

TEXTE

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Environmental offences in Germany 2016: a statistical analysis

Short Version

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Environmental offences in Germany 2016: a statistical analysis

Short version

by



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1 Introduction¹

Environmental crime causes significant damage, albeit damage that is difficult to quantify. It affects the environment (e. g. the state of water, soil and air), people (e. g. health) and the wellbeing of society in general (e. g. through corruption). A 2018 report estimates the annual turnover generated by environmental crime at 110 - 281 billion US dollars.²

This text summarises key findings of the German-language publication 'Environmental offences 2016' (*Umweltdelikte 2016*). The publication provides a quantitative overview of the development and status of environmental crime in Germany between 2004 and 2016. It is a part of the series '*Umweltdelikte*' published by the Federal Environment Agency (UBA), the most recent edition of which was published in 2004. For the present publication, data from the two annual statistical sources that bring together data on (environmental) crime and criminal procedures were analysed; these are the Police Crime Statistics (*Polizeiliche Kriminalstatistik*) compiled by the Federal Criminal Police Office (*Bundeskriminalamt*)³ and the Statistics on Criminal Prosecution (*Strafverfolgungsstatistik*) compiled by the Federal Statistical Office (*Bundesamt für Statistik*).⁴ The long version of '*Umweltdelikte 2016*' (in German) can be accessed via the website of the Federal Environment Agency.⁵

Even before the introduction of the EU Environmental Crime Directive in 2008⁶, Germany had a comprehensive body of environmental criminal law. The adoption of the EU Environmental Crime Directive led to an increase in public attention for environmental crime in Germany. While the Environmental Crime Directive made some amendments necessary, the basic structure of German criminal law has remained unchanged. Environmental criminal provisions exist in the Criminal Code (*Strafgesetzbuch*), especially in Chapter 29, and in various environmental laws. The latter include the Chemicals Act (*Chemikaliengesetz*), the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*) and waste legislation. In the German legal system, environmental criminal liability presupposes a violation of administrative norms or acts, e.g. the terms of a permit.

Data on environment-related administrative offences and the sanctions imposed for them are, with some exceptions, not collected centrally in Germany. No significant quantitative statements can therefore be made concerning this particular topic, which is, however, important in practice.

When interpreting the data presented in this publication, it is important to keep in mind that the 'dark figure', i.e. the proportion of offences that remain undiscovered and thus are not recorded within the statistics, is very likely to be quite high (see below, section 2). Thus, the figures presented below do not reflect the actual extent of environmental crime in Germany.

In the following, Section 2 presents figures on the development of statistically recorded environmental crime in Germany in general. Section 3 presents figures on criminal enforcement. Section 4 presents information on waste and wildlife crime, the two types of crime on which EU level discussion and policies currently focus.

¹ The present publication was compiled as part of the research project "Environmental criminal law: status quo and further development", supported by the German Federal Environment Agency (*Umweltbundesamt*), using research funding provided by the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. The authors thank Pete Langman for English-language editing.

² Nellemann et al. 2018, S. 15.

³ An abbreviated English version of the 2016 statistical report is available at https://www.bka.de/EN/CurrentInformation/PoliceCrimeStatistics/2016/pcs2016_node.html. Translations of legal terms in the present publication mostly follow the terminology used in the statistical report.

⁴ For more information on these statistics, see below section 6.1.

⁵ At <https://www.umweltbundesamt.de/publikationen/umweltdelikte-2016-auswertung-von-statistiken>.

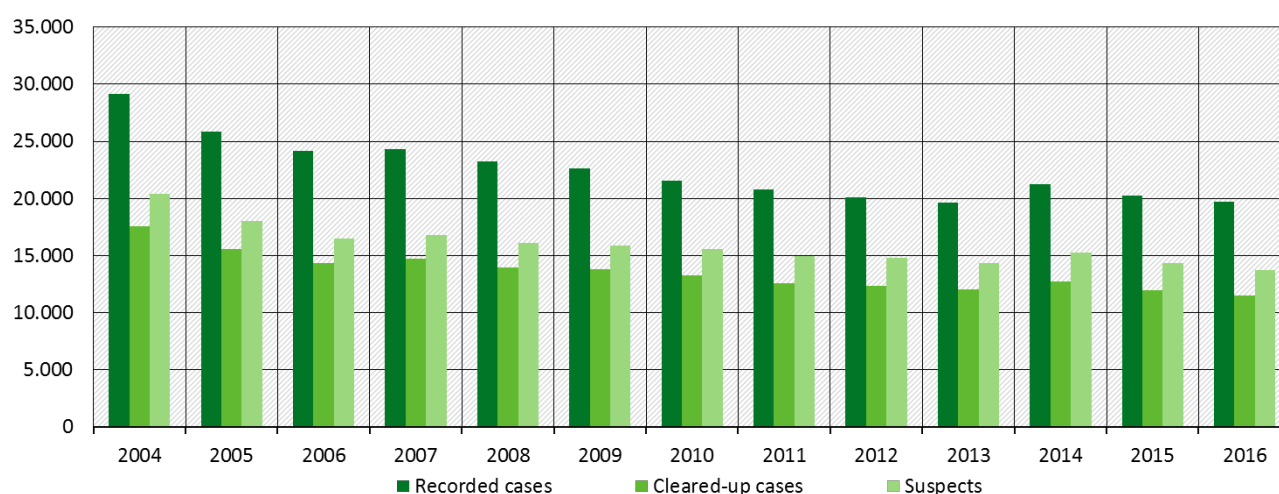
⁶ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 6.12.2008, p. 3 - 30.

Methodological notes and the definitions used can be found in the annex at the end of this publication.

