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REPORT

From:	Presidency
To:	Permanent Representatives Committee / Council
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC - Progress report

Introduction

On 15 December 2021, the Commission submitted a proposal for a Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC. The proposal was accompanied by an impact assessment and a communication.¹

The Commission submitted the proposal after having evaluated Directive 2008/99/EC, on the protection of the environment through criminal law, in 2019/20.

¹ 14459/22 + COR 1 + ADD 1 + ADD 2 REV 1 + ADD 3.

In that evaluation², the Commission found that the Directive did not have much effect on the ground: over the past 10 years the number of environmental crime cases successfully investigated and sentenced remained low. Moreover, the sanction levels imposed were too low to be dissuasive, and cross-border cooperation did not take place in a systematic manner.

The proposal aims to improve the effectiveness of the Directive. It defines environmental crime more precisely, adds new environmental crime categories under its scope, and introduces various new provisions, including on minimum maximum sanctioning levels for natural and legal persons, on specific training to strengthen the law enforcement chain, on adequate resource allocation, and on cross-border investigation tools. It contains provisions to support persons reporting environmental crime, environmental defenders and persons that are affected by environmental crime. It strives to improve the collection of statistical data on environmental crime proceedings to better monitor and evaluate the results of the measures taken and identify problematic stages of the enforcement chain.

Discussions in the COPEN Working Party

Immediately after its submission, the Working Party on Judicial Cooperation in Criminal Matters (COPEN) started examining the proposal. In June 2022, working under the French Presidency, the Council agreed a partial general approach on the text, relating to Article 2 (except the definitions of ‘public concerned’ and ‘victim’), Articles 3 and 4, and the associated recitals.³

From 1 July 2022, the COPEN Working Party continued the examination of the remaining part of the proposal under the Czech Presidency. To that end, the COPEN Working Party came together over five days: on 13/14 July, 7/8 September and 28 September 2022. Its next meeting is planned for 19 October.

² SWD (2020) 260 final

³ 9374/22 (public document).

Discussions focused on the provisions on sanctions (Articles 5-9), but all other provisions were also examined, including those on limitation periods (Article 11), jurisdiction (Article 12), investigative tools (Article 18), national strategy (Article 20) and data collection and statistics (Article 21).

Overall, the Working Party made substantial progress towards a legislative text that can be supported by a qualified majority of Member States.

Discussions in CATS

On 21 September 2022, the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) discussed selected issues concerning sanctions for natural and legal persons.⁴

A large majority of the delegations could agree to sanction levels for natural persons in Article 5(4) and (5) to be set at five and three years, respectively. Delegations provided their views on other aspects relating to sanctions, both for natural persons and for legal persons.

On 28 September 2022, discussions continued in the COPEN Working Party, taking account of the results of the CATS meeting. The Presidency closed the discussions on a number of articles where agreement had been reached. The provisions regarding sanctions, in particular, need to be further debated.

Aim of the Presidency

The Presidency aims to reach a general approach at the meeting of the Council (Justice and Home Affairs) in December 2022. That general approach will constitute the mandate for negotiations with the European Parliament, in order to reach an agreement in the context of the ordinary legislative procedure.

⁴ 12221/22.