



ENVIRONMENTAL PROTECTION THROUGH CRIMINAL LAW

Directive (EU) 2024/1203

Directive (EU) 2024/1203 published on April 30 in the Official Journal of the European Union (EU) replaces Directives 2008/99/EC and 2009/123/EC, establishing new minimum rules to define criminal offenses and sanctions related to environmental crimes.

Directive (EU) 2024/1203 aims to protect the environment more effectively, and therefore includes measures such as interception of communications, discreet surveillance and financial investigation tools. In short, it emphasizes the importance of protecting personal data and imposes stricter penalties on entities responsible for environmental crimes compared to other types of crime.

WHY THE NEED FOR NEW REGULATIONS?

The existing rules on sanctions under Directive 2008/99/EC of the European Parliament and of the Council and the Union's sectoral environmental legislation have not been sufficient to ensure compliance with Union law on environmental protection.

The adoption of the new Directive is essentially aimed at safeguarding and deterring illegal conduct that harms the environment by:

- (i) The provision of effective, proportionate and dissuasive criminal sanctions that correspond to the seriousness of the offenses and that may reflect greater social disapproval

compared to the use of administrative sanctions;

- (ii) The complementarity of criminal law and administrative law, which is crucial to prevent and dissuade such harmful conduct;
- (iii) The revision of criminal offenses, with new offenses being added on the basis of the most serious breaches of European Union environmental law;
- (iv) Improving the mechanisms for detecting, investigating, prosecuting and adjudicating environmental criminal offenses;
- (v) Strengthening the use of criminal law as a deterrent to environmentally damaging behavior;
- (vi) Standardizing common definitions of environmental offences.

NEW CRIMINAL OFFENSES

For the purposes of this Directive concerned, conduct is unlawful if it contravenes:

- (i) Union law which contributes to the pursuit of one of the objectives of Union policy on the environment; and
- (ii) a provision laid down by law, regulation or administrative action in a Member State, or a decision taken by a competent authority of a Member State, giving effect to Union law.

TYPES OF UNLAWFUL AND INTENTIONAL CONDUCT

The following conduct constitutes a criminal offense if it is unlawful and intentional:

- The discharge, emission or introduction of a quantity of material, substances, energy or ionizing radiation into the air, soil or water which causes or is likely to cause death or serious injury to persons, or substantial damage to the quality of air, soil or water, or serious damage to an ecosystem, animals or plants;
- The manufacture, placing or making available on the market, export or use of substances, on their own, in mixtures or in articles, including their incorporation into articles, as well as the manufacture/use/storage/import and export of mercury contrary to the requirements of Regulation (EU) 2017/852 of the European Parliament and of the Council and where such conduct causes or is likely to cause death or serious injury to persons, substantial damage to air, soil or water quality, or substantial damage to an ecosystem, animals or plants;
- The collection, transportation or treatment of waste where hazardous waste is involved or, where hazardous waste is not involved, where such waste causes or is likely to cause death or serious injury to persons, or substantial damage to the quality of air, soil or water, or substantial

damage to an ecosystem, animals or plants;

- The operation/closure of an installation where a hazardous activity is carried out or where hazardous substances or mixtures are stored or used, in accordance with European legislation and where such conduct causes or is likely to cause death or serious injury to persons 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 potential of bodies of surface water or to the quantitative status of bodies of groundwater;
- The introduction into the territory of the Union, placing on the market, keeping, breeding, transport, use, exchange, growth, cultivation and release into the environment or propagation of invasive alien species of Union concern, where such conduct is in breach of European legislation or the conditions of the permit or authorization granted under that legislation and causes or is likely to cause death or serious injury to persons or substantial damage;
- The death, destruction, capture, possession, sale or offering for sale of one or more specimens of species of wild fauna or flora listed in the annexes

to Council Directive 92/43/EEC and one or more specimens of species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council;

- Any conduct that causes the deterioration of a habitat located in a protected site or the disturbance of animal species listed in Annex II (a) of Directive 92/43/EEC in a protected site (when this deterioration or disturbance is significant);
- The production, placing on the market, import, export, use, release of substances that deplete the ozone layer or emit fluorinated greenhouse gases, or the placing on the market, import, export, use of products and equipment containing such substances;
- The execution of projects, without authorization, that are likely to cause substantial damage to the environment;
- The introduction or marketing of goods or products contrary to the provisions of the regulation on the marketing of certain raw materials and products associated with deforestation and forest degradation;
- The discharge of polluting substances by ships.

RELEVANT ASPECTS

- ⇒ Instigation and complicity in criminal offenses committed intentionally should also be punishable.

- ⇒ Attempting to commit a criminal offense which causes or is likely to cause death or serious injury to a person or which is likely to cause substantial damage to the environment or is otherwise considered particularly harmful is also a criminal offense when committed intentionally.
- ⇒ Persons who report, provide evidence or otherwise cooperate with the competent authorities in relation to the criminal offenses referred to therein shall have access to support and assistance measures, in accordance with national law, in view of the fundamental exposure and prevention of such breaches, thus safeguarding the environment and the well-being of society.

PENALTY SYSTEM

As far as the penalty system is concerned, in relation to natural persons, the prison sentences associated with the offenses are, in many cases, aggravated; in the most serious cases, with a maximum prison sentence of no less than ten years.

In the case of legal persons Enterprises, the maximum amount of fines to be imposed by Member States may not be less than (i) 3% or 5% of the total worldwide turnover of the legal person, or (ii) 24 million and 40 million euros, depending on the infringement committed.

There are also **ancillary measures/sanctions applicable to both legal and natural persons**, such as:

- a) the obligation to restore the environment within a certain period or to compensate for damage when it is irreversible;
- b) exclusion from access to public funding (including public tenders, subsidies, concessions and licenses); or
- c) the withdrawal of authorizations required to carry out the activities that resulted in the infringements in question.

Among the **ancillary measures** provided for, the Directive also establishes an obligation for **legal persons** to set up due diligence programs to improve compliance with environmental rules.

ENTRY INTO FORCE AND NEXT STEPS

The new rules established by Directive (EU) 2024/1203 of the European Parliament and of the Council of April 11, 2024 on the protection of the environment through criminal law **come into force on May 20, 2024.**

Currently, the Penal Code already provides for crimes such as pollution or damage to nature, which can also be attributed to legal persons (in articles 278, 279, 279a, 280 and 281, which provide for prison sentences of up to a maximum of between 6 months and 8 years).

Member States will now have two years to transpose this Directive, and **must do so by May 21st, 2026.**

In addition to the crimes currently provided for, the above crimes will also be added.

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