

# Protection of the environment through criminal law

2021/0422(COD) - 27/02/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 499 votes to 100, with 23 abstentions, a legislative resolution 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

## *Subject matter*

The proposed Directive establishes minimum rules with regard to the definition of criminal offences and penalties in order to protect the environment more effectively, as well as with regard to measures to prevent and combat environmental crime and to effectively enforce Union environmental law.

## *Criminal offences*

The new Directive includes an updated list of criminal offences. It provides that Member States must ensure that the following conduct constitutes a criminal offence when it is **unlawful and intentional**:

Member States should ensure that the following conduct constitutes a criminal offence where it is **unlawful and intentional**:

- the placing on the market, in breach of a prohibition or another requirement aimed at protecting the environment, of a product the use of which on a larger scale, namely the use of the product by several users, regardless of their number, results in the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants;
- the manufacture, placing or making available on the market, export or use of substances, whether on their own, in mixtures or in articles, including their incorporation into articles, where such conduct causes or is likely to cause the death of, or serious injury to, any person, substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants;
- ship-source discharge of polluting substances;
- the construction, operation and dismantling of an installation, where such conduct causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants;
- the abstraction of surface water or groundwater, where such conduct causes or is likely to cause substantial damage to the ecological status or ecological potential of surface water bodies or to the quantitative status of groundwater bodies.

New rules contain the so-called **qualified** offence, such as large-scale forest fires or widespread pollution of air, water and soil, which leads to an ecosystem being destroyed and is therefore comparable to ecocide

and cause: (a) the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or (b) widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water.

### ***Penalties for natural persons***

Environmental crimes committed by individuals and company representatives would be punishable with imprisonment depending on how long-lasting, severe or reversible the damage is. Qualified offences could be punished with **eight** years, those causing the death of a person with **ten** years in prison and the other offences with up to five years of imprisonment.

Member States should take the necessary measures to ensure that natural persons who have committed criminal offences may be subject to accessory criminal or non-criminal penalties or measures which may include the following:

- an obligation to: (i) restore the environment within a given period, if the damage is reversible, or (ii) pay compensation for the damage to the environment, if the damage is irreversible or the offender is not in a capacity to carry out such restoration;
- fines that are proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the natural person concerned and, where relevant, that are determined taking due account of the gravity and duration of the damage caused to the environment and of the financial benefits generated from the offence;
- exclusion from access to public funding, including tender procedures, grants, concessions and licences;
- where there is a public interest, following a case-by-case assessment, **publication** of all or part of the judicial decision that relates to the criminal offence committed and the penalties or measures imposed, which may include the personal data of convicted persons only in duly justified exceptional cases.

### ***Liability of legal persons***

Member States should take the necessary measures to ensure that a legal person held liable for criminal offences is punishable by **effective, proportionate and dissuasive criminal or non-criminal penalties or measures**.

For companies the fines will reach **3 or 5%** of their yearly worldwide turnover or alternatively **EUR 24 or EUR 40 million** depending on the nature of the crime. Member States should decide whether to prosecute criminal offences that did not take place on their territory.

### ***Limitation periods***

The proposed Directive lays down limitation periods as such: (i) at least **ten years** from the commission of a criminal offence punishable by a maximum term of imprisonment of at least ten years; (ii) at least **five years** from the commission of a criminal offence punishable by a maximum term of imprisonment of at least five years; (iii) at least **three years** from the commission of a criminal offence punishable by a maximum term of imprisonment of at least three years.

### ***Access to justice***

Persons affected or likely to be affected by the criminal offences and persons having a sufficient interest or maintaining the impairment of a right, as well as non-governmental organisations that promote

environmental protection and meet requirements under national law, should have appropriate procedural rights in proceedings concerning those offences, where such procedural rights for the public concerned exist in the Member State in proceedings concerning other criminal offences, for instance as a civil party.

### ***Training***

Member States should take necessary measures to ensure that specialised regular training is provided to judges, prosecutors, police and judicial staff and to competent authorities' staff involved in criminal proceedings and investigations with regard to the objectives of this Directive.

Member States should establish and publish a **national strategy** on combatting environmental criminal offences by three years from the date of entry into force of this Directive.