm caused by infringements will be only partially addressed.

So far as infringements are concerned, the three main guiding principles of compliance assurance are to:

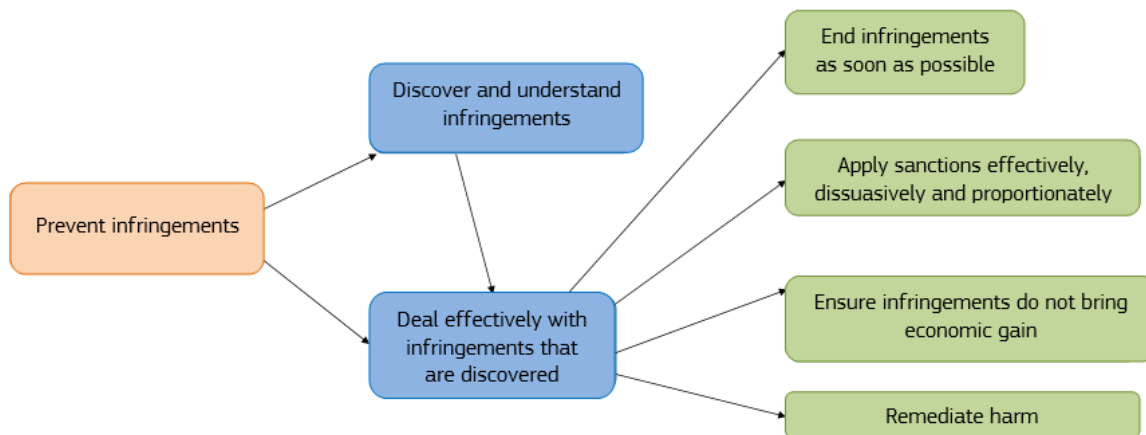
- Prevent infringements and the harm that they cause;
- Discover, assess and understand infringements;
- Respond effectively to infringements.

The principle of responding effectively to infringements involves four subsidiary principles:

- End infringements as soon as possible;
- Sanction infringements through sanctions that are effective, dissuasive and proportionate;
- Remove any financial gains;
- Remediate or mitigate the harm caused by infringements.

The following figure illustrates how these principles interact to deliver effective compliance assurance.

Figure 4: Principles for effective compliance assurance



Each of these principles is explored separately below. But it is important to remember that the principles are meant to interact and reinforce each other.

### 7.2.1. Prevent infringements and the harm that they cause

Prevention is a basic principle of European Union environmental policy and echoes the axiom from health management that 'prevention is better than cure'.

To be effective, prevention needs to take account of the drivers, attitudes and perceptions mentioned in Chapter 6 as well as the kinds of harm that infringements cause. The ideal is to prevent infringements, but, if that is not possible, it is important to try to prevent the harm that they cause.

Chapter 12 examines in more detail how prevention can be pursued in practice.

### 7.2.2. Discover, assess and understand infringements

Chapter 6 notes the clandestine nature of many serious infringements. Given that the conduct of duty-holders is influenced by their perceptions of how likely infringements are to be discovered, it is important that authorities have the will and resources to discover non-compliance. It is also important that duty-holders and society at large understand this. Without the discovery of infringements, it is not possible to respond to them effectively.

Discovery alone, however, is not enough. Assessing individual infringements is necessary in order to determine specific liabilities and appropriate responses. And understanding infringements at a more strategic level is a necessary part of preventing them and the harm that they cause.

Chapter 10 examines in detail how discovery, assessment and understanding can be pursued in practice.

### 7.2.3. Respond effectively to infringements that are discovered and assessed

Responding effectively to infringements involves employing up to four subsidiary principles. Whether all of these are relevant will depend on the nature of the specific infringement discovered. Where





more than one subsidiary principle is relevant, authorities will need to be ready to pursue several outcomes at the same time. For example, where they discover a serious ongoing infringement at a waste facility, they will need to consider intervening in order to stop it, sanction it and remediate the harm that it has already done.

### End infringements as soon as possible

Many environmental crimes and related infringements are of a continuing nature – for example, the operation of an illegal landfill. A key objective of compliance assurance is to bring such infringements to an end as soon as possible. This is necessary not only in order to uphold the law, but to stop further harm from occurring or accumulating.

### Sanction infringements with effective, proportionate and dissuasive sanctions

In addition to the Environmental Crime Directive, recent Union environmental legislation contains an explicit requirement ('the standard penalty clause') obliging Member States to introduce sanctions for infringements of that legislation. The sanctions must be 'effective, proportionate and dissuasive'. This requirement was established by case-law of the Court of Justice of the European Union. The underlying rationale is that sanctions are necessary in order for Union law to be effective.

This subsidiary principle is therefore a legal obligation on Member States. Sanctions may take different forms and be administrative and/or criminal in nature.

### Remove any illicit financial gain

As economic gain is key driver of environmental crime and related infringements, the principle of removing illicit gains is important to ensure a level playing field and the confidence of businesses that comply with the law.

Logically, sanctions that are effective, dissuasive and proportionate should address and cancel out illicit economic gains. Otherwise, they risk not being truly dissuasive. A duty-holder might continue infringing the law on the basis that the cost of sanctions will be less than the gains from the infringement. Payment of sanctions might even be treated as an acceptable 'business cost'. There are mechanisms, such as an escalating scale of fines, which can allow sanctions to be adjusted to ensure that illicit gains are cancelled out. There are also additional tools such as asset recovery.

### Remediate or mitigate any harm caused by infringements

The environmental harm caused by environmental infringements may take many forms: contamination of land; water pollution; air pollution; damage to wildlife. In addition, there may be adverse effects on human health and well-being.

Remediating environmental harm can mean de-contaminating land, and putting in place restoration measures for wildlife and polluted waters. This costs money and, according to the polluter pays principle, it is the perpetrator of the infringement who should pay. The Environmental Liability Directive creates a framework for remediating environmental damage which is based on the polluter pays principle. This will be applicable in respect of conduct related to at least some environmental crimes and infringements.

The competent authorities as well as perpetrators may have obligations towards the human victims of environmental crimes and infringements. Should a perpetrator fail to act, the authorities may themselves have to take necessary measures.



Mitigating environmental harm can also cover situations such as the seizure of live animals being illegally traded. Arrangements will need to be made for the care of such animals, for example in rescue centres.

Chapter 11 examines in detail how different responses can be pursued.

## 7.3. Other principles and Fundamental Rights

### 7.3.1. Other principles such as 'act consistently'

Other principles than those mentioned in Section 7.2 may also be important. 'Act consistently' is one. Environmental compliance assurance authorities should aim to act consistently in dealing with environmental crimes and related infringements, i.e. deal with similar infringements in a similar way. This sends positive signals to the law-abiding community. Internal guidance, including enforcement policies, can play an important role here – see Chapter 11.

### 7.3.2. Fundamental Rights

Environmental crimes and related infringements undermine Union environmental laws and environmental compliance assurance is therefore necessary. However, it is important that interventions of competent authorities themselves respect the law – in particular, by respecting rights enshrined in the Charter of Fundamental Rights of the European Union.

The Charter entered into force on 1 December 2009 and applies to Member States when they are implementing European Union law. The content of the Charter closely mirrors that of the European Convention on Human Rights (ECHR).

The rights contained in the Charter have a dual relevance in the fight against environmental crime and related infringements:

- First, certain fundamental rights provide safeguards against an oppressive or unjustified use of compliance monitoring and enforcement powers by public authorities in relation to Union environmental laws. In practice, these safeguards may be invoked by those accused of environmental crimes and infringements. Compliance assurance authorities therefore need to be able to demonstrate that they have respected such safeguards.
- Second, fundamental rights provide safeguards for members of the public who are adversely affected by environmental crimes and infringements related to Union environmental laws. Compliance assurance authorities need to be able to demonstrate that they have respected these safeguards.

Certain safeguards may be invoked by **both** categories of person.

The four justice provisions of the Charter of Fundamental Rights in its Title VI are especially relevant to criminal-law enforcement:

- **Article 47. Right to an effective remedy and to a fair trial:** When rights and freedoms guaranteed by the law are violated, an effective remedy before a tribunal must be guaranteed. This includes, amongst other things, the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. This article may be important to those accused of environmental crimes and infringements; it may also be important to victims whose rights to environmental protection have been infringed.
- **Article 48. Presumption of innocence and right of defence:** Everyone who has been charged must be presumed innocent until proven guilty according to the law. This funda-



mental principle of criminal law implies that the burden of proof is on the public prosecutor or on any other party bringing charges according to the law. Respect for the rights of the defence of anyone who has been charged is also guaranteed under Article 48.

- **Article 49. Principles of legality and proportionality of criminal offences and penalties:** No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. This implies the importance of a sound legal basis; the legal obligations of duty-holders must be clearly defined in law before an infringement is committed. Principles of legality also mean that a heavier penalty cannot be imposed than the one that was applicable at the time a criminal offence was committed. In addition, Article 49 provides that the severity of penalties must not be disproportionate to the criminal offence. This echoes the subsidiary enforcement principle on sanctions mentioned earlier: this too refers to proportionality.
- **Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence.** This is sometimes referred to as the 'ne bis in idem' or 'double jeopardy' rule. No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Other provisions of the Charter may be relevant to either the accused or victims or both. The following is a non-exhaustive list:

- **Article 1. Right to life.** Some infringements may involve serious harm to or loss of human life.
- **Article 8. Protection of personal data:** Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. These and other rights related to the protection of privacy are important in the context of data collection and in the context of an investigation, during which personal data are assessed.
- **Article 16. Freedom to conduct a business:** The Charter recognises the freedom to conduct a business in accordance with Union law and national laws and practices. This freedom is important as it implies that compliance assurance activities need to respect the freedom to conduct a lawful business. The freedom does not, however, extend to unlawful businesses like illegal waste operations.
- **Article 17. Right to property:** Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. Environmental laws, including Union ones, often regulate the use of property in the general interest and compliance assurance is often a matter of overseeing the application of such laws. Indeed, compliance assurance may involve ensuring that regulated property owners – for example, those operating waste treatment facilities – do not through environmental nuisances unlawfully infringe the rights of other property owners.
- **Article 21. Non-discrimination:** The non-discrimination principle is important in compliance assurance activities. Although some differentiation may be necessary in targeting activities – for example, based on an objective assessment of risk, this differentiation may not involve discrimination based on any ground such as sex, race, colour, ethnic or social origin,

genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

#### 7.4. Testing against the crime scenarios

**Table 12: Testing against the scenarios**

Scenario	Comments
<b>Problematic waste facility</b>	<ul style="list-style-type: none"> <li>• The principles of prevention, discovery and responding effectively to infringements are all relevant;</li> <li>• In terms of responding effectively, the following ancillary principles are all relevant: end infringements as soon as possible; sanction infringements with effective, proportionate and dissuasive sanctions; remove illicit financial gains; and remediate environmental harm;</li> <li>• In terms of fundamental rights, Article 17 of the Charter needs to be considered in light of the property rights of neighbours.</li> </ul>
<b>Illegal killing of wild birds</b>	<ul style="list-style-type: none"> <li>• The principles of prevention, discovery and responding effectively to infringements are all relevant;</li> <li>• In terms of responding effectively, the following ancillary principles are relevant: end infringements as soon as possible; sanction infringements with effective, proportionate and dissuasive sanctions; and remediate environmental harm.</li> </ul>
<b>Illegal trade in wildlife</b>	<ul style="list-style-type: none"> <li>• The principles of prevention, discovery and responding effectively to infringements all relevant;</li> <li>• In terms of responding effectively, the following ancillary principles are relevant: end infringements as soon as possible; sanction infringements with effective, proportionate and dissuasive sanctions.</li> </ul>



## 8. Organisation, capacity, EU role and financial support

### 8.1. Introduction

Combating environmental crimes and related infringements requires a good organisational framework. This has several aspects. This Chapter looks at the range of public actors involved in compliance assurance and how their roles interact along a decision-making chain. It then focusses on some of the basic features to be expected of individual bodies and institutions. It follows this with a look at the capacity of national bodies and institutions to act and deliver results. Finally, it briefly describes the role of EU institutions and bodies, and available EU financial support.

### 8.2. The environmental compliance assurance chain

Different public authorities deliver compliance monitoring and enforcement, and prevention of infringements.

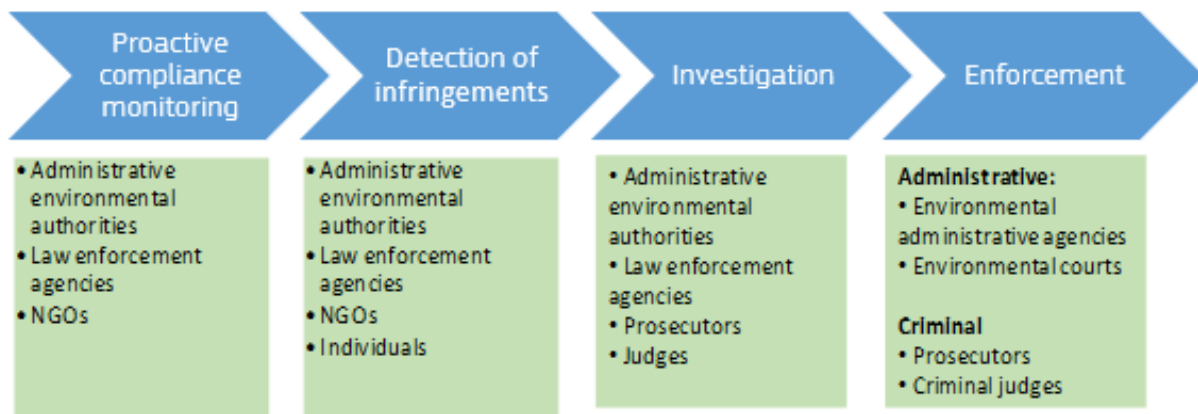
The interaction between different authorities and professionals can be described in terms of a 'compliance assurance chain' or 'enforcement chain'. This is because combating crimes and related infringements usually involves inter-dependent roles being exercised by different professionals, acting in sequence. Roles related to the discovery and assessment of infringements will be exercised before roles related to follow-up and adjudication, but a chain of decisions will connect them – decisions by inspectors or police to refer dossiers to prosecutors, for instance, or decisions by prosecutors to bring cases to trial.

The main public actors in the environmental compliance assurance chain are:

- General administrative bodies – for example, local authorities issuing or withdrawing permits, or imposing administrative sanctions;
- Environmental administrative agencies – for example, environmental inspectorates undertaking inspections;
- General or specialist law enforcement authorities ('LEAs') – for example, police or customs units undertaking investigations of suspected infringements;
- Prosecutors;
- Judges.

The typical roles of each are presented in Figure 5.

Figure 5: Actors in the compliance assurance chain



Organisational frameworks vary. Some ministries and environmental agencies have enforcement powers, others do not. Some Member States have highly integrated structures, with centralised authorities responsible for permitting and inspecting certain facilities, and prosecuting infringements. Others distribute responsibilities for environmental compliance monitoring and enforcement across a wide array of public actors.

Whatever the organisational framework, authorities and individual professionals must take decisions along the compliance assurance chain in order to deal with environmental crimes and related infringements. Decisions on how to proceed are usually based on specific criteria, sometimes established by national law. Examples are a duty for an inspector to report a suspected crime to the prosecutor, and a duty for the prosecutor to prosecute if sufficient evidence exists to support a trial. It is important that actors along the chain are aware of such criteria and have tools for their uniform application. Having a robust decision-making chain is vital.

Non-public actors can complement or assist the work of the public authorities. Examples are individual citizens submitting complaints or environmental NGOs providing investigators with relevant information on alleged infringements of environmental laws or taking part in criminal proceedings for environmental crimes (when the applicable law so allows). These actors together with publicly employed professionals are sometimes collectively referred to as 'environmental defenders'.

The compliance assurance chain is one of the reasons coordination and cooperation are important. These are addressed in more detail in Chapter 9.

### 8.3. Legal frameworks for individual bodies and institutions

Each public body and institution charged with delivering environmental compliance assurance will act within a specific legal framework. Legal frameworks vary considerably but the following are basic features to be expected of those bodies and institutions charged with discovering, investigating and prosecuting infringements:

- **Clear identification of formal responsibilities:** National laws and regulations should provide a clear allocation of responsibilities and take into account the possible intersections between different responsibilities (see also Chapter 9);
- **Independence and absence of conflict of interest:** Safeguards need to be in place to ensure that compliance assurance activities are carried out in a consistent and impartial manner and that staff responsible for monitoring and enforcement are free of any conflict of interest;



- **Powers, duties and ancillary safeguards:** The law must provide authorities with the necessary legal powers and duties to effectively carry out specific compliance assurance tasks. Powers and duties may need to be supplemented by ancillary safeguards, including with regard to delegation. Section 8.4.1 below looks at this topic in more detail.

## 8.4. The capacity to act and deliver results

Discovering and characterising environmental crimes and related infringements, bringing prosecutions and making adjudications are complex and resource-intensive activities. Reasons include:

- The highly technical and changing nature of environmental law;
- The extent of the geographical areas to be monitored;
- The high number of regulated sites to be monitored;
- The coexistence of administrative and criminal law sanctioning regimes;
- The dependence of applicable criminal provisions on often highly technical and changing environmental administrative law;
- The complexity of the assessment of environmental impacts;
- The need to meet the legal requirements concerning the standard of proof within criminal trials;
- The involvement of organised criminal groups;
- The trans-boundary nature of some environmental crimes and related infringements;
- The links between environmental crime and other criminal offences;
- The need to combine effective interventions with respect for fundamental rights - such as those laid down in the EU Charter of Fundamental Rights.

As a consequence, ensuring capacity in the bodies and institutions responsible for environmental compliance assurance is a key aspect of successfully addressing environmental crimes and related infringements. This implies providing these bodies and institutions with the right range of powers, duties and supplementary safeguards; giving them access to sufficient human and financial resources; ensuring that they enjoy adequate specialisation, guidance and training; and supporting them with the right technical equipment and tools.

### 8.4.1. Scope of powers, duties, ancillary safeguards and delegations

Environmental compliance assurance authorities need collectively to have the appropriate range of powers and be subject to related duties.

The following is a non-exhaustive list of interventions which may need to come within the scope of these **powers and duties**:

- Conducting routine inspections and specific investigations. This requires powers to enter properties, conduct searches, examine relevant material assets, request and examine documents, examine computer and electronic data, and collect related information;
- Conducting checks across a chain of transactions. An example would be monitoring the waste chain by cross-checking transport documents and financial or transaction documents such as contracts, invoices, and weight dockets;
- Investigating financial flows, including by checking the financial records of corporations;





- Investigating non-environmental crimes linked to environmental crime. Examples include corruption, forgery, tax fraud and money laundering;
- Taking enforcement action under administrative law. Examples include obtaining an injunction to oblige a duty-holder to comply with a permit; inserting more stringent requirements into a permit; temporarily suspending a permit; imposing coercive sanctions that are waived if the duty-holder ends the infringement;
- Taking criminal and ancillary administrative enforcement action. Examples include seizing objects, imposing sanctions and confiscating the proceeds of crime;
- Carrying out cross-border investigations. This can involve using mechanisms for administrative and legal assistance with other countries;
- Addressing serious and organised crime.

It will often be necessary to have **ancillary guarantees for the effectiveness** of these powers. To ensure the effectiveness of inspections and other checks, for instance, the competent authorities should be able to rely on duty-holder obligations to assist and provide access to premises, documents and other records and to refrain from obstruction. In addition, the non-fulfilment of inspection duties may in itself represent an infringement, which should be subject to sanctions. Authorities will also need to ensure that their staff do not disclose information covered by professional secrecy.

It is also important to consider the conditions for **delegation** of compliance assurance tasks to third parties. Sometimes an authority may need to delegate certain tasks to third parties – for example, the forensic analysis of evidence of an environmental crime. Delegation may reflect the limits of an authority's technical capacity. Such delegation of tasks should be possible to another natural or legal person only where the latter has the necessary expertise and capacity and is impartial and free of any conflict of interest, and the authority's accountability is not reduced. The conditions for delegating compliance assurance tasks should be clearly established by national law, regulations, guidelines or other measures<sup>49</sup>.

#### 8.4.2. Human and financial resources

A sufficient number of inspectors, investigators, prosecutors and judges needs be allocated to environmental compliance monitoring and enforcement.

Competent authorities need to be provided with a sufficient budget to undertake in an effective manner actions which are necessary but often costly – for example, carrying out forensic analysis or deploying expert witnesses within a criminal trial. However, insufficient human and financial resources continue to be an important barrier to the effective implementation of environmental law.

#### 8.4.3. Specialisation

Environmental compliance monitoring and enforcement can be technically complex and therefore require a high level of specialised knowledge across the environmental compliance assurance chain.

A lack of specialised knowledge in one or more parts of the chain may produce a vicious circle – as illustrated by the following figure.

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<sup>49</sup> For example, Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, OJ L 118, 27.04.2001, p. 41-46 (RMCEI), includes a recommendation to Member States to ensure that, when environmental authorities delegate inspections to other persons, the latter have no personal interest in the outcome of the inspection.





Figure 6: Vicious circle arising from lack of specialisation



Source: EUFJE

The need for specialised knowledge arises, amongst other reasons, because environmental crimes and related infringements:

- Are often '**victimless**'. This means that there is an absence of specific human victims who can testify to the harm done to them or to the environment. This is not always the case (see in particular Chapter 10.7.3), but those who monitor environmental compliance need to be in a position to detect infringements autonomously - something that usually requires specialised knowledge.
- Often involve **complex assessment of environmental impacts**. Such assessment may be necessary to verify whether an infringement qualifies as an administrative or a criminal offence; prove beyond any reasonable doubt that a criminal offence requiring a given negative impact on the environment or a specific environmental medium (air, water, soil) has been committed; or obtain an ancillary outcome, such as remediation of environmental damage. This may entail highly technical and complex qualitative and quantitative evaluations.
- In the case of **organised crime**, the specialised knowledge to carry out financial investigations is important in order to uncover any illicit profits obtained.

By way of examples, specialised knowledge may be needed to:

- Be able to ask the right questions and detect false explanations;
- Detect false qualification of substances;
- Gather reliable evidence;
- Prove the causal link between unlawful conduct and damage to the environment;
- Assess environmental damage and impose proper remedial measures;
- Investigate the financial aspects of environmental crime;
- Choose the appropriate response;



- Investigate and take enforcement actions against serious and organised environmental crime.

Specialisation at the stages of discovery, assessment, prosecution and adjudication may take the following forms, amongst others:

- **Specialised bodies** to investigate or prosecute environmental crimes. See Box 9 for examples.
- **Specialised environmental courts;**
- **Forensic and intelligence units** to evaluate and plan interventions, especially against organised crime networks;
- **Specialised professionals** such as data analysts and intelligence officers.

The Final Report on Mutual Evaluations of Environmental Crime strongly recommends specialisation – see Box 58 in Chapter 14.

#### Box 9: Examples of specialised bodies for investigating or prosecuting environmental crime

The ***Servicio de Protección de la Naturaleza (SEPRONA)*** in Spain.

The office of **the Spanish Environmental Prosecutor**, the ***Fiscalia***.

The ***Office central de lutte contre les atteintes à l'environnement et à la santé publique*** in France,

The ***Comando unità per la tutela forestale, ambientale e agroalimentare dei Carabinieri*** in Italy.

The ***Spissorganet i politiet og påtalemyndigheten for bekjempelse av økonomisk kriminalitet og miljøkriminalitet*** in Norway.

#### 8.4.4. Guidance

The work of authorities and individual professionals can be supported through **technical and legal guidance**. Enforcement policies, strategies, guidelines, checklists or protocols can provide step-by-step guidance on how to address particular challenges and carry out particular interventions.

Collaboration between the various actors of the compliance assurance chain and scientific bodies may allow the development of reliable technical guidance that can be used by inspectors, police authorities, prosecutors and judges. Different scientific disciplines can contribute – for example, to guidance on the assessment of environmental damage and the impacts of environmental crime and related infringements.

Ideally, guidance should cover all stages and aspects of the compliance assurance chain – see the example in Box 10.



### Box 10: Documents guiding action across the compliance assurance chain in England<sup>50</sup>

The Environment Agency of England has:

- An investigations manual, detailing how to go about investigating an environmental offence;
- The common incident classification scheme (CICS), which determines the seriousness of an incident and the compliance classification scheme (CCS), which determines the seriousness of a permit condition infringement. Both are used in the determination of the seriousness of an offence, and its categorisation and response;
- An enforcement and sanctions policy (2017) explaining in detail which enforcement options are available and which option to apply in a particular situation;
- The offence responsible options table which sets out all of the offences and the enforcement responses available;
- The prosecutors' handbook. This explains in details how to prosecute an environmental offence.

