New EU Rules on Protection of the Environment through Criminal Law

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News

On 30 April 2024, 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 was published in the EU's Official Journal. On 16 November 2023, the European Parliament (EP) and the Council reached a provisional agreement on the proposal presented by the Commission in December 2021 (→ eucrim 4/2021. 219). The EP formally adopted the act at the end of February 2024, the Council adopted it at the end of March 2024.

The Directive establishes minimum EU-wide standards for the definition of environmental criminal offences and penalties, replacing the previous 2008 legislation. In addition, the new legislation includes measures to prevent and combat environmental crime and to effectively enforce Union environmental law. In detail, the Directive provides obligtations for the Member States to set up rules on the following issues:

- Definition of conduct that is considered an environmental criminal offence;
- Punishability of inciting, aiding and abetting, and attempt;
- Penalties for natural persons;
- Liability of legal persons;
- Penalties for legal persons;
- Aggravating circumstances;
- Mitigating circumstances;
- Freezing and confiscation of instrumentalities and proceeds from the criminal offences referred;
- Limitation periods;
- Jurisdiction;
- Investigative tools available for investigating or prosecuting criminal offences referred;
- Protection of and support for whistleblowers;
- Publication of information in the public interest and access to justice for the public concerned;
- Preventive measures;
- Provision of adequate resources;
- Provision of specialised regular training;
- Coordination and cooperation between competent authorities within a Member State;
- Cooperation between Member States and the Commission, and Union bodies, offices or agencies;
- Establishment of a national strategy on combatting environmental criminal offences;
- Recording, production and provision of anonymised statistical data that allow the monitoring of the effectiveness of the measures to combat environmental criminal offences.

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The main features of the Directive include the following: The directive is applicable to offences perpetrated within the European Union, although Member States may elect to extend their jurisdiction to cover crimes committed outside their territories. The directive notably expands the list of criminal offences from nine to twenty, encompassing new crimes such as timber trafficking, the illicit recycling of ship components, and serious violations of chemical legislation. Furthermore, a clause pertaining to "qualified offences" has been incorporated into the legislation, targeting intentional acts that result in significant environmental degradation. These would include offences comparable to ecocide with catastrophic results such as widespread pollution or large-scale forest fires - offences that are already covered by the law of certain Member States and that are under discussion in international fora.

The penalties for these crimes are severe. Those who commit intentional offences resulting in death are liable to a maximum prison sentence of at least ten years, while other offences may result in imprisonment of up to five years. Qualified offences are subject to a maximum prison sentence of at least eight years. As regards fines for legal persons, Member States are able to choose between levying them according to the company's turnover or to set fixed amounts: for the most serious offences fines must be at least 5% of their total worldwide turnover or €40 million; for other offences fines must be at least 3% of turnover or €24 million. Additional sanctions include environmental restoration obligations, exclusion from public funding, and the withdrawal of permits.

Member States must also lay down rules concerning limitation periods necessary to combat environmental crime effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement. Limitation periods depend on the minimum maximum penalty for imprisonment as defined in the Directive.

It is ensured that persons reporting offences will be provided with support, that judges, prosecutors, police and other judicial staff will undergo specialised regular training, and that Member States will organise awareness-raising campaigns to reduce environmental crime. They can also establish a fund to support prevention measures and tackle the consequences of environmental offences. In cross-border cases, national authorities will be required to cooperate among themselves and with other competent bodies, such as Eurojust, Europol or the European Public Prosecutor's Office.

Next steps: Member States are required to adapt their national laws accordingly by 21 May 2026. The Commission is required to submit an implementation report to the European Parliament and to the Council by 21 May 2028. By 21 May 2031, the Commission shall carry out an evaluation of the impact of the Directive addressing the need to update the list of environmental criminal offences referred to in Arts. 3 and 4. With regard to the unlawfully and intentionally committed offences (defined in Art. 3(2) of the Directive), the Commission is called on to regularly consider if there is a need to amend the criminal offences covered.

Criticism: Stakeholder criticised the legislative project in advance. Criticism included the overly broad definition of offences and the fact that the directive would open the door to corporate (environmental) criminal law.

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