2 Statistical data on environmental crime in general

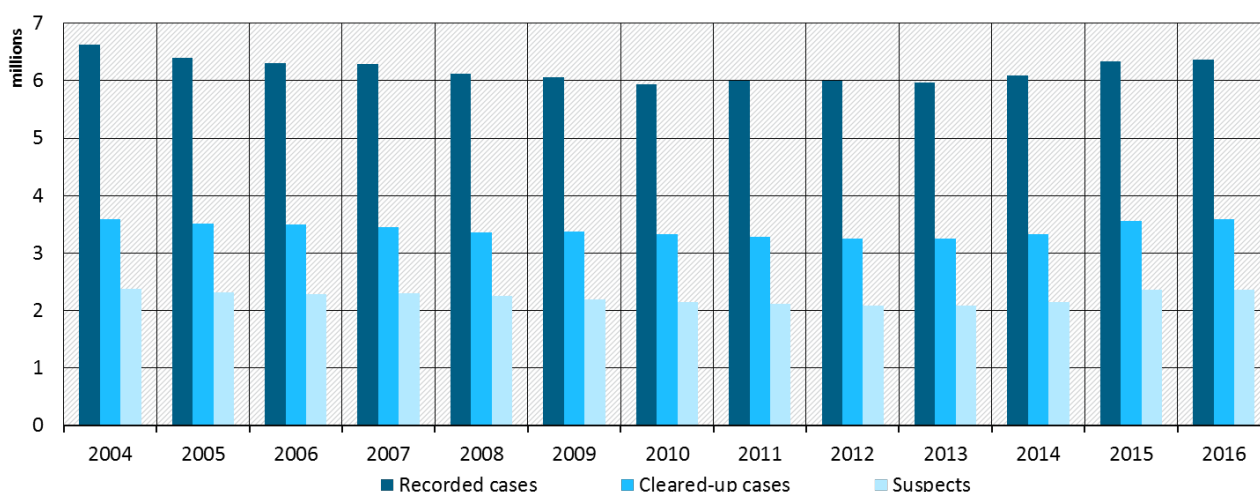
The total number of environmental crimes recorded by the police fell by 32 % between 2004 and 2016, from 29,117 in 2004 to 19,704 in 2016, despite changes in substantive criminal law that have extended the scope of several of the relevant provisions in the Criminal Code. In comparison, the total number of crimes of any nature recorded by the police fell by only 4 % in the same period. For environmental crimes, the number of cleared-up cases and suspects decreased by 35 % and 33 % respectively. By contrast, for all crimes that recorded by the police the number of cleared-up cases and suspects varied by less than 1 % for the same period.

Figure 1: All environmental crimes: cases recorded by the police, cleared-up cases and suspects (2004–2016)



Source: Police Crime Statistics (PCS) 2016

Figure 2: All crimes: cases recorded by the police, cleared-up cases and suspects (2004–2016)



Source: PCS 2016

There are two possible reasons for the decrease in the number of environmental crimes cases recorded by the police: improved compliance (e.g. due to an increasing awareness of laws), or a reduction in the capacity of authorities to inspect, control, investigate and institute criminal prosecution. The statistics themselves do not allow any inferences to be made regarding which of these factors is decisive.

The very different development of figures in the area of environmental crime compared to overall crime suggests that the reason for a decline of the recorded number of environmental crimes is not a general decline in crime; there is clear evidence from outside of the statistics that the decisive factor is a reduced capacity in the competent authorities for monitoring and enforcing compliance with environmental law.⁷ This assumption was also shared by practitioners who were interviewed for the underlying research project.⁸ Since environmental crime often lacks individual victims who might report it, it is discovered primarily through monitoring by authorities. If such monitoring is carried out less frequently or intensively due to a lack of staff, then fewer potential environmental crimes are likely to be discovered. There is no data available regarding the number of public authority staff given the task of enforcing environmental law, however.

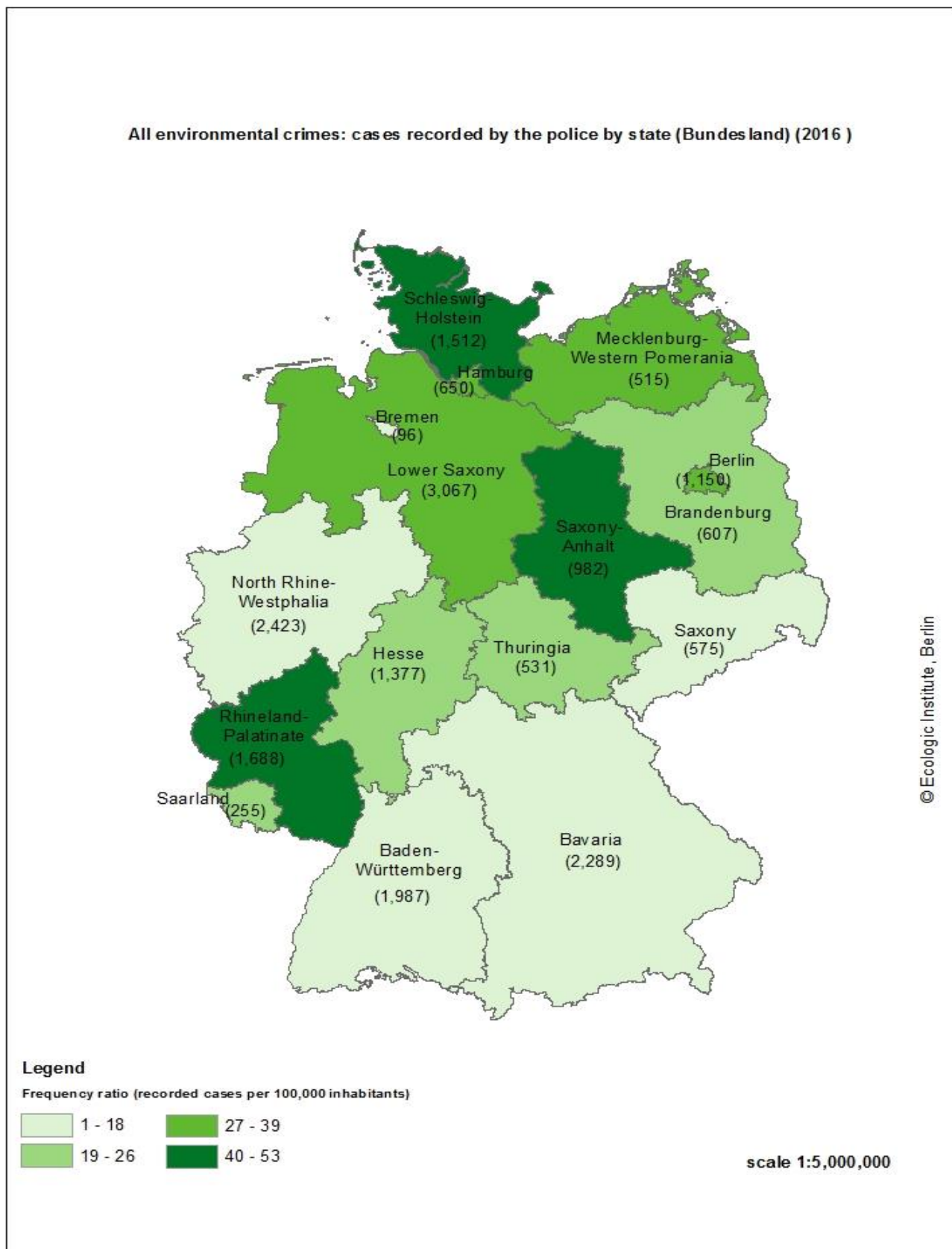
The number of cases of environmental crime recorded by the police per 100,000 inhabitants varied between the states⁹ (*Bundesländer*) in Germany, as shown in Figure 3.

