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# A discourse analysis of the EU Directive 2008/99/EC

The influence and power of the EU on the  
implementation of environmental crime law



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## Abstract

This paper seeks to understand the relationship between the European Unions (EU) 2008 directive over environmental crimes and the member states which was implemented it into their systems of law. The aim of the paper is to investigate the EUs power and influence over the member states through directives such as the 2008 directive and how the member states implemented and perceived it. Using Carol Bacchis WPR-approach for discourse analysis the power dynamics between the EU and member states were investigated. The member states chosen to be analysed were Sweden and former member United Kingdom (UK). The analysis found that the member states were mostly receptive of the 2008 directive. As Sweden is the one left in the EU now, they also look upon the new proposed directive from 2021 favourably however there are parts they question which can be overstepping from the EU. The UK on the other hand did like the 2008 directive but as they left, they put forward a plan to better their environmental policies making use of the EU and international policies as guides. The power of the EU created by the 2008 directive was limited due to lack of statistical data, proper reporting to the EU from member states and slow acting on circumstances changing quickly. The new 2021 proposed directive has been created to try address the issues found in the 2008 directive.

## Key words

Environmental crime, Environmental law, EU directives, Transnational crime, Discourse analysis

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# Contents

<b>A discourse analysis of the EU directive 2008/99/EC</b> .....	<b>1</b>
The influence and power of the EU on the implementation of environmental crime law.....	1
<b>Abstract</b> .....	<b>3</b>
<b>Key words</b> .....	<b>3</b>
<b>Acknowledgments</b> .....	<b>3</b>
<b>Contents</b> .....	<b>4</b>
<b>1 Introduction</b> .....	<b>1</b>
<b>2 Analytical and theoretical framework</b> .....	<b>3</b>
2.1 Previous research .....	3
2.2 Analytical framework.....	4
2.2.1 Bacchi model of discourse analysis .....	4
2.2.2 Environmental crimes and global organizations .....	5
2.2.3 Sovereignty .....	6
2.2.4 Methodology .....	6
2.2.5 Method diagram .....	8
2.3 Issues of methods.....	9
2.3.1 Case.....	9
2.3.2 Selections and delimitations .....	9
2.3.3 Material .....	9
2.3.4 Validity and reliability .....	10
<b>3 Analysis</b> .....	<b>12</b>
3.1 What's the problem of the implementation of environmental crime punishment and prevention represented in the directive 2008/99/EC? .....	12
3.2 What presuppositions or assumptions underlie this representation of the implementation of environmental crime punishment and prevention? .....	14
3.3 How has this representation of the problem come about? .....	14
3.4 What is left unproblematic in this problem representation? Where are the silences? Can the problem of implementation be thought of differently? .....	15
3.5 What effects are produced by this representation of the problem of implementation of environmental crime punishment and prevention? .....	15
3.6 How/where has this representation of the problem of implementation of environmental crime punishment and prevention been produced, disseminated, and defended? How has it been (or could it be) questioned, disrupted, and replaced? .....	17
<b>4 Findings</b> .....	<b>20</b>
<b>5 Conclusion</b> .....	<b>22</b>
5.1 Further research .....	23
<b>6 References</b> .....	<b>24</b>



# 1 Introduction

The global interests into the environment have been growing larger and larger in the last few years. Many put emphasis on the lessening of environmental harm to try and save the planet. This comes with several problems. To stop harm against the environment one needs to criminalize actions done and be able to punish those that break those crimes. In Rob Whites book *Transnational Environmental Crime: Toward an Eco-Global Criminology* from 2011 he explore the many different facets of crimes against the environment. One of the matters he put out as most important to think about is that there can be criminals on all levels of society from state level to individual level. The crimes can be varied and therefore hard to define (White 2011, p. 3). How much harm must be done for actions to be taken on a global level? Crimes committed against the environment can have consequences from local to global causing a problem of who can prosecute a crime. When it comes to enforcement on a more global scale the lessening of state sovereignty can come into question. The act of a larger more global organization can make states lose power on its own land and policies. (Steger 2020, p. 64-82) Another dimension to this is that ecological globalization or acts against the environment even on a smaller scale in a country can possibly spread globally making it a global issue. Most nations in the world take part in agreements to reduce harm against the environment such as lessening pollution of carbon dioxide that has been linked to global warming (Steger 2020, p. 95-110). The European Union or EU have put out many directives and goals surrounding the environment and its many facets but two of the directives are the environmental crimes directives from 2008 and the new proposal from 2021. As seen by Rob White (2011) crimes can be committed by anyone and on differing levels and this paper want to investigate EU's power over implementation of the directives in other nations and how that can possibly threaten state sovereignty of the member states. As a new proposal of a renewed directive have been made the result of the 2008 directive as well as the EU are under more scrutiny. The results of the 2008 directive are therefore an important factor in the current political climate.

*How does the power and influence of the EU effect the implementation of environmental crimes law and prevention in EU member states?*

The aim of this paper is to investigate the EUs power and influence over the implementation of the 2008 directive and its results for its member states from the implementation of the 2008 directive until the new proposed directive in 2021.

1. How much control does the EU have over the implementation of the directives?
2. What kind of effects can the EUs representation of the implementation have on member states?
3. Do the member states support the power which the EU have or not?

