

Brussels is hatching ambitious plans to crack down harder on environmental crime

Brussels is hatching ambitious plans to crack down harder on environmental crime, but its chances of success will depend on EU countries' willingness to cooperate.

That could prove to be a significant obstacle. Countries vary widely on what constitutes environmental crime, let alone how to tackle it — leading to major loopholes that criminals have become adept at exploiting.

Diverging rules about what is classified as “waste,” for example, means countries have different definitions of waste trafficking — which generates between €4 billion and €15 billion annually — as a criminal offense.

Traffickers are savvy to the differences, and will label plastic waste imports as “raw material or recycled material ... when in fact it's waste that has never been treated,” said Éric Figliolia, France's deputy representative at Eurojust, the EU agency that facilitates judicial cooperation among countries.

Efforts to crack down on other lucrative types of organized environmental crime prevalent in the EU — such as wildlife trafficking, which is worth between €7 billion and €9 billion, and the illegal timber trade, worth €6 billion — face similar roadblocks.

A situation where “certain crimes are less strictly punished in a country or another” leads to safe havens, said Jan op gen Oorth, spokesperson for EU law enforcement agency Europol. While places like Italy and Central Europe have long been seen as havens for environmental crime, it's a problem across the bloc. Op gen Oorth said the Benelux region — Belgium, the Netherlands and Luxembourg — is “very attractive for criminals because it has lots of airports, big ports, good infrastructure, good highways, and you're well connected to the German, the French and the English markets.”

Because organized environmental crime tends to happen across borders, EU agencies like Europol, Eurojust and the EU Anti-Fraud Office (OLAF) have an important role to play. But they can only get involved once a country reports a crime and asks for assistance.

That means cracking down on these criminal networks largely relies on countries making it a priority, op gen Oorth said — something they haven't done in recent years.

“Every crime area is always competing with others when it comes to allocation of budget, allocation of priorities in law enforcement,” he said, adding that illegal migration, terrorism and international drug trafficking have tended to top the list.

“We are also a little bit in Europe the victims of our high standards,” op gen Oorth said.

“From the moment we decide that we want to live in a society that's clean, that's not polluted, that means waste needs to be taken care of — in a certain way creating an opportunity for criminals.”

Cooperation issues

According to Figliolia, “there is a growing awareness among European police and judicial authorities” of the need to cooperate on environmental crimes.

Tracking organized environmental crime is highly technical, expensive and labor intensive, Figliolia said. “It involves different administrative, judicial and customs services, and all this has to be coordinated at the national level before it can be coordinated at the international level.”

Criminals often operate in a gray zone. “With waste trafficking and environmental crime, you see that they often have a semi-hybrid setup: They have a legal company that do legal work, but on the side, they also do some illicit work,” op gen Oorth said. “That makes it very difficult to detect.”

Romania, for example, has been trying to crack down on illegal logging in the wake of an infringement procedure from the European Commission, but progress has been slow. That’s because countries like Romania “lack technical assistance ... and expertise,” said Laura Bouriaud, a professor at Romania’s Stefan cel Mare University of Suceava who studies illegal logging in Central and Eastern Europe.

“There is a need for more specialized police units, environmental guards ... and more modern means of enforcement,” she said.

Such specialized units already exist in France, Sweden, Spain, Italy and Germany.

But more resources don’t always guarantee smooth cooperation. During the 2015 Dieselgate scandal, German authorities were “reticent to cooperate,” according to Frédéric Baab, a French magistrate with Eurojust, which coordinated work among countries to investigate and prosecute companies involved in the case. When that happens, “everything is stalled,” he told Le Monde.

The Commission’s fix

Brussels wants to clear those roadblocks and spur countries into action.

He added that the Commission will provide “more specialized training for police, prosecutors and judges and ensur[e] that they have the resources and tools that they need.” But he conceded that no additional funds will be allocated to those efforts.

As part of its revision of the 2008 Environmental Crime Directive, the Commission will call on countries to report on their prosecution of environmental crimes in a new database to get a clearer picture of the scale of the problem.

It also plans to harmonize definitions of environmental crimes and set tougher sanctions for them.

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“Sanction levels differ greatly among Member States and their application in practice appears not to be dissuasive,” the Commission noted, adding: “There has been no clear improvement of crossborder cooperation since the Directive came into force.”

Figliolia insisted that harmonizing sanctions is key because “otherwise offenders go forum shopping and set up part of their business in countries where [these crimes] are least prosecuted.”

“Too often in Europe, there is no real penalty for environmental crime, lawbreakers can go unpunished, and there are too few incentives to observe the law,” said Environment Commissioner Virginijus Sinkevičius. “We want to change that.”

Although the European Parliament wants to include environmental crime in the mandate of the European Public Prosecutor’s Office to support countries with less expertise, Sinkevičius that could be discussed next year.

Frederik Hafen, environmental democracy policy officer at the European Environmental Bureau, an NGO, welcomed the Commission’s proposal “because it creates more legal certainty” and “a lot more crimes are covered.” But he argued that the proposed minimum levels for penalties — at least 5 percent of a company’s global turnover — are too low.

If environmental crimes continue to carry low sanctions, governments risk spending “more public resources on detecting and prosecuting them” than they will recoup in fines, he said, Politico reports.