⁷ See. Klöpfer/Heger 2014, p. 158, 165; Sina 2017, p. 97 with further references; further references also in Klüpfel 2016, p. 27.

⁸ Findings from the research interviews and other results of the research project are published in a separate report.

⁹ Germany is a federal republic. The individual states (*Bundesländer*) are primarily responsible for law enforcement within their own boundaries.

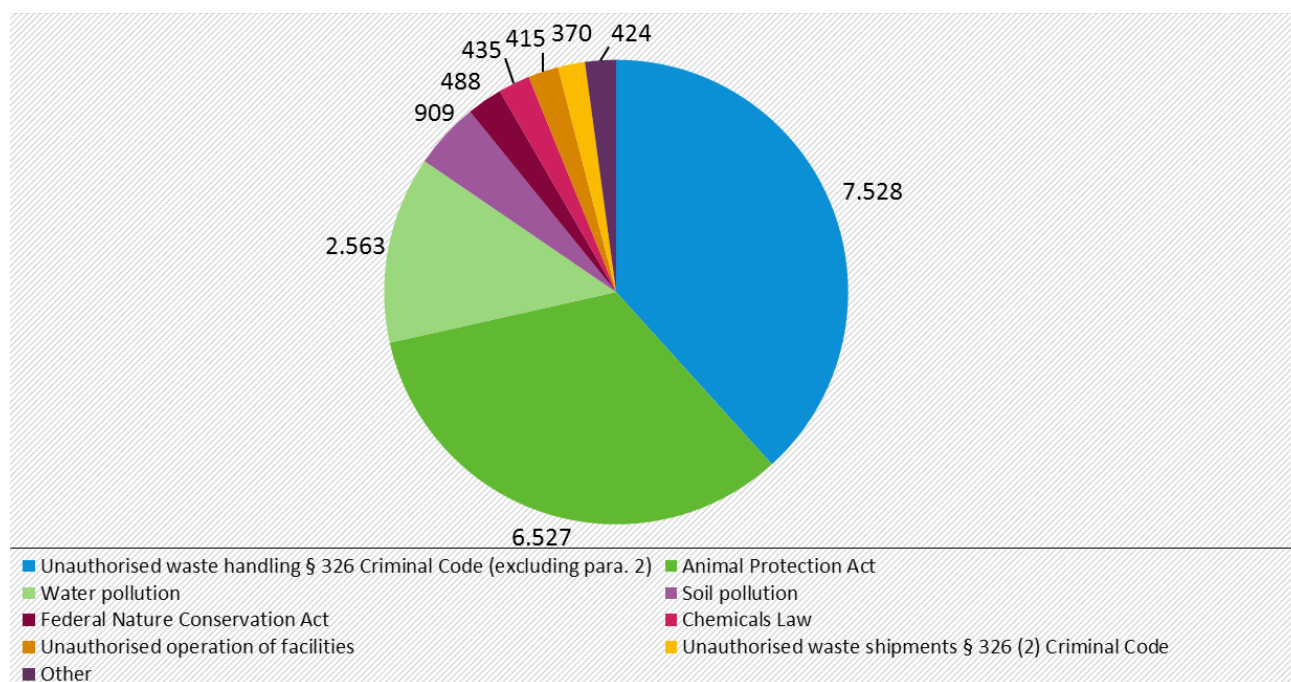
Figure 3: All environmental crimes: cases recorded by the police by state (*Bundesland*) (2016)



Source: PCS 2016, geodata: Federal Agency for Cartography and Geodesy, Service Center

In 2016, 38 % of all environmental offences recorded by the police related to the illegal handling of waste (§ 326 Criminal Code, not including paragraph 2). Offences under the Animal Protection Act accounted for 33 % of the total and water pollution offences for 13 %. Together, these offences accounted for 85 % of all recorded environmental crimes in 2016 (see Figure 3). The number of cases concerning nuclear energy offences, radiation offences and offences under the Plant Protection Act was particularly low. There were also few cases that concerned the endangering of protected areas and of causing noise, vibrations and non-ionising radiation respectively.

Figure 4: All environmental crimes: cases recorded by the police, by type of crime (2016)¹⁰



Source: PCS 2016

There were particularly marked changes with regard to water and air pollution. For these offences, the number of cases recorded by the police in 2016 was almost 40 % and 30 % respectively below the value for 2004. The number of cases of unauthorised handling of waste (§ 326 Criminal Code, excluding cases of para. 2) also fell by about 50 % during this period. On the other hand, there was a significant increase in the number of cases of unauthorised waste shipment (§ 326 para. 2 Criminal Code), which in 2016 was three times the number recorded in 2004.

Of those suspected of committing environmental crimes in 2016, 65 % were identified by the police as acting alone and 35 % as not acting alone.

Only a very small number of cases were recorded in the field of organised crime, based on a narrow definition of the term¹¹. Between 2004 and 2016, the number of cases involving organised environmental crime ranged from 1 (2004) to 8 (2012). The majority of environment-related cases involved the illegal manufacture and placement into the market of food and medicines, i.e. not environmental crime in the narrow sense.

¹⁰ Types of crimes with fewer than 150 cases in 2016 have been included in the category "other".

¹¹ See for the definition below, 6.2.

3 Statistical data on enforcement

The clearance rate for environmental crimes did not change significantly between 2004 and 2016, fluctuating between 59 % and 61 % over this time. This rate is above that for all crimes in Germany, which also remained at a relatively constant 54-56 % over the same period. Particularly high clearance rates were achieved in cases of unauthorised operation of facilities (96.4 %), explosion and radiation-related offences (89.5 %) and offences under the Chemicals Act (see Table 1). The clearance rate also improved particularly significantly for cases of air pollution, from 66 % in 2004 to 80 % in 2016.