This paper seeks to make a discourse analysis in which it will look at the power and authority of EU. It will make use of the WPR-(What's the problem represented to be-) approach made by Carol Bacchi which is described in the book *Textens mening*



och makt by Boréus and Berström from 2019. The method makes use of pointed questions asked of the material in the analysis. The question over the power of EU can be investigated using the WPR-approach which contain questions to ask of the material used in the analysis. The questions will be used to find the power of the EU when implementation of a directive and the surrounding knowledge which both can be seen and unseen. The EU and the member states perspective over the representation of the problem is going to be used to investigate the research question this paper seek to find.



## 2 Analytical and theoretical framework

This chapter is going to contain previous research into similar topics, a theoretical framework which will be used to formulate the methodology for the analysis as well the method itself. Further the material and discussion over reliability and validity of the methodology will be discussed thereafter.

### 2.1 Previous research

Charlier, R. H. (2003) investigated the relationship between environmental crimes and court systems as well as the international court's view on how it is regulated and how judicial systems work. In the article the idea of regulating how a state divide a court into differing parts is put forward as the best solution to increase efficiency or making sure that some parties does not get access to the system which can hurt disenfranchised groups of people. The international court is the one suggesting such a system which they see as the most fair and reasonable system which court can operate when dealing with environmental crimes. The article discusses the many differing global organizations and what part they should have when it comes to environmental crimes due to how global consequences for such crimes can be. The suggestion in the article is to have those crimes tried at a more international level rather than state level (Charlier, R. H. 2003). What is the EUs goal with the directive? Does it stretch to taking part of the system on a larger more global scale or do they contain it for the member states?

Rachel Killean (2021) discusses introducing a more eco-sensitive approach to international criminal court to see if it would better the response to environmental crimes. The paper questions argues that the current approach is not enough to stop such crimes and therefore need broader defined crimes as well as better reparations. The international court must have better reparations which acknowledge the harm committed. The paper sees that currently the international court does not have any real laws surrounding environmental crimes and the paper seek to question that. Why should environmental crimes which can have an effect over borders not be considered in international court and just in the individual state court? The paper argues that global organizations should take up environmental crimes as part of their court system due to the high and long reach of environmental harm (Rachel Killean 2021). Does the EU consider cross-border crimes for environmental laws? The analysis would have to look at it the 2008 directive consider the member states and cross-border crimes.

Cochran, J.C., Lynch, M.J., Toman, E.L. et al. (2018) investigated the sentencing patterns related to environmental crimes in Florida, USA. They looked at how often offenders got convicted as well as the harshness of the sentencing. The paper found that environmental crimes was less likely to get a sentence as well as less likely to be harsh, though when animals were harmed, they could be slightly harsher. This showed that environmental crimes were not seen as important as other crimes and not as harmful as other crimes (Cochran, J.C., Lynch, M.J., Toman, E.L. et al. 2018). The question is does the system need to change or does it have to be taken more seriously on a larger level such as in the USAs case in federal court or in



the case of the EU does the directive carry enough power to work in the individual cases? Does the 2008 directive work when fighting crimes against the environment?

Stefes, C.H. & Theodoratos, P. (2017) studied how non-democratic regimes deal with environmental crimes and how their law making, and implementation is stifled. The article focuses especially on Armenia and its mining industry which has substantial problems when it comes to environmental harms. The most considerable problems for researchers when investigating the problem is that non-democratic systems does not have a adequate system which track institutions and actors which can facilitate harm. The focus on the article is the problems with holding accountable and being open for scrutiny which non-democratic regimes does not have (Stefes, C.H. & Theodoratos, P. 2017). The EUs directive would have to take into consideration how open states are with increased scrutiny and a change to a system. All of EUs members are democratic however their structure differs and therefore can make for differing views on a directive as well as receptiveness over changes of their system of laws. How much effect did the 2008 directive have on the member states and were they receptive of the changes?

## 2.2 Analytical framework

### 2.2.1 Bacchi model of discourse analysis

The definition for discourse put forward by Howarth from 2007 say that discourse is all social phenomena or “social relationship systems” (Boréus & Berström 2019, p. 254). The paper will therefore focus on the social relationships and the silent knowledge between the EU and EU member states. The focus will therefore be on the EUs role in putting forward the directive and subsequent reactions from the implementation of the directive from EU member states.

Bacchis model of discourse analysis is described by Boréus & Berström (2019) as a model which asks questions of the material one want to investigate. The model is called the “What’s the problem presented to be-approach” or shortened to WPR-approach. The model is used when investigating power dynamics and social and political relationships. It tries to find the perceptions on a subject which a material touts and investigate the legitimacy of said perceptions. The method can be used for a range of material but have been used extensively when investigating political policies and more recently material from media (Boréus & Berström 2019, p. 271). WPRs questions are there to find the underlying knowledge of the differing parties examined and finding all their perspectives. The model will be used to investigate the knowledge behind the power dynamics of the EU when implementing a directive such as the environmental crime directive from 2008 used in this paper. The questions asked will be focused on the perspectives and how it relates to power relationships. The EU and the member states perspectives on the directives will be examined to find the influence by the EU onto members and global relationships. The questions are formulated as to find the underlying power structures as well as ideas. The first question is asking what the problem is and how it is presented in the material chosen to be analysed. The second is there to find the presuppositions and assumptions made by the material and people behind the representation of the problem. The next few questions investigate how the presentation came to be, and





the underlying silences and what is left to interpretation. The last two questions seek to find the effects of the representation and where and how it has been used and if it has been proven to work or not in other instances. They also seek to see if the presentation has ever been challenged as well as replaced. For the WPR-approach the model seek to see how the hidden messaging can challenge the materials representation of the problems as well as the use of the presentation, did it work or not (Boréus & Berström 2019, p. 272-275). In this analysis it will be used to find EUs side, the hidden meanings in the 2008 directive as well as the member states perspective to find if the representation of the implementation of the directive worked, did as it should as well as the results on the representation of the problem. Did the representation of the problem of the implementation work?