All these documents together explain in detail the criteria and tools for choosing the appropriate response, which is thus based on specific criteria decided and published beforehand.

### Box 11: Recommendations on guidelines in Final Report on Mutual Evaluations on Environmental Crime

Member States are recommended to ensure that the distinction between the administrative and criminal penalty systems in the environmental field is clearly defined, by adopting and making available to all relevant actors specific and uniform criteria for such differentiation.

Member States are recommended to establish guidelines to ensure that problematic concepts, such as 'substantial damage' and 'environmental damage', are adequately defined, with a view to facilitating the work of the competent authorities in this area.

## 8.4.5. Training

Competent authorities need to ensure that their staff have the necessary **professional qualifications**, have opportunities for **professional development** and receive appropriate **training. Programmes** for professional development and training can address, amongst other things:

- The different professions that undertake environmental compliance assurance, in particular those of inspector, police officer, customs official, prosecutor and judge;
- The technical and forensic support required by these professions;
- Core qualifications, core competences and criteria for measuring expertise;
- Entry-level recruitment requirements;
- The need to identify, analyse and regularly assess and update training needs;
- Preparation of adequate training material in different formats, including for distance learning;
- In-service training and the links to career development and continuous assessment;

<sup>50</sup> Environment Agency, Enforcement and Sanctions Policy, available at <https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/environment-agency-enforcement-and-sanctions-policy>.



- Assessment of training effectiveness.

**Joint training exercises** with participation of different actors along the environmental compliance assurance chain can foster a common understanding of what is at stake, ensure a consistent approach and address weak links and inter-actions.

**European and national environmental enforcement networks** (see Chapter 9) can play an important role in identifying training needs, developing training material and organising exchange programmes. Competent authorities should encourage their staff to participate in training-related network activities and use and disseminate training materials developed by the networks.

**CEPOL** is a European agency dedicated to the training of law enforcement officials – see Box 13.

**Academia** may play a useful ancillary role, for example by organising training activities and events, and by carrying out research and developing literature on scientific, technical and legal topics of relevance to compliance monitoring and enforcement.

#### Box 12: Training recommendations of Final Report on Mutual Evaluations on Environmental Crime

Taking into account the complex and multi-faceted nature of environmental crime, including waste-related crime, Member States are recommended to maintain or enhance regular and continuous in-depth training in this field for all practitioners involved in the fight against these forms of crime, including prosecutors and judges.

Member States should consider exploring the possibility of providing or establishing inter-institutional planning of training, with a view to providing joint training, bringing together all relevant stakeholders in combating environmental crime and facilitating enhanced cooperation between Law Enforcement Authorities and the prosecution services.

Member States should make the best possible use of training opportunities available at EU level, such as CEPOL and relevant networks, as well as at international level, by ensuring regular participation in those training activities by relevant stakeholders involved in tackling environmental crime, including waste-related crime.

Member States should consider the possibility of using e-learning methods in environmental training for all the entities involved in fighting environmental crime<sup>51</sup>.

#### Box 13: CEPOL

CEPOL is the European Union Agency for Law Enforcement Training. It is dedicated to developing, implementing and coordinating training for law enforcement officials. It brings together a network of training institutes for law enforcement officials in EU Member States and supports them in providing frontline training on security priorities, law enforcement cooperation and information exchange. CEPOL also works with EU bodies, international organisations, and third countries to ensure that the most serious security threats are tackled with a collective response<sup>52</sup>.

#### 8.4.6. Technical support and tools

Good organisation also requires the availability of appropriate technical support and tools for discovering and characterising infringements. These include:

<sup>51</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 54.

<sup>52</sup> [https://www.cepol.europa.eu/sites/default/files/CEPOL\\_Leaflet\\_2020.pdf](https://www.cepol.europa.eu/sites/default/files/CEPOL_Leaflet_2020.pdf)



- **Laboratories and equipment for forensic analysis:** For example, these can confirm the fraudulence of documentation used to illegally transport waste or wildlife – as where a certificate misrepresents hazardous waste as non-hazardous, or a protected wild animal as captive-bred;
- **Online tools for intelligence-gathering and sharing:** For example, online intelligence can be used to check online shopping platforms in order to detect sellers and buyers of protected wildlife products or derivatives; or to check social networks in order to develop risk profiles;
- **Geospatial intelligence:** See Chapter 10.



## 8.5. EU institutional role

As already mentioned, infringements of EU environmental legislation need to be subject to a system of sanctions and there is a directive on environmental crime.

The Court of Justice of the European Union (CJEU) has a key role in the interpretation of relevant EU law.

The Council, representing EU Member States, has a Justice and Home Affairs (JHA) mechanism, which was used to carry out the mutual evaluations mentioned in Chapter 1.

Several services of the European Commission have a role in helping Member States combat environmental crime and related infringements:

- **DG Environment** is responsible for the bulk of EU environmental legislation and **the Environmental Compliance and Governance Forum**<sup>53</sup> under whose auspices this Guidance has been developed;
- **DG Justice** is responsible for the Environmental Crime Directive and other criminal law legislation;
- **DG Home** is responsible for security matters and tackling organised crime;
- **DG Taxud** is responsible for EU customs legislation;
- **OLAF** has a role in investigating fraud that concerns the EU budget.

Other EU services and bodies may also contribute. Bodies like **CEPOL** (mentioned above) and **Euro-pol** and **Eurojust** (mentioned in Chapter 9) provide specialist help. The **European External Action Service (EEAS)** plays a role in helping to combat wildlife crime in third countries.

## 8.6. EU financial support

In combating environmental crimes and related infringements, compliance assurance authorities, networks of practitioners and environmental NGOs can benefit from a number of sources of financial support at European level.

Of particular relevance are the **LIFE Regulation**<sup>54</sup> (under the responsibility of DG Environment) and the **Internal Security Fund-Police** (under the responsibility of DG Home).

The LIFE Regulation provides for both grants and the funding of multi-annual projects. Box 14 provides examples of what it supports.

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<sup>53</sup> This was established by a formal Commission decision in 2018, see C(2018)10 final.

<sup>54</sup> Regulation (EU) 2021/783 of the European Parliament and of the Council of 29 April 2021 establishing a Programme for the Environment and Climate Action (LIFE), and repealing Regulation (EU) No 1293/2013, OJ L 172, 17.5.2021, p. 53–78.

Box 14: Examples of support under the LIFE Regulation for efforts to combat environmental crimes and related infringements

- **LIFE-ENPE:** This project helped to establish the European Network of Prosecutors for the Environment (ENPE) and supported over a period of five years its activities. Through the development and promulgation of best practices in fighting waste crime, wildlife crime and air pollution, and in sanctioning environmental crimes in general, ENPE has evolved into an organisation with a central role in contributing to delivery of EU policy and legislation on combating environmental crime. The 4 ENPE Working Groups provided detailed guidance, training materials and recommendations for future action, focusing on advancing and aligning legislative and policy design, revision, implementation and communication.
- **LIFE+ VENENO NO:** This project has aimed to address and reduce the illegal poison use which is one of the main causes of non-natural mortality in some of the most endangered species in Europe, such as the Spanish Imperial Eagle, the Bearded Vulture, the Red Kite or the Egyptian Vulture (including the Canary Islands subspecies), all of which are included in Annex I of the Birds Directive. In addition to several operational, training and awareness-raising activities, four procedural protocols were developed based on the idea that enforcement involves a series of complementary activities within a compliance assurance chain, from surveillance, through breach detection, evidence collection and investigation, to the application of remedies and sanctions.
- **LIFE SWEAP:** this project runs from 2018 to 2023 with the overall purpose to support the circular economy by disrupting the illegal waste trade at the EU level by increasing skill set amongst inspectors and law enforcement agencies, intensifying collaboration nationally and internationally, developing innovative tools and techniques, creating an EU-wide inspection data set and providing intelligence products.

## 8.7. Testing the content against the three crime scenarios

**Table 13: Testing against the scenarios**

Scenario	Comments
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<p><b>Problematic waste facility</b></p>	<ul style="list-style-type: none"> <li>• <b>Scope of powers, duties, ancillary safeguards and delegations:</b> There should be inspectors with powers and duties to check compliance with the landfill permit. The presence of illegal waste – and links to illegal activities and waste shipments – points to the need to also involve law enforcement authorities (LEAs).</li> <li>• <b>Human and financial resources:</b> Human and financial resources need to extend beyond checks on the landfill itself: they need to also cover problems of wider illegality.</li> <li>• <b>Specialisation, guidance and training:</b> There needs to be specialist knowledge covering waste laws and classification of waste.</li> <li>• <b>Technical support and tools:</b> Laboratory or other means of analysing waste are necessary.</li> <li>• <b>EU institutional role and financial support</b> The scenario subject-area relates to DGs Environment (waste), Justice (Environmental Crime Directive) and Home (security) as well as possibly Europol and Eurojust (see next Chapter). Projects under both LIFE and the Internal Security Fund-Police offer lessons in how to combat the kinds of infringements set out in the scenario.</li> </ul>
<p><b>Illegal killing of wild birds</b></p>	<ul style="list-style-type: none"> <li>• <b>Scope of powers, duties, ancillary safeguards and delegations:</b> The nature of the infringements points to the need for LEA investigative powers and duties.</li> <li>• <b>Human and financial resources:</b> Human and financial resources are needed to address a repeat pattern of illegal killings.</li> <li>• <b>Specialisation, guidance and training:</b> There needs to be specialist knowledge covering wildlife laws, poisons and their effects.</li> <li>• <b>Technical support and tools:</b> Laboratory means of analysing poisons are necessary.</li> <li>• <b>EU institutional role and financial support</b> The scenario subject-area relates to DG Environment (wildlife), Justice (Environmental Crime Directive) and Home (security). Projects under LIFE offer lessons in how to combat the kinds of infringements set out in the scenario.</li> </ul>
<p><b>Illegal trade in wildlife</b></p>	<ul style="list-style-type: none"> <li>• <b>Scope of powers, duties, ancillary safeguards and delegations:</b> The powers and duties of customs are central to this scenario.</li> <li>• <b>Human and financial resources:</b> Human and financial resources are needed to address the trans-frontier nature of the infringements.</li> <li>• <b>Specialisation, guidance and training:</b> There needs to be specialist knowledge covering wildlife laws, in particular CITES.</li> <li>• <b>Technical support and tools:</b> Technical support may include genetic analysis of specimens.</li> <li>• <b>EU institutional role and financial support</b></li> </ul>





	<p>The scenario subject-area relates to DG Environment (wildlife), Justice (Environmental Crime Directive), Home (security) and the European External Action Service. Projects under LIFE offer lessons in how to combat the kinds of infringements set out in the scenario.</p>
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## 9. Coordination and cooperation

### 9.1. Introduction

Chapter 8 draws attention to the compliance assurance chain. This Chapter examines the importance of coordination and cooperation to ensure effective decision-making along the chain.

The terms 'coordination' and 'cooperation' are often used loosely and inter-changeably. 'Coordination', however, is best used to describe the interactions between authorities and professionals that are necessary to achieve results in specific cases – for example, interactions between inspectorates and police forces on the one hand and prosecutors on the other, in which the former supply evidence that enables the latter to mount prosecutions. 'Cooperation' is best used to describe more general forms of constructive relations.

The Chapter begins with an overview of organisational and functional aspects of coordination and cooperation. It then looks at coordination and cooperation mechanisms and tools at different levels. It also considers the role of international conventions and partnerships involving these, and of voluntary networks of compliance assurance professionals. Finally, it tests the content against the crime scenarios of Chapter 2.

### 9.2. Overview of coordination and cooperation

The need for coordination and cooperation relates to, firstly, the division of labour along the compliance assurance chain and, secondly, the occurrence of crimes and infringements that straddle the functional areas, responsibilities or powers of different authorities.

Effective coordination and cooperation can be achieved by:

- **Ensuring through legislation or regulations a clear division of responsibilities and the establishment of coordination mechanisms:** The legislative and regulatory framework for compliance assurance can contribute to effective coordination by making the division of responsibilities between different public actors clear and by providing for coordination mechanisms where they need to work together.
- **Fostering effective coordination of and cooperation on activities within single authorities:** Certain authorities exercise multiple functions and it may be necessary to ensure effective coordination between these functions. An example is provided by administrative authorities responsible for permitting, inspecting and taking enforcement action against industrial facilities. The permit-writing function may need to be closely coordinated with the inspection and enforcement functions. An inspection may show the need for tightening permit conditions, for instance – something to be followed up by those responsible for permit-writing.
- **Fostering effective coordination of and cooperation on activities between different authorities:** This may be a matter of one authority approaching another when it reaches the limits of its own functions or powers. For example, if an environmental administrative agency detects an illegal cross-border waste shipment, but has no investigative competence to track the shipment, it may approach the police. Similarly, if a police force identifies a possible illegal wildlife shipment, it may need the assistance of customs in order to carry out a search. Cooperation and coordination may need to extend to non-



environmental authorities, as where investigation of an illegal waste facility discloses employment law irregularities. And it may need to extend across different administrative areas or jurisdictions.

- **Cooperation with private sector, NGOs and other non-public actors:** Legitimate businesses (for example in the waste management sector), civil society (in particular environmental NGOs), the media and the citizens in general can all make a contribution to the fight against environmental crime and related infringements – for example, by reporting possible infringements or making complaints. Having arrangements for cooperation can enhance that contribution.

It is important to note the **limits** of coordination and cooperation. Different compliance assurance authorities have an autonomous existence. Some exercise a supervisory or enforcement role in respect of others – which means that relations cannot be allowed to become 'cozy' and undermine the functional responsibilities of the former. For example, police or prosecutors may need to investigate and act against wrong-doing in a local authority.

### 9.3. Coordination and cooperation mechanisms at national level

#### 9.3.1. Within and between competent authorities

Coordination and cooperation mechanisms may be formal or informal. The following is a non-exhaustive list of possible mechanisms between authorities, with Box 15 below includes several relevant examples:

- Specialised coordination bodies;
- National enforcement strategies;
- Ministerial decrees on cooperation and coordination;
- Memoranda of understanding and other written agreements between competent authorities;
- National enforcement networks;
- Regular strategic meetings of heads of competent authorities, and related meetings;
- Joint inspections and enforcement actions;
- Joint training events between different authorities and professionals, notably inspectors, police, customs and prosecutors to exchange challenges, experiences and good practices;
- With specific regard to wildlife trafficking, the establishment of a national CITES Committee.

#### Box 15: Examples of mechanisms for coordination and cooperation between authorities

**Specialised coordination body:** An example is the Flemish High Enforcement Council for Spatial Planning and the Environment. Its role involves consulting with all the authorities competent for compliance assurance of environmental legislation (including public ministries and administrative agencies); determining the priorities for compliance assurance; and promoting compliance assurance protocols (which can, for example, specify which kind of authorities will execute specific compliance monitoring tasks).

**Ministerial decree:** In Germany inter-ministerial decrees governing cooperation between the authorities involved in combating environmental crime have been issued by the Ministries of Justice, Environment and Home Affairs in some states.

**National enforcement strategy:** In the Netherlands, the National Enforcement Strategy aims at the coordinated and effective cooperation of all agencies that play a role in compliance assurance of environ-



mental legislation, including making agreements on the coordination of national and regional priorities and dealing with them as effectively as possible administratively and/or criminally.

**Written agreement:** In Portugal, a Protocol of Cooperation has been signed by the Public Prosecutor's Office, the Secretariat General from the Ministry of Environment, the Environmental Agency, the General Inspection for Agriculture, Sea, Environment and Spatial Planning, the Institute of Nature Conservation and Forests, the Regional Inspectorate for Environment from Azores and the Regional Direction for Spatial Planning and Environment of Madeira, with the aim of ensuring the best possible coordination between these authorities.

**Network:** In Ireland, the Environmental Protection Agency established the Network for Ireland's Environmental Compliance and Enforcement (NIECE). It now embraces over 1,000 public-sector staff drawn from around 50 different agencies with compliance assurance responsibilities. The objective is to improve inter-agency cooperation and coordination so that a higher and more consistent standard of environmental protection can be achieved. Similar networks exist in Italy, Portugal and the Netherlands. Often they are modelled on the pan-European network, IMPEL.

**Meetings:** In Norway, annual meetings take place of the so-called Environmental Forum, which brings together the national specialised prosecuting authority (ØKOKRIM) and all the administrative authorities concerned. These are held under the chair of the National Police Directorate, as are annual contact meetings between ØKOKRIM and the National Environment Agency. Annual meetings also take place between local police districts coordinators and ØKOKRIM.

INTERPOL has developed a recommended approach called NEST – see Box 16.

#### Box 16: Outline of NEST approach of INTERPOL

For a more effective tackling of environmental crime, INTERPOL recommends a multidisciplinary approach to environmental enforcement and the creation of National Environmental Security Task Forces (NEST). These are multi-disciplinary teams of experts from various national agencies including police, customs, environmental and other specialized agencies, and the prosecutor's office who work together to maintain national environmental security. NGOs can also be involved. INTERPOL has developed a guide to assist member countries in setting up a NEST. The NEST guide provides examples of NESTs, legal guidelines and a recommended process to follow.

More details are available at: <https://www.interpol.int/en/Crimes/Environmental-crime/Our-response-to-environmental-crime#pt-1>.

Some of the mechanisms mentioned above cover the details of **information exchange** between different compliance assurance authorities. Such exchange may involve intelligence-sharing or the operation of **joint data-bases**.

#### Box 17: Recommendations on national inter-agency coordination and cooperation in the Final Report on Mutual Evaluations on Environmental Crime

Member States are encouraged to establish a formal and structured inter-institutional framework for cooperation at strategic and operational levels among all relevant stakeholders involved in the prevention of and the fight against environmental crime, including waste-related crime, based on a multidisciplinary approach, possibly through protocols or memoranda of understanding.

Member States should consider designating a central body/entity or platform at national level in charge of coordinating the efforts of all the authorities involved in the fight against environmental crime, including waste-related crime, with a view to providing synergies, as well as maximising readiness and reaction capabilities.



Member States are encouraged to ensure systematic exchanging of information and the establishment of shared databases with data on environmental crime, including waste related crime, among all the competent authorities involved in countering such criminal activities<sup>55</sup>.

### 9.3.2. Cooperation with private sector, NGOs and other non-public actors

Arrangements for cooperation with non-public actors include signing and implementing memoranda of understanding with green NGOs and developing citizen science approaches which allow the public and civil society to make submissions to the authorities in a structured manner – see the example in Box 18.

#### Box 18: Example of cooperation with national environmental associations

The Italian Comando unità per la tutela forestale, ambientale e agroalimentare of the Carabinieri (CUTFAA) has signed several memoranda of understanding with environmental associations. Moreover, a Center for the Development of Memoranda of Understanding has been established at the CUTFAA in order to intensify this form of cooperation with civil society.

#### Box 19: Recommendations on cooperation with non-public actors in the Final Report on Mutual Evaluations on Environmental Crime

Member States are encouraged to make use of structured public/private partnerships in the field of environmental protection, which could be based on memoranda of understanding or other formal agreements, with a view to ensuring a clear framework for regular cooperation, thus contributing to enhancing the fight against environmental crime, including waste-related crime.

Member States are encouraged to establish bodies or structures with the participation of representatives of both the public and the private sector dealing with environmental matters, with a view to ensuring cooperation in the prevention of and fight against environmental crime, including waste-related crime.

Member States should encourage the private sector to share information on suspected environmental breaches with the public authorities, where appropriate, by establishing in national law an obligation for the private sector to report environmental incidents.

Member States are encouraged to establish or further develop working relationships, dialogue and regular exchanges of information with the national NGOs active in the environmental field<sup>56</sup>.

<sup>55</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 49.

<sup>56</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 75.



## 9.4. Coordination and cooperation mechanisms at European and international levels

### 9.4.1. Between competent authorities

Coordination and cooperation mechanisms exist at European and international levels to deal with trans-boundary environmental crime. They include:

- **Designation of contact points:** Such contact points facilitate administrative assistance, mechanisms for the exchange of information, and participation in compliance assurance activities by the competent authority of another Member State.
- **Joint Investigation Teams (JITs):** JITs carry out criminal investigations in one or more of the involved states. They are based on an agreement between competent judicial and law-enforcement authorities and are established for a limited duration. JITs can be particularly useful at the early stage of an investigation and with a view to facilitating an exchange of information. Indeed, the methodology underpinning JITs could be also used at national level to improve co-ordination and cooperation between different national authorities. Clearly defining a common objective can contribute to making JITs successful. The scope and aims of the cooperation are at best defined in a detailed agreement.

Within the European Union, **Europol** and **Eurojust** have been established to facilitate cross-border coordination and cooperation between national law-enforcement and judicial authorities in fighting serious and organised crime, including environmental crime.

#### Box 20: Europol

**Europol** - the European Union Agency for Law Enforcement Cooperation - supports cooperation among Member States on serious crimes that affect more than one Member State, on terrorism and crimes that affect a common interest covered by an EU policy.

Europol's work covers environmental crimes, including ship-source pollution, illicit waste trafficking, illicit trafficking in endangered plant and animal species, illegal logging/timber trade and illegal fisheries, organised crime and crimes (such as corruption and money laundering) linked to them.

Each Member State has an established or designated National Unit, which is the liaison body between Europol and the competent authorities of that Member State. However, Member States may allow direct contacts between their competent authorities and Europol.

Member States can exchange information on criminal offences concerning them, via Europol National Units. Liaison officers assist in the exchange of information between Europol, Member States and third countries.

Europol undertakes the following activities, among others:

- Coordinating and supporting investigations and operations that are carried out by the competent authorities of the Member States (in the context of joint investigation teams);
- Providing Member States, via the responsible National Units, with information on criminal offences concerning them;
- Supporting cross-border operations and investigations, by facilitating the information exchange, as well as joint investigation teams among Member States and third partners, operational, technical and analytical support;
- Supporting capacity-building on crime prevention and technical and forensic tools and investigative procedures;
- Supporting EU training initiatives by offering expertise;
- Providing strategic and intelligence analysis.



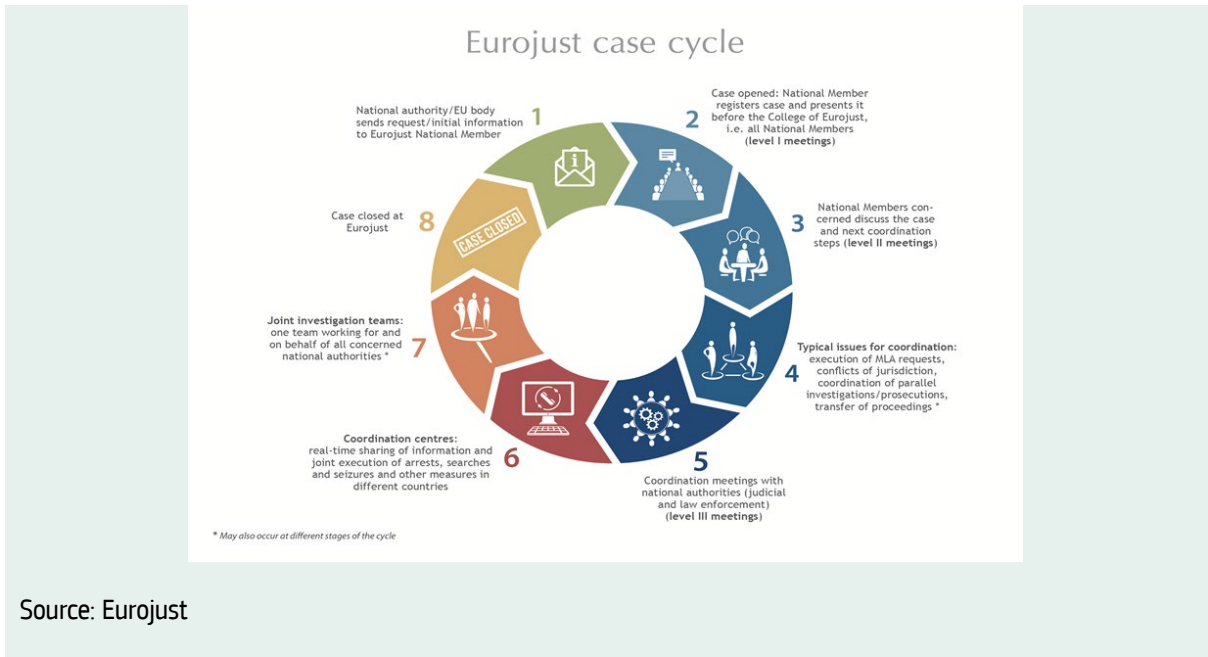
## Box 21: Eurojust

**Eurojust** – the European Union's Agency for Criminal Justice Cooperation – supports coordination and cooperation between judicial and law enforcement authorities of the Member States, focusing, however, on criminal prosecution. Eurojust competence covers among others, illicit trafficking in endangered animal species, illicit trafficking in endangered plant species and varieties, and other environmental crimes, including ship source pollution.