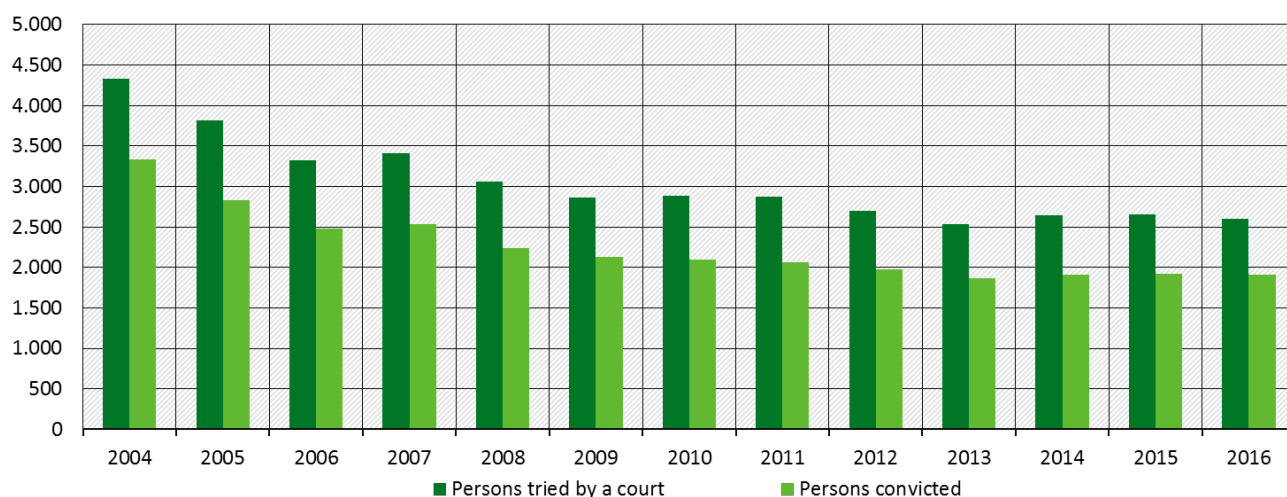
Table 1: All environmental crimes: cleared-up cases – clearance rates by type of offence

Offence		Clearance rate in %
Unauthorised operation of facilities § 327 Criminal Code		96,4
Explosion and radiation-related crime §§ 307-312 Criminal Code (excluding § 308)		89,5
Offences under the Chemicals Law		88,5
Unauthorised waste shipments § 326 (2) Criminal Code		84,9
Offences under the Federal Hunting Law		81,6
Air pollution § 325 Criminal Code		80,3
Unlawful handling of radioactive substances, dangerous substances and goods § 328 Criminal Code		77,7
Endangering protected areas § 329 Criminal Code		73,7
Offences under the Federal Nature Conservation Act		68,4
Soil pollution § 324a Criminal Code		63,4
Unauthorised waste handling § 326 Criminal Code (excluding para. 2)		57,3
Offences under the Animal Protection Law		54,9
Causing noise, vibrations and non-ionising radiation § 325a Criminal Code		52,2
Water pollution § 324 Criminal Code		49,7
Offences under the Plant Protection Law		42,9
Causing a severe danger by releasing poison § 330a Criminal Code and causing a common danger by poisoning § 314 Criminal Code		37,9
All environmental crimes		58,6

Source: PCS 2016

The numbers of persons tried by courts and convicted decreased by 40 % and 43 % respectively between 2004 and 2016, in line with the reduction in all recorded environmental crimes (see figure 5).

Figure 5: All environmental crimes: persons tried by a court and persons convicted (2004–2016)



Source: Statistics on Criminal Prosecution 2004–2016

The proportion of convictions, termination of proceedings¹² and acquittals remained relatively constant between 2004 and 2016. In 2016, 74 % of cases resulted in a conviction, 23 % saw proceedings terminated and 3 % of defendants were acquitted. For all types of crimes, the respective percentages were 82 % for convictions, 15 % for termination of proceedings, and 3.5 % for acquittals. By far the largest number of persons tried and convicted in 2016 had committed offences relating to the unauthorised handling of waste (Section 326 of the Criminal Code, excluding paragraph 2) and offences under the Animal Protection Act. No one was tried or convicted for offences under the Plant Protection Act in the same year. In comparison with the overall percentage of environmental crime cases terminated (23 %), an above-average number of proceedings under the Federal Hunting Act (47 %), the Chemicals Act (42 %) and regarding the unauthorised operation of facilities (40 %) were terminated in 2016.

Table 2: All environmental crimes: persons tried by a court by types of decision and offence (2016)

Offence	Conviction	Termination	Acquittal
Unauthorised waste handling § 326 Criminal Code (excluding para. 2)	773	206	28
Offences under the Animal Protection Law	771	192	34
Water pollution § 324 Criminal Code	139	61	8
Unauthorised operation of facilities § 327 Criminal Code	65	47	6
Unauthorised waste shipments § 326 (2) Criminal Code	46	9	3
Soil pollution § 324a Criminal Code	39	21	2
Offences under the Chemicals Law	36	29	4
Offences under the Federal Nature Conservation Act	28	27	3
Air pollution § 325 Criminal Code	5	1	0

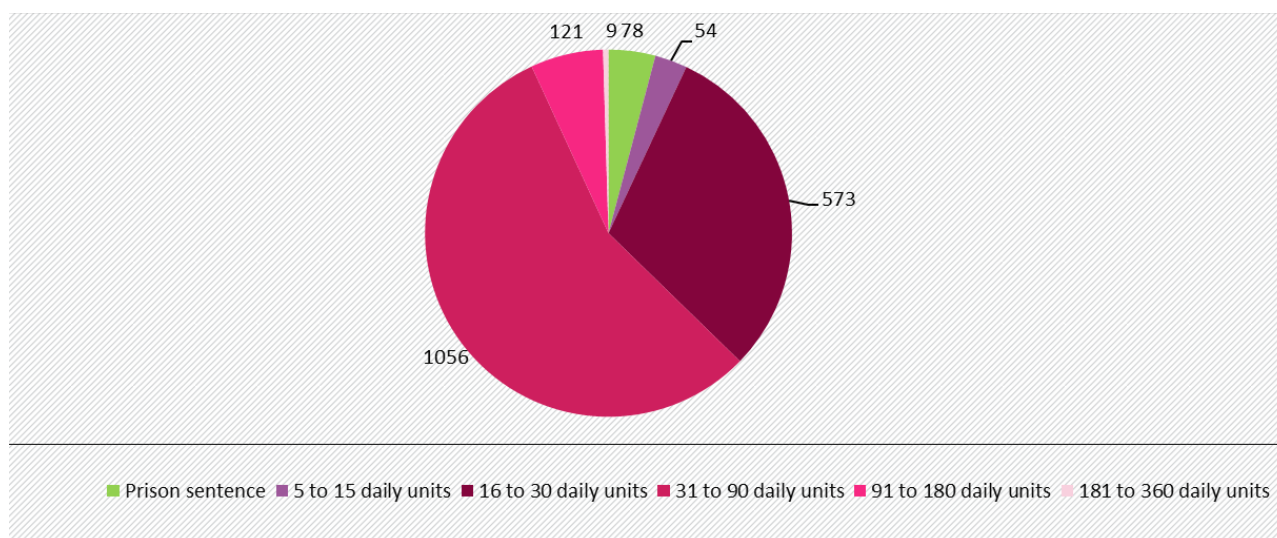
¹² Under German criminal law, proceedings can be terminated for a number of reasons, notably if there are no sufficient grounds for prosecution or if the offence is relatively minor. It is also possible to terminate proceedings and impose certain conditions on the suspect.