## **2.2.2 Environmental crimes and global organizations**

Environmental crimes can be hard to define as it can have many different facets and consequences. White (2011) described it as anyone can commit a crime against the environment and it can be from local to global in term of consequence and actions. This is what complicate defining crimes against the environment. Anyone can commit crimes and anyone from a singular person to a company to a state can do it. The crimes can consist of pollution of air, water and land which can be from local to global in scale and consequence. The crimes can be pollution but also trade and smuggling of goods over borders which can harm the environment. He also emphasizes the that the actions must be harmful to human, non-human animals, and environment for it to be considered a crime. To that end defining crimes against the environment, one must define harm and how much harm must be done for it to be considered a crime. There exists several treaties and initiatives on a global scale to lessen the harm to the environment and some are the EUs many directives and initiatives (White 2011, p. 3-14). To sum up White (2011), environmental crimes can be committed by anyone on any level of society and the crimes are mostly defined by how harmful it is toward humans, non-humans, and the environment. It encompasses pollution and, smuggling and trading of plants, animals, and resources.

Another part to discuss is global organizations, such as the EU, and what part they have in reducing harm to the environment and what impact it can have on the individual states. Both political globalization and ecological globalization play part in this. Global organizations have been around for over a hundred years and are still working to create relations between nations and try to solve issues that appear on a global scale. The EU would be considered a regional organization which can through ecological globalization have global consequences. When it comes to political globalization one would look at the policies and laws which can be decided on a larger scale and then implemented on a smaller scale in individual states. This does raise the question and discussion over state sovereignty and how it can be affected by moves from a more global organization as compared to an individual state (Steger 2020, p. 64-82). Sovereignty will be discussed more in-depth in the next part. The second part to discuss is ecological globalization which touches on pollution, trade and smuggling over borders as well as actions taken to prevent it. There are both sustainable and unsustainable forms of ecological globalization. When it comes to unsustainability pollution, unregulated trade, and smuggling are



main attributers. When it comes to more sustainable options one must look to regulate trade and criminalize actions which can hurt the environment (Steger 2020, p. 95-110). The EUs directive is an example of trying to regulate and criminalize actions which is harmful to the environment.

White (2011) looked at environmental crimes prevention and punishment to understand who commit crimes and how large of a scale it can happen as well as the requirements for crimes such as harmfulness. Steger (2020) look on the other hand on the organizations which either enable it or try to prevent it. To summaries it to how it will be used in this analysis. The EUs directive for environmental crimes are there to define how harmful the actions must be as well as regulate member states actions on such crimes, the organization is there to regulate and uphold a standard, which member states should or have to follow.

### 2.2.3 Sovereignty

Steger (2020) introduced sovereignty as a necessity for a state to have autonomy and freedom to govern their own territories. He argues that globalization can threaten sovereignty because of laws and regulations being made for individual states by global organizations or similar which can make a state lose control of part of its sovereignty and right to govern its territory. He does point out that it can set into questions how much power a state has over itself. The EU was made to be first and foremost an economic relationship between nations but have been increasing its range into other part such as environmental laws and human rights (Steger 2020, p. 64-82). The question is how much that can affect the sovereignty of a member state? The EU directives are made to be implemented in the member states so one question to ask is how much that influences a member states sovereignty?

Smith Jr. FL. (1990) discussed how effective globalizing different political moves such as environmental policies can be. He especially discusses the problem posed against globalizing environmental actions. He discusses the shortcomings of global actions taken when sending monetary aid to third world countries. He saw no notable change by this and now question if globalizing actions against environmental harm is going to work. He proposes that sovereign action is better than global action. He questions if the actions taken are the right actions to tackle the problem or if they are surface action which does not address the problem (Smith Jr. FL. 1990). Smiths (1990) proposal stand on questioning global action over sovereign action, and which is more likely to succeed. Is EUs directive tackling the problem it sets out to solve or should member states do it in their own nations? Did the 2008 directive as proposed work when implemented and did the new proposal from 2021 be needed?

### 2.2.4 Methodology

Bacchis model of the WPR-approach will be used as method when analysing the directive made by the EU. The questions will be formulated and changed slightly from the model to encompass all the parts needed when analysing the directive and other material. The model has six questions which can be changed and removed if needed. In this analysis all questions will be used. The questions are going to focus



on the implementation of the directive and its effects as well as the surrounding reactions and discussions about said implementation.

Questions reworded from Bacchis model of WPR-approach (Boréus & Berström 2019, p. 273):

1. What's the problem of the implementation of environmental crime punishment and prevention represented in the directive 2008/99/EC?
2. What presuppositions or assumptions underlie this representation of the implementation of environmental crime punishment and prevention?
3. How has this representation of the problem come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the problem of implementation be thought of differently?
5. What effects are produced by this representation of the problem of implementation of environmental crime punishment and prevention?
6. How/where has this representation of the problem of implementation of environmental crime punishment and prevention been produced, disseminated, and defended? How has it been (or could it be) questioned, disrupted, and replaced?

The method will make use of two perspectives when investigating the problem represented in the directives as well as the use of the representation. The two perspectives will be the EU and the member states, Sweden, and the former member United Kingdom (UK). The EU is there as they put forward the directive as well as the plan for implementation which this analysis will focus on. The members are there to look at their implementation of the directives as well as their view on it. These perspectives have been chosen as to get the fullest and most well-rounded answers to the questions.



