

Protection of the environment through criminal law

2021/0422(COD) - 30/04/2024 - Final act

PURPOSE: to provide common definitions of environmental criminal offences and for effective, proportionate and dissuasive criminal penalties for serious offences.

LEGISLATIVE ACT: Directive (EU) 2024/1203 of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC.

CONTENT: this 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.

The law will only apply to offences committed within the EU. However, member states are able to choose to extend their jurisdiction to offences that have been committed outside their territory.

Criminal offences

This Directive specifies which unlawful conduct may constitute a criminal offence. Behaviour constitutes a criminal offence when it is **intentional** and, in certain cases, also when it is the result of at least serious negligence. In particular, unlawful conduct which causes **death or serious injury to persons, or substantial damage to the environment or creates a considerable risk of such damage**, or which is considered to be particularly harmful to the environment will also constitute a criminal offence when it is the result of at least serious negligence.

The number of conducts that will constitute a criminal offence will increase from **nine to 20**. The new offences include:

- the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into the air, soil or water,
- serious breaches of legislation on chemicals,
- the shipment of waste, where such behaviour involves a significant quantity,
- illegal recycling of polluting ship components,
- the construction, operation and dismantling of an installation,
- the abstraction of surface water or groundwater,
- any behaviour causing the deterioration of a habitat within a protected site,
- the production, placing on the market, import, export, use or release of substances that deplete the ozone layer.

Inciting or aiding and abetting the commission of a criminal offence will also be punishable as a criminal offence.

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 and sanctions

Intentional offences which cause the death of a person will be punishable with a maximum prison sentence of at least **ten years**. Other offences will result in imprisonment of up to **five years**. The maximum prison sentence for qualified offences will be at least **eight years**.

Member States will take the necessary measures to ensure that penalties or measures for legal persons held liable for the criminal offences and will include criminal or non-criminal fines and may include other criminal or non-criminal penalties or measures, such as: (i) an obligation to restore the environment or pay compensation; (ii) fines proportionate to the seriousness of the behaviour; (iii) exclusion from entitlement to public benefits or aid; (iv) withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence; (v) closure of establishments used for committing the offence.

For companies the fines will be at least **5%** of the total worldwide turnover for the most serious offences or alternatively **EUR 40 million**. For all other offences, the maximum fine will be at least **3%** of turnover or alternatively **EUR 24 million**.

Aggravating circumstances

The following circumstances can, in accordance with national law, be regarded as an aggravating circumstance: (i) the offence caused the destruction of, or irreversible or long-lasting substantial damage to, an ecosystem; (ii) the offence was committed in the framework of a criminal organisation; (iii) the offence involved the use by the offender of false or forged documents; (iv) the offence was committed by a public official when performing his or her duties; (v) the offence generated or was expected to generate substantial financial benefits.

Limitation periods

The 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 referred to in the Directive, and persons having a sufficient interest or maintaining the impairment of a right, as well as non-governmental organisations promoting environmental protection and meeting the conditions laid down by national law, must have appropriate procedural rights in proceedings concerning such offences.

Last, Member States will have to draw up and publish a **national strategy** for combating environmental criminal offences by 21 May 2027 at the latest.

ENTRY INTO FORCE: 20.5.2024.

TRANSPOSITION: no later than 21.5.2026.