The national competent authorities address their request for assistance in criminal judicial cooperation matters to the National Member of the Member State at Eurojust. National competent authorities should inform their National Member at Eurojust of on-going national investigations, which show the likely involvement of a criminal organisation and are likely to have a transnational dimension. Eurojust especially intervenes in cases of serious environmental crime affecting two or more Member States. In addition, Eurojust supports cases which affect only one Member State and a non-EU country, if the case requires a prosecution on common bases (where an agreement is concluded with that non-EU country or where there is a specific need for Eurojust's involvement). Also, cases which affect only one Member State but have repercussions at Union level can be supported by Eurojust.

Eurojust can undertake the following activities, among others:

- Facilitating execution of requests for judicial cooperation, e.g. European investigation orders, international mutual legal assistance requests and extradition requests;
- Assisting Member States in addressing the question of which jurisdiction is best placed to prosecute in cross-border cases;
- Assisting Member States with regard to the admissibility of evidence and proper follow-up to assets freezing and confiscation orders;
- Assisting the competent authorities in ensuring the best possible coordination of investigations and prosecutions;
- Assisting to improve cooperation between the competent national authorities, in particular based on Europol's analyses;
- Setting up coordination meetings and centres to speed up and improve judicial cooperation across borders within the EU and beyond; they can bring together judicial and law enforcement authorities from Member States – and in some cases third countries – to enable real-time transmission of information in cases of serious cross-border crimes and co-ordinate responses during common action days;
- Facilitating communication between competent authorities of different Member States, to ensure information exchange and cooperation, particularly where language barriers prevent their direct communication
- Supporting joint investigation teams (JITs) also with respect to waste and wildlife crime at all stages of the JIT life cycle from its establishing to evaluating its results in order to facilitate and support investigations and prosecutions.
- Eurojust handles requests for assistance from competent authorities according to the following workflow:



Box 22 provides an example of a successful investigation and prosecution involving a JIT facilitated by Eurojust.

#### Box 22: An example of a JIT in relation to cross-border wildlife crime

An organised crime group operating in Sweden, the UK and Finland was suspected of having illegally traded wild bird eggs on a large scale. Facilitated by Eurojust, a Joint Investigation Team (JIT) involving Finland and Sweden was set up. Eurojust contributed funding for an external expert – an ornithologist – to support the investigation.

Over 200 wild bird eggs were found at the residence of one of the charged persons. In the UK, a suspect was charged with offences of possession of bird eggs, purchasing the eggs, selling the eggs and offering the eggs for sale in breach of UK national wildlife legislation. The suspect pleaded guilty and was sentenced to 220 hours of community service for trading illegally in wild and rare bird eggs. In Sweden, an indictment was issued for hunting offences, for receiving the proceeds of illegal hunting, and for offences against the protection of endangered species.

Source: Eurojust

Where transnational crime involves third countries, cooperation and coordination can be facilitated by global bodies such as **Interpol** (see Box 23) and the **World Customs Organisation** (see Box 24 below).





### Box 23: INTERPOL<sup>57</sup>

**INTERPOL**, the only organisation with a mandate to share and process criminal information globally, helps police in different countries work together to tackle cross-border crimes. Every member country has their own Interpol office (National Central Bureau, NCB), which connects that country's police force with the other members. They share information with each other and have access to a variety of tools and resources. INTERPOL also produces manuals and reports which facilitates an understanding of the nature, scale and features of transnational environmental crime and the most effective avenues to address it. INTERPOL activities include:

- Leading global and regional operations to dismantle the criminal networks behind environmental crime using intelligence-driven investigations;
- Coordinating and developing international law enforcement best practice manuals, guides and other resources;
- Providing environmental law enforcement agencies with access to INTERPOL tools and services by enhancing their links with INTERPOL National Central Bureaus;
- Working with the Environmental Compliance and Enforcement Committee to shape strategy and direction.

### Box 24: World Customs Organisation

**The World Custom Organization** (WCO) is a forum for dialogue and exchange of experiences between national customs delegates. The WCO offers its members technical assistance and training services. The secretariat also supports its members in their endeavours to modernise and build capacity within their national customs administrations. The WCO undertakes initiatives to combat fraudulent activities (including by promoting cooperation between customs as well as between the latter and legitimate business like shipment companies). Such initiatives are of particular relevance with regard to detection of transnational illegal trade in waste and wildlife.

### Box 25: Recommendations on European and international coordination and cooperation in the Final Report on Mutual Evaluations on Environmental Crime

Member States are encouraged to participate actively in work carried out at EU and international levels to enhance cooperation in tackling environmental crime, including waste-related crime, in particular in the activities of EU agencies and bodies — Eurojust, Europol and EJM — and of the European networks active in this area.

Member States are encouraged to raise the awareness of practitioners of the possibilities and advantages of JTs and their use in environmental crime cases in order to make investigations more effective.

Member States are encouraged to ensure or further develop cooperation with neighbouring countries, including third countries, and, where appropriate, to develop regional cooperation in fighting environmental crime.

Member States are encouraged in particular to cooperate closely with EU and non-EU countries of destination or origin of shipments of waste, in order to coordinate efforts in combating illegal cross-border activities in this area, inter alia by establishing contact points/liaison officers with a view to information exchange and sharing of best practices<sup>58</sup>.

<sup>57</sup> For more information see: <https://www.interpol.int/Crimes/Environmental-crime/Our-response-to-environmental-crime>

<sup>58</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 72.



#### 9.4.2. Cooperation with non-public actors

Cooperation with non-public actors can be useful at transnational and international levels just as it is at national level – see Box 26.

**Box 26: Example of cooperation arrangement between public and non-public actors: ROUTES Partnership<sup>59</sup>**

The **ROUTES** - Reducing Opportunities for Unlawful Transport of Endangered Species – **Partnership** is a cooperation arrangement to help tackle wildlife trafficking. It brings together transport and logistics companies, government agencies, development groups, law enforcement, conservation organizations, academia and donors to disrupt wildlife trafficking activities, and forms a key element of the concerted international response to addressing wildlife poaching and associated criminal activities worldwide.

#### 9.5. Coordination and cooperation under international conventions and related international partnerships

Another important basis for international coordination and cooperation is provided by international environmental conventions and agreements (sometimes known as Multilateral Environmental Agreements or MEAs) such as the Basel Convention mentioned in Chapter 4 and CITES and the Bern and Bonn Conventions mentioned in Chapter 5. Box 6 in Chapter 5 shows how the Bern Convention has served to produce several important recommendations on combating wildlife crime.

A more general-purpose agreement of relevance is the United Nations Convention against Transnational Organised Crime ('UNTOC') – see Box 27.

**Box 27: UNTOC<sup>60</sup>**

**The United Nations Convention against Transnational Organised Crime ('UNTOC')** was adopted by General Assembly resolution in 2000, and is the main international instrument in the fight against transnational organized crime. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

<sup>59</sup> For more information see: <https://routespartnership.org/>.

<sup>60</sup> <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.



The growth of MEAs has meant that there are overlaps and common concerns when it comes to environmental crimes and related infringements. This has led to international initiatives aimed at bringing together the secretariats of MEAs and other relevant entities. The Green Customs Initiative mentioned in Box 28 is an example.

#### Box 28: The Green Customs Initiative<sup>61</sup>

**The Green Customs Initiative** was launched in 2004 and is a global partnership of international organisations and entities cooperating to enhance the capacity of customs and other relevant border control officers to monitor and facilitate the legal trade and to detect and prevent illegal trade in environmentally sensitive commodities covered by relevant trade related Multilateral Environmental Agreements (MEAs) and international conventions.

These commodities include ozone depleting substances (ODS), toxic chemicals, hazardous wastes, endangered species and certain living-modified organisms. The objective of Green Customs Initiative is achieved through awareness-raising on all relevant international agreements as well as provision of assistance and tools to the customs community. Green Customs Initiative is designed to complement and enhance existing customs training efforts under the respective agreements. The Green Customs Initiative provides opportunities for coordinated and cost-effective development of tools, delivery of training and awareness-raising of customs officers and other border control officers through its umbrella partnership involving multiple organisations with diverse mandates.

The partners of the Green Customs Initiative comprise the secretariats of relevant trade related multilateral environmental agreements, such as the United Nations Environmental Programme, Interpol, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, United Nations Office on Drug and Crime, the Minamata Convention on Mercury, the Secretariat for the Vienna Convention for the Protection of the Ozone Layer and for the Montreal Protocol on Substances that Deplete the Ozone Layer, the Organisation for the Prohibition of Chemical Weapons, and the World Customs Organization. While not open to individual countries, it provides useful tools and resources that countries can use.

Source: <https://www.greencustoms.org/>

## 9.6. Voluntary networks of compliance assurance professionals

At European and global levels, voluntary networks of professionals and organisations play a prominent role in promoting cross-border cooperation on compliance assurance. They allow knowledge and experience to be shared through a range of activities, including: conferences and other periodic and one-off events; membership surveys; training or awareness-raising activities; publication of developments of interest to members; preparation of guidance or other documentation on good practices; and contributions to policy-making on different aspects of compliance assurance.

Networks also allow good links to be maintained between Member State authorities and the authorities of third countries. Table 14 provides an overview of the main European networks.

Cooperation between these networks themselves is also important, since, collectively, they embrace professionals working across the entire compliance assurance chain. Regular **cross-network** events have become of a feature of cooperation between the IMPEL, EnviCrimeNet, ENPE and EUFJE networks mentioned in Table 14.

<sup>61</sup> <https://www.greencustoms.org/>



In recognition of the role of IMPEL, EnviCrimeNet, ENPE, EUFJE and NEPA, the European Commission made them members of a high-level expert group, the Environmental Compliance and Governance Forum, established in 2018 to help steer actions that the Commission wished to undertake on environmental compliance and governance – including the preparation of this Guidance.

The Commission encourages all Member States to facilitate participation in these networks. As noted in Chapter 8, the EU provides financial support.

Table 14: European environmental compliance assurance networks

Network	Composition, objectives and activities
<b>IMPEL</b>	The <b>European Union Network for the Implementation and Enforcement of Environmental Law</b> <sup>62</sup> is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the EU, EEA and EFTA countries. The network's objective is to create impetus in the EU to make progress for more effective application of environmental legislation. The core of IMPEL's activities take place within a project structure and concern awareness-raising, capacity-building, peer review, exchange of information and experiences on implementation, international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.
<b>ENPE</b>	The <b>European Network of Prosecutors for the Environment</b> <sup>63</sup> aims to contribute to protecting the environment by supporting the operative work of environmental prosecutors and the implementation and enforcement of environmental law by environmental prosecutors. To this end, ENPE supports the operative work of environmental prosecutors; promotes the exchange of information and experience of the enforcement and prosecution of environmental crime between Members; fosters knowledge of environmental law among prosecutors and promotes the development of environmental criminal law as an integral part of criminal law enforcement generally; shares experience of investigations, prosecutions and sanctions in the field of environmental criminal law; contributes to better understanding, implementation and enforcement of environmental criminal law; encourages and supports cooperation between Members and facilitates capacity building in relation to the prevention and prosecution of environmental crime; facilitates collection of data about environmental crime across Europe and enforcement action taken; identifies and develops good, and whenever possible, best practice, for successful prosecutions and produces guidance, tools, common standards and approaches to the prosecution of environmental offences; shares training programmes in relation to environmental criminal law; and cooperates with relevant international organisations.
<b>EnviCrime-Net</b>	The <b>Network for Countering Environmental Crime</b> <sup>64</sup> is an informal network connecting police officers and other crime fighters in the field of environmental crime to learn from each other about the extent and nature of environmental crime, the best practises to handle it, etc. Its activities include enhancing awareness of the fight against environmental crime at the strategic level; sharing of expertise; risk assessments that can be exchanged amongst the participants; learning from one another in the fields of risk assessments and intervention strategies; tactical analyses of particular forms of environmental crime; joint investigations into environmental crime; exchanging investigation methods; exchanging information prior to initiating the operational phase; creating the

<sup>62</sup> For more information see: <https://www.impel.eu/about-impel/>

<sup>63</sup> For more information see: <https://www.environmentalprosecutors.eu/>

<sup>64</sup> For more information see: <http://www.envicrimenet.eu/>



	right training and schooling possibilities in cooperation with Cefpol.
<b>EUFJE</b>	The <b>European Union Forum of Judges for the Environment</b> <sup>65</sup> was created with a view to raising the awareness of judges of the key role of the judicial function in the effectiveness of sustainable development. The EUFJE aims to promoting the enforcement of environmental law by contributing to a better knowledge by judges of environmental law, by exchanging judicial decisions and by sharing experience in the area of training in environmental law.
<b>NEPA</b>	The <b>European Network of the Heads of Environment Protection Agencies</b> <sup>66</sup> is an informal group bringing together the heads and directors of environment protection agencies and similar bodies across Europe. The network exchanges views and experiences on issues of common interest to organisations involved in the practical implementation of environmental policy.

Very specific problems like illegal waste trafficking may justify specific partnerships between European networks and their counterparts in other global regions. An example is provided by the WasteForce Project mentioned in Box 29.

#### Box 29: WasteForce Project<sup>67</sup>

Funded by the EU's Internal Security Fund – Police, this project is carried out by a consortium led by the IMPEL network. One of its actions is operational networking between practitioners in Europe and their counterparts in the Asia-Pacific region.

At global level, the most important network is INECE, the International Network for Environmental Compliance and Enforcement.

#### Box 30: INECE<sup>68</sup>

**INECE** includes environmental regulators, investigators, prosecutors, judges, and employees of international environmental and development organisations. Officials from customs, the police, NGOs, academia, the media, and business also participate.

INECE is the only global organisation focused exclusively on achieving compliance with environmental law through effective compliance promotion and enforcement strategies, including administrative, civil, criminal, and judicial enforcement. INECE works on both national implementation of domestic environmental laws and on improving the effectiveness of multilateral environmental agreements.

INECE develops and implements practical and innovative activities that strengthen environmental compliance and enforcement at all levels of governance – local, national, regional, and international. INECE builds the capacity of compliance and enforcement stakeholders to contribute to the rule of law and good governance in areas that advance sustainable development

<sup>65</sup> For more information see: <https://www.eufje.org/index.php?lang=en>

<sup>66</sup> For more information see: <http://epanet.pbe.eea.europa.eu/>.

<sup>67</sup> <https://www.wasteorceproject.eu/>.

<sup>68</sup> For more information see: <https://inece.org/about/>.

The Global Judicial Institute on the Environment (GJIE) is a recently established global judicial network supported by UNEP.

**Box 31: The Global Judicial Institute on the Environment**

**GJIE** is organized by judges for judges and committed to judicial independence, transparency, and integrity. The Institute supports the judiciary across the world to effectively handle cases concerning the environment and promote the environmental rule of law.

Its mission is to support the role of courts and tribunals in applying and enforcing environmental laws and in promoting the environmental rule of law and the fair distribution of environmental benefits and burdens.

## 9.7. Testing the content against the three crime scenarios

**Table 15: Testing against the scenarios**

Scenario	Comments
<p><b>Problematic waste facility</b></p>	<ul style="list-style-type: none"> <li>• <b>Coordination and cooperation mechanisms at national level:</b> There may be a need for internal coordination within the competent local authority between the permit-writing officials and the inspectors. In addition, coordination and cooperation will be needed with both law enforcement authorities (LEAs) and prosecutors. Many of the coordination and cooperation mechanisms set out in Chapter 9.3.1 will be relevant.</li> <li>• <b>Coordination and cooperation mechanisms at European and international levels</b> As two other Member States are concerned, established contact points with these as well as the roles of Europol and Eurojust are all relevant.</li> <li>• <b>Voluntary networks of compliance assurance professionals</b> While not directly involved in individual cases, IMPEL, EnviCrimeNet, ENPE, EUFJE and NEPA all have an interest in addressing waste crimes and infringements, and are a useful source of contacts and knowledge.</li> </ul>
<p><b>Illegal killing of wild birds</b></p>	<ul style="list-style-type: none"> <li>• <b>Coordination and cooperation mechanisms at national level:</b> There is a need for good coordination between the nature conservation authority and the police and prosecutors. Many of the coordination and cooperation mechanisms set out in Chapter 9.3.1 will be relevant.</li> <li>• <b>Coordination and cooperation mechanisms at European and international levels</b> The problems are internal to one country, but there is still a need for cooperation at European level, since birds of prey are a common heritage and often face similar threats in different countries.</li> <li>• <b>Role of international conventions:</b></li> </ul>



	<p>The Bern Convention is especially relevant to persecution of wild birds.</p> <ul style="list-style-type: none"> <li>• <b>Voluntary networks of compliance assurance professionals</b></li> </ul> <p>IMPEL, EnviCrimeNet, ENPE and EUFJE all have an interest in this kind of wildlife crime and can be a source of valuable knowledge and experience in how to combat it.</p>
<p><b>Illegal trade in wildlife</b></p>	<ul style="list-style-type: none"> <li>• <b>Coordination and cooperation mechanisms at national level:</b></li> </ul> <p>There is a need for good coordination between customs, police, prosecutors and any relevant national wildlife authorities. Many of the coordination and cooperation mechanisms set out in Chapter 9.3.1 will be relevant.</p> <ul style="list-style-type: none"> <li>• <b>Coordination and cooperation mechanisms at European and international levels</b></li> </ul> <p>The problems are transboundary and extend beyond Europe.</p> <ul style="list-style-type: none"> <li>• <b>Role of international conventions:</b></li> </ul> <p>CITES is particularly relevant.</p> <ul style="list-style-type: none"> <li>• <b>Voluntary networks of compliance assurance professionals</b></li> </ul> <p>IMPEL, EnviCrimeNet, ENPE and EUFJE all have an interest in this kind of wildlife crime and can be a source of valuable knowledge and experience in how to combat it.</p>



## 10. Interventions to discover, assess and understand infringements

### 10.1. Introduction

Chapter 6 refers to the challenges authorities face in discovering, assessing and understanding infringements.

This Chapter looks at the interventions that can be used to address these challenges. The interventions include inspections, surveillance and investigations. Collectively, they come under the umbrella term 'compliance monitoring'.

This Chapter looks firstly at overall approaches to compliance monitoring, distinguishing between proactive and reactive interventions. It then looks at the reasons why monitoring will vary in intensity and focus, and the likely importance of coordination and cooperation between authorities. There follows an outline of important specific techniques for discovering, assessing and understanding infringements, and an outline of monitoring carried out by non-public actors, such as whistleblowers.

### 10.2. Overall approaches to monitoring: proactive and reactive

There are two broad approaches to compliance monitoring. One is proactive, the other reactive.

The proactive approach covers interventions made by authorities on their own initiative. Proactive compliance monitoring covers activities such as the conduct of routine inspections. It is often done in a planned manner, with the twin aims of verifying compliance and detecting infringements.

In contrast, reactive monitoring covers interventions that respond to incidents, accidents and other occurrences, such as receipt by the authorities of a complaint.

Proactive compliance monitoring has its limits. The number of duty-holders and the range of occupational and other activities that could give rise to infringements make it infeasible to proactively monitor every duty-holder's conduct. How then to choose which duty-holders and which occupational activities to monitor proactively?

Some human activities are considered inherently risky and are subject to specific inspection requirements under Union environmental law. This is the case with the operation of waste facilities and industrial facilities, for example. Some activities may be subject to general proactive monitoring regimes – for example, imports and exports into the Union will be subject to customs controls.

Routine monitoring may also be carried out to verify that certain measures are taken following an enforcement intervention – for example, a case-and-desist order to an operator conducting an activity in an illegal manner.

Whatever the context, authorities will need to choose where and when to carry out checks.

**Risk assessment** has emerged as a technique for targeting different kinds of proactive compliance monitoring. The technique looks at both the risk of infringements occurring and their likely negative effects. Typical risk assessment criteria include whether a duty-holder was found to be non-compliant in the past. The technique can be used both strategically and operationally. At the strategic level, it can be used to identify overall priorities, and at the operational level it can be used to target specific duty-holders or locations.





Risk assessment is mandatory under some European environmental legislation, such as the Industrial Emissions Directive, 2010/75, Article 23, and the Waste Shipment Regulation, 1013/2006, Article 50(2)(a) - see Box 34 below.

Proactive compliance monitoring is necessary but not sufficient. Reactive monitoring is also required in order to deal with the unexpected.

There is no clear-cut dividing line between each kind of monitoring. Strategic planning of compliance monitoring needs to proactively anticipate the unexpected, and ensure that there are contingency plans in place to deal with problems that emerge despite not being envisaged. By the same token, reactive monitoring may yield lessons that are subsequently taken up in proactive monitoring. For example, the investigation of a complaint may show that a waste facility has infringed waste laws, leading the facility to be targeted for future proactive inspections under risk assessment criteria.

### 10.3. Varying the nature and intensity of the compliance monitoring

Environmental crimes and related infringements vary in nature and seriousness. As a result, monitoring also needs to vary in nature and intensity.

The need to vary the nature and intensity of monitoring interventions may emerge at the discovery stage. For example, the routine inspection of a waste facility may provide indications of serious misconduct that requires more intensive investigation. Or there may be indications from the outset that illegal waste disposal is taking place on an organised basis. In such situations, the intensity of the monitoring will need to anticipate the need to acquire evidence sufficient to mount a criminal prosecution.

The need to vary the nature and intensity of monitoring interventions may also arise at the stage of assessing infringements. In some situations, both administrative-law enforcement and criminal-law enforcement may need to be undertaken in respect of the same set of infringements, each serving a different purpose. For example, administrative-law enforcement may be necessary to limit the environmental harm caused by the infringement, and criminal-law enforcement may be necessary to ensure that the infringement is made subject to a dissuasive and proportionate sanction.

The need for variation in the nature and intensity of compliance monitoring also highlights the importance of coordination and cooperation between authorities and professionals, as addressed in Chapter 9. In particular, administrative bodies may need to bring in police and prosecutors to carry out certain probing forms of monitoring and it is crucial that there are sound arrangements and practices in place to allow this to happen smoothly. Arrangements for information- and data-sharing across authorities are also important in this context.

### 10.4. Specific techniques of public authorities for discovering infringements

The techniques described under this heading are typically used *prior* to any detailed investigation of infringements that have already come to light. They are important in bringing to light infringements that might otherwise go undiscovered.

#### 10.4.1. Routine and non-routine inspections of waste facilities and other installations

An environmental compliance assurance authority may visit a facility or the site of an activity in order to check performance and records. These visits and checks are termed 'inspections' and are



the classic way of verifying compliance and discovering infringements at waste facilities and other higher-risk installations.

In 2001, the European Parliament and Council adopted a Recommendation on how such inspections should be carried out – see Box 32. This drew heavily on previous work done by IMPEL.

#### Box 32: 2001 Recommendation on inspections

**Recommendation 2001/331/EC providing for minimum criteria for environmental inspections** recommends that Member States should ensure that environmental inspection activities are planned in advance and have at all times a plan or plans for environmental inspections for their entire territory and all controlled installations within it. The Recommendation further details that the plans for environmental inspections should be produced on the basis of the relevant EU environmental obligations, but also of a register of controlled installations within the plan area, a general assessment of major environmental issues within the plan area and a general appraisal of the state of compliance by the controlled installations as well as data on and from previous inspection activities, if any.

Inspections may be proactive ('routine') or reactive ('non-routine'). Routine inspections are often risk-based. Non-routine inspections may be a response to incidents (such as a landfill fire) or complaints (for example about odour nuisances from a landfill).

The 2001 Recommendation has been influential in the design of a number of binding inspection provisions – including binding inspection provisions contained in the Industrial Emissions Directive, 2010/75/EU ('the IED'). IED inspections play an important role in relation to larger industrial installations, including larger waste facilities.

IMPEL has developed and promotes valuable guidance on inspections – see Box 33.

#### Box 33: Examples of IMPEL guidance on inspections

**IMPEL** has developed **the environmental inspection cycle**<sup>69</sup>. A detailed overview is provided of how an environmental inspection cycle should take place in seven separate steps.

IMPEL has also developed a guidance document on **landfill inspections** presenting best practices from different legal systems and pointing at the importance of organising planned inspections<sup>70</sup>. IMPEL & Make It Work have developed a Guidance for regulators on enabling innovations for the circular economy (prevention and recycling of waste)<sup>71</sup>. It contains practical tools for planning and performing of inspections in the waste recovery or recycling chain (end-of-waste recycling installations, waste and end-of-waste fluxes).

<sup>69</sup> For more information see: <https://www.impel.eu/environmental-inspection-cycle/>.