### 2.2.5 Method diagram

	1	2	3	4	5	6
EU	<i>EUs</i> representation of the problem	<i>EUs</i> presuppositions or assumptions that underlie the representation	How did the representation on the problem come to be from the EUs perspective?	1. What is left unproblematic in this problem representation? 2. Where are the silences? 3. Can the problem of implementation be thought of differently? 4. What effects are produced by this representation?	What effects are produced by this representation?	How/where has this representation of the problem been produced, disseminated, and defended? How has it been (or could it be) questioned, disrupted, and replaced?
EU member states  Sweden and former member United Kingdom (UK)	X	X	X	X	What effects are produced by this representation?	How/where has this representation of the problem been produced, disseminated, and defended? How has it been (or could it be) questioned, disrupted, and replaced?

*Perspectives and questions asked to analyze the EU directive 2008/99/EC.*



## 2.3 Issues of methods

### 2.3.1 Case

The chosen case, the 2008 EU directive on environmental crimes were chosen due to its impact on the EU and EU members in relation to both environmental crimes but also how directives and implementations of directives can impact relationships between the EU and its members and between members. The paper chose to focus on three perspectives: the EU, and two member states Sweden and the United Kingdom, UK. As the analysis is limited due to time limit to two members in the analysis other members might feel differently about the implementation of the directive, so the analysis is going to have a less quantitative analysis and more qualitative look into the smaller sample. This does limit being able to make the sample of two into a representative of all the members of the EU.

### 2.3.2 Selections and delimitations

The paper will make use of both the 2008 and the new proposal form 2021 however as the new proposal have not yet been implemented into member states and have not yet been finalized the impact of it have not yet been seen and will therefore be used as an effect of the 2008 directive. The 2008 directive have been implemented and put into action and therefore this paper will focus on the 2008 directive, while using the 2021 proposal for measuring the effect of the 2008 directive.

The paper will make use of the perspective of EU members and have chosen to use Sweden and the former member UK, as analysis objects. Sweden as a current member and UK as a former member which implemented the directive. The paper chose to use only two members due to the time limit of the paper.

### 2.3.3 Material

The primary material which will be analysed in this paper is the EU directive from 2008 which is called *Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law*. The analysis uses this directive to investigate the EUs representation and view on the implementation of environmental crime punishment and prevention. As this paper seek to find how effective the implementation was the analysis will be from two perspectives the EU and the member states.

For the EU material the directive from 2008 it used but also the new proposal from 2021. The new proposal consists of several documents but the most important which will be used in this analysis is called *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*. The proposal was created after an evaluation of the 2008 directive, but the evaluation will not be used in this paper. The European Commission's internet site will also be used for timeline purposes as well as a few earlier policies and directives regarding environmental crimes will be used on the third question in the analysis to create a historical context in which the EUs 2008 directive stemmed from.



When it comes to the member states of the EU which implemented the 2008 directive, this paper is going to use the member state Sweden and former EU member United Kingdom, UK. Sweden has been vocal in its support of the new proposal for updating the 2008 directive and while the UK have left the EU, they did implement the directive and their view will be both as a member and an outsider. An outside perspective will help round out the analysis and as the UK is now not a part of the EU, will they want to update the environmental crimes directive to the new proposal or not? How did they view the directive?

The materials chosen for Sweden are three parts, one from the Swedish law that got first created in 1998 and have been updated until now, one from 2016 and one from 2022 which coincide with the new proposal from the EU. The one from 1998 is called *Miljöbalk (1998:808)* which is the environmental laws in Sweden, this analysis will only make use of the parts referencing the 2008 EU directive. The second one from 2016 is an article about a change in laws which are there to clarify the EUs directive in the Swedish law, it is called *Regeländringar beslutade den 17 mars 2016* and written by the environmental department of the Riksdag. The third one from 2022 is based on the new proposal from the EU and discusses it as a revision of the Swedish environmental laws. It is called *Revidering av EU:s miljöbrottsdirektiv Fakta-PM om EU-förslag 2021/22:FPM58 : COM(2021) 851*. These three will be used to discuss the EUs implementation of the directive in Sweden and its effects on the Swedish law.

The materials chosen for the UK are from 2014, 2018 and an evaluation of the 2008 directive in which the UK took part in from 2018. The one from 2014 is a review of the relationship between the UK and EU which looks at the environmental policies. It is called *Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change* by HM Government. The second one from 2018 is a plan for when they leave the EU, to be a world leading example of environmental protections. It is called *Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment* by the Department of Environment, food, and rural affairs. The last one from 2018 is an evaluation of the 2008 directive which the UK took part in but also encompasses more member states of the EU. It is called *The Utopia of the Harmonization of Legal Frameworks to Fight against Transnational Organized Environmental Crime*.

### 2.3.4 Validity and reliability

The paper makes use of a qualitative study using questions aimed at the material to find the answer to the research question. The validity of this method is high. Validity can be defined as agreement between theoretical definition and the operational method, the absence of systemic faults and that one measure what one say one measures (Esaiaasson 2007, p.63). The questions are taken from an established methodology and have been used in many papers to investigate discourse and power dynamics. The theoretical background makes up the basis for the method but can be better formulated and described to increase the validity of the paper further. The methodologies most sizable obstacle is if the questions measure



the discourse. The method made by Bacchi have been used extensively and have shown to work so the question for this paper is if the material can answer the research question and the questions made by Bacchi. The reliability of the method is when there is a lack of systematic fault in the methodology (Esaïsson 2007, p.70). The method chosen for this paper, the WPR-approach, largest problem when it comes to reliability is the holistic nature of its questions. The approach makes use of broader and less specific questions which can be a weakness in its design. On the other hand, it is a more broad and holistic study which can make a difference in freedom in the approach to the questions (Boréus & Berström 2019, p.294). In this paper the reliability is mostly hindered by the mentioned weakness but is not strictly a mayor weakness.