Offence	Conviction	Termination	Acquittal
Offences under the Federal Hunting Law ¹³	5	1	0
Unlawful handling of radioactive substances, dangerous substances and goods § 328 Criminal Code	3		1
Aggravated cases of environmental crimes	2	0	0
Endangering protected areas § 329 Criminal Code	1	1	1
Causing a severe danger by releasing poison § 330a Criminal Code	1	2	0
Offences under the Plant Protection Law	0	0	0
All environmental crimes	1.914	597	90

Source: Statistics on Criminal Prosecution 2016

Of those convicted of environmental crimes in 2016, 78 received prison sentences and 1,813 criminal fines. Of the fines, 60 % were between 31 and 90 daily units¹⁴, while 32 % were between 16 and 30 daily units (see figure 6). While larger fines, of between 181 and 360 daily units, were imposed on 7 % of those convicted of environmental crimes in general, this proportion was more than twice as high in cases of the unauthorised operation of installations, where 15 % of those convicted received fines of this magnitude.

Figure 6: All environmental crimes: convicted persons by type of sanction (2016)



Source: Statistics on Criminal Prosecution 2016

Table 3 provides an overview of criminal fines by type of offence.

¹³ The statistics contain in addition one case of an offence under the Federal Hunting Law, in which the court decided not to impose a sanction. This case has not been included in the above table.

¹⁴ In German criminal law, the value of one daily unit is defined as the 30th part of the monthly net income of the perpetrator.

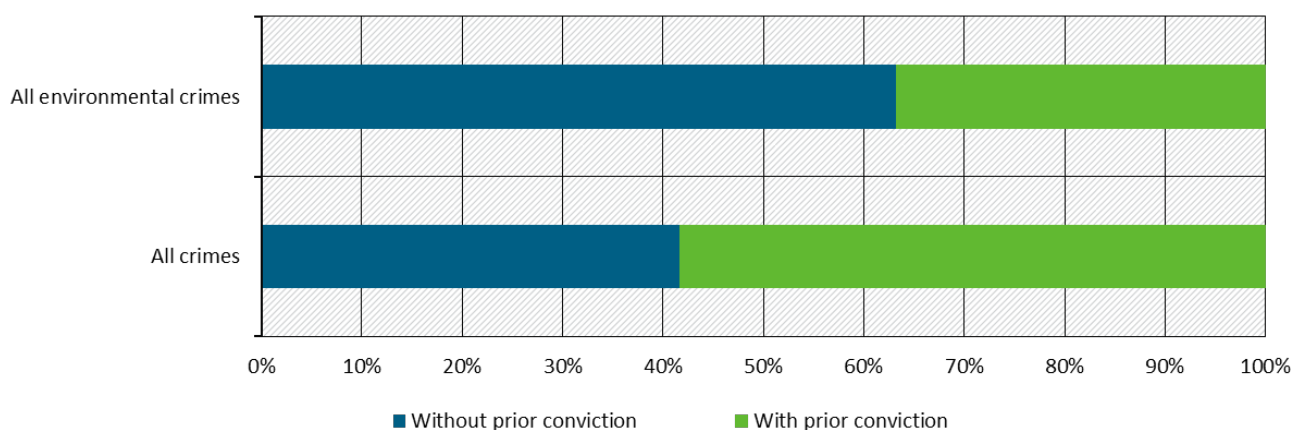
Table 3: All environmental crimes: convicted persons, fines by type of offence (2016)

Offence	Number of daily units of criminal fines					
	5 - 15	16 - 30	31 – 90	91 - 180	181 - 360	overall
Unauthorised waste handling § 326 Criminal Code (excluding para. 2)	26	272	406	44	3	751
Offences under the Animal Protection Law	20	182	440	58	5	705
Water pollution § 324 Criminal Code	2	57	74	3	1	137
Unauthorised operation of facilities § 327 Criminal Code	0	10	42	9	0	61
Unauthorised waste shipments § 326 (2) Criminal Code	0	16	27	2	0	45
Soil pollution § 324a Criminal Code	1	18	17	2	0	38
Offences under the Chemicals Law	2	10	23	1	0	36
Offences under the Federal Nature Conservation Act	2	5	17	0	0	24
Air pollution § 325 Criminal Code	1	0	4	0	0	5
Offences under the Federal Hunting Law	0	1	2	2	0	5
Unlawful handling of radioactive substances, dangerous substances and goods § 328 Criminal Code	0	1	2	0	0	3
Aggravated cases of environmental offences	0	0	1	0	0	1
Endangering protected areas § 329 Criminal Code	0	0	1	0	0	1
Causing a severe danger by releasing poison § 330a Criminal Code	0	1	0	0	0	1
Offences under the Plant Protection Law	0	0	0	0	0	0

Source: Statistics on Criminal Prosecution 2016

37 % of those convicted of environmental offences had a previous conviction, as compared to 58 % of those convicted of any offence. 63 % of those convicted of an environmental crime had no criminal record, compared with 42 % for all offences (see figure 7).

Figure 7: All environmental crimes: convicted persons by prior convictions (2016)



Source: Statistics on Criminal Prosecution 2016

4 Statistical data on waste and wildlife crime

4.1 Unauthorised waste handling § 326 Criminal Code (excluding para. 2)

According to § 326 (1) of the Criminal Code, it is a criminal offence to carry out certain actions in connection with hazardous wastes (as defined in the law) either outside of a facility authorised for this purpose or when deviating substantially from legally defined or approved procedures without prior authorisation. § 326 (1) Criminal Code covers certain types of hazardous waste, including waste harmful to humans (e.g. carcinogenic substances) and waste that could contaminate water, air or soil or endanger an animal or plant population. Available sanctions range from a fine to a maximum of five years' imprisonment. Any attempt to carry out actions in contravention to § 326 (1) is also subject to punishment. If the perpetrator is deemed to have acted negligently, the maximum sanction is three years imprisonment.