<sup>70</sup> For more information see: <https://www.impel.eu/wp-content/uploads/2016/08/Guidance-document-Landfill-JVMN-090813.pdf>.

<sup>71</sup> For more information see: <http://minisites.ieep.eu/work-areas/environmental-governance/better-regulation/make-it-work/events/2019/02/rome-making-the-circular-economy-work-connecting-policy-law-and-practice-march-2019>.



#### 10.4.2. Verification of self-monitoring and reporting

Some compliance monitoring is based on placing duty-holders under obligations to monitor themselves and keep records. Duty-holders may be obliged to conduct due diligence, sometimes by relying on third party due diligence bodies: see the example of the Timber Regulation mentioned in Chapter 5. Some duty-holders may have certified mechanisms based on audits.

Where such systems are in place, the role of the competent authorities may be to carry out checks on the duty-holder or the due diligence body. This may involve checking emissions or other records of how an installation functions.

#### 10.4.3. Waste shipment inspections

Waste shipments are subject to binding inspection requirements that are based on the approach of the 2001 Recommendation on minimum criteria for environmental inspections in the Member States already mentioned above – see Box 34 below.

##### Box 34: Inspections under the Waste Shipment Regulation<sup>72</sup>

Article 50 of the Waste Shipment Regulation 1013/2006 sets out detailed provisions on waste shipment inspections. Member States are required to have an inspection plan based on a risk assessment covering specific waste streams and sources of illegal waste shipments and considering ‘if available and where appropriate, intelligence-based data such as data on investigations by police and customs authorities and analyses of criminal activities. That risk assessment shall aim, inter alia, to identify the minimum number of inspections required, including physical checks on establishments, undertakings, brokers, dealers and shipments of waste or on the related recovery or disposal.’

Inspections of shipments are to include the verification of documents, the confirmation of identity and, where appropriate, physical checking of the waste.

#### 10.4.4. Customs controls

Custom controls are of particular importance to verify compliance with wildlife and waste legislation. Especially when it concerns transport of endangered species listed in CITES and of waste shipments to non-EU countries, the first authorities to be confronted with a possible infringement are the custom authorities.

Before allowing the goods to be placed under a customs procedure under Regulation 338/97, customs control the existence of the required permit or certificate and may also perform a physical check and possibly take samples for laboratory checks. On suspicion of non-compliance, the goods remain under customs control and customs may collaborate with the environmental authorities and other enforcement authorities such as the police. Under Regulation 1013/2006 customs must perform documentary checks and may also be called to verify the identity of the goods and perform physical checks. Close cooperation with the competent authorities takes place in this case as well. In accordance with Article 46 of Regulation (EU) 952/2013, customs controls are risk-based.

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<sup>72</sup> At the time of finalisation of this guidance document, the Waste Shipment Regulation was subject to a revision process.



#### 10.4.5. State-of-the-environment and pressure monitoring

There are obligations on authorities to monitor water quality, air quality and the state of nature – and sometimes to monitor pressures as well. Such monitoring can help in the discovery of infringements. For example, wildlife monitoring may disclose a problem of persecution of wild birds.

#### 10.4.6. General surveillance, including earth observation, tracking and geo-spatial intelligence

It is important to be able to discover illegal activities that are highly mobile and clandestine. Examples are the clandestine transport and disposal of waste and the illegal trapping or persecution of wild birds. Offenders will often go to great lengths to ensure that their infringements are not detected. Routine inspections (which tend to focus on permitted or non-clandestine activities) are likely to be ineffective on their own. That is why general surveillance is important.

Spatial surveillance involves careful monitoring of circumstances that may disclose infringements and can cover earth-observation of land-cover changes, physical land surveys to detect possibly illegal clandestine and unreported activities, and evidence-gathering on the nature and extent of detected infringements.

Earth observation (EO) involves obtaining information about what is happening on the earth through observations made from satellites and aircraft hosting a range of equipment and sensors capable of gathering and recording different kinds of environmental data. This data can be useful for both state-of-environment monitoring and compliance monitoring. Earth observation is sometimes referred to as 'remote sensing' – especially when conducted from satellites.

Advantages of satellites include their sweep of coverage (with the entirety of terrestrial and marine surface areas being regularly observed), and their provision of time-series information (with similar data being collected continually over time, allowing the evolution of the state of the environment or of a particular land-use to be followed).

In combination with tracking devices based on global positioning systems (GPS), satellites can also be used to monitor moving objects such as road vehicles. GPS tracking can address problems such as illegal movements of waste, for instance.

Making use of earth observation and satellite tracking for compliance monitoring involves obtaining, processing and analysing data. Imagery from publicly owned satellites covered by the EU Copernicus programme is accessible for free, but charges may be made for data gathered from private satellites. Environmental compliance assurance authorities have also the possibility to collect earth observation data themselves by using fixed-wing aircraft or drones. Processing and analysing data may require specialist skills – and authorities may not always have these in-house. Artificial intelligence (AI) can be used to analyse data automatically.

The data obtained from earth observation and satellite tracking can form part of geographic information systems (GIS). These are frameworks for gathering, managing and analysing spatial data. A GIS can organise information in layers and through visual tools such as maps. It can also identify patterns in and relationships between data. GIS technologies have been steadily advancing over recent decades. **Geo-spatial intelligence** (or GEOINT) is a particular kind of GIS – see Box 35.



### Box 35: Geospatial intelligence

Geo-spatial intelligence (GEOINT) is intelligence about human activity on Earth derived from the exploitation and analysis of imagery and geospatial information that describes, assesses, and visually depicts physical features and geographically referenced activities on Earth. GEOINT consists of imagery and imagery intelligence<sup>73</sup> (IMINT) combined with other geospatial<sup>74</sup> information. It uses different sources of information about specific locations (for example, imagery from satellites and other means of earth observation such as drones) as either itself a form of compliance monitoring or as a tool for directing other forms of compliance monitoring (such as site-based inspections). Other geospatial information is essentially all other spatial data with which specific information on compliance can be linked as attributes (for example, landfill permit information).

GEOINT recognises that interventions are likely to be more effective if they can exploit and combine different sources of spatial information. For example, to investigate the cause(s) and effects of serious habitat damage, authorities may find it useful to draw on state-of-the-environment habitat monitoring, satellite monitoring by Copernicus, and citizen science or complaint-related data. This implies that authorities must have access to different information sources and be able to analyse them effectively.

At least 6 roles can be mentioned<sup>75</sup>:

- **Early alerts:** GEOINT has the potential to provide automated early alerts (e.g. by picking up the digital signatures of unusual or irregular land-use changes and notifying these to the end-users, i.e. the responsible public authorities). This can help authorities to intervene more quickly;
- **Risk-assessment:** GEOINT can help authorities to better assess the risks of non-compliance (e.g. by using satellites for large-scale surveillance and high-lighting pollution hot-spots and other spatial factors pointing to a greater probability of infringements). The remote sensing pilot mentioned as part of the LIFE SMART waste project in Box 36 is an example;
- **Real-time information:** GEOINT can allow authorities to monitor activities in real time, for example through EO sensors that send a constant stream of monitoring data. EO can be used to monitor individual waste facilities for example, to complement site visits (see also Box 39);
- **Forensic evidence of past misconduct:** Because it is constantly collected and stored for future use, satellite surveillance allows authorities to go back in time when investigating illegal or irregular land-use changes, in particular to establish a time-line for when the changes occurred and show the duration;
- **Visual evidence at criminal trials:** GEOINT can provide visual evidence at trials, enabling judges to 'see' the crime;
- **Deterrence:** Where authorities make it publicly known that they are regularly using GEOINT to detect environmental infringements, this can also have a powerful deterrent effect on potential offenders.

It may be challenging to persuade political and senior management levels of the need for resources to go into use of EO and GEOINT. Practical experience shows, however, that use of satellite images

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<sup>73</sup> Imagery intelligence (IMINT) is an intelligence-gathering discipline which collects information via imaging sensors on satellite and/or airborne platforms (planes, drones).

<sup>74</sup> Geospatial information is defined in the ISO/TC 211 series of standards as data and information having an implicit or explicit association with a location relative to the Earth.

<sup>75</sup> See for a detailed analysis and concrete examples Ray Purdy, Using Earth Observation Technologies for Better Regulatory Compliance and Enforcement of Environmental Law, *Journal of Environmental Law*, 2009, 22:1 (2010), p. 59-87.



for environmental compliance assurance can be cost-effective and result in significant financial savings due to reduced costs for classic on-site inspections<sup>76</sup>.

The practical use of evidence-gathered through EO will have to consider relevant procedural legal provisions, in particular as regards data protection and use as evidence in courts<sup>77</sup>.

## 10.5. Specific techniques of public authorities for further investigating and assessing infringements

The techniques described under this heading are typically used where infringements have already been discovered or are suspected but it remains necessary to compile more evidence for enforcement purposes. The techniques may vary considerably, depending on the nature of the infringement and the degree of suspected criminality.

In very broad terms, the techniques will need to focus on related but distinct evidence-gathering challenges:

- Precisely and accurately identifying **the infringements** concerned;
- Precisely and accurately characterising the **nature and gravity** of the environmental harm. This may, amongst other things, be necessary in order to characterise certain infringements as meeting the threshold for an environmental crime;
- Identifying a suspect or series of **suspects**;
- Identifying and characterising the **modus operandi** of the infringement;
- Characterising the level of **culpability** of individual suspects.

The techniques engage a range of skills, including specialised ones. It is likely that, in serious cases in particular, a transversal approach will be needed, with several techniques required. Different techniques may need to be deployed at different stages. The relationship between different techniques is likely to be dynamic – with the results of some techniques pointing to the need to employ others, and all the resulting evidence needing to be compared and collated into a dossier or dossiers for purposes of follow-up and enforcement. This further underscores the importance of the coordination and cooperation mentioned in Chapter 9.

### 10.5.1. Targeted surveillance and intelligence-gathering

Investigating clandestine criminality requires teamwork, planning and specific techniques. Specific techniques include:

- Infiltration of a specific community of law-breakers (for example, a waste mafia). However, not all legal systems allow this;
- Telephone and internet surveillance. In some Member States, permission to use telephone surveillance is often refused. Use of the wider criminal code may be important, as greater powers may exist to investigate organised crime. Use of the Internet may enable the detection of illegal traders;
- Use of tracking devices – see Box 36;

<sup>76</sup> See for details and examples Ray Purdy, Using Earth Observation Technologies for Better Regulatory Compliance and Enforcement of Environmental Law, *Journal of Environmental Law*, 2009, 22:1 (2010), p.78-79.

<sup>77</sup> See for a detailed analysis Carole Billiet, Satellite Images as Evidence for Environmental Crime in Europe, in: Rurdy, R. and Leung, D. (2012) *Evidence from Earth Observation Satellites*, Leiden: Brill: 321-355.



- Controlled deliveries – see Box 37;
- Targeted earth observation – see Box 38.

### Box 36: Use of tracking devices

**The LIFE SMART Waste project (LSW)** ran as an innovative partnership between key European bodies addressing waste crime from 2014 to 2020. The overarching goal of the project was to demonstrate innovative ways of understanding, tackling and reducing waste-related crime. This included work on the usefulness of tracking devices in the prevention and detection of waste crime (*Action B7, The deployment of electronic tracking devices to detect and prevent waste crime*). The project explored the types of tracking devices available, how the systems operate, potential application in the waste industry and the risks and challenges in doing so. It demonstrated that tracking devices can serve as an intelligence tool to obtain evidence, corroborate intelligence and/or to close intelligence gaps in a cost-efficient way. The application of such devices to test and understand local authority waste flow, with the potential to improve collection systems, infrastructure inadequacies and cost efficiencies was also examined. The project work addressed also aspects of processing personal data and data security risks.

Source: *LIFE Smart Waste Project*.

The **IMPEL LIFE SWEAP** project running from 2018 to 2023 focusses on waste shipments enforcement actions and aims, inter alia, at development of new tools to collect and share inspection data (online reporting app) and to map illegal shipment trends (geographical mapping tool). GPS tracking devices are used to generate accurate data on the routes and final destinations of waste streams.

Source: *IMPEL LIFE SWEAP*, <https://www.sweap.eu/>.

LIFE projects, such as '[LIFE hen harriers](#)' and '[The Egyptian Vulture New LIFE](#)' have explored and demonstrated the advantages of using cameras and satellite tagging, including for detection and investigation of illegal killing of birds. IMPEL SWEAP project looks at tracking devices; NGOs working on tracking tools.

See also *LIFE Smart Waste*.

### Box 37: Controlled deliveries

The Organised Crime Convention mentioned in Chapter 9.5, defines 'controlled delivery' to mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence. The aim is to follow a chain involving different actors. It can be useful for trade-related environmental crimes such as waste and wildlife trafficking. It can help in 'following the money' and obtaining evidence of money laundering connected with environmental criminality.

### Box 38: Geospatial intelligence for targeted surveillance

Earth observation involving satellites might be used to continuously monitor in real time a landfill or other waste facility suspected of illegal waste disposal. Sensors might be used to help identify whether there is excessive deposit of waste, for instance. Authorities can cross-check the information obtained with data from the permits and authorisations.





### 10.5.2. Expert analysis

In some cases, scientific and technical experts may need to be called on. For example, where a land-fill is only licensed to accept household waste, it may require expert knowledge to verify whether particular waste is household waste or industrial or toxic waste. In some cases, authorities may themselves have the necessary expertise; in others, they will have to call in external experts.

Expert analysis may be necessary not only to identify and characterise an infringement but to assess its gravity. For example, Article 3(f) of the Environmental Crime Directive, mentioned in Box 7 in Chapter 5, provides for the criminalisation of the killing of a protected animal, *'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'*. Where the relevant criminal law refers to this exception, expert evidence may be needed in any prosecution in order to show that the negligible exceptions do not apply. It should be noted, however, that the unlawful killing of the protected animal is already an infringement of the Habitats Directive and that sanctions should apply to such acts independently of the Environmental Crime Directive. Thus, there ought to be a basis to take enforcement action even if the expert analysis cannot come to a conclusion on the negligible exceptions.

### 10.5.3. Forensic analysis

Environmental forensics can help analyse concrete circumstances and the modus operandi of perpetrators. For example, it might be used to verify that a protected species has been poisoned and to identify the toxic agent.

#### Box 39: Forensic use of geospatial intelligence

Satellite imagery may be very useful in establishing a timeline for an infringement involving land-use change – for example, illegal waste disposal, destruction of a protected habitat or illegal logging. This is because satellite images – and possibly images from other forms of earth observation, such as ortho-photography – can be obtained for the past as well as the present.

Such imagery may also be useful in any subsequent court trial in enabling the court to visualize the commission of the infringement.

### 10.5.4. Financial investigations

Given that economic gain is a crucial driver of environmental crimes and infringements, investigation of financial flows is important. The Financial Risk Assessment Toolkit mentioned in Box 40 is an example.

#### Box 40: LIFE SMART Waste project

**The LIFE SMART Waste project (LSW)** is an innovative partnership between key European bodies addressing waste crime. The project commenced in June 2014 and will run until May 2020. The overarching goal of the project is to demonstrate innovative ways of understanding, tackling and reducing waste-related crime, specifically in relation to challenging waste streams (low-value and difficult-to-treat waste). Several project reports, including on practical interventions, investigations and intelligence, are available on the project webpage and on request to the Project Communications team.

The *Financial Risk Assessment* toolkit helps regulators assess the risks of illegal or suspicious activity, such as the disposal of waste on a particular site. It is designed as a decision-making tool to assist regulators or inspectors when considering licence or permit applications – in particular, in determining whether to issue a licence or permit for waste activities, tighten permitting conditions, enhance financial provisions, or increase levels of compliance monitoring or inspections. The toolkit uses financial indicators to help identify those sites or operators at high risk of poor environmental compliance, irregular waste disposal and other illegal waste activities. Comprising of both qualitative and quantitative information, the toolkit can be viewed in





two parts:

- A qualitative part, which looks at business ownership and sources of funding, including a credit history check in case the business funding is not traditionally sourced. Site owner checks can also be organised to ensure site owners are aware of planned activities and possible associated risks.
- A quantitative part, which concerns material and operating costs. Material costs, which are the costs of the materials entering and leaving a particular site, may fluctuate. This may influence the business model of the operator, possibly leading to cases of non-compliance. The quantitative part also addresses operating costs of the business for the first three years, including revenues, capital and terms of loans.

To assist regulators in identifying indicators of potential waste crime, a *Waste Crime Indicators* toolkit was designed. The toolkit combines data analysis with regulatory insight to develop indicators of potential illicit waste activities. Another tool developed under the project is the *Horizon Scanning* toolkit, aimed at identifying and prioritising the online indicators of potential issues arising in the short, medium and long term. Users may follow a 9-step process of information gathering, insight and action planning, for topics be ranked – thereby assisting regulators to prioritise issues which they may not have been aware of previously. The *Competitive Intelligence* toolkit is designed to identify gaps in stakeholders' understanding of challenging waste streams, using a modelling process aligned to key intelligence questions. The project also developed a *Remote Sensing* pilot, using various methods of earth observation (including satellite imagery) and a probability model to identify both potential and actual sites of illegal waste disposal. The model gives greater insight into ground disturbances (possible signs of illegal waste activities) and highlights particular types of waste, such as tyres or baled waste.

Source: *LIFE SMART Waste project*

#### 10.5.5. Interviews of suspects and witnesses

Standard investigation techniques such as interviewing suspects and witnesses and recording statements may also have an important role. Some witnesses may also be complainants (see below).

#### 10.5.6. Techniques for identifying potential and actual cases of environmental damage under the Environmental Liability Directive

IMPEL has worked on a practical guide and a practical tool on the scope of environmental damage determination that helps in identifying clues of environmental damage and in pointing to the applicability of environmental liability requirements – see Box 41.

#### Box 41: IMPEL CAED project<sup>78</sup>

CAED stands for 'Criteria for the Assessment of the Environmental Damage'. The project is linked to the Commission guidelines on environmental damage mentioned in Box 44. Its aim is to identify, from a regulatory and, in particular, technical and practical perspective, how to detect, identify and assess the clues and pieces of evidence of environmental damage and threats of same.

<sup>78</sup> <https://www.impel.eu/projects/criteria-for-the-assessment-of-the-environmental-damage-caed/>.



## 10.6. Specific techniques of public authorities for understanding infringements

The previous sections have focused on techniques for detecting and analyzing specific infringements. However, it is also necessary to have a broader understanding of why and how infringements occur, and the motivations of perpetrators. Techniques that enable this include:

- Expert judgment of individual environmental compliance assurance professionals, based on experience and case-studies;
- Exchanges of information amongst environmental compliance assurance professionals. The networks of professionals mentioned in Chapter 9 can play a very useful role;
- Statistical analysis;
- Sociological and other research – for example, on attitudes and perceptions that can lead to a social tolerance of certain kinds of environmental crimes and infringements.

The Waste Crime Indicators Toolkit and Horizon Scanning Toolkit described in Box 40 are examples of techniques to help gain a broader understanding of the risks of certain kinds of infringements arising.

## 10.7. Compliance monitoring role of non-public actors

Most compliance monitoring ought to be carried out by public authorities and publicly employed compliance assurance professionals. There is also, however, a potential role for non-public actors.

### 10.7.1. Reports by trade associations, audits, certification and due diligence

For reasons of unfair competition, trade associations and others may draw attention to non-compliant competitors – for example, legitimate waste operators may draw attention to the negative impacts of illegal waste operators, and may provide valuable sectoral analysis to the competent authorities.

Operators of certain businesses may be required to employ due diligence (for example, under the Timber Regulation mentioned in Chapter 5) or they may voluntarily undergo external audits. Such exercises may reveal infringements or infringement risks. While these may not always be reported to the authorities, they may serve to raise the general alert level about unsatisfactory conduct – particularly if later followed by informal reporting, through tip-offs or whistle-blowing, for instance.

### 10.7.2. Whistle-blowers

Unlawful activities may occur in any organisation, whether private or public, big or small. People who work for an organisation and know about such occurrences are in a privileged position to inform those who can address the problem.



#### Box 42: EU Whistleblower Protection Directive

**The Whistleblower Protection Directive**<sup>79</sup> aims to enhance the enforcement of Union law and policies in specific areas by laying down common minimum standards providing for a high level of protection of persons reporting breaches of Union law.

The Directive defines a ‘reporting person’, i.e. whistle-blower, to mean a natural person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities.

The Directive, amongst other things, covers whistle-blowing linked to the Environmental Crime Directive and infringements of Union environmental legislation.

Whistle-blowing can be extremely relevant for environmental crimes and related infringements, which are often difficult to discover.

#### 10.7.3. Citizen complaints, citizen science, victims, and NGO investigations

Infringements of environmental legislation can come to the notice of the authorities through complaints by victims, neighbours or other citizens, typically in situations where not much technical expertise is required to discover the infringements.

Citizens do not have the powers of authorities – for example, to enter onto property and examine records and equipment. However, they can alert authorities to problems such as environmental nuisances or obvious instances of environmental damage and pollution.

The Vade Mecum on complaint-handling and citizen engagement<sup>80</sup> deals extensively with handling of environmental complaints and stresses the importance and value of a well-structured approach, including a role for citizen science, and to note some aspects of particular relevance where there is significant criminality.

First of all, citizen complainants may be vulnerable – or feel themselves vulnerable – to intimidation or other forms of reaction from suspected perpetrators. Authorities may therefore need to employ techniques such as confidential telephone numbers for reporting infringements. They may also need to advise on the risks of directly confronting serious offenders, including organised criminals.

Second, although environmental crimes are sometimes described as ‘victimless’, it cannot be excluded that some environmental crimes will have direct human victims. This can be the case with crimes involving waste disposal and pollution. The Victims Protection Directive provides a framework for safeguarding such victims. The rights that victims have under this framework should not be overlooked.

#### Box 43: Victims Protection Directive

**The Victims’ Protection Directive**<sup>81</sup> aims to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. ‘Victim’ means:

(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss

<sup>79</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law.

<sup>80</sup> Available online in different language versions at: [Environmental compliance assurance vade mecum - Publications Office of the EU \(europa.eu\)](https://ec.europa.eu/environment/publications/environmental-complaints-summary-guide_en). A summary guide in different language versions is available at: [https://ec.europa.eu/environment/publications/environmental-complaints-summary-guide\\_en](https://ec.europa.eu/environment/publications/environmental-complaints-summary-guide_en).

<sup>81</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

Third, it should be remembered that some forms of criminality such as waste and wildlife trafficking may be linked to serious crimes against the person in third countries – including violence towards and assassination of ‘environmental defenders’.

Fourth, some NGOs have the willingness and capacity to conduct serious investigations of wrongdoing, sometimes by going ‘under cover’. Important evidence may emerge as a result.

## 10.8. Testing the content against the three crime scenarios

**Table 16: Testing against the scenarios**

Scenario	Comments
<p><b>Problematic waste facility</b></p>	<ul style="list-style-type: none"> <li>• <b>Proactive and reactive monitoring:</b> The scenario involves routine inspections of the permitted waste facility. However, there is also a need for monitoring to react to the complaints, whistleblowing and other information mentioned.</li> <li>• <b>Discovery techniques:</b> The following are all relevant to different aspects of the scenario: routine and non-routine inspections of the landfill; waste shipment inspections; general surveillance.</li> <li>• <b>Techniques for further investigating and assessing infringements:</b> The following may all play a role: targeted surveillance and intelligence-gathering; expert analysis of waste; forensic analysis of waste; financial investigations; interviews of suspects and witnesses.</li> <li>• <b>Techniques for understanding waste infringements:</b> Expert judgment, statistics and network exchanges may all deepen the understanding of why these kinds of waste infringements occur as well as the modus operandi.</li> <li>• <b>Compliance monitoring role of non-public actors:</b> The scenario features a whistleblower as well as citizen complaints. The Victims Protection Directive is also relevant.</li> </ul>
<p><b>Illegal killing of wild birds</b></p>	<ul style="list-style-type: none"> <li>• <b>Proactive and reactive monitoring:</b> The main monitoring is reactive – and a response to the killing of the rare bird of prey.</li> <li>• <b>Discovery techniques:</b> State-of-the-environment and pressure monitoring are both very important in this scenario.</li> <li>• <b>Techniques for further investigating and assessing infringements:</b> The following may all play a role: targeted surveillance and intelligence-gathering; expert identification of bird of prey; forensic analysis of poison; interviews of suspects and witnesses.</li> <li>• <b>Techniques for understanding wildlife infringements:</b></li> </ul>



	<p>Expert judgment, statistics and network exchanges may all deepen the understanding of why these kinds of wildlife infringements occur as well as the modus operandi.</p> <ul style="list-style-type: none"> <li>• <b>Compliance monitoring role of non-public actors:</b></li> </ul> <p>The scenario features an expert NGO. Citizen science may also play a role in such a scenario – by showing the distribution and population trends of individual species of wild bird, for instance.</p>
<p><b>Illegal trade in wildlife</b></p>	<ul style="list-style-type: none"> <li>• <b>Proactive and reactive monitoring:</b></li> </ul> <p>While there are proactive customs' controls, the main monitoring is a reaction to information received.</p> <ul style="list-style-type: none"> <li>• <b>Discovery techniques:</b></li> </ul> <p>The following are all relevant to different aspects of the scenario: routine customs controls; general surveillance.</p> <ul style="list-style-type: none"> <li>• <b>Techniques for further investigating and assessing infringements:</b></li> </ul> <p>The following may all play a role: targeted surveillance and intelligence-gathering; expert and forensic analysis of the lizards trafficked; interviews of suspects and witnesses.</p> <ul style="list-style-type: none"> <li>• <b>Techniques for understanding wildlife infringements:</b></li> </ul> <p>Expert judgment, statistics and network exchanges may all deepen the understanding of why these kinds of wildlife infringements occur as well as the modus operandi.</p> <ul style="list-style-type: none"> <li>• <b>Compliance monitoring role of non-public actors:</b></li> </ul> <p>The scenario features an expert NGO which carries out its own Internet monitoring.</p>

# 11. Enforcement measures to respond to infringements

## 11.1. Introduction

This Chapter explores in more detail the measures available to Member States to respond to detected infringements.

