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- Discussion Paper

In view of the CATS meeting on 8 February 2022, delegations will find attached a discussion paper by the Presidency, containing two questions.

(Courtesy translation by the Presidency)

Discussion paper

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

What ambition for the European Union?

In its communication entitled: "*The European Green Deal*" published on 11 December 2019, the European Commission has developed a real strategy for the European Union to move not only towards an economy more respectful of natural resources, but also towards "*a fair and prosperous society that responds to the challenges posed by climate change and environmental degradation, improving the quality of life of current and future generations*".

In order to build this fair and prosperous society based on effective protection of the citizen, the European Commission undertook, in this "*Green Deal*", to encourage: "*action by the EU, its Member States and the international community to step up efforts against environmental crime*". The European Commission further specified this wish by indicating that the examination of the advisability of a revision of the 2008 directive relating to the protection of the environment through criminal law was part of the EU Biodiversity Strategy for 2030 adopted on 20 May 2020.

The fight against environmental crime is indeed a major challenge of the twenty-first century.

Because it is of course a question of protecting the environment, against the illegal use of certain substances dangerous for the soil, water, air, flora, fauna and civilian populations, or against the misuse or illicit use of certain natural resources, and thus preserve biodiversity and fight against global warming. But **also because environmental crime has become the playground of many offenders**.

Indeed, the **links between environmental crime and organized crime**, particularly in terms of **waste trafficking¹, wildlife trafficking, and the illegal exploitation and trade of minerals**, are increasingly significant, as noted in the latest Eurojust Report on Eurojust's casework on environmental crime². More generally, environmental crime has become, in a few years, **one of the most lucrative criminal activities in the world**. Indeed, organized criminal groups have been able to take advantage of the shortcomings of international coordination and of legal frameworks that are still too little incriminating to multiply, with relative impunity, activities that constitute a growing threat to our collective security. This lucrative nature is, moreover, fertile ground for the development of related offences such as corruption and money laundering.

This link between environmental crime and organized crime is moreover enshrined in other international forums. The European Union and its Member States are parties to the United Nations Conventions against transnational organized crime (known as the Palermo Convention) and against corruption (known as the Mérida Convention), of which the Conferences of the States Parties (respectively 12-16 October 2020 and 16-20 December 2019³) have adopted resolutions recognizing the importance of this subject and the need for increased cooperation between the signatory States by mobilizing the specific instruments linked to these two international conventions. More specifically, the Conference of the States Parties to the Palermo Convention (12-16 October 2020) adopted by consensus a resolution bringing within the scope of this convention offences that affect the environment and calling upon States Parties to, in particular, make them serious crimes as defined in this convention⁴.

¹ On this subject, on 17 November 2021 the European Commission submitted a proposal for a regulation on shipments of waste and amending regulations (EU) No 1257/2013 and (EU) No 2020/1056, which aims in particular to facilitate the shipment of waste for re-use and recycling in the Union, to combat illegal shipments of waste, and to tackle the problems of managing waste sent to third countries.

² https://www.eurojust.europa.eu/sites/default/files/assets/report_environmental_crime.pdf

³ Resolution 8/12:

https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/COSP8_resolutions.pdf

⁴ Resolution 10/6:

https://www.unodc.org/documents/treaties/UNTOC/COP/SESSION_10/Resolutions/Resolution_10_6_-_English.pdf

In this context, the **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, presented by the European Commission on 15 December 2021, aims to **provide the European Union and its Member States with an effective and coherent legal framework**, intended to step up the fight against environmental crime through harmonized incriminations and procedural mechanisms, proposing a high level of sanctions, and encouraging real synergy between all the national players concerned (administrative, police and judicial authorities).

The purpose of this proposal is to establish **minimum rules concerning the definition of criminal offences and sanctions** in the field of environmental protection, but also to lay down **minimum rules in procedural matters**, such as the provisions relating to limitation periods, jurisdiction, investigative tools, the rights of victims or the protection of persons who report environmental offences or assist the investigation.

The ambition of the proposal requires that it be dealt with in stages. The Presidency thus intends, initially, after an introductory presentation of the text article by article, to concentrate the work on incriminations and sanctions with a view to a **partial general orientation**.

The incrimination technique, substantially revised, was the subject of technical exchanges between the delegations during a first meeting of **the COPEN group on 19 and 20 (morning) January**, which will continue on 23 February with the introductory presentation of the articles relating to sanctions and of the procedural, administrative and final provisions.

In line with these first discussions, during this **CATS** meeting the Presidency will propose to illustrate this subject with an operational sequence during which Mr Sylvain Noyau, *général de brigade* and head of OCLAESP, the French central office for combating environmental and public health offences, will present the transnational and concrete issues of this subject in the field. With this intervention by an inter-ministerial judicial police service, the objective of the Presidency is thus to fully invest in the cross-cutting nature of the CATS, devoted to coordination in the field of police and judicial cooperation in criminal matters.

After this intervention, the CATS delegates will be invited to answer the following questions in order to give political guidelines to the negotiation currently underway at a technical level in the working group:

1. *The COPEN working group of 19 and 20 January revealed a broad support for the principle of revising Directive 2008/99/EC. Following the operational illustration by the French central office and in the light of your national experience in the fight against environmental crime, which aspects of the proposed directive do you consider to be of particular added value?*

2. *On these aspects, what concrete objectives should, in your opinion, guide these negotiations so that the competent national law enforcement and judicial authorities can effectively strengthen their fight against serious environmental crime?*