Pursuant to § 326 (3) of the Criminal Code, anyone who fails to deliver radioactive waste to the competent authorities in violation of administrative duties can be punished with up to three years imprisonment or with a fine. In cases of negligence, the prison sentence is up to one year.

The criminal offences in § 326 (1) Criminal Code implement Article 3 b) of the EU Environmental Crime Directive, which obliges Member States to make conduct including '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' a criminal offence, 'when unlawful and committed intentionally or at least with serious negligence.'

Waste-related administrative offences can be found in § 69 of the German Circular Economy and Waste Act (*Kreislaufwirtschaftsgesetz*).

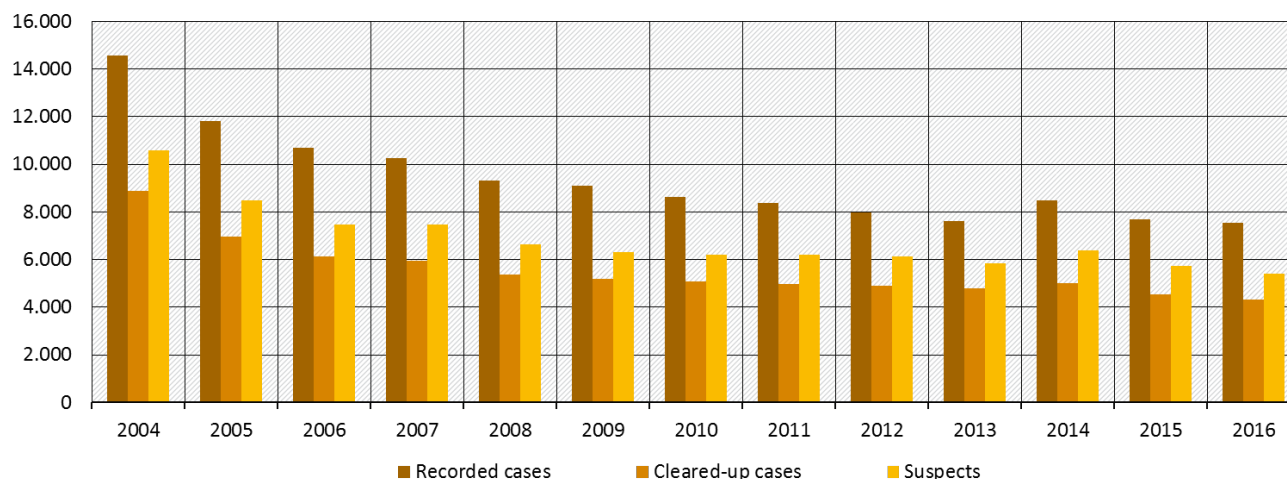
The amount of municipal waste generated annually has remained stable at around 50 million tonnes since 2011. This has enabled the German government to achieve its goal of decoupling economic growth from the generation of municipal waste. The bulk of Germany's waste generation derives from the construction industry, however, which accounts for around 60 % of the total, as opposed to municipal waste which, in 2014, accounted for only 15 % of net waste generated.¹⁵ Whether the amount of

¹⁵ Umweltbundesamt 2017a, p. 92f.

waste generated is related to the number of criminal offences under § 326 of the Criminal Code, is not investigated here and no statement can be made in this regard.

Figure 8 provides an overview of the development of cases of unauthorised handling of waste recorded by the police.

Figure 8: Unauthorised waste handling (§ 326 Criminal Code, excluding para. 2): cases recorded by the police, cleared-up cases and suspects (2004–2016)



Source: PCS 2016

The cases of unauthorised waste handling (§ 326 StGB except paragraph 2) recorded by the police account for a high proportion of crimes against the environment (39 %) in 2016. The clearance rate for cases of unauthorised handling of waste was 58 % in 2016, almost the same level as that for all environmental offences (59 %).

4.2 Unauthorised waste shipments § 326 (2) Criminal Code

Until 9 November 2016¹⁶, the legal situation was such that anyone who transported waste to, from or through the territory of Germany contrary to any prohibition or without the required permit became liable to prosecution pursuant to § 326 (2) of the Criminal Code. Paragraph 2 covers the same types of hazardous waste as paragraph 1. Here, too, the maximum sanction was five years imprisonment or three years in the case of negligence. The attempt was also punishable by law.

Through § 326 (2) Criminal Code Germany implemented the EU Environmental Crime Directive and Art. 50 of Regulation (EC) No. 1013/2006 on shipments of waste.

The German Waste Shipment Act (*Abfallverbringungsgesetz*), which implements certain provisions of Regulation (EC) No. 1013/2006, lists in § 18 administrative offences that apply in connection with the Regulation on Fines Relating to Waste Shipment (*Abfallverbringungsbußgeldverordnung*).

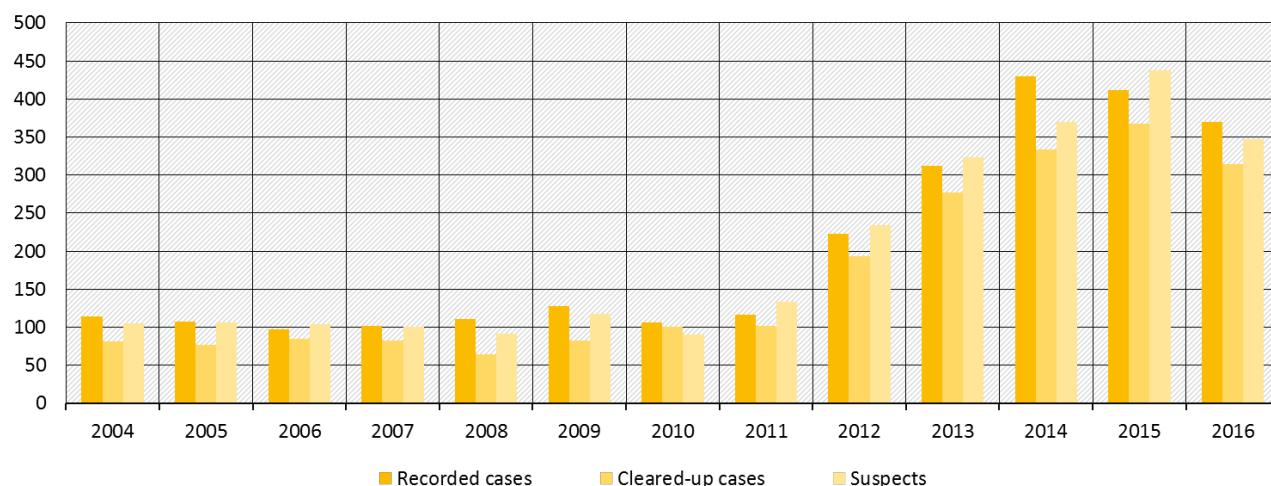
The data published for Germany until 2016 on cross-border waste shipments that are subject to notification requirements show that considerably more notifiable waste is imported than exported. The