Collectively, these measures represent the means by which public authorities implement the compliance assurance principle of responding effectively to infringements – and more specifically the sub-principles of ending infringements as soon as possible; sanctioning infringements through penalties that are effective, dissuasive and proportionate; removing any financial gains; and remediation or mitigating the harm caused. These are all treated under the umbrella term 'enforcement'.

The Chapter begins with an overview of the measures available under administrative, criminal and civil law. It then looks at the three sanctioning criteria mentioned above – which are relevant under both administrative and criminal law. It follows this with an examination of available administrative-law measures, criminal-law measures and environmental liability, as well as approaches to selecting the right set of measures to respond to particular infringements. Finally, it tests the content against the scenarios of Chapter 2.

## 11.2. Overview of measures under administrative, criminal and civil law

Enforcement by public authorities can make use of measures developed under administrative, criminal and civil law:

- Administrative law, which concerns decision-making and the fulfilment of responsibilities by public administrations, provides public authorities with a range of responses to ensure that administrative law requirements - such as those related to environmental permits - are fulfilled by duty-holders.
- Criminal law governs the sanctioning of the most serious wrong-doing.
- Civil law provides public authorities with responses to infringements of contracts or agreements or conduct that results in compensatable damage. In this context, it is particularly relevant to the operation of environmental liability regimes, which aim at ensuring that the polluter addresses environmental damage.

Table 17 provides an overview of the key characteristics of each category of law.

Table 17: Overview of characteristics of administrative, criminal and civil law

Administrative law	Criminal law	Civil law - environmental liability
Provides for financial sanctions, i.e. fines, but also other measures.	Provides the most deterrent forms of sanction, including prison sentences.	Aims at compensation of environmental harm and restoration of environmental damage, as well as preventing such damage.
Measures often aim at preventing or ending infringements.	Use involves social stigma and expresses strong moral disapproval.	Allocating liability to the polluter can provide incentives for compli-
Measures can generally be im-		

<p>plemented quickly.</p> <p>Can be used against companies in legal systems without criminal liability for legal persons.</p> <p>Measures sometimes only bring offenders into compliance without deterring future misconduct (but high administrative fines can be a deterrent).</p> <p>Can be cost-effective for authorities, since procedures are less complex than for criminal law.</p>	<p>High thresholds for use: usually only public prosecutors can bring cases<sup>82</sup>, high evidentiary threshold.</p> <p>High costs as a result of the process, typically involving a criminal court.</p>	<p>ance.</p> <p>Usually not suitable for diffuse pollution.</p>
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While some measures within these categories will be alternatives to each other, many are complementary – and some may be necessary in parallel to other measures. That is why it is important to have an overview.

It is also useful to remember that public enforcement involving one or more of these measures may coincide with private enforcement. Some infringements of environmental law may involve or be closely related to wrong-doing under consumer law, for instance – or they may involve torts such as damage to property or harm to the health of individuals. Such wrong-doing may give rise to private compensatory claims or private demands for injunction under civil law. Details of such possibilities lie outside the scope of this Guidance, but complex clusters of infringements may result in use of multiple public and private enforcement measures alongside or in succession to each other.

### 11.3. Effective, proportionate and dissuasive penalties

Article 5 of the Environmental Crime Directive requires that the offences covered by the directive shall be punishable by effective, proportionate and dissuasive criminal penalties.

However, as already noted, there is a more general requirement for all infringements of Union law to be subject to a system of penalties that are effective, proportionate and dissuasive<sup>83</sup>. This more general requirement can encompass both administrative and criminal sanctions.

Each of the three criteria is considered below. As will be seen, the criteria are not completely discrete but overlap with each other.

The three criteria derive from case-law of the Court of Justice of the European Union. The Court presented the criteria in the context of a principle known as the principle of effectiveness. According to this, EU Member States are bound to ensure that obligations created under Union law are made effective in practice. The Court considered that the principle necessitated the existence of sanctions for infringements of those obligations. Sanctions also needed to fulfil the three criteria mentioned.

<sup>82</sup> There are exceptions, however. For example in England and Wales the Environment Agency can bring criminal cases to court and in Belgium, France, Spain and Italy victims can bring cases to the criminal court.

<sup>83</sup> See for example Case 68/88, *Commission v Hellenic Republic* [1989] ECR 2965, paragraphs 23, 24 and 25.



### 11.3.1. Effectiveness

Sanctions are effective if they relate to the specific characteristics of infringements and serve to make sure that the Union obligations at stake are respected in practice. Sanctions should therefore be very closely related to the obligations to which they refer and be relevant to infringements of those obligations.

Effectiveness also relates to the intensity and implementability of sanctions. Even if well adapted to specific obligations and any infringements of those obligations, sanctions may be ineffective if the results of their application do not ensure respect for the obligations. This might be the case where available sanctions are too low relative to the seriousness of infringements, for example, or where they fail to sufficiently address continuing or repeated infringements. It might also be the case where the conditions that public authorities have to fulfil in order to apply the sanctions are so onerous as to render them unusable in practice.

In this regard, the harm caused by the infringement needs to be taken into account. Effectiveness implies not only bringing the harm to an end but preventing future harm from a continuation or repetition of the infringement. For example, it would be ineffective to impose what appears to be a heavy lump-sum fine on a polluting enterprise if it is known that the enterprise will pay the fine but continue to illegally pollute. Hence, the sanction – or set of sanctions – also needs to aim at preventing the illegal pollution from continuing. One possibility is to combine imposition of a lump-sum penalty for past misconduct with imposition of a daily penalty for continuing misconduct. The daily penalty is only brought to an end when the infringement is brought to an end.

Effectiveness also relates to the ongoing harm or loss occasioned by an infringement, making restoration or compensation for damage caused an appropriate element of the set of sanctions applied.

The full implications of the need for sanctions to be effective mean that a system of sanctions needs to include a sufficient range of punitive measures to address the characteristics of individual infringements or clusters of infringements as well as the characteristics of individual perpetrators. Having a wide array of different administrative law, criminal law and civil law measures that enforcement authorities can use will underpin an effective enforcement system<sup>84</sup>.

### 11.3.2. Proportionality

Proportionality concerns the relationship between a penalty on the one hand and the importance of the infringement and the attitude of the perpetrator on the other.

When an infringement is administrative in character, does not cause any harm to the environment and was not committed with deliberate intent, the criterion of proportionality would allow for a low penalty. This could consist of an administrative fine, if a legal system allows this. Conversely, proportionality would call for a higher penalty if actual harm is caused or the infringement was deliberate in nature.

### 11.3.3. Dissuasiveness

Dissuasiveness means that the perpetrator of an infringement is dissuaded from continuing or repeating the infringement, and, more generally, that other potential perpetrators are dissuaded from infringing environmental obligations.

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<sup>84</sup> Michael Faure, The evolution of environmental criminal law in Europe: a comparative analysis, in Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi (eds.), *Environmental crime in Europe*, Oxford, Hart Publishing, 2017, 309-314.





Sanctions should be of a type and magnitude that ensures that the expected costs of infringing are higher than the expected benefits to the perpetrator. The greater the harm to society resulting from an infringement and the greater the potential benefits to the perpetrator, the higher the expected penalty will need to be in order to have a dissuasive effect.

The optimal penalty will also depend on the probability of the perpetrator being apprehended, prosecuted and convicted. The lower the probability of detection, the higher the penalty should be. For example, if perpetrators who deposit waste illegally cause serious harm to society, derive high benefits for themselves and operate in a clandestine way that makes the probability of detection low, a severe penalty will be necessary.

To deal with profit-driven infringements committed by businesses of varying size, it may be appropriate to have a penalty based on business turnover. This can help to anticipate calculations by those operating such businesses, especially larger ones, that any financial penalties can be absorbed as just another cost of doing business.

An appropriate degree of transparency will be necessary in order for the wider dissuasive effect of penalties to be realised. This might involve publicising the most serious instances of punishment. Negative publicity may impact the reputation of corporate wrongdoers, for instance, and influence future corporate conduct.

## 11.4. Administrative law enforcement

### 11.4.1. Fines

In some Member States, administrative authorities have the possibility to sanction environmental infringements by imposing financial penalties, i.e. fines, typically through fixed penalty notices.

Use of a system of administrative fines may be an important alternative to use of the criminal justice system.

There are demanding evidentiary standards to secure a criminal conviction – for example, there can be no reasonable doubt about the guilt of the accused. This may make prosecutors reluctant to prosecute infringements as environmental crimes – especially where infringements are not perceived as meeting a threshold of sufficient seriousness. In many Member States, environmental infringements have a low probability of leading to criminal prosecutions.

Against this background, administrative fines can be used for infringements that might otherwise not be penalised, including minor ones. The procedures for imposing administrative fines vary across Member States, but in most legal systems the burden of proof is lower than in criminal procedures – and the administrative costs are also lower.

In this context, however, the importance of proportionality should not be overlooked. Serious environmental infringements should not be addressed by penalties that are disproportionately low. Furthermore, in some countries, legal persons are not subject to criminal sanctions. Administrative law therefore provides for higher sanctions to address such circumstances.

### 11.4.2. Other administrative-law measures

Imposing administrative fines is not the only available administrative-law response to infringements.

With regard to the enforcement principle of ending infringements as soon as possible and remedying or mitigating harm, administrative authorities may be able to rely on the following measures amongst others:

- Written or recorded verbal warnings;



- Notices to cease activities;
- The seizure, disablement or confiscation of goods;
- Communications, notices or orders requiring corrective action by the duty-holder, possibly including capital investment and remediation or offsetting of environmental damage;
- Withdrawal of an operating permit or refusal to renew it.

As can be seen, administrative-law measures allow for the imposition of 'safety measures' aimed at preventing (further) environmental harm from occurring, irrespective of the detection of a particular infringement. In such cases, it is important to carry out additional monitoring to verify whether the safety measures imposed do indeed lead to the prevention of harm. Formally speaking, such safety measures are not penalties.

With regard to penalties, administrative law may allow for measures other than or in addition to fines. An example is **environmental enforcement undertakings** - a written agreement between a regulatory authority and a duty-holder who is considered to have infringed an obligation according to which the duty-holder agrees to undertake particular actions in relation to the unsatisfactory conduct<sup>85</sup>. These may achieve more than a warning or notice while avoiding the possible burden-of-proof difficulties or disputes that could arise from imposition of an administrative fine or pursuit of a criminal prosecution.

There are many potential advantages in having a broad inventory of available administrative law measures:

- They can allow administrative authorities to intervene and achieve a necessary result quickly. When, for example, waste has been illegally deposited or a dangerous installation is used in an unlawful manner, it would be unacceptable to have to wait for the outcome of a criminal prosecution - which could run for several years - before preventing or limiting harm;
- They can allow responses to be graduated and calibrated. For example, duty-holder conduct may be unsatisfactory but not to the extent of warranting a penalty: warnings may be a sufficient initial response, with a more serious enforcement intervention used later if necessary;
- They can be cost-effective. In other words, effective results can be achieved with limited deployment of administrative resources.

## 11.5. Criminal law enforcement

### 11.5.1. Generally used for the most serious infringements

The sanctions that a criminal court can impose, including imprisonment, can be very severe. In addition, a criminal conviction often entails a social stigma.

It is possible that a Member State will rely exclusively on criminal law penalties in respect of all infringements of Union environmental law. In such circumstances, the criminal law will need to cater for the full range of infringements, even relatively minor ones. In such cases, the criminal law itself may make a distinction between minor infringements (which may be termed 'summary offences' or

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<sup>85</sup> See further on environmental enforcement undertakings Ole Pedersen, Environmental enforcement undertakings and possible implications: responsive, smarter or rent-seeking?, *Modern Law Review*, 2013, Vol. 76(2), 319-345.



'petty crimes' and be tried in the lowest tier of court, with limited monetary penalties applied) and serious ones (which may be termed 'indictable offences' and be reserved for a higher court tier).

Taking the European Union as a whole, the criminal law is generally reserved for the most serious infringements – with administrative law penalties being used to sanction lesser infringements.

Serious criminal law sanctions are especially needed when the probability of detection is very low and the gain to the perpetrator high. In such cases, either very high financial penalties should be applied or, when there is a risk of insolvency, non-monetary penalties.

On the other hand, the severity of such sanctions justifies the higher evidential thresholds of the criminal process, since the consequences of errors may be very negative for the accused.

In legal systems that combine use of both criminal and administrative law, the criminal law is likely to be most effective for the following types of environmental infringements:

- Infringements by repeat-offenders who cannot be deterred by other means;
- Infringements committed intentionally/voluntarily;
- Infringements that involve substantive harm and not just a contravention of administrative formalities. Such harm can include actual damage to the environment or a threat to human health.

#### 11.5.2. Toolbox approach

Whatever the legal system, infringements should be addressed in line with the enforcement principles already mentioned. This can be facilitated through use of a 'toolbox approach'. This means using a range of measures to respond to different aspects of the same infringement or cluster of infringements.

Administrative law typically allows for a range of measures to respond to infringements or unsatisfactory duty-holder conduct. It can thus allow or be part of a toolbox approach.

Apart from providing for the classic sanctions of monetary penalties and imprisonment, the criminal law may also require or allow for a range of ancillary enforcement measures which can help fulfil the enforcement principles. In European legal systems, there are many examples of such measures<sup>86</sup>:

- Some criminal sanctions are both punitive and preventive in nature – for example, disqualification from further exercising a profession, if the crime was committed through abuse of the profession<sup>87</sup>;
- Temporary or perpetual prohibition on carrying out particular activities<sup>88</sup>;
- Dissolution of a legal person;
- Forfeiture of benefits or gains: this has both a punitive and a restorative character<sup>89</sup>;
- Many legal systems provide for restorative measures. For example, an offender might be ordered to remove waste that has been illegally deposited;
- Community service punishments.

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<sup>86</sup> See the respective country sections in Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi (eds.), *Environmental criminal law in Europe*, Oxford, Hart Publishing, 2017.

<sup>87</sup> Such a disqualification can for example be ordered in Germany, but in many other legal systems as well.

<sup>88</sup> Also provided for in Spain and Italy.

<sup>89</sup> The possibility to forfeit benefits obtained through crime is provided for in many legal systems, for example those of Germany and Poland.



A further issue is the recovery of the costs of successful criminal prosecution. Those costs may be substantial and, to the extent possible, it is appropriate to seek to recover them as part of a successful prosecution. In cases of wildlife crime, for example, this might involve imposing on the perpetrator the costs of laboratory analysis and the keeping of animals.

As with administrative-law enforcement, criminal law enforcement can benefit from having a range of available enforcement measures. This makes it easier to ensure that 'the punishment fits the crime' and that the costs to society are kept to a minimum.

### 11.5.3. Environmental criminal law and other areas of criminal law

As already noted in Chapters 4 and 5, infringements of Union environmental obligations may be linked to more general infringements. In particular, wrong-doing may involve crimes such as fraud, tax evasion, corruption, violence, intimidation, undocumented employment and forced labour, and money-laundering. Where waste has been illegally deposited, for example, the offender may have falsified particular documents in order to hide the illegal deposit, which could constitute fraud. Tax evasion is also likely to have arisen.

It cannot be excluded that activities which have a veneer of legality under environmental law will feature corruption. For example, waste may be disposed of under the terms of a waste permit obtained through corrupt means, such as unlawful payments or inducements to the public officials responsible.

Perpetrators may not only be willing to resort to corruption. They may also use violence and intimidation, as noted in Chapter 6.

Illegal activities may use undocumented labour, contravening employment laws. Sometimes labour will be forced and infringe anti-slavery laws.

Money-laundering may feature in both clandestine illegal activities and activities which have a veneer of legality. For example, money obtained from other forms of criminality may be routed through waste businesses.

It is very important that all these possible dimensions of misconduct are clearly identified already at the compliance monitoring stage. Being able to show that not only an environmental crime but also other offences have been committed may be important in convincing prosecutors or the judiciary of the need to prosecute or impose serious sanctions.

Indeed, in practice, prosecutors may choose to prosecute non-environmental crimes, such as fraud, rather than environmental ones. This may be because, under a penal code, it is easier to prove the commission of 'classic' crimes than it is the commission of environmental ones; or judges may be more familiar with classic provisions of the penal code than with environmental crime provisions; or the penalties provided for in legislation may be higher.

### 11.5.4. Corporate bodies

Specific challenges to criminal law enforcement may arise when a legal entity is non-compliant. Legal entities may be private companies, state-owned companies or other incorporated public bodies.



Some legal systems have adopted corporate criminal liability. In other legal systems, there is no corporate criminal liability<sup>90</sup>. In the latter, it may be possible to impose administrative fines on corporations or use other administrative-law enforcement measures against them. Criminal law enforcement may still be possible, but limited to directors, officers or other persons through which the legal entity has committed the crime<sup>91</sup>.

Regardless of the legal system, the three sanctioning criteria apply, and it is important to ensure that infringements by legal entities and their directors and officers are adequately addressed.

There are specific risks associated with private companies that need to be taken into account in criminal and other forms of enforcement. One risk is that offenders may abuse a corporate structure to engage in criminal or other misconduct and subsequently file for bankruptcy. This can create huge social costs – including, possibly, the dismissal of a workforce. Society may suffer in other ways – as where no corporate finance is available to restore damage to land, water or biodiversity resulting from an infringement.

It is important to have mechanisms to recover illicit gains obtained by directors and other company officers via abuse of a corporate structure, and to otherwise deter such misconduct. 'Lifting the corporate veil' is an expression to describe means of making directors and other officers accountable for corporate wrongdoing. Sections 11.5.2 and 11.5.3 above refer to a number of possible measures that can be used.

Requiring financial security in advance for certain inherently risk activities can help mitigate the latter risk (see also Chapter 12). It may also reduce risks related to complex company structures – for example, risks arising from companies which are subsidiaries of parent companies<sup>92</sup>.

#### 11.5.5. Organised crime

Use of enforcement measures is especially challenging when infringements are the result of organised crime:

- Organised crime may mean that infringements are not 'one off' phenomena but repeated and systemic;
- Organised crime may completely subvert lawful business models and operate a chain of illegal businesses and conduct chains of illegal transactions, sometimes under a veneer of legality. The waste sector is especially vulnerable since it involves a reverse supply-chain with multiple opportunities to depart from legal obligations – from the waste-production and collection stages to the transport and disposal and treatment stages;
- Organised crime may prove 'Hydra-headed', with many centres and branches available to replace those against which punitive action is taken, and infringements enabled to continue as a result;
- Organised crime may undermine law enforcement itself, as where public officials and witnesses are corrupted or intimidated.

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<sup>90</sup> On the importance of being able to allocate (criminal) liability to a legal entity, see: Faure, M., The evolution of environmental criminal law in Europe: a comparative analysis, in Farmer, A., Faure, M., and Vagliasindi G.M., (eds.), *Environmental crime in Europe*, Oxford, Hart Publishing, 2017, p. 280-285.

<sup>91</sup> This is for example the case in Germany. On administrative corporate liability in Germany, see: David Roef, Corporate criminal liability, in Johannes Keiler and David Roef (eds.), *Comparative concepts of criminal law*, 3<sup>rd</sup> ed., Antwerp, Intersentia, 2019, p. 365-370.

<sup>92</sup> For a detailed analysis, see the following study prepared for the European Parliament in 2021 by Professor Michael Faure: '[Tackling Environmental Crimes under EU Law: The Liability of Companies in the Context of Corporate Mergers and Acquisitions](#)', PE 693.182.



These factors should be taken into account in the use of enforcement measures. Some legal systems have particular rules concerning participation in a criminal organisation. The fact that a particular environmental crime is committed in an organised manner can in some countries be considered as an aggravating circumstance<sup>93</sup>.

### 11.5.6. Procedural challenges

In contrast to administrative law measures, which can be taken by a public authority itself (subject to later court oversight if a defendant contests the measures), criminal enforcement requires prosecutors to bring cases before a court and prove that a crime has been committed.

Sometimes a defendant will admit to having committed the crime, sparing the prosecutor the need to prove the infringement. However, the prosecutor may still need to demonstrate the gravity of the infringement and the extent of the defendant's culpability in order to persuade the court to impose a penalty or set of penalties that is effective, proportionate and dissuasive.

All of this explains why the preparation of criminal prosecutions needs to be thorough. Indeed, preparation for trial needs to begin at the evidence-gathering stage:

- Public authorities need to have the necessary powers to acquire evidence: if rules are not followed, prosecutions may be dismissed at the trial stage.
- Evidence-gathering needs to encompass all the different dimensions of environmental crimes and related infringements. This means examining not only the culpability of defendants but the impact on the environment, human health and society (through unfair competition and loss of government revenues, for instance) and illicit gains made. Only in this way will it be possible to ensure fulfilment of the full set of enforcement principles.
- Where prosecutors are at one or more removes from evidence-gathering, the officials, law officers and experts responsible for evidence-gathering will need to be able to present it in a clear and thorough manner in order for prosecutors to be confident of success at trial.
- Evidence-gathering needs to be technically sound, with expertise available in court to demonstrate the content of the crime. Close coordination between compliance monitoring authorities and prosecutors therefore needs to extend to the trial stage. This involves a logistical element, with care needed to ensure that expert witnesses are available on the trial date.

Some ancillary enforcement measures, such as asset recovery, may involve additional procedures, expertise and evidence-gathering.

## 11.6. Environmental liability

Environmental liability is an extension of a tort-based approach to wrong-doing.

Even where administrative law and criminal law are not involved (because there is no infringement, for instance, or public authorities decide not to act), tort law allows private persons to claim damages or obtain an injunction against those who harm their property or health. Tort law – which is a branch of civil law – can therefore be used to prevent or remediate some of the harm resulting from environmental infringements or wrong-doing. However, traditional tort law is of limited use if

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<sup>93</sup> See further on the importance of organised crime in environmental crime: Faure, M., *The evolution of environmental criminal law in Europe: a comparative analysis*, in Farmer, A., Faure, M., and Vagliasindi G.M., (eds.), *Environmental crime in Europe*, Oxford, Hart Publishing, 2017, p. 286-287.



harm is done to public goods such as water or biodiversity (as distinct from private property and the health of identifiable individuals).

This is where environmental liability comes in. Environmental liability goes beyond the limits of traditional tort law by allowing interventions to prevent harm to public goods or to remediate such harm where it has already occurred. It is therefore especially relevant to the enforcement principle of remediating or mitigating the harm caused by infringements.

In the European Union, **the Environmental Liability Directive (ELD)**<sup>94</sup> provides a legal framework for preventing and remediating damage to biodiversity, water and land. While many of its obligations fall directly on economic operators, there are important obligations on public authorities to ensure that environmental damage is fully and correctly addressed.

#### Box 44: Guidelines on a common understanding of 'environmental damage'

**The Environmental Liability Directive** establishes a framework of environmental liability based on the polluter pays principle, to prevent and remedy environmental damage. Operators are liable to prevent or remediate environmental damage caused or threatened by occupational activities such as the running of industrial or waste facilities and water abstraction and impoundment. 'Environmental damage' covers damage to water, land and protected species and natural habitats. Damage can arise from accidents, incidents or inadequate management. It can also arise from illegal occupational activities such as operation of illegal landfills, illegal logging or illegal peat extraction. Remediation can include, for example, restoration of damaged habitats listed in the Habitats Directive. In March 2021, the European Commission adopted Guidelines on a common understanding of 'environmental damage'.<sup>95</sup>

It is important to note that use of the ELD is not discretionary, nor are the previously mentioned administrative-law and criminal-law enforcement measures alternatives to it. Furthermore, environmental liability under the ELD is sometimes strict – that is to say, an economic operator may have to adopt ELD measures even if not otherwise subject to administrative-law or criminal-law enforcement measures. The rationale is that some economic activities are inherently risky for the environment and that, as a consequence, economic operators need to exercise particular care.