## 3 Analysis

The analysis will make use of the WPR-approaches questions which will be asked of the materials, the 2008 directive, the 2021 proposed directive and the material for Sweden and the UK. The questions are answered by beginning with the EUs side, then Sweden's side and then the UK, then summarised at the end of each answer.

### 3.1 What's the problem of the implementation of environmental crime punishment and prevention represented in the directive 2008/99/EC?

The directive is divided into two parts, the first their general explanations on why the directive was created as well as a general overview over the following part which is the 10 articles created. The problem is therefore represented in both parts but with differing in their structure.

The first part begins by explaining the EUs reasoning and intentions with the directive and how and what they want to achieve through the it. The directive was created with the intention to make a more complete and comprehensive community policy over environmental crimes. They express those earlier systems of penalties have not worked to realize compliance with the laws. The EUs goal as stated in the directive is to make a system, with similar laws, which can be used when criminal actions go over borders (Directive 2008/99/EC, 2-4). Therefore, their goal is to create a system which can handle larger criminal activity as well as expand to more common laws between nations to ease the burdens of environmental crimes on the former systems. The text continues to describe the implementation of the directive as well as what role member states should have in the process. The directives obligations are only for member states and the obligations are to provide for "prohibitive measures", which will be discussed in the next part. Further the directive details the kind of obligations:

This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment. This Directive creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases. (Directive 2008/99/EC, 10)

The role of the member states should therefore be to implement laws and penalties in which laws are able to be used over borders while not enforcing a specific change to the established systems in the member states. The directive emphasizes that the directive is limited to more minimal laws and that should member states wish they can implement more harsh and stringent measures in the individual states. Further obligations of member states are that they should report how well the implementation of the directive went as well as the results of the laws. The objective of the directive is to make a better and more effective system over environmental crimes and therefore the directive does only need the necessary parts which can achieve this result (Directive 2008/99/EC, 10-14). To summarise this first part the





EU's objective is to make the environmental crimes and its handling more community base wherein the laws can function over borders in the EU. The directive is there to instruct the member states on why and how they should implement environmental crimes into their established systems. The emphasis is on minimal rules and laws which can be expanded, while making sure that the directive reaches its objective.

The second part describes in more technical terms what role member states should have and how they should go about implementing the directive for their systems. The articles relevant to this analysis is article 3 - 9. The articles describe the obligations which the member states must implement as well as the time when it should be implemented into their systems. Articles 3 – 7 are about the obligations and laws and punishment which they should implement into their systems of laws. These talk about the directive which should be implemented and not the implementation itself. Article 3-5 states the offences such as deterioration of habitat, shipments of waste and handling of nuclear material. They also state that member states should make sure that punishments and penalties are implemented and followed. Articles 6 and 7 discusses legal persons and how they should be defined and punished. The member states should implement effective measures which make legal people liable for the offences stated in article 3. Articles 8 and 9 are about when the directive should be implemented and the instructions to report how well the directive could be implemented as well as the results of the directive. The two articles say the obligations which the member states have toward the EU when implementing the directive. The directive should have been implemented before the 26 December 2010 and that they must report back to the EU how the implementation of the directive worked out. The laws and rules created should also contain references to the directives, so it is easier to investigate what role the directive had on laws after the directive was implemented (Directive 2008/99/EC, Articles 3-9). To summarise the articles, they speak of the offences, criminal liability, penalties, and the member state's role in implementing these articles into law.

To answer the question the representation of the problem of the implementation of environmental crime punishment and prevention as presented by the EU is divided into why the EU created the directive as well as how and what the member states should implement from the directive into their existing system of laws. The EU's reasons are that the previous systems did not account for broad enough and strong enough laws to make perpetrating crimes against the environment injurious enough to comply with the laws. They also seek to make a system which can make crime across borders easier to prosecute due to similar laws. The implementation itself is presented as minimal rules and laws to implement into existing systems which can be expanded on by the individual member states. The member states have the obligation of implementing the directive within a time limit as well as reporting back the result to the EU to see how well the transition went when implementing the directive.



### 3.2 What presuppositions or assumptions underlie this representation of the implementation of environmental crime punishment and prevention?

The representation of the problem as presented in the directive has presuppositions and assumptions which one should be aware when reading the text and implementing the directive. The problem presented deals with environmental crime and implementation of punishments and preventions of them which can carry assumptions and presumed positions but also the EUs wording have underlying meanings in parts of the directive. When it comes to presuppositions and assumptions in the directive it takes for granted that the reader is to some extent familiar with the laws surrounding environmental crimes as well as how the punishment for them have looked before the directives proposed ones. The directive also sees the laws and punishments as a deterrent for offending against them but does not state how it can be a deterrent outside of higher risks involved when breaking laws, the EU take for granted knowledge of how prevention of crime works. The directive does try to explain where ideas originate and mean but certain parts are not stated outright in the text. One example is that the recourse for not implementing the directive is not stated clearly in the text. The only references are the principles of the rights of member states in the EU but not stated in the text itself and is therefore an assumption of knowledge of how the EU deal with directives and member states that does not comply with it.