¹⁶ On 10 November 2016, i.e. essentially outside the period covered by this publication, the legal situation changed to the effect that criminal provisions were inserted into § 18a and § 18b of the Waste Shipment Act. §18a regulates the criminal liability for illegal shipments of hazardous waste, §18b those of non-hazardous waste. In contrast, § 326 (2) of the Criminal Code has been significantly simplified and covers cases of illegal cross-border shipments of waste within the meaning of Section 326 (1) of the Criminal Code, with the exception of those covered by §§ 18a and 18b of the Waste Shipment Act. See on the amendments also Michalke 2017.

amount of imported waste fluctuates and was over 6 million tonnes in 2016. The amount of waste exported and in transit has increased since 2010 and in 2016 stood at just under 3 million tonnes for export and just under 2 million tonnes for transit. The data also show that cross-border waste shipments are mainly between neighbouring countries, and especially from areas close to the border.¹⁷ The statistical data do not allow any conclusions to be drawn on the causal relationship between legal waste shipments and criminal offences.

Figure 9 provides an overview of cases of unauthorised waste shipments recorded by the police.

Figure 9: Unauthorised waste shipments § 326 (2) Criminal Code: cases recorded by the police, cleared-up cases and suspects (2004–2016)



Source: PCS 2016

Cases of unauthorised waste shipments pursuant to § 326 (2) (Criminal Code) accounted for 2 % of recorded environmental crimes in 2016. At 85 %, the clearance rates for cases of unauthorised waste shipments was significantly higher than the clearance rate for all environmental crimes (59 %).

4.3 Offences under the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*)

§§ 71 and 71a Federal Nature Conservation Act contain various criminal offences in connection with protected species and their habitats§ Federal Nature Conservation Act. Both paragraphs refer to some of the actions that constitute administrative offences according to § 69 Federal Nature Conservation Act and stipulate that they constitute crimes when carried out with regards to strictly protected species: The paragraphs cover violations of certain prohibitions on pursuit, capture, disturbance, injury, killing, and taking from the wild of protected animal and plant species, their habitats or sites. They also cover certain sale, purchase, marketing and other activities in violation of the EU Wildlife Regulation.¹⁸ The maximum term of imprisonment for violations of § 71 (1) and (2) Federal Nature Conservation Act is five years. The law provides for a more severe sanction for a commercial or habitual manner of committing the offence. § 71a Federal Nature Conservation Act covers in its paragraph 1 infringements of prohibitions on access and possession contained in the European Birds Directive¹⁹ and the Fauna-

¹⁷ Umweltbundesamt 2017b.

¹⁸ 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 61, 3.3.1997, p. 1–69.

¹⁹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7–25.

Flora-Habitat Directive²⁰ as well as commercial and habituary infringements of certain standards under species protection law. § 71a (2) Federal Nature Conservation Act criminalises certain infringements of the EU Wildlife Regulation. The maximum term of imprisonment in cases of paras. 1 and 2 is three years. In both paragraphs, there are special rules for committing the offences, in a grossly negligent manner or based on (grossly) negligent ignorance of the protection status of a species.

The Federal Nature Conservation Act implements parts of articles 3 f) and g) of the EU Environmental Crime Directive. These articles oblige the Member States to ensure that the killing, destruction, possession or taking of specimens of protected wild animal or plant species and the trade in these species constitutes a criminal offence when unlawful and committed either intentionally or with serious negligence. An exception applies only in cases where the acts concern a negligible quantity of specimens and have a negligible impact on the conservation status of the species.

§ 69 Federal Nature Conservation Act details a large number of administrative offences relating to infringements of the various prohibitions of national and European wildlife legislation as well as provisions on protected areas and biotopes.

In principle, all wild animals and plants in Germany are protected by the Federal Nature Conservation Act. However, there are species that the law places under "special protection", as they are considered to be threatened by extinction. In addition, 417 of around 48,000 wild animal species as well as 52 ferns and flowering plants and one lichen species among the approximately 9,500 plant species in Germany are considered to be "strictly protected". Most of the strictly protected animal species are butterflies and birds, but the European hamster, for example, is also included in this category.²¹ Overall, the conservation status of animals and plants in Germany is assessed as "predominantly poor", despite some improvement.²² A third of the species occurring in Germany are on the Red List of Threatened Species, because they are considered to be endangered. The relative impact of criminal offences under the Federal Nature Conservation Act on the population of wild animals and plants when compared with other factors (such as the destruction of habitats caused by lawful actions) is not examined here.

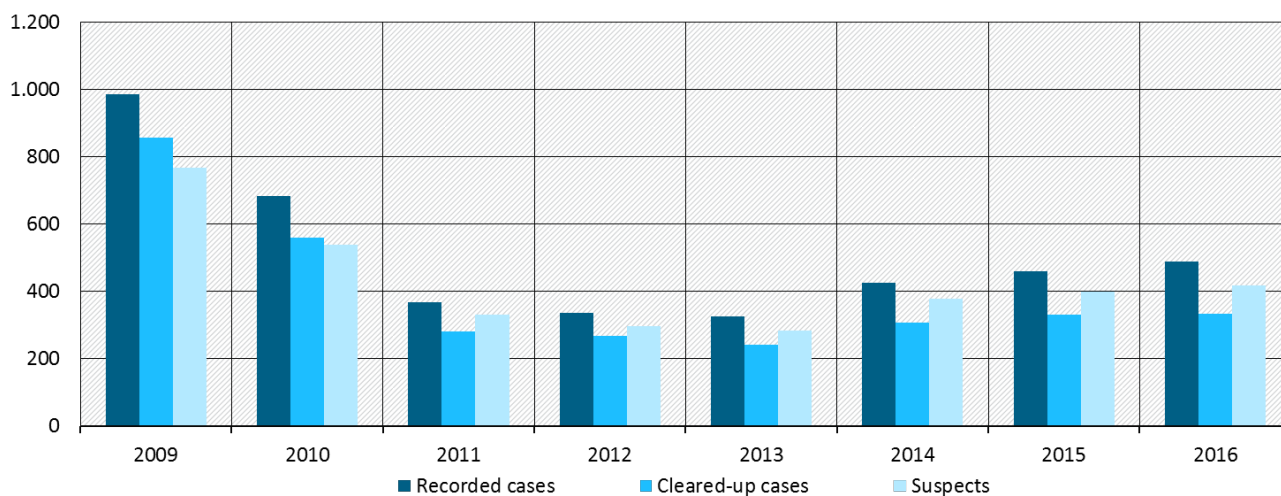
Figure 10 provides an overview of offences under the Federal Nature Conservation Act recorded by the police.