With these caveats, there are good reasons why there should be very close co-operation between, on the one hand, public authorities responsible for administrative-law and criminal-law compliance monitoring and enforcement and, on the other hand, authorities responsible for application of environmental liability:

- Environmental compliance monitoring may show that, in addition to or independent of use of administrative-law or criminal-law measures, ELD action is necessary. That is why there should be systematic arrangements in place to ensure that those who monitor compliance inform the public authorities with ELD responsibilities of circumstances indicating a need for ELD intervention;
- Conduct of economic operators warranting administrative-law safety measures may also require preventive action under the ELD. The different types of preventive measures should be coherent with each other;

<sup>94</sup> Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, OJ L143/56 of 30.04.2004.

<sup>95</sup> Guidelines providing a common understanding of the term 'environmental damage' as defined in Article 2 of Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (2021/C 118/01).





- Without use of ELD remedial measures, there is a risk that administrative-law and criminal-law enforcement will leave unaddressed or only partially addressed the environmental compliance assurance principle of remediating or mitigating the harm caused by infringements.

### 11.7. Mechanisms for deciding the appropriate enforcement response(s)

There is an element of discretion involved in deciding on enforcement responses – both in respect of the choice of response(s) and the intensity of the responses chosen. For enforcement to be effective, it is important that any exercise of discretion is purposeful, proportionate and consistent. A range of mechanisms exist to help ensure this.

#### 11.7.1. Importance of the monitoring stage before enforcement

The monitoring stage is important in determining the appropriateness of responses. This is for at least two reasons: first, it should indicate the extent of the environmental harm resulting from the infringement; second, it will provide the evidence on which any enforcement responses must be based. Mechanisms to make this stage systematic and predictable include use of relatively standardised classification criteria to record and categorise infringements. An example is the common incident classification scheme (CICS) mentioned in Box 10 in Chapter 8.

#### 11.7.2. Putting enforcement principles into effect

Responses should be grounded in the four subsidiary enforcement principles described in Chapter 7.2 and in the Introduction to the present Chapter, i.e. end infringements as soon as possible; sanction through sanctions that are effective, dissuasive and proportionate; remove any financial gains; remediate or mitigate the harm caused by infringements. Putting these into effect may mean looking at the possibilities offered by administrative and criminal law as well as civil law and environmental liability, and making choices that are both appropriate and consistent – see Table 18.



Table 18: Putting subsidiary enforcement principles into effect

	<b>Administrative law</b>	<b>Criminal law</b>	<b>Civil law and environmental liability</b>
<b>End infringements as soon as possible</b>	<ul style="list-style-type: none"> <li>▪ May allow suspension or withdrawal of an operating permit;</li> <li>▪ May allow a cease-and-desist or improvement notice;</li> <li>▪ May allow seizure of vehicles and equipment used in the commission of an infringement.</li> </ul>		<ul style="list-style-type: none"> <li>▪ Civil law may allow an injunction to prevent ongoing nuisance or infringement;</li> <li>▪ Environmental liability requires the operator to prevent imminent environmental damage;</li> <li>▪ Environmental liability requires the operator to immediately manage damage factors where there is already a damaging occurrence.</li> </ul>
<b>Use sanctions that are effective, dissuasive and proportionate</b>	<p>May be appropriate where:</p> <ul style="list-style-type: none"> <li>▪ The infringement is committed by a first-time offender;</li> <li>▪ Only administrative interests are violated or only minor endangerment of the environment is caused;</li> <li>▪ The infringement did not take place in any organised manner;</li> <li>▪ The duty-holder cooperates with the authorities;</li> <li>▪ The infringement could be discovered relatively easily (high probability of detection).</li> </ul>	<p>More likely to be appropriate where:</p> <ul style="list-style-type: none"> <li>▪ The offender is a repeat offender;</li> <li>▪ The infringement is committed intentionally/voluntarily;</li> <li>▪ The infringement is committed in the context of organised crime;</li> <li>▪ The duty-holder does not cooperate with authorities;</li> <li>▪ The infringement has endangered or harmed the environment</li> <li>▪ Environmental damage is large (in financial terms);</li> <li>▪ The offender has tried to avoid detection (generally: low probability of detection).</li> </ul>	

<b>Remove any financial gains</b>	May be appropriate where infringement did not cause high gains to the offender.	More likely to be appropriate where the gain to the offender is large.	
<b>Remediate or mitigate any environmental harm</b>	An operating permit, e.g. for a landfill, may include financial security which can be used to remediate damage.		<ul style="list-style-type: none"> <li>▪ Environmental liability requires the operator to remediate environmental damage;</li> <li>▪ There may be financial security to address situations where the operator is insolvent.</li> </ul>

### 11.7.3. Published enforcement policy

Having a published enforcement policy can help to show how a compliance assurance authority will apply the principles set out in Chapter 7. Box 45 below provides an example. Enforcement policies are valuable in helping to ensure a consistent approach towards infringements of environmental law (see Chapter 7.3). Enforcement policies that are published can improve transparency and accountability from regulators by signalling to business and society the kind of responses and standards they can expect from regulators in dealing with infringements. They send important signals to the regulated community to assist better compliance. For example, a policy can indicate that where an industry voluntarily discloses an infringement and offers to remediate, this is likely to effect the response of the enforcement body. A public enforcement policy will also show that regulators will use their sanction powers in a proportionate and risk-based way<sup>96</sup>.

#### Box 45: Example of published enforcement policy

<sup>96</sup> For more detailed analysis of advantages of a published enforcement policy see 2006 Report on Regulatory Justice: Making Sanctions Effective (Macrory report), p. 33, 67-68, 86-89.



**The Environment Agency of England** has developed and published a clear enforcement and sanctions policy indicating not only the formally available enforcement options, but also how the Agency makes enforcement decisions in particular cases and uses sanctioning powers to secure compliance with environmental laws.

The document sets out details on:

- The outcomes the Environment Agency wants to achieve, i.e. stop illegal activity from occurring or continuing, put right environmental harm or damage, bring illegal activity under regulatory control, and so in compliance with the law, punish an offender and deter future offending by the offender and others;
- The applicable enforcement and sanctioning regulatory principles, such as Act and punish proportionately, Be consistent, Be transparent, Target enforcement action, Be accountable;
- The relevant penalty principles, such as Change the behaviour of the offender, Remove any financial gain or benefit arising from the breach, Be responsive and consider what is appropriate for the particular offender and regulatory issue, including punishment and the public stigma that should be associated with a criminal conviction, Be proportionate to the nature of the breach and the harm caused, Take steps to ensure any harm or damage is restored, Deter future breaches by the offender and others;
- The liability for enforcement action;
- Rights, records and cost recovery;
- The enforcement and sanction options available and how enforcement decisions are taken.

Source: Environmental Agency England, *Environment Agency enforcement and sanctions policy*

#### 11.7.4. Tools for choosing administrative law or criminal law along the environmental compliance assurance chain

In addition to a general enforcement policy, there may be specific tools for practitioners to use when making decisions along the environmental compliance assurance chain, in particular decisions as to whether to use administrative law or criminal law. The intervention matrix developed in the Netherlands is one example.

##### Box 46: Intervention matrix

The Netherlands developed a **National Enforcement Strategy – an Appropriate Intervention for each Finding** to assist authorities in implementing their general duty to enforce environmental infringements. This includes appropriately intervening for every finding of non-compliance, making comparable choices in comparable situations, and choosing and applying interventions in similar ways across the country. To this end, the strategy contains **an intervention matrix** outlining several steps to be taken by enforcement institutions in each case of non-compliance. These include determining the type and gravity of a violation of environmental laws based on aggravating gravity factors, assessing whether administrative or criminal law should be applied, considering the behaviour of the offender, taking the appropriate action and recording it.

Source: *Human Environment and Transport Inspectorate*



### 11.7.5. Sentencing guidelines

It may be useful for the judiciary to be able to refer to sentencing guidelines to help them ensure that sanctions are effective, proportionate and dissuasive. In the context of wildlife crime, it is relevant to mention the work of the Bern Convention highlighted in Box 6 in Chapter 5. Also relevant is the Bioval project mentioned in Box 47 below.

#### Box 47: Bioval project

The EU Forum of Judges for the Environment launched in cooperation with IMPEL, ENPE and the University of Leuven the BIOVAL project aimed at developing a practical instrument to value ecological damage (with a focus on wildlife species) for the purposes of adjudication on sanctioning of environmental offences and compensation and restoration of environmental damage. The initial research focused on analysis of the use of price list systems for valuation of environmental wildlife species in several EU Member States (e.g. Finland, Spain, Slovakia) and of similar tools used in other areas.

It is expected that the use of such a practical instrument in administrative, civil or criminal court proceedings would help ensure a greater legal certainty and a shorter case duration. It may also lead to more equal treatment of similar cases assessed in different contexts (different regions, different courts, different procedures). Publication, dissemination and trainings on the use of the instrument are envisaged.

Source: EUFJE, [Summary of the BIOVAL Project](#)

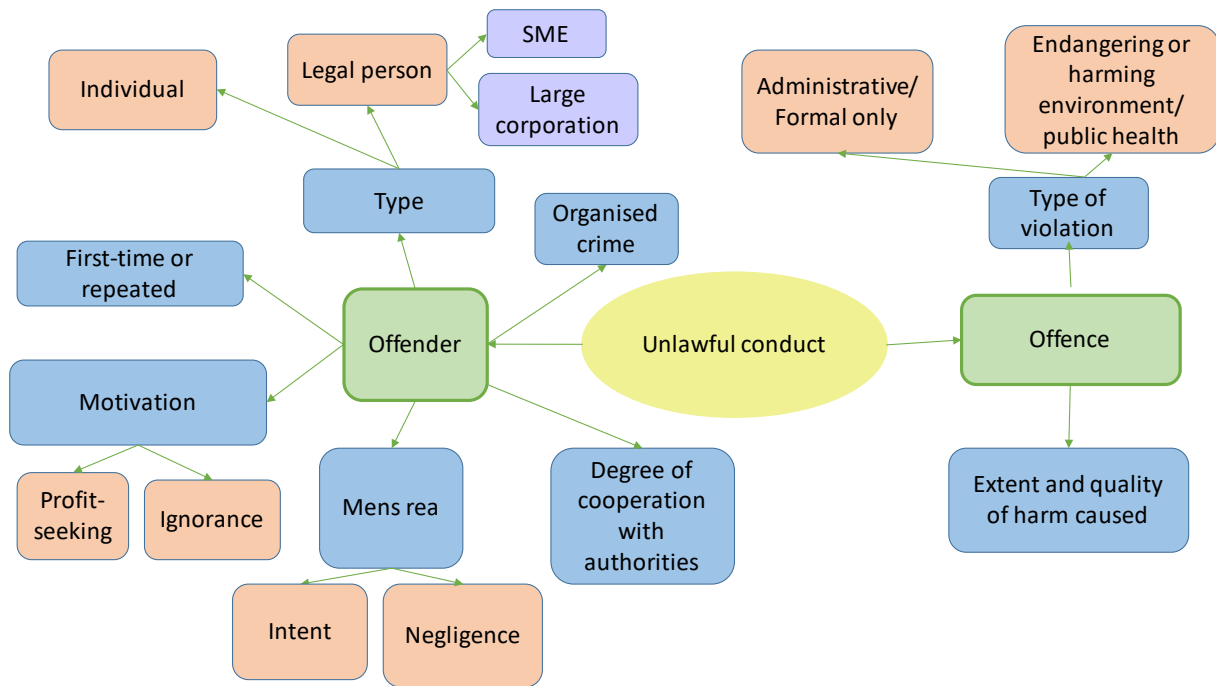
### 11.7.6. Culpability and environmental gravity factors

As will be clear from the foregoing, decisions along the compliance assurance chain will involve taking account of both the culpability of a suspect for an infringement and the environmental gravity of the infringement.

Inspectors, police, prosecutors and judges may not need specific environmental expertise to assess the culpability of suspects, for example whether they acted deliberately or negligently, transparently or in a clandestine manner, cooperatively or obstructively, opportunistically or as part of a criminal enterprise. Such factors of culpability are not unique to environmental law.

Assessing the environmental gravity of infringements may, however, require special expertise. Mechanisms to help decision-making along the compliance assurance chain should ensure that such

Figure 7: Factors determining culpability and gravity of unlawful conduct



expertise is both available and used.

#### Box 48: Work of ENPE and EUFJE on gravity factors

The report *Sanctioning Environmental Crime – Prosecution and Judicial Practices*, 2017, by the European Network of Prosecutors for the Environment (ENPE) is an outcome of the LIFE-ENPE project on environmental crimes, prosecution and sanctioning. The LIFE-ENPE project, whose aim is to improve the efficiency and effectiveness of prosecutors and judges in combating environmental crime, has formed four working groups to build capacity and consistency in implementing EU environmental law. Working group 4 on *Sanctioning, prosecution and judicial practice* to whose work also members of the EU Forum of Judges for the Environment contributed, explored the effectiveness of different methods of securing compliance and described its findings between December 2016 and December 2017 within the aforementioned report. It included, inter alia, a summary of the work outcomes on *Proportionality in prosecution and sentencing: an exploration through gravity factors*. The relevant report section comprises:

- A general explanation of the importance of gravity factors in prosecution and sanctioning;
- An analysis of existing relevant models;
- An overview of identified relevant gravity factors;
- Recommendations for use of gravity factors in practice and further development of gravity factors, including usefulness of specific gravity factors for individual categories of environmental crime, as well as for training for prosecutors and judges on evaluation of environmental damage.

Source: ENPE, *Sanctioning Environmental Crime – Prosecution and Judicial Practices*



## 11.8. Testing the content against the three crime scenarios

**Table 19: Testing against the scenarios**

Scenario	Comments
<b>Problematic waste facility</b>	<ul style="list-style-type: none"> <li>• <b>End infringements as soon as possible:</b> The scenario points to the need for urgent action. The local authority's permit-related role may allow it to withdraw or suspend the permit, stopping activity at the landfill. It may also seek an injunction under civil law to prevent a nuisance or act under environmental liability to oblige the operator to take preventive action for land damage.</li> <li>• <b>Use sanctions that are effective, proportionate and dissuasive:</b> The scenario suggests the need for use of criminal sanctions, but in any case sanctions are appropriate. Daily penalties or imprisonment may be necessary if unlawful waste disposal continues despite other enforcement action.</li> <li>• <b>Remove any financial gains:</b> The likely financial gains should be taken into account in any use of sanctions.</li> <li>• <b>Remediate or mitigate any environmental harm:</b> Obligations under Union waste legislation and the Environmental Liability Directive provide a basis for remediation at both the landfill site and any illegal waste sites.</li> </ul>
<b>Illegal killing of wild birds</b>	<ul style="list-style-type: none"> <li>• <b>End infringements as soon as possible:</b> In contrast to the waste facility scenario, there is no obvious straight-forward way to end the pattern of infringements other than discovering, prosecuting and sanctioning the perpetrator(s).</li> <li>• <b>Use sanctions that are effective, proportionate and dissuasive:</b> The clandestine and difficult-to-discover nature of the crime make it important to focus on a dissuasive sanction. The sanction should also be proportionate to the rarity of the bird of prey.</li> <li>• <b>Remove any financial gains:</b> Financial gains are not a salient feature of this scenario.</li> <li>• <b>Remediate or mitigate any environmental harm:</b> Obligations under the Environmental Liability Directive provide a basis for requiring land-owners found to have unlawfully killed the bird of prey to remediate the damage. The information on introduction costs for the bird of prey should be of use.</li> </ul>
<b>Illegal trade in wildlife</b>	<ul style="list-style-type: none"> <li>• <b>End infringements as soon as possible:</b> Knowing that they have come to the notice of the competent authorities may deter the suspects F and S from continuing their illegal trade. However, if their perception is that their crimes will go unpunished, they may continue. Hence, the importance of applying credible sanctions.</li> <li>• <b>Use sanctions that are effective, proportionate and dissuasive:</b> Illegal wildlife trafficking is a serious infringement. The clandestine and difficult-to-</li> </ul>



discover nature of the infringement as well as use of forged documents argue in favour of a serious sanction.

- **Remove any financial gains:**

Estimating the likely financial gain should help ensure that the level of sanction cancels out the gain.

- **Remediate or mitigate any environmental harm:**

The care of any confiscated wildlife specimens will need to be taken into account.



## 12. Measures to prevent infringements and the harm that they cause

### 12.1. Introduction

This Chapter explores two categories of preventive measure.

First, it looks at measures that governments and public authorities can take to prevent infringements or reduce their incidence. These are aimed at those who can be persuaded to comply with environmental obligations.

Second, the Chapter looks at measures to prevent or reduce the harm that infringements can cause, in particular through use of financial security.

### 12.2. Preventing infringements or reducing their incidence

As noted in Chapter 6.5.2, the informal Chester Bowles model postulates that compliance assurance authorities will encounter a spectrum of (mis)conduct and a range of explanations for the occurrence of infringements.

Measures to prevent and reduce the incidence of infringements may vary according to the different explanations for – or influences on – non-compliant conduct, including:

- Ignorance of the law, ignorance of what compliance requires and ignorance of the best ways to comply;
- Indifference to, or hostility, to the purposes of the law;
- Opportunities to infringe the law and derive advantages from infringements;
- Ignorance of or indifference to the likelihood of enforcement and the consequences of enforcement.

#### 12.2.1. The design of legislation and rules

The design-stage of legislation or rule-setting instruments such as ministerial regulations and environmental permits provides opportunities to prevent infringements:

- Making obligations clear and unambiguous reduces the risk of duty-holders misunderstanding or misinterpreting the law;
- Obligations can be framed so as to minimise the opportunities for wrong-doing. For example, transparency provisions may safeguard against wrong-doing by making it more likely that it will come to light;
- Ensuring the enforceability of obligations helps to ensure that the law does not become – and be perceived to be – a 'paper tiger'. This means ensuring that there are compliance assurance responsibilities and measures linked to the obligation. It might also mean addressing issues such as the burden of proving an infringement – to ensure that it is not impossible or excessively onerous for public authorities to monitor and enforce compliance (without of course compromising the fundamental rights mentioned in Chapter 7).

In light of the above, policy-makers should seek the advice of compliance-assurance officials on how best to 'crime proof' legislation and regulations.





### 12.2.2. Compliance promotion measures

As with compliance monitoring, a **risk-based approach** may help to target compliance promotion activities in an effective manner.

Compliance promotion activities are especially relevant where:

- There is a significant social acceptance of unlawful conduct – for example, illegal hunting;
- New and complex obligations are introduced;
- Infringements are caused by a lack of awareness, knowledge, understanding or capacity on the part of duty-holders;
- There is a large number of duty-holders, making it difficult to rely on compliance monitoring and enforcement activities alone to secure compliance;
- The pattern of recurring infringements suggests that compliance monitoring and enforcement are not taken seriously by perpetrators.

Compliance promotion measures could include the following:

- Communicating the importance of compliance to the general public and raising awareness. This may increase social acceptance of the purposes of environmental laws and societal pressure for compliance – see Box 49 for an example;
- Publishing official guidance documents, toolkits and checklists<sup>97</sup>, and by providing duty-holders with advice and guidance;
- Publishing enforcement-related information – for example, yearly activity reports of competent authorities, statistics on prosecutions and imposed sanctions, press releases on individual successful police operations and prosecutions. This may have a deterrent effect by showing that 'crime doesn't pay' (see also Chapter 13);
- Promoting the role of duty-holder representative bodies in helping to assure compliance. These may themselves help to organise fulfilment of obligations – as in the case of producer responsibility organisations in the waste sector.

The appropriate measures will depend on the nature and type of the infringements encountered and the conduct and motives of the perpetrators. A 'hand-holding' approach is obviously inappropriate for organised crime, for instance.

Guidance documents, toolkits and checklists may be especially useful in helping small and medium-sized enterprises (SMEs) to understand legal requirements and how to comply with them. The waste sector is an example. Dealing effectively with questions from businesses may also help ensure compliance. Setting up hotlines and online support with well-trained staff and thoroughly thought-through sets of answers for specific issues may be a cost-effective approach<sup>98</sup> – especially where new obligations are put in place.

Providing incentives for lawful conduct can also be a useful compliance promotion tool. Financial benefits may be linked to the fulfilment of an obligation. Fulfilment of environmental obligations

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<sup>97</sup> OECD, *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD publishing, 2014, Principle 10.

<sup>98</sup> OECD, *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD publishing, 2014, p. 60.



may also be perceived as bringing benefits independently of these incentives, as where they coincide with higher revenues. This may be the case with efficient waste management, for instance.

#### Box 49: Compliance promotion in the context of actions against persecution of raptors in Spain

The LIFE funded project 'VENENO NO - Action to fight illegal poison use in the natural environment in Spain', has aimed to achieve a significant reduction in illegal poison use in Spain as one of the main causes of non-natural mortality in some of the most endangered species in Europe, such as the Spanish Imperial Eagle, the Bearded Vulture, the Red Kite or the Egyptian Vulture (including the Canary Islands subspecies), all of which are included in Annex I of the Birds Directive.

In the framework of the project, which ran from 2010 to 2014, several effective awareness-raising activities were performed. The media campaign generated more than 900 news in different media. The total number of articles published in the journals of the Editorial America Iberia increased significantly. 19 training courses to raise awareness and share good practices on the investigation of the illegal use of poison were given to over 500 police officers and forest rangers in seven different regions of Spain. Alternatives to the use of poison against predators which affect livestock and crops were promoted to farmers. Educational and awareness-raising activities were organised also in schools. The project initiated the Network of Volunteers against Poisoning and the SOS VENENO telephone line, which received more than 900 calls during the project lifetime.

Source: [\*Final report of the VENENO project\*](#)

### 12.3. Financial security

Where crimes or infringements are committed or contemplated, financial security offers a means of averting or limiting the harm that environmentally high-risk businesses can cause – especially those run by corporate bodies.

For example, extractive and waste activities may produce a lasting legacy of problems if there is inadequate site engineering or poor site-management safeguards. Such activities are often carried out under permit and there are generally post-closure conditions aimed at ensuring that sites will be rehabilitated or kept safe once the economic activity has ceased.

Operators may, however, minimise investment and disregard conditions and safeguards in order to maximise economic gain, leaving sites in an environmentally hazardous condition. For example, a landfill operator may dispose of greater quantities or more categories of waste than their waste permit allows, causing air and water pollution and soil contamination. While proactive compliance monitoring may identify such compliance problems and lead to early enforcement, it is possible that, once profits have been made and withdrawn, operators will close the business and declare themselves insolvent, leaving no operator resources to address the legacy problems. Public authorities may then have to step in and pay to clean up sites or otherwise ensure public safety. In the worst cases, they may have to address costly environmental disasters.

This insolvency risk is a general risk when it comes to enforcement against private legal bodies, since they are usually protected by limited liability.

Requiring or encouraging economic operators to provide *ex ante* financial security can serve two functions. First of all, it can anticipate the insolvency risk, guaranteeing that sufficient funds will be available to fulfil environmental obligations or remedy environmental damage. Second, it can act as an incentive to those providing financial security to take steps to avoid the need for costly measures in the event of insolvency.

Financial security can take different forms. It may consist of a bank guarantee, for instance, or a deposit of funds equal to the estimated amount of potential compliance costs in a separate account, or liability insurance cover. Any third party providing financial security – a bank or insurance

company, for example - will need to assess the risk of providing the security and charge the duty-holder accordingly. If the duty-holder provides insufficient proof of preventive measures, the third party is likely to either impose strict conditions and request a very high premium, or simply refuse to provide the security.

Details of good practices in the use of financial security are beyond the scope of this Guidance. However, Box 50 below refers to important work done by IMPEL.

**Box 50: IMPEL practical guide**

In 2014, the European Network of the Heads of Environment Protection Agencies (EPA Network), recognised that the cost of dealing with environmental liabilities arising from industrial operations too often fell to the public purse as a result of the failure of financial provisions. An IMPEL project was set up to identify what forms of financial provision are most likely to deliver secure and sufficient cover which is available to the regulator when needed. The project aims were the generation of a better understanding of the availability and suitability of financial tools.