### 3.3 How has this representation of the problem come about?

When it comes to the historical context from which this representation comes from one must look at former EU directives, global relations which could influence nations as well as to some extent individual nations. The EU directive over environmental crimes states that its reasons for wanting to expand the protections over the environment is to strengthen earlier systems which did not work as well as the EU wanted, the statements are based on the knowledge of the systems already in place (Directive 2008/99/EC, 2-3). On the European Commission's site, they established a timeline on the development of environmental crimes in the EU from 1998 until 2007 wherein they described how the first policies were created to the 2008 environmental crime directive. The first policy created was by the Council of Europe from 1998 where they established a convention for protecting the environment using criminal law as deterrent. The timeline continues through until 2007 wherein the 2008 directive was conceptualised. The timeline over the environmental crimes in the EU was started in 1998 but it was not until the Danish initiative in 2000 that the Council of Europe adopted a framework for environmental crimes. The commission did not see the framework as sufficient and created a proposal for directives to be implemented over environmental crimes through criminal law. It was in 2000 that the European Parliament discussed both the framework and the proposal. The council did not accept all of it but did adopt the framework. It later went to the European Court of Justice which started the creation



and later implementation of the directives over environmental crimes (The European Commission, n/y).

### 3.4 What is left unproblematic in this problem representation? Where are the silences? Can the problem of implementation be thought of differently?

The directive is composed of the obligations and wants that the member states should implement and follow but certain questions can be raised on the assumptions and silences in the text. The directive does not touch on the consequences of refusing to implement the directive as well as what the members might see as overreach. The directive focuses on the technical and legal sides of the implementation of the directive of environmental crimes but lack a question of how much it can challenge a state's sovereignty over their legal systems. The directive does not wish to impose a system but add their laws and regulations in existing legal systems in the member states (Directive 2008/99/EC, 10). This puts up the question can add laws and regulations onto an existing system feel like infringing on a states sovereignty? As sovereignty means to have control over one's own territory and system one can argue that implementing the directive can be infringing but as the system is not changed the opposite can be argued as well. As for the consequences of not implementing the system one would have to look for other sources of information and not the directive itself to find it. This can make a lay person reading the directive not understanding the stakes in the consequences of the directive. They might look at the sentence "Failure to comply with a legal duty to act can have the same effect as active behaviour and should therefore also be subject to corresponding penalties" (Directive 2008/99/EC, 6) and interpret it as a threat to member states for not implementing the directive. That the inaction can have the same consequence as the action itself. The silences are mostly in the assumptions and presuppositions. The knowledge that is left unspoken and taken for granted.

### 3.5 What effects are produced by this representation of the problem of implementation of environmental crime punishment and prevention?

The EU wished for the directive to make crime over borders easier to fight as well as broaden the scope of environmental crimes. The directive was therefore a wish of what type of effects which it sought to see. The effects of this can be analyzed through two ways lived and not lived. This question focuses on the not lived and more on the technical and documental part of the question. How did the member states implement it, and did they expand the laws further than the directive did? Did the directive reach its goal when it comes to its implementation?

To start with Sweden, the directive will be analyzed through the environmental laws in Sweden from the Miljöbalk (1998:808) as well as the changes in 2016 announced in an article from 2016 (Sveriges Riksdag 2016). The implementation of the EU



directive into the Swedish system was through laws such as the laws around electronic waste which was based on the directive. The law is there to regulate the electronic waste and accreditation and market control over electronic devices and its waste (Miljöbalk 1998:808, 15 kap. 34 §). The directive expanded the laws surrounding waste management of electronic waste. A second part in Swedish law which is accredited to the EU directive is the control over EU-directive into Swedish law. The law discusses the EU's role and Sweden's obligations to the EU. The law is about control over marketing and Sweden's role in following the EU's directives orders (Miljöbalk 1998:808, 26 kap. 30 §). The law reflects the EU effect on the changes of laws or additions on the laws. A third law is about dangerous chemical management. The law is about the mismanagement of chemicals and how much it can hurt the environment. The parts relevant to this analysis is part 10 and 11 of the law which details about if one lets lose a chemical or explosive device in the marketplace or misclassify products released into the marketplace that one can get convicted. The eleven is about creating a chemical or explosive product and releasing it to the marketplace without considering its regulations (Miljöbalk 1998:808, 29 kap. 3 §). To summarize the laws which have been created to follow the EU directive as well as expand them though this analysis will discuss this in the next part. Sweden therefore implemented it into its system successfully. The question is if it could reach the goals put out by the EU. The article from 2016 expand the discussion to wherein the environmental laws are changed to better follow the 2008 directive in a clearer way (Riksdagen 2016). These all show the effects on the Swedish laws by the EU directive.

To analyze this question on the UK the review made by HM Government from 2014 will be used. In the review the relationship between the UK and the EU is discussed as both positive and negative. In the first chapter it establishes that there were more positives as the UK joined when the environment started to be considered as more important and could therefore influence its conception. The more negative aspect was that EU's more minimal rules and letting member states make more stringent laws made it harder to work around. It does also highlight the ways in which the UK were able to influence the EU's environmental laws to be more favorable to their views (HM Government 2014, p. 17-25). In this sense UK had a lot of influence on the EU's directives and view and therefore would look at it in a positive light. The second chapter on the other hand consider the impact of the EU and its regulations on the UK and found that businesses can have a harder time to rise and that it was harder to be competitive in the marketplace. On the other hand, the environmental standard as a whole rose because of the EU's environmental regulations and laws. Later in the chapter the consideration over how effective implementation of EU's directives are considered. It was found that the slow pace of adapting to changing circumstances as well as their inflexibility were a cause for concern. Some concern was over to harsh laws over chemicals and other hazardous materials as it can stifle innovations. On the other hand, raised standard for products on the EU market which were welcomed (HM Government 2014, p. 27-72). The standards that were raised by EU's laws and regulations were positively received while the slower moving and not adapting ways in which the EU moves were more negative. The implementation worked but it made a question of the importance of how much a



member state should increase regulations more than the directive obligated or how much the EU should interfere in its member states.