²⁰ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7–50.

²¹ Bundesamt für Naturschutz, 2016, p. 86

²² Bundesamt für Naturschutz 2016, p. 33.

Figure 10: Offences under the Federal Nature Conservation Act: cases recorded by the police, cleared-up cases and suspects (2004–2016)



Source: PCS 2016

While offences under the Federal Nature Conservation Act accounted for just 2.5 % of all environmental crimes in 2016, clearance rates for these specific offences were higher, at 68 %, than the 59 % rate achieved for all environmental crimes.

Data on violations of the Federal Nature Conservation Act are compiled by the Federal Agency for Nature Conservation.²³ In response to violations of wildlife regulations, federal authorities carried out 1,024 seizures in 2017, the majority of them at Frankfurt Airport. In the same year, there were 824 confiscations²⁴. In addition, authorities at state level also carried out seizures and confiscations.

²³ Available at <https://www.bfn.de/themen/cites/statistik/andere-statistiken.html>

²⁴ In German law, a seizure (*Beschlagnahme*) is a temporary procedural measure which serves, for example, to secure evidence. A confiscation (*Einziehung*), on the other hand, is a sanction to be imposed by a court; when imposed, the perpetrator does not receive back the corresponding object or an amount of money.

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6 Annex: Statistical basis and definitions

6.1 Statistical basis

The publication "*Umweltdelikte 2016*" and this summary are based on figures on environmental crime in Germany from the Police Crime Statistics (PCS)²⁵ and the Statistics on Criminal Prosecution²⁶.

Additional data on organised crime came from the Federal Criminal Police Office's (BKA) annual reports on organised crime²⁷ and those on violations of nature protection provisions and enforcement actions are published by the Federal Agency for Nature Conservation (BfN). On the basis of this data, an overview is given of selected statistical aspects of the offences included in the 29th section of the Criminal Code (§§ 324 - 330d of the Criminal Code) and certain environmental offences contained in other laws. Nuclear energy and radiation offences according to §§ 307, 309-312 Criminal Code were also included in the analysis.

The PCS is prepared by the Federal Criminal Police Office (BKA) on the basis of information provided by the states' Criminal Police Offices (LKA). The PCS registers all offences that came to the attention of the police and were classified as such.

The Criminal Prosecution Statistics is compiled and published by the Federal Statistical Office. It contains information on persons that were tried and persons that were convicted by German courts. They are based on data from the prosecution authorities (public prosecutor's offices and juvenile courts) in the states.

Both sets of statistics are published annually.

The titles of some of the individual offences changed during the period covered by the publication "*Umweltdelikte 2016*" (2004-2016): the report uses the title of the offences in use in 2016.

Obviously, the number of offences recorded is influenced by the substantive legal framework in force. Overall, legal changes in the period covered by this publication (2004 - 2016²⁸) have tended to broaden the scope of criminal liability for environmentally harmful behaviour.²⁹ However, the extent to which this has actually influenced the numbers of environmental offences in the reporting period cannot be inferred from the statistics: they do not contain any details on the respective criminal acts and the application of the legal framework.

²⁵ Available in English at https://www.bka.de/EN/CurrentInformation/PoliceCrimeStatistics/policecrimestatistics_node.html. A detailed list of the data used can be found in the long (German only) version of this publication.

²⁶ Available only in German at https://www.destatis.de/DE/Themen/Staat/Justiz-Rechtspflege/_inhalt.html#sprg235918

²⁷ Available at https://www.bka.de/EN/CurrentInformation/AnnualReports/OrganisedCrime/organisedcrime_node.html.

²⁸ For changes in the legal framework prior to 2004, see the previous edition of this publication Goertz/Marty 2006, S. 8f.

²⁹ See Klöpfer/Heger 2014, p.165.

6.2 Definitions

The publication is based on the following definitions taken from the underlying statistical reports, the PCS and the Statistics on Criminal Prosecution:³⁰

Case recorded by the police is “every unlawful (criminal) act listed in the catalogue of offences that is the subject of a complaint handled by the (criminal) police. Punishable attempts also fall under this definition.”

Clearance rate (CR) expresses the percentage relationship between cases cleared up and cases recorded by the police during the period under review. $CR = \text{cases cleared up} \times 100 / \text{cases recorded by the police}$.

Convicted persons are persons accused of a crime who have been sentenced to imprisonment, or a fine under general criminal law (including a written penal order) or whose offence has been punished under juvenile criminal law with a juvenile sentence, disciplinary measure or educational measure. Only a person who 14 years of age or older at the time of the offence can be convicted under German law.

Overall crime is the number of all illegal offences recorded by the police, including attempts punishable under criminal law. This does not include state security offences, traffic-related offences, administrative offences, offences that do not fall within the police's remit (e.g. financial and tax offences) and offences reported directly to the public prosecutor's office.

Organised crime is “the planned commission of criminal offences determined by the pursuit of profit or power which, individually or as a whole, are of considerable importance if more than two persons, each with his/her own assigned tasks, collaborate for a prolonged or indefinite period of time

a) by using commercial or business-like structures,

b) by using force or other means of intimidation, or

c) by exerting influence on politics, the media, the public administration, the judiciary or the business sector.”³¹

Solved (cleared-up) case is “an offence which, based on investigative results, was committed by at least one suspect whose rightful personal details have become known (e. g. through an identification document, by taking identification material, etc.)”.

Suspect is “everyone who, based on police inquiries and adequate factual evidence, is suspected of having committed an unlawful (criminal) act. This also includes accomplices, instigators and abettors.”

Tried persons are defendants against whom written penal orders have been issued or against whom criminal proceedings have been finally concluded by a judgement or decision to discontinue proceedings, after the main proceedings were opened. Their number is composed of convicted persons and persons against whom other decisions have been taken (e.g. termination of proceedings, acquittal).

³⁰ Definitions in quotation marks are taken *verbatim* from the PCS, unless indicated otherwise.

³¹ Definition taken from „Organized Crime Situation Report 2016” by the Federal Criminal Agency, p. 10, report available at <https://www.bka.de/SharedDocs/Downloads/EN/Publications/AnnualReportsAndSituationAssessments/OrganisedCrime/organisedCrimeSituationReport2016.html>