**A Practical Guide – Financial Provision: Protecting the Environment and the Public Purse<sup>99</sup>** was produced. The guide identifies issues to consider in the decision-making process when assessing financial provision, and assists regulators and other users in finding successful solutions. It also highlights the importance of ongoing maintenance and monitoring of financial provision to ensure successful delivery of that financial provision when required and provides examples of usage and guidance internationally. The three main parts of the guide provide:

- Information on the calculation of the amount of financial provision including links to available tools and template;
- A detailed breakdown of the key advantages and disadvantages of each financial provision, together with recommended checks for financial provision in general and for each financial provision; and
- Examples of usage and guidance internationally.

**12.4. Testing the content against the three crime scenarios**

**Table 20: Testing against the scenarios**

Scenario	Comments
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<sup>99</sup> [Financial-Provisions-EN-October-2017-1.pdf \(impel.eu\)](https://www.impel.eu/Financial-Provisions-EN-October-2017-1.pdf).



<p><b>Problematic waste facility</b></p>	<ul style="list-style-type: none"> <li>• <b>The design of legislation and rules:</b></li> </ul> <p>Legislative possibilities for preventing or limiting the harm for this kind of scenario include stringent permit requirements on those who wish to operate waste facilities. Permit requirements may also help in ensuring that infringements come to light and can be tackled speedily.</p> <ul style="list-style-type: none"> <li>• <b>Compliance promotion measures:</b></li> </ul> <p>The evidence of unlawful activity suggests that compliance promotion measures would not have helped vis-à-vis the waste operator. However, compliance promotion measures are important for public confidence in the authorities' willingness and ability to treat waste crimes and infringements seriously.</p> <ul style="list-style-type: none"> <li>• <b>Financial security:</b></li> </ul> <p>A requirement for the landfill operator to provide financial security would provide funds for remediation measures.</p>
<p><b>Illegal killing of wild birds</b></p>	<ul style="list-style-type: none"> <li>• <b>Compliance promotion measures:</b></li> </ul> <p>To reinforce monitoring and enforcement, it is important to raise public awareness of the seriousness of the killing of the bird of prey.</p>
<p><b>Illegal trade in wildlife</b></p>	<ul style="list-style-type: none"> <li>• <b>Compliance promotion measures:</b></li> </ul> <p>The evidence of deliberate unlawful activity suggests that compliance promotion measures would not have helped vis-à-vis the suspects F and S. However, compliance promotion measures are important for public confidence in the authorities' willingness and ability to treat wildlife trafficking seriously.</p>



## 13. Data and information

### 13.1. Introduction

This Chapter begins by explaining why it is important to collect, generate, store, share and use data and information on environmental crimes and infringements as well as related compliance assurance.

It follows this with a look at three principal uses of data and information:

- To support compliance assurance interventions;
- To evaluate the effectiveness of compliance assurance authorities and their work;
- To inform the general public and duty-holders.

It then examines practical aspects of collecting, generating, storing, sharing and analysing data and information before testing the content against the three crime scenarios.

### 13.2. Importance of data and information

Combating environmental crimes and related infringements involves collecting, generating and using data and information<sup>100</sup>. Data and information are collected or generated across the entire compliance assurance chain.

Data and information can be embedded in text (for example, inspection and investigation reports) or images (as from earth observation). Increasingly, data are digitised, which opens new possibilities for using and sharing them, including via automated processes ('artificial intelligence or AI'). This trend creates growing expectations that public authorities should be technologically proficient.

The ways in which data and information are collected, generated, stored and shared will help determine what use can be made of them. Collection, generation, storage and sharing therefore represent a foundation on which other data and information activities rest.

Use of data and information involves analysing it and extracting useful outputs such as statistics.

Data and information can be put to different uses – or, to employ jargon, serve different 'use cases'. These use-cases are dependent on the extent of and accessibility of the data collected and generated. At the same time, the use-cases themselves will influence both what is collected and generated.

In essence, compliance monitoring and enforcement are about the collection, generation and use of **evidence**. These categories of compliance assurance interventions are therefore one of the main use-cases of data and information. Certain forms of compliance promotion can be assimilated to this use-case – for example, awareness-raising campaigns based on risk analysis.

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<sup>100</sup> Data, especially if in digital form, can be considered as raw material. Only through processing and analysis can they yield useful information and help to build knowledge. Information and knowledge can bring their full benefits only if they are effectively shared and communicated where needed and useful.



The effectiveness of individual compliance assurance interventions is, however, part of a bigger picture. Compliance assurance authorities need to use their resources effectively. **Evaluation** of organisational effectiveness is therefore a second key use-case of data and information.

A third use-case is **communication** to the general public and duty-holders. Such communication is part of compliance promotion and is justified by the need to have public support for efforts to secure compliance.

### 13.3. Supporting compliance assurance interventions

Data and information are necessary to carry out compliance monitoring and enforcement. They are also generated by these activities.

To discover infringements, compliance assurance authorities may need to rely on data and information coming from duty-holders, including:

- **Records** kept in situ by duty-holders, such as the operators of waste facilities holding a permit;
- **Reports** submitted by duty-holders, such as on polluting emissions from a permitted facility. Such reports in turn may depend on data recorded through use of **monitoring equipment** maintained by duty-holders;
- **Declarations** and other documents submitted by duty-holders, for example in relation to waste shipments.

They may also need to rely on data and information coming from other public authorities, such as **state-of-the-environment monitoring**. Examples are records of habitats and species arising from **surveys**, or records of air or water quality provided by air-quality and water-quality **monitoring stations**.

The inspections, investigations and other checks carried out by compliance assurance authorities will themselves generate data and information such as **inspection reports** or **earth observation imagery**. Some information such as **intelligence** on organised crime will be especially sensitive.

As one proceeds to enforcement along the compliance assurance chain, more data and information is generated. **Administrative notices** will be issued to non-compliant duty-holders. **Criminal prosecutions** will be brought, **sanctions** imposed and **environmental remediation** required.

The data and information generated will be relevant for future work. For example, a record of a successful prosecution will be a relevant piece of information when carrying out a subsequent risk assessment of an individual facility for an inspection plan.

Authorities can use data in a multitude of ways to target their individual interventions in an effective manner but also to follow trends, to perform broader risk-assessments and to develop long-term strategies for combating environmental crime. If, for instance, data and information show that a specific region is experiencing a high incidence of infringements such as the fly-tipping of waste, this can help in the prioritisation of monitoring and enforcement efforts there. Data and information can reveal not only short-term but longer-term patterns that are useful in prioritisation.

In light of the foregoing, the effective use of data and information for interventions requires compliance assurance authorities to:

- Oversee the reliability of records kept by and reports submitted by duty-holders;
- Have good systems for the transfer of data and information from duty-holders to authorities;
- Have good systems for transfer of data and information from other non-public actors, for example from complainants, including whistleblowers;



- Have good data-bases for such data and information, allowing for ease of retrieval and analysis;
- Have ease of access to data and information collected and held by other public authorities, i.e. good data-sharing arrangements;
- Create and maintain good records themselves of their own interventions, for example inspection reports;
- Have good data-bases for their own records;
- Have a capability and capacity to combine different data and information. This is the essence of geo-spatial intelligence, described in Chapter 10;
- Have a capability and capacity to analyse and extract useful data and information both in specific contexts and at scale – for example, to generate statistics to enable effective risk-assessment;
- Strike the right balance between reasons to restrict data- and information-sharing (on grounds such as professional secrecy and respect for personal data) and reasons to share and combine it.

### 13.4. Supporting the evaluation of effectiveness

Data and information are crucial for evaluating the effectiveness of activities aimed at combating environmental crime and related infringements. This sometimes requires additional efforts and resources but usually the investments are quickly paid back and the added value is high. Establishing regular assessment of the performance of competent authorities allows for the development of a self-learning, self-critical and self-improving system on combating environmental crime and wider compliance assurance.

The need to evaluate regularly the performance of relevant bodies and the effectiveness of the enforcement-related measures based on indicators and related data has been increasingly recognised. Some environmental compliance assurance authorities have developed indicators to measure the performance, the efficiency and the effectiveness of their activities on compliance assurance, including tackling environmental crime, on the basis of tailored data collection.

#### 13.4.1. Categories of indicators and related data

For assessing the activities on tackling environmental crime and wider compliance assurance, the relationship between input (e.g. available staff resources and funding), output (e.g. number and intensity of relevant activities, such as inspections, investigations, enforcement campaigns) and outcome indicators (e.g. changes in compliance conduct, improvement of the state of the environment) is important.

**Box 51: Input, output and outcome performance indicators (based on IMPEL<sup>101</sup> and OECD<sup>102</sup> work)**

**Input indicators** relate to the resources allocated to compliance assurance activities, for instance the number of inspectors, investigators and other enforcement staff, available budget and equipment.

**Output indicators** relate to the activities undertaken by the competent authorities. Output data include,

<sup>101</sup> IMPEL 2012, Exploring qualitative and quantitative assessment tools to evaluate the performance of environmental inspectorates across the EU; IMPEL 2014. Doing the Right Things for Waste Shipment Inspections.

<sup>102</sup> Mazur, E (2010), "Outcome Performance Measures of Environmental Compliance Assurance: Current Practices, Constraints and Ways Forward", OECD Environment Working Papers No 18, OECD Publishing.





for example, the number of inspections and investigations carried out, figures on detected infringements, types and numbers of enforcement responses, including sanctions, but also the number of crime prevention activities, the extent of the support provided to duty-holders and of the measures undertaken to ensure transparency.

**Intermediate outcome indicators** relate to the effectiveness of relevant activities and the ability of competent authorities' efforts to prevent, detect and punish environmental crimes and related infringements. Examples include compliance rates, reduced non-compliance risk, better understanding of environmental obligations. Those are more difficult to measure at a general level and can usually only be assessed in specific contexts. Establishing a causal link between relevant activities and the achieved result is particularly challenging because several factors play a role.

**Final outcome indicators** relate to changes in environmental quality – measuring the environment which all of the compliance assurance activity is aimed at protecting.

Input indicators are relatively straightforward to understand, as is the tracking of the final outcome of environmental quality. However, it is the linking of these through output and intermediate outcome indicators which presents a particular challenge. It requires showing the effect of particular compliance assurance activities. Proving such a causal relationship is very difficult at a general level, but may be possible in specific enforcement cases. An example would be enforcement action against a company that illegally dismantled end-of-life vehicles for the recovery of second-hand parts and a follow-up inspection demonstrating that the polluted site is cleaned up as a direct result of the compliance assurance efforts.

Intermediate outcome indicators can involve measuring matters such as compliance rates (e.g. the number of inspections identifying serious infringements out of all inspections undertaken) and recidivism (e.g. the percentage of a specific category of sanctioned offenders infringing the same obligations again) and the duration of non-compliance<sup>103</sup>. Challenges for the definition and practical use of such indicators have to be considered (e.g. the announcement of inspections in advance may undermine the representativeness of compliance rates)<sup>104</sup>.

Explaining the context is important. Statistics may need to be accompanied by qualitative analysis to be meaningful.

In order to demonstrate the results of efforts to combat environmental crimes and related infringements, identify weaknesses and ensure the cost-effectiveness of activities, using a toolbox of meaningful and well-designed input, output and outcome indicators appears appropriate. Within each category, it is possible to define a wide range of specific indicators, as Box 52 below shows.

#### Box 52: Examples of performance indicators for environmental compliance assurance authorities

Drawing on the literature<sup>105</sup>, work of IMPEL (2012)<sup>106</sup> and relevant EU instruments<sup>107</sup>, examples of indicators that can be used for evaluation of activities aimed at combating environmental crimes and related infringements include:

<sup>103</sup> Mazur, E (2010), "Outcome Performance Measures of Environmental Compliance Assurance: Current Practices, Constraints and Ways Forward", OECD Environment Working Papers No 18, OECD Publishing p. 21.

<sup>104</sup> OECD 2009, "Measuring Results of Environmental Regulation and Compliance Assurance: Guidance for countries of Eastern Europe, Caucasus and Central Asia", p. 8.

<sup>105</sup> Mazur, E (2010), "Outcome Performance Measures of Environmental Compliance Assurance: Current Practices, Constraints and Ways Forward", OECD Environment Working Papers No 18, OECD Publishing.

<sup>106</sup> IMPEL 2012. Exploring qualitative and quantitative assessment tools to evaluate the performance of environmental inspectors across the EU.

<sup>107</sup> Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States (OJ L 118, 27.4.2001, p. 41–46); Commission Recommendation of 13 June 2007

...





- Numerical Input Indicators:
  - Number of inspectors and investigators (person hours)
  - Budget allocation
- Numerical Output Indicators:
  - Number of regulated entities benefiting from compliance promotion actions
  - Number of planned inspections carried out versus total planned inspections
  - Ratio of number of inspections that did not identify infringements and total number of inspections
  - Number, total amount and average amount of administrative fines imposed by a particular authority or category of authorities
  - Number/amount of fines effectively collected versus number/amount of fines imposed
  - Number of seized live specimens in the context of wildlife trafficking
  - Number of criminal prosecutions brought to trial versus the number of dossiers referred to prosecutors
  - Number of criminal sanctions imposed
- Numerical Intermediate Outcome Indicators:
  - Percentage of compliant entities out of a total number of a category of regulated entities
  - Recidivism rates
  - Quantities of pollutant emissions reduced as effect of enforcement actions
- Numerical Final Outcome Indicators:
  - Number of protected areas considered to be in good condition for biodiversity objectives
- Non-numerical indicators:
  - Existence of a national or other environmental enforcement strategy
  - Availability of appropriate training for all actors along the enforcement chain
  - Use of risk assessment and analysis of trends in environmental crime
  - Use of structured mechanisms for coordination and cooperation between relevant authorities
  - Existence of specialised bodies
  - Adequacy of information on scale and negative impacts of environmental crimes and related infringements and efforts and results of efforts to tackle it.

### 13.5. Supporting communication

The role of data and information does not stop with internal or inter-institutional work. Authorities also need to raise public awareness and ensure public confidence in their own role.

Publicity about inspection and enforcement actions and their outcomes can drive compliance and secure deterrence. For duty-holders and the general public, the publication of data and information on compliance assurance activities and their results signals that infringements do not go undetected or unpunished. Engaging the media in such publication is therefore important.

For mass media and the ordinary person, data, information and knowledge need to be highly refined to make them interesting and attention-worthy. For instance, it is important to develop good visualisation tools for indicators.

Web-portals with good web design may provide a structured context for communication.

The publication of the following by means of documents may be useful for transparency and awareness-raising purposes:

- Texts of relevant Union legislation and corresponding national, regional or local implementing legislation;

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identifying a set of actions for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (2007/425/EC).



- Names and contact details of the national authorities with functions on combating environmental crimes and related infringements;
- Details on how and to which authority the public can submit complaints and information about suspected environmental crimes and related infringements;
- Information intended to prevent environmental crime and to promote compliance by duty-holders;
- Summaries and guidance used to guide on technically complex legal provisions;
- Current and previous versions of strategic documents on combating environmental crimes and related infringements;
- Guidance on compliance monitoring methods or summaries of these;
- Plans concerning inspections or surveillance, or summaries if disclosure of the entire content would undermine the plans' effectiveness;
- Annual or other periodic reports on compliance assurance activities: ideally data and information on compliance assurance would be collected at regular intervals (yearly for example) at a central information point and be made available to the public<sup>108</sup>;
- Site visit reports of inspections, or summaries if disclosure of the entire content would undermine the purpose of the site visit;
- Peer review reports;
- Data or summaries of data, including statistics, on number and results of different categories of compliance monitoring and enforcement actions;
- Information on individual successful enforcement actions and court decisions;
- Statistics on imposed sanctions for environmental crime and offending;
- Information on compliance assurance projects and activities in the Member State's territory that are supported under the LIFE Regulation and other EU and national funding instruments.

The publication of this type of information should not jeopardise the effectiveness of investigation and prosecution work. Since some information is sensitive, certain restrictions are foreseen, consistent with the Access to Environmental Information Directive, 2003/4/EC<sup>109</sup>. Restrictions can sometimes be eased by anonymising and aggregating information.

The following boxes provides examples of enforcement reports.

#### Box 53: Publication of an annual enforcement report by the Flemish High Council for Spatial Planning and Environment<sup>110</sup>

The Flemish High Council for Spatial Planning and Environment (VHRM) was an advisory body which supports the Flemish government and parliament on issues related to the enforcement of environmental and spatial-planning legislation. The VHRM was responsible, amongst other things, for organising consultations with competent authorities, providing advice to policy-makers, facilitating the development of enforcement protocols, coordinating the five-year environmental enforcement programme and preparing annual enforcement reports. Environmental enforcement actors in the Flemish Region were expected to provide all available information that can be useful for drafting the environmental enforcement report.

The VHRM environmental enforcement reports were published annually and contain:

<sup>108</sup> For example the environmental enforcement reports of the Flemish High Council of Environmental Enforcement are from the moment that they are submitted to the Flemish government also made public via publication on the website.

<sup>109</sup> OJL 41, 14.2.2003, p. 26.

<sup>110</sup> At the time of finalisation of this guidance, it is understood that the Flemish High Council was no longer functioning.



- A general evaluation of the regional environmental enforcement policy;
- A specific evaluation of individual enforcement instruments and safety measures;
- An overview of cases in which no decision was taken within the set term with respect to the appeals against the imposition of administrative measures;
- An evaluation of public prosecutors' decision-making practice regarding whether or not to criminally prosecute an identified offence;
- An overview and comparison of the environmental enforcement policies pursued by municipalities and provinces;
- An inventory of insights obtained during enforcement activities which can be used to improve environmental legislation, policy visions and policy implementation; and
- Recommendations for the further development of environmental enforcement policy.

Source<sup>111</sup>: *Flemish High Council for Spatial Planning and Environment*

#### Box 54: Environmental enforcement reports by the Office of the Spanish Environmental Prosecutor

The Spanish Fiscalía publishes regular reports on its activities, setting out the key issues investigated and providing statistics.

Source: *Fiscalía de Medio Ambiente*

Compliance assurance authorities also need to be adept in *ad hoc* communication. They need to be able to react credibly whenever environmental crime problems attract significant public interest. Proactively, they can draw attention to big individual successes in tackling environmental crimes, using press releases or other communiqés.

## 13.6. Practical challenges

There are many practical challenges in ensuring that data collection, storage, retrieval, sharing, analysis and communication are done effectively, efficiently and legally. There is a high value in individual compliance assurance authorities – or such authorities collectively – having a coherent overall policy to manage these challenges.

### 13.6.1. Data-management resources

The resources available to combat environmental crimes and related infringements are typically scarce. This can create a dilemma: even if authorities recognise the importance of data and information, they may find it difficult to allocate the necessary resources, in particular if what is required is an organisational step-change to achieve the right level of data-management.

A useful starting point is to identify what resources are necessary. Electronic data-bases and data-storage are key pieces of IT infrastructure. The availability of cloud services means that authorities may not need to invest so heavily in IT infrastructure as in the past. Nevertheless, there will still be a need for dedicated IT and analytical staff and understanding the skills required is crucial. These

<sup>111</sup> For further details and analysis see Michael Faure/An Stas, "The Flemish High council of Environmental Enforcement: the role of an environmental enforcement network in a new coordinated environmental enforcement landscape within the Flemish region", in: *Environmental Enforcement Networks: concepts, Implementation and Effectiveness* (Edited by M Faure. Peter De Smedt, An Stas), Edward Elgar Publishing 2015.



may include several relatively new specialisms, such as particular kinds of data-analysis (for example, related to earth observation). There also need to be adequate bridges between these staff and more traditional staff with administrative backgrounds, such as field inspectors, so that they can combine forces effectively.

### 13.6.2. Data-collection and storage

Good data-management begins with the collection stage. End-users and use-cases can and should be considered from the outset, with efficiency factored in where possible - as where monitoring sensors transmit data automatically to the authorities, or inspectors and investigators use mobile electronic devices that allow work on the ground to be automatically geo-tagged and time-recorded. Thought given to how data are collected makes it more likely that data will be wisely organized, shared, analysed and used.

### 13.6.3. Data- and information-sharing between authorities within a Member State

Without prejudice to the autonomy and independence of individual compliance assurance authorities, it is important to share information along the compliance assurance chain.

Poor sharing arrangements reduce effectiveness and represent an incomplete return on the overall tax-payer investment in the authorities concerned.

Good sharing arrangements should be considered an integral part of managing inter-agency relationships. Examples include:

- Ensuring that sharing priorities are included in formal agreements between authorities (e.g. memoranda of understanding). This helps to stimulate development of systems for sharing and can be a signal for staff on the ground to share information;
- Establishing protocols and forms to facilitate information sharing;
- Encouraging joint trainings of staff from different authorities to ensure a common understanding of relevant methodologies and build trust;
- Ensuring that staff working on the ground are free to share information with other relevant authorities;
- Ensuring inter-operability of data systems – authorities retain separate data systems, but these are inter-operable so that large quantities of data can be easily shared and used;
- Operating common databases and platforms – where staff in more than one authority input and use data in one system and which is designed to inform the decisions of those organisations.

There is a high added value in establishing a system of electronic records of activities related to detection, investigation, prosecution and sanctioning of environmental crime and related infringements. Certain relevant spatial data are subject to the sharing requirements of the INSPIRE Directive<sup>112</sup>.

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<sup>112</sup> Directive 2007/2/EC establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), OJL 108, 25.4.2007, p. 1.



#### 13.6.4. Data- and information-sharing between authorities from different Member States (cooperation on cross-border crime)

Exchanging information between relevant authorities from different countries is essential to tackling trans-boundary environmental crimes, such as wildlife trafficking and illegal waste shipments. As already indicated in Chapter 9, bodies such as Europol and Eurojust facilitate this. Box 55 describes a specific sharing mechanism developed by Europol.

##### Box 55: Europol's Secure Information Exchange Network Application (SIENA)

Europol operates the SIENA platform that enables the swift, user-friendly and secure exchange of operational and strategic crime-related information among:

- Europol's liaison officers, analysts and experts
- Member States
- Third parties with which Europol has cooperation agreements.

SIENA is used by entities, such as:

- EU law-enforcement agencies
- Cooperating partners such as Eurojust, Frontex, OLAF and Interpol
- Cooperating states outside the EU, such as Australia, Canada, Norway, Liechtenstein, Moldova, Switzerland and the United States.

Access has been given also to entities, such as asset-recovery offices, police customs cooperation centres, passenger-information units, financial intelligence units.

Source: Europol [website](#).

#### 13.6.5. Data-collection and analysis tools

Responsible staff will need to be aware of the existing tools for data collection and analysis and how to use them.

Examples include:

- Shared databases where staff from different authorities can introduce data and information;
- Web-based applications allowing real time information exchange;
- Use of web-portals and online platforms.
- Tools for big data analysis;
- Classic questionnaires, as used for instance by the Flemish High Council of Environmental Enforcement. Such questionnaires must be designed so as to make answering them easy and low-cost.

As can be seen, data analysis may be statistical in nature, but it is important to also envisage a role for qualitative analysis.

Some forms of performance evaluation will be external, such as **a national peer review** as promoted by IMPEL. These may have their own methodologies and research methods and generate their own data and information, as well as making use of what is already available.



### 13.6.6. Statistics

Section 13.4.1 above draws attention to the range of statistical information that can be relevant for purpose of performance evaluation<sup>113</sup>.

The same or similar statistical information can be used for risk assessment and for producing published reports.

The public and media may be interested in statistics on the following, for example:

- Resources allocated (at different levels) to prevention, detection and prosecution of environmental crimes and related infringements;
- Instances of detected or reported infringements;
- Decisions on the follow-up to individual infringements;
- Total number, subject matter and results of individual investigations and prosecutions;
- Number of closed investigations;
- Number of cases sent by the prosecutor for administrative enforcement and of disregarded cases;
- Number and rates of prosecuted cases which reach trial;
- Number of cross-border cases;
- Number, type and level of imposed criminal and administrative sanctions and restoration measures.

To be useful in practice, statistics should be sufficiently detailed – and be broken down according to the specific types of environmental crimes and infringements concerned, for instance.

Production of statistics can be facilitated by good data collection arrangements – as the example in Box 56 shows.

#### Box 56: Sentencing statistics of the Land and Environment Court of New-South Wales in Australia

The Land and Environment Court of New-South Wales in Australia, in conjunction with the Judicial Commission of New South Wales, established in 2008 the world's first sentencing database for environmental offences, as part of the Judicial Information Research System (JIRS). Sentencing statistics for environmental offences display sentencing graphs and a range of objective and subjective features relevant to environmental offences. Judges are able to access directly the remarks on sentencing behind each graph.

These sentencing statistics are important for improving consistency in adjudication, ensuring more severe sanctions for environmental crime over time, providing balanced individual justice and consistency and indicating the range of sentences<sup>114</sup>. They serve also for informing the wider public on the sentencing practice of the Court.