To summaries this question, the effects seen is changes to the systems of law even though it is not huge. The EU set out to use minimal laws in established systems and it seem to have worked well in the member states Sweden and the UK. There are parts which are more negative such as the rigidity of the EUs slow moves but positives in increased environmental standards.

### 3.6 How/where has this representation of the problem of implementation of environmental crime punishment and prevention been produced, disseminated, and defended? How has it been (or could it be) questioned, disrupted, and replaced?

The EUs reaction to the directive's effects can be seen through the new proposed directive from 2021 which addresses weaknesses in the original directive. The directive details how the 2008 directive went over the last 10 year and found as the quote below details that the goals set up by the directives were not satisfied.

The Commission evaluated the Directive in 2019/20 and published its findings in October 2020. It 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 very 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 European Union 2021, p. 1)

It shows that the directive was not strong enough to reach the goals but also that the relationships between member states did not reach a satisfactory level. One of the reasons for its failure was the lack of reporting and reliable statistics which hurt both the evaluation and the member states own law making. The proposal is there to address the short comings of the first directive as well as increase the consequences on the member states who does not report and gather data to show how the directive does in the states. The goal of the new directive is therefore to improve investigations of the directives effectiveness, make more effective sanctions to increase willingness to cooperate, make cross-border investigations easier, increase the data collection and ensuring that the data is accurate (The European Union 2021, p. 1-2). The proposal is therefore there to correct the parts of the 2008 directive which did not reach the desired results. The EUs goals are mostly the same except they want to increase the consequences and data collection to make sure that the directive does reach the goals.

In Sweden one can see in the laws mentioned in the former question, the changes made and how the country expanded and changed after new directives and other laws were added. The law is expanded upon by other later additions of EU directives and other laws. For example, on the last law mentioned above there are



many parts to it wish are related to other directives such as *Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants* which are used when discussing chemical management. It expands upon the production and selling of chemicals to be more restrictive (Miljöbalk 1998:808, 29 kap. 3 §). This means that the original directive was not encompassing enough to reach EUs goals stated in the 2008 directive and needed to be added to through further examples. The new proposed revision of the directive from 2021 is also discussed by the Swedish Riksdag in which they explain that the minimal laws and rules made by the 2008 directive is being revised to encompass a larger scope. More categories are added, and the punishments are looked over to see if they could reach the goals set forth. Some of the proposals are increased obstacles to do business, clean up environmental harms and when laws are broken can people be barred from voting in elections. Sweden say they are mostly on the EU side in expanding on the laws, but questions EUs proposal on barring voting when convicted of a crime and if they should be able to interfere with a member states democratic system in such a way. Sweden sees it negatively to interfere in the democratic process and that it should be considered on a deeper level before it is to be implemented (Sveriges Riksdag 2022). Sweden in a way sees it as a threat to their democratic system and sovereignty over their state when considering barring voting. The rest of the new proposal Sweden look more favourably upon.

First when it comes to the UK is the study on the harmonization of transnational crimes when looking at the environment by Maria Marquès-Banqué from 2018. The study is not about the UK specifically, but they took part as an analysis subject. In the study the 2008 directive is used as a case study when looking at environmental crime laws and its transnational implementation. One problem witnessed were that the directives minimal laws was not as effective as it could have been. The minimal rules did not give the member states strong enough laws to effectively fight crimes. The UK was part of the member states when looked at when investigating the impact made by the directives on member states (Marquès-Banqué M. 2018). As the UK started as a member state and then left the EU, they look at the directives differently to Sweden as they were leaving and then left. As mentioned in the previous question the directive was well received in the UK as it increased the environmental laws and regulations, they did though see weaknesses in its approach. As the time in which they left the EU came closer one can see their view shift to taking inspiration from the EUs directive and keeping parts of it but also how they would look upon it after they left. In the consultation by the Department of Environment, food, and rural affairs (2018) we can see their view shifting.

A new statutory policy statement on environmental principles and an independent, statutory environmental watchdog will help to deliver the vision of the 25 Year Environment Plan and ensure our country is a world leader in environmental protection once we leave the EU. (Department of Environment, food, and rural affairs 2018, p. 1)

They started to shift their policies to be leading the world without the EU. They further emphasise the use of international and EU policies and principles as a guide to their new laws over environmental crimes. They make use of the strengths of the principles made by the EU while making their own laws and regulations. One



consideration raised by the UK is that they would no longer be held accountable by the EU when it comes to the environmental laws and its applications. This raises the responsibility of the UK to make the right calls when applying environmental crime laws and regulations (Department of Environment, food, and rural affairs 2018, p. 1-2). The UK is therefore now responsible for regulating the laws surrounding environmental crimes which fell unto the EU before they left. The UK use the EU and international community as a guide to their environmental laws. In a way it is testament to the proficiency of the EU made with the environmental crime's directive from 2008 on the UKs laws on the environment.



