

Protection of the environment through criminal law

2021/0422(COD) - 28/03/2023 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Antonius MANDERS (EPP, NL) on the proposal for a directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Subject matter

The report strengthened the subject matter of the proposed Directive stating that it should establish minimum rules concerning the definition of criminal offences and sanctions as well as concerning the measures, means and resources necessary to prevent and combat environmental crime and to properly enforce the Union's environmental law, in order to protect the environment more effectively.

Definitions

Members proposed to include the definition of 'environmental damage' to mean serious harm to any person's health, or substantial damage to the quality of air, the quality of soil or the quality of water, or to biodiversity, ecosystem services and functions, animals or plants, which is detrimental to anything that grows, blooms and lives, including but not limited to the damage as referred to in Article 2 of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage.

Offences

The report stated that Member States should ensure that the following conduct constitutes a criminal offence when it is unlawful and committed intentionally:

- the discharge, emission or introduction of a quantity of materials or substances, energy, or ionising radiation into air, soil or water which causes or is likely to cause death or serious harm to any person's health or substantial damage to the quality of air, the quality of soil or the quality of water, or to biodiversity, ecosystem services and functions, animals or plants;
- the placing on the market or illegal trade, including online, of a product, the use of which, in breach of a prohibition or another requirement, causes or is likely to cause death or serious harm to any person's health or substantial damage to the quality of air, the quality of soil or the quality of water, or to biodiversity, ecosystem services and functions, or animals or plants as a result of the product's use on a larger scale;
- the manufacture, placing or making available on, import to and export from the Union market, including online, or use of substances, whether on their own, in mixtures or in articles, including their incorporation into articles, when it causes or is likely to cause death or serious harm to any person's health or substantial damage to the quality of air, the quality of soil or the quality of water, or to biodiversity, ecosystem services and functions, animals or plants;

- any conduct that causes a forest fire or a significant deterioration of more than one hectare of forest.

Penalties for natural persons

Member States should take the necessary and appropriate measures, including having effective procedures in place, to ensure that the offences are punishable by effective, proportionate and dissuasive criminal penalties. They should take the necessary measures to develop measures other than imprisonment in order to contribute to the restoration of the environment.

Member States should also take the necessary measures to ensure that natural persons who have committed the relevant offences may be subject to additional sanctions or measures which should include:

- obligation to reinstate the environment within a given time period, or to compensate for the damage caused, if the perpetrator is not in a capacity to carry out such a reinstatement or if the damage is irreversible;
- fines, proportionate to the gravity and duration of the damage caused to the environment as well as to the financial benefits accrued by committing the offence;
- disqualification from exercising a leading position within a legal person of the type used for committing the offence;
- a requirement to pay the costs of the proceedings borne by the successful party, in accordance with conditions and exceptions provided for in national law applicable to court proceedings.

Liability of legal persons

Legal persons that commit an offence would be held liable under civil law, where relevant, for any harm or damage they cause as a result of that offence, and, in conformity with national law, can be required to compensate the persons who have suffered that harm or damage. The level of sanctions should be proportionate and adapted to reflect the **degree of severity and duration of the damage caused**.

Members propose to increase the fines imposed on legal persons so that the maximum limit is not less than 10% of the average worldwide turnover of the legal person in the three business years preceding the fining decision.

Mitigating circumstances

Member States should take the necessary measures to ensure that, in relation to relevant offences, the following circumstances may be regarded as mitigating circumstances:

- the offender restores nature to its previous condition before the start of a criminal investigation;
- the offender takes steps to minimise the impact and extent of the damage or remediates the damage of has the damage remediated before the start of a criminal investigation.

Precautionary measures

Necessary measures should be taken to ensure that their competent judicial authorities may order the **immediate cessation of the unlawful conducts** referred to in this Directive or impose measures to prevent the execution of such conducts, in order to avert damage being caused to the environment.

Limitation measures

Lastly, Member States should take the necessary measures to provide for a limitation period allowing for the investigation, prosecution, trial and judicial determination of criminal offences for a sufficient period of time after the discovery of criminal offences (and not only after their commission).