Source: [Land and Environment Court of New-South Wales](#)

#### Box 57: Recommendations concerning statistics in the Final Report on Mutual Evaluations on Environmental Crime

Member States are encouraged to develop a centralised and integrated approach to the collection of systematic, reliable and up-to-date statistics on environmental crime, including waste-related crime, by each competent authority, with a view to mak-

<sup>113</sup> See also Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 21.

<sup>114</sup> For details on the content of the database and analysis of its usefulness, see Brian E. Preston & Hugh Donnelly, *Achieving consistency and transparency in sentencing for environmental offences*, Judicial Commission of New-South Wales, Sydney, 2008.

ing possible consistent and coherent comparison and analysis of relevant information among institutions.

The statistics referred to above should cover all reported environmental offences and each stage of the related criminal and administrative proceedings, with disaggregated data on waste crime, as well as clusters and analysis of metadata, and should be made available to all the relevant stakeholders.

Member States should use the available statistical data on environmental crime to develop comprehensive environmental risk-based assessments and to carry out strategic evaluations, with a view to assessing the effectiveness of their national systems and to adapt them, where appropriate, in order to counter this form of crime more effectively.

Member States are encouraged to improve the information channels on environmental crime data between the competent authorities, by considering the creation of a centralised database or by ensuring interconnection and interoperability between the existing databases, as well as the establishment of a central authority responsible for managing the relevant data<sup>115</sup>.

### 13.6.7. Professional secrecy and data-protection

The competent authorities should require their staff not to disclose information covered by professional secrecy. Such information would consist of information acquired in the course of compliance assurance activities disclosure of which would undermine the purpose of inspections and investigations; the protection of the commercial interests of a natural or legal person; or the protection of prosecutions, court proceedings and legal advice. This type of information should be disclosed only if there is an overriding public interest in its disclosure.

Individuals' right to protection of their personal data, as provided for in the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) should not be jeopardised.

## 13.7. Testing the content against the three crime scenarios

**Table 21: Testing against the scenarios**

Scenario	Comments
<b>Problematic waste facility</b>	<ul style="list-style-type: none"> <li><b>Data and information for monitoring and enforcement:</b></li> </ul> <p>The local authority should have access to waste records kept by the waste facility operator. There should also be landfill-related state-of-the-environment monitoring data, for example on any gases generated by the landfill. Inspections should generate inspection reports. There should be a system for receiving and recording information from the complainants. A system of records should exist for waste shipments. Data and information-sharing will be necessary across Member States in respect of the waste shipment infringement. There will also need to be data-sharing between the local authority and the LEAs involved, as well as prosecutors, if a criminal prosecution is brought.</p>
<b>Illegal killing of wild birds</b>	<ul style="list-style-type: none"> <li><b>Data and information for monitoring and enforcement:</b></li> </ul> <p>State-of-the-environment records will be important both to record the deaths of the bird of prey and confirm its conservation status. Monitoring information will relate to surveil-</p>

<sup>115</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 25.



	<p>lance and intelligence-gathering and forensic analysis. There should be a system for receiving and recording information from the expert NGO. There will also need to be data-sharing between the LEA and any wildlife authority involved, as well as prosecutors, if a criminal prosecution is brought.</p>
<b>Illegal trade in wildlife</b>	<ul style="list-style-type: none"><li>• <b>Data and information for monitoring and enforcement:</b></li></ul> <p>Customs records will be important. The SIENA platform may be useful for information-sharing across different Member States.</p>





## 14. Being strategic

### 14.1. Introduction

As is clear from previous Chapters, environmental crimes and related infringements may vary considerably in character, geographical location, scale and environmental and economic impacts. They may also be perpetrated by very different kinds of individual and corporate body – and the competent authorities who are concerned may also vary.

Unsurprisingly, Member States, authorities and practitioners have many possible choices and combinations of choices when it comes to interventions.

This Chapter looks at how Member States, authorities and practitioners can be strategic. Being strategic means putting together the right combination of measures, and allocating and directing the right resources, to address the challenges that arise.

The Chapter focuses on three different levels:

- **Structural,**
- **Organisational** and
- **Operational.**

The first relates to constitutional, legislative and institutional frameworks. The second relates to arrangements made by compliance assurance bodies, either individually or collectively, to combat one or more category of infringement. This is the domain of national enforcement (or, more precisely, compliance assurance) strategies and similar exercises, and this Chapter covers the main steps involved in preparing them. The final level relates to the strategic choices of individual practitioners when faced with scenarios of the kind set out in Chapter 2. It should be emphasised that there is no hard and fast dividing-line between these different levels.

### 14.2. Being strategic at the structural level

This is the level of fundamental decision-making within Member States.

Strategic progress at this level can encompass:

- **Constitutional arrangements**, for example on the general role of courts and the scope for use of administrative and criminal law;
- **Creation of new institutions or bodies**, for example the creation of new specialised crime-fighting or compliance assurance bodies, including specialised courts;
- **Creation of new specialised units or functions within existing institutions of bodies**, for example the creation of an environmental crime unit within a police force;
- **Creation of specialised national networks of prosecutors, judges and other practitioners**, for example, the creation of a national network modelled on European networks like IMPEL;
- **Consolidation of legislation on environmental compliance assurance**;
- **Reforms of general penal codes**, for example to put a greater focus on environmental crime;
- **Creation of special investigative powers in legislation**, for example to give general environmental inspectorates power to investigate environmental crimes.



## Box 58: Specialisation recommendations of Final Report on Mutual Evaluations on Environmental Crime

### **Specialisation and networking within prosecution services and the judiciary**

Member States should take appropriate measures to ensure or increase the level of specialisation of their prosecutors and judges, with a view to efficiently prosecuting and sanctioning environmental crime.

For that purpose, they should consider establishing specialised structures/units and/or appoint specialised prosecutors and judges with a good level of understanding and knowledge of this complex area of crime, and provide them with continuous specialised training in environmental crime, including waste, legislation and related crimes.

Member States should consider establishing networks of prosecutors and judges specialising in environmental crime at national level, to help them exchange experience and assist each other, as a measure to improve the effectiveness of the fight against this type of crime<sup>116</sup>.

### **Specialisation within law enforcement authorities (LEAs)**

Member States which have not yet done so are encouraged to establish within their national police services specialised units both at central and at local level for the investigation of environmental crime, including waste-related crime, in the best possible timeframe in order to combat such crimes more effectively.

Member States should maintain and/or, where appropriate, increase the level of specialisation of LEA staff dealing with investigations of environmental crime, including waste-related crime, in order to ensure the appropriate expertise for dealing with such complex forms of crime.

Member States are encouraged to provide or further develop the relevant units/services of their Law enforcement authorities (LEAs) with adequate human resources in order to boost their inspection and enforcement capacity in countering environmental crime, including waste-related crime<sup>117</sup>.

### **Specialisation within environmental inspectorates and other administrative authorities**

Member States should maintain and/or, where appropriate, further increase the level of specialisation and the skills of the personnel of their administrative authorities dealing with environmental offences, including waste-related offences, in order to ensure adequate expertise in this complex and technical area.

Member States are encouraged to ensure that their administrative environmental authorities have an adequate number of staff to efficiently and proactively perform control activities, in particular with a sufficient number of inspections to monitor compliance with environmental legislation and detect related offences.

Member States are encouraged to consider, in accordance with their national law, the possibility of vesting the administrative environmental inspectors, with (limited) criminal investigative powers, in order to enhance their capacity of detecting and investigating environmental crime, including waste-related crime<sup>118</sup>.

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<sup>116</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 35.

<sup>117</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 39.

<sup>118</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 44.



### Box 59: Legislative recommendations of Final Report on Mutual Evaluations on Environmental Crime

Member States are encouraged to consider reviewing national legislation related to the fight against environmental crime, including waste-related crime, which if possible could be collected into a single legal text, in order to facilitate its full understanding and application by all competent authorities.

Member States are recommended to ensure that their national legislation allows the use of special investigative tools to investigate environmental crimes, including waste-related crimes, insofar as this is proportionate in relation to the offence concerned, in order to effectively combat these criminal phenomena<sup>119</sup>.

### 14.3. National compliance assurance strategies, and similar strategies

A national or other similar compliance assurance strategy should define the problems or challenges to be addressed, the objectives pursued, the priorities for action and the organisational basis for action – see Box 60 below.

### Box 60: National Strategy recommendation of Final Report on Mutual Evaluations on Environmental Crime

Member States which have not yet adopted a National Environmental Strategy on environmental crime are encouraged to do so in the best possible timeframe and also to consider the adoption of an action plan for the implementation of such a strategy, with a view to improving the overall coherence and consistency of relevant actions in this field.

The strategy should outline the objectives and priorities of national policy in this area of crime, clearly lay down the roles and responsibilities of all the competent authorities involved in countering this type of criminal activity and the modes of their cooperation, the resources needed and procedures and mechanisms for regular monitoring of the results achieved.

Member States are also recommended to attribute coordinating functions for the implementation of the above strategy to a single body/entity or cooperative structure and to ensure that it is regularly updated and reviewed, on a risk-analysis-based approach, in order to take account of relevant developments and trends and of related threats regarding environmental crime<sup>120</sup>.

A strategy may assume a structural status quo – or its ambition may extend to structural reforms.

A strategy is likely to be high-level and top-down, and set a policy direction for several years. Key aspects of preparing, adopting and implementing a strategy include:

- Having a political or high-level instruction to prepare a strategy, and a lead authority charged with its preparation;
- Being clear about its scope, objectives and time-frames from the outset;

<sup>119</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 59.

<sup>120</sup> Final report of the Eighth round of mutual evaluations on environmental crime of 15 November 2019, p. 20.



- Ensuring consultation, in particular of all actors along the enforcement chain;
- Defining and understanding challenges;
- Priority-setting;
- Defining responsibilities and resources needed for implementation;
- Considering organised crime;
- Considering how effectiveness and success will be evaluated;
- Establishing the structure and content of the strategy;
- Publication of the strategy.

#### 14.3.1. Getting started

If not required by legislation, a strategy will need to begin with an administrative instruction originating within government or at the top level of an institution or compliance assurance body.

The instruction will require some institution or body – and selected individual officials or staff – to take a lead in preparing, consulting on and drafting the strategy.

The broad purpose, scope and objectives of the strategy should be made clear from the outset.

**Scope** will relate to:

- The **kinds of environmental crimes and related infringements to be addressed**. For example, there may be arguments for addressing wildlife crimes and infringements separately from waste crimes and infringements;
- The **extent to which the entire compliance assurance chain is engaged**. The nature of waste and wildlife crime, as well as the monitoring and enforcement choices available, strongly indicates that a multi-agency approach is likely to be the most effective. However, even if the strategy only covers a single body, it should address interactions along the chain – and other actors should be informed of and consulted in its preparation;
- The **extent to which the full range of compliance promotion, monitoring and enforcement interventions are encompassed** – for example, the use of both administrative and criminal law. The content of this Guidance strongly suggests the value of a multi-dimensional approach, but even if a strategy is limited in the dimensions it covers (for example, the use of criminal law) it should take account of other dimensions.

#### 14.3.2. Consultations

It is especially appropriate to consult all practitioners along the compliance assurance chain.

It may also make sense to consult more widely. By way of example, when it comes to combating waste crime (and specific problems such as fly-tipping of waste), legitimate waste operators, affected landowners and others may all have important contributions to make. By way of a further example, combating the illegal persecution of wild birds can benefit from the contributions of specialist bird conservation organisations.

There are different possibilities for carrying out consultations, including through:

- A wide public consultation process;
- Targeted surveys, and
- Use of focus groups or dedicated working groups.

Consultations may take place at different stages – or indeed throughout the preparation process.

### 14.3.3. Defining and understanding the challenges

A strategy should describe the compliance-related problems or challenges it intends to address.

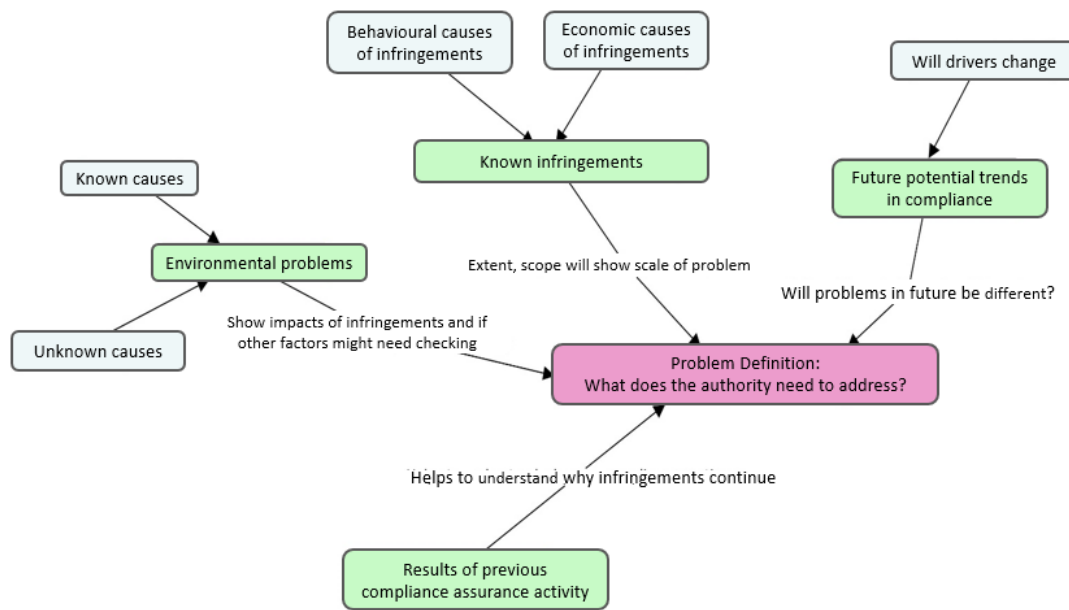
Where the existence of environmental crimes and infringements is already clear, this is an obvious starting point. However, one of the challenges may be information gaps – for example, on the scale of clandestine illegal dumping of waste.

It is important to look to the future – a strategy is not addressing yesterday’s problems, but tomorrow’s. Are social, economic and environmental conditions likely to change and what consequences are these likely to have? For example, are there changes in prospect in how markets in waste services work?

The description of the problems or challenges is likely to result in a range of issues that could call for intervention – as in the scenarios described in Chapter 2.

The importance of good information has already been stressed in this Guidance. The following figure illustrates some of the different types of information that an authority should consider in defining challenges that it needs to address.

Figure 8: Types of information authorities may use in informing a compliance assurance strategy



### 14.3.4. Priority-setting

Risk assessment has already been mentioned in Chapter 10 as a tool for targeting compliance monitoring. It can also be employed to help set priorities under a strategy.

The key risk is that there will be environmental crimes and related infringements. The extent of the risk amounts to the likelihood of such crimes and infringements arising, and the likelihood of them causing negative effects.

Existing information relevant to assessing the likelihood of crimes and infringements arising can include:



- The number of duty-holders concerned;
- The attitudes of duty-holders;
- Known or estimated levels of infringements – including due to gaps in knowledge;
- Known effects of interventions.

Negative effects will be of the kind mentioned in Chapters 4 and 5.

#### 14.3.5. Responsibilities and resources

A strategy also needs to identify who is responsible for taking it forward, as well as for individual parts of the strategy. It should also identify who has the oversight role and how co-ordination will be ensured.

The strategy needs to set out a resource plan to ensure its delivery. Where authorities are subject to annual budget authorisations, **resource plans** for several years may not be confirmed. However, it is important to indicate what resources are required to deliver the strategy and, therefore, address the challenges it has described.

Should the strategy dictate the allocation of resources, or should available resources dictate the strategy?

In many cases, the ability of an authority or authorities to implement a strategy will be constrained by existing resources. The aim of a strategy will often therefore be to make the most effective use of these. However, strategies also provide a basis for arguing within government for the resources to deliver their objectives.

When considering resources, it is useful to distinguish between an authority's capabilities, capacities and tools – as already mentioned in Chapter 8. The **capability** of an authority concerns what it can do – for example, it may or may not be able to carry out a forensic analysis itself. **Capacities** concern the resources needed to use the authority's capabilities. **Tools** are practical means used to support interventions, such as databases and manuals.

#### 14.3.6. Special focus on organised crime

If there is a known involvement of organised crime (for example in relation to waste crime), it is appropriate to take into account wider crime-fighting efforts – for example, to counter cyber-crime and money-laundering.

#### 14.3.7. Implementation, measurement and review

All strategies should be monitored and reviewed following implementation, and lessons learned. A strategy should indicate how its success is to be determined (for example by reference to targets and measurable indicators) and how it is to be reviewed and when.

Chapter 13 sets out details of how implementation can be evaluated.

#### 14.3.8. Structure and content of a strategy

In terms of structure and content, a strategy might usefully describe the following:

- **Summary:** Executive summary for easy communication;
- **Objectives and timescale:** General and specific objectives; period of validity of the strategy and possible milestones for its implementation;



- **Scope:** The kinds of crime and infringements addressed; the parts of the environmental compliance assurance chain involved; and the range of interventions included;
- **Challenges:** The range of challenges presented by the crimes and infringements addressed;
- **Consultations:** The consultation process and techniques used and their results;
- **Priorities:** Any risk assessment or other tools used and an explanation of the priorities defined;
- **Organisation and resource plan:** Mapping of authorities to be involved in implementation, referencing their functions, mandates and legal powers; description of human resources to deliver the strategy as well as material resources (for use of geo-spatial intelligence, for example); identification of necessary professional knowledge and expertise, provision for regular training and information-exchange, including joint training where appropriate;
- **Coordination and cooperation:** Arrangements within a Member State: internal to an authority, inter-agency, networking (use of Memoranda of Understanding, regular strategic meetings, etc.); arrangements for trans-boundary cooperation and coordination: EU/non-EU, mechanisms for making use of Eurojust, Europol and Interpol;
- **Intervention logic and intervention mix:** Basis on which crimes and infringements will be tackled, drawing on environmental compliance assurance principles and including an enforcement policy; inventories of available monitoring and enforcement interventions; guidance on how to choose interventions – as exemplified by the intervention matrix in the National Enforcement Strategy of the Netherlands;
- **Special focus on organised environmental crime:** Role of organised crime; links to other areas of criminality; specific arrangements for dealing with this problem;
- **Data and information:** The sorts of topics addressed in Chapter 13;
- **Review and evaluation of the strategies implementation:** Targets and indicators; time-plan for review and evaluation; procedural arrangements;
- **Communication policy:** Envisaged publication of progress reports, statistics and individual actions.

#### 14.3.9. Publication and communication

While the main purpose of strategies is to guide the work of environmental compliance assurance authorities, they can also serve as important communication tools. It is, therefore, good practice to publish them. This allows stakeholders and the wider public to better understand the priorities and activities of the authorities concerned. Furthermore, the very publication of a strategy focused on enforcement may, in itself, help to deter crimes and infringements.

Having a post-adoption policy on communication is also valuable:

- There is likely to be media interest in environmental crimes and infringements. It makes sense to ensure that media outlets are well-informed – not only in relation to general compliance assurance activities but also in relation to actual outcomes. Publicising action taken on individual serious crimes is an example;
- There may be a specific media and stakeholder interest in having statistics on monitoring and enforcement.



#### 14.4. Being strategic at operational level

The existence of good structural and organisational arrangements should help practitioners to be effective in practice.

However, complex crime or infringement scenarios – such as those presented in Chapter 2 – make it appropriate to also think strategically at operational level. This is because such scenarios have no pre-determined compliance assurance outcomes. Outcomes will depend on the successive choices and decisions of individual practitioners or teams of practitioners.

Being strategic means judging a range of different factors, knowing the choices available and making the choices most likely to secure the best available outcomes. This can involve:

- **Ensuring that the right people take the lead.** Even from the outset, some scenarios may point to a possible lead role for more than one compliance assurance authority. An inspectorate may be competent to inspect a waste facility, but a law enforcement authority may be better placed to investigate criminality at the same facility.
- **Allocating appropriate responsibilities.** It will be necessary to decide how much expertise should usefully be engaged.
- **Choosing between swift and delayed intervention.** Some circumstances will require urgent intervention in order to stop environmental harm as soon as possible – for example, destruction of a protected wildlife site. Others may justify a longer-term approach, for example an investigation of organised illegal waste trafficking may yield more evidence if there is a controlled delivery.
- **Ensuring that the best does not become the enemy of the good.** In some scenarios, the dividing line between an administrative-law infringement and an actionable environmental crime may not be so clear-cut. Even where use of criminal law appears to offer the most proportionate response to a serious infringement, evidence may be insufficient to mount a prosecution against certain perpetrators. If the use of criminal law is ultimately rejected, it is important that the infringement is nonetheless addressed under administrative law.

Having well-trained and experienced individual practitioners and teams should help to ensure that the best strategic choices are made, particularly in the early stages of discovery and assessment of infringements.





## Glossary

<b>Competent authority</b>	A public authority fulfilling one or more of the following functions: compliance promotion, compliance monitoring, enforcement.
<b>Compliance</b>	Conduct that ensures that a legal obligation is met. This might involve taking a positive action to do something that is legally required – or avoiding doing something that is prohibited.
<b>Compliance assurance</b>	The interventions used by public authorities to ensure compliance by duty-holders with environmental obligations. It covers compliance promotion, compliance monitoring and enforcement.
<b>Compliance assurance chain</b>	The inter-relationship between the functions of compliance promotion, compliance monitoring and enforcement in respect of the same legal obligations. A single competent authority can be responsible for the entire chain up to the point of court action or different authorities can be responsible for different functions along the chain. This is sometimes referred to as the enforcement chain.
<b>Compliance monitoring</b>	Surveillance, inspections, investigations, audits or other interventions carried out by, on behalf of, or under the supervision of, a competent authority to examine the compliance of duty-holders with legal obligations.
<b>Compliance promotion</b>	Action to ensure compliance by duty-holders with legal obligations other than by means of compliance monitoring or enforcement. It can include prevention of infringements.
<b>Duty holder</b>	Any natural or legal person required to fulfil a legal obligation. See also regulated community.
<b>Enforcement</b>	Action by a competent authority under civil, administrative or criminal law in response to an infringement or suspected infringement of a legal obligation.
<b>Enforcement chain</b>	Compliance assurance chain.
<b>Environmental defender</b>	Individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment.
<b>Gravity factors</b>	Factors used to determine the gravity of unlawful conduct.
<b>Inspection</b>	An examination of any aspect of an activity of a duty-holder to ensure that such aspect(s) comply with legal obligations and/or to detect and characterise infringements and identify the causes and those responsible. It covers but is not limited to the following: site visits; sample-taking and scientific and technical analysis; checks on records and documents; spot checks and controls on the movement of goods or of mobile activities



	which are subject to legal obligations.
<b>Inspectorate</b>	Competent authority carrying out environmental inspections
<b>Investigation</b>	An examination to determine the cause(s) of infringements of legal obligations and correctly identify the duty-holders responsible. It is the phase of compliance monitoring related to identifying the causes of and culpability for infringements, especially where these are not clear when infringements are first detected.
<b>Law Enforcement authority (LEA)</b>	Police force or customs or other authority with similar powers to investigate environmental crimes.
<b>Peer review</b>	An exercise through which external experts on compliance assurance visit a host Member State or host authority to assess and report on one or more aspects of compliance assurance.
<b>Prevention</b>	Action designed to prevent environmental crimes and related infringements from occurring.
<b>Regulated community</b>	Duty-holders, in particular those covered by a particular regime, such as landfill permits.
<b>Regulator</b>	Any governmental body (national/local; ministry/agency) which has responsibility for ensuring that duty-holders apply and are in compliance with relevant obligations arising from environmental law. Regulators are, therefore, a sub-set of environmental authorities.
<b>Risk assessment</b>	An assessment of the actual or likely occurrence of infringements of legal obligations and of their impacts.
<b>Risk mitigation</b>	Measures aimed at preventing, terminating or reducing infringements in the light of a risk assessment.
<b>Sanctions</b>	Punitive measures that the law foresees and competent authorities impose for the performance of an act that is proscribed, or for the failure to perform a required act. They can be criminal or administrative in nature.
<b>Surveillance</b>	Careful observation of circumstances that may reveal infringements of legal obligations by duty-holders. It covers but is not limited to the following: earth observation of land-cover changes and other phenomena that may disclose infringements; physical land surveys to detect clandestine or unreported activities and intelligence-gathering on the possible existence, nature and extent of infringements.
<b>Unlawful conduct</b>	Infringement of legal obligations originating from EU environmental legislation. This can involve undertaking actions that are prohibited, undertaking actions that are not in line with general legal obligations or failing to take actions that are required.



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