## 4 Findings

The first question looked at how the representation of the problem of implementation of the directive over environmental crimes was presented by the EU. Their presentation was that the former systems were too weak to have a noticeable effect on limiting crimes against the environment and their goal was to make cross-border crime fighting easier, make laws minimal which can be inserted into existing law systems and that the member states are under obligation to implement and report back how the implementation work in their existing systems.

The second question looked at the presumptions and assumptions shown in the directive and the analysis found that the most common presumption were parts which only someone with deeper knowledge would see. Such as the part in which they do not say what consequences member states would face if they did not implement the directive, they took for granted that the reader would be familiar with the EUs systems to know that knowledge. The directive also takes for granted that the person reading the document are familiar with laws surrounding environmental crimes and its punishments and does not go in depth on the previous systems.

The third question looked at the historical context from which the EUs representation arouse from. It was found to come from a long series of policies and laws from 1998 when the first environmental law was considered by the Council of Europe until now with the 2008 directive and later the new proposal from 2021. The journey went through many stages before the more definitive finished 2008 directive was created.

The fourth question consider that which is not spoken and silence in the directive. One such matter is the sovereignty of a state. Can they feel threatened by the forced implementation of the directive into their system of law? It can be argued both ways. Another part which can be argued to be silenced were the consequences against member states which does not want to implement it which one has to either be knowledgeable of before or look to other sources to find.

The fifth question looked on the effects of the representation of the problem made by the directive. The analysis looked at Sweden and the UK as the analysis subjects. The question sought to find how the implementation of the directive looked in their systems. Sweden implemented the directive successfully into their laws and followed the obligations as a member state. They looked upon it favourably. The UK implemented as well successfully and looked upon it mostly favourably. They did see weaknesses in it which they named such as that it put limits on inventions using chemicals and another was how slow the EU were to react to matters.

The sixth question looked at how the implementation of the 2008 directive has been used, changed, and discarded. The EU looked at the evaluation of the directive and found it lacking and then made the new 2021 proposal which sought to improve and change the part which were not effective in the 2008 directive. They found that the first directive did not reach their goals and therefore needed to make sure that the





goal could be reached by creating this new proposal. Sweden was positive to the new proposal and found it well founded however they question the parts which they found possible to threaten their democratic system which were the part where they could take away peoples right to vote in elections. The UK as they left the EU did not consider the new proposal more than an inspiration for their own laws. But in 2018 they put out a consultation where they considered the EU and how they would work around environmental crimes. Their idea was that they would use international and EU laws and regulations as a guide to their own laws. In a sense they would follow similar paths but not the same.



## 5 Conclusion

The analysis was made to see how the EUs influence and power affected implementation of the 2008 directive and in turn the member states. The analysis found that the presentation of the problem was using minimal rules to not affect the systems they were implemented in too much and they wanted to make cross-border crime fighting easier. They did not achieve their goal using the 2008 directive as shown in the new 2021 proposed directive. Their directive was not strong enough to make a large difference and the member states, Sweden, and the UK, did not consider the directive as to be imposing on their system. The only statement that Sweden questioned as a threat to sovereignty is in the new proposal that consider taking away people's right to vote when convicted of an environmental crime. The UK looked at the EU as ineffective in how fast they could move and much of the discourse surrounding the 2008 directive is about the effectiveness of it which was shown in the new proposal to be limited.

1. How much control does the EU have over the implementation of the directives?

The EU does have power over its implementation but the effectiveness over the 2008 directive was questioned in the 2021 proposal. The EU put an obligation on the member states to implement and report back its results but as seen in the proposal the system was not effective in getting accurate data to make adequate statistical decisions based on those obligated reports. In a way the control is only as strong as the consequences one receives when breaking the obligations. The new proposal seeks to make them harsher, so if it goes through as, it is now the EU will have better control over the new directive. The UK felt they had a say in the creation of the 2008 directive and was for it for the most part except the EUs slow moves when changes happen in circumstances and some problems when it comes to inventions with chemical. Sweden did not see the 2008 directive as overreaching and does support the harsher tone of the 2021 proposal but see parts such as the taking away convicted peoples right to vote as overreaching.

2. What kind of effects can the EUs representation of the implementation have on member states?

The two member states used in this analysis Sweden and the UK both looked positively upon the directive though they saw downsides to it such as the lack of consideration on the chemical inventions and how slow the EU can move at times. The UK as they left the EU still uses the EU as a source of inspiration and guide when considering the environment. Sweden looks favourably upon it with exceptions to the new proposal and the part which Sweden deem a possible threat to democracy in Sweden's view, taking away people's right to vote.

3. Do the member states support the power which the EU have or not?



Sweden looks favourably mostly on the EU and its directive when it comes to environmental laws however, they question the reach of the EU when saying in the new proposal to take away peoples right to vote. For the most part Sweden deems the directive and new proposal as positive changes, but some parts should be looked at again to deem if they are necessary to implement into their system of laws.

The paper sought to see how much power and influence the EU have over implementation of environmental crime laws into the member states and this paper have found that the directives does give the EU certain power over the member states, but the actual reach of that power can be questioned. The UK deemed the EU as slow moving and not reactive enough to make fast adept reactions. The power that the EU have will be expanded using the 2021 proposed directive and as seen from Sweden it is mostly viewed as a positive change.

## 5.1 Further research

An interesting part to make further research on would be how the new proposal is seen in more member states, as well as looking at more member states in a similar study to this. The UK when investigating their changing environmental policies and laws from before in the EU to now outside of the EU would be interesting to make further research into.



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