

# Procedure file

| Basic information  |   |
|--|---|
| COD - Ordinary legislative procedure (ex-codecision procedure)<br>Directive                                      | 2021/0422(COD)<br>Procedure completed, awaiting publication in Official Journal |
| Protection of the environment through criminal law<br>Repealing Directive 2008/99 <a href="#">2007/0022(COD)</a> |   |
| Subject<br>3.70.16 Law and environment, liability  |   |
| Legislative priorities<br><a href="#">Joint Declaration 2022</a><br><a href="#">Joint Declaration 2023-24</a>    |   |

| Key players         |  |  |            |
|---------------------|--|--|------------|
| European Parliament | Committee responsible  | Rapporteur   | Appointed  |
|                     |  <a href="#">Legal Affairs</a>                                |  <a href="#">MANDERS Antonius</a>        | 28/02/2022 |
|                     |  | Shadow rapporteur  |            |
|                     |  |  <a href="#">ROBERTI Franco</a>        |            |
|                     |  |  <a href="#">CICUREL Ilana</a>         |            |
|                     |  |  <a href="#">TOUSSAINT Marie</a>       |            |
|                     |  |  <a href="#">JORON Virginie</a>        |            |
|                     |  |  <a href="#">BUXADÉ VILLALBA Jorge</a> |            |
|                     |  |  <a href="#">AUBRY Manon</a>           |            |
|                     | Committee for opinion  | Rapporteur for opinion   | Appointed  |
|                     |  <a href="#">Development</a>                                |  | 14/03/2022 |
|                     |  |  <a href="#">ROOSE Caroline</a>        |            |
|                     |  <a href="#">Environment, Public Health and Food Safety</a> |  | 11/03/2022 |
|                     |  |  <a href="#">PIETIKÄINEN Sirpa</a>     |            |
|                     |  <a href="#">Civil Liberties, Justice and Home Affairs</a>  |  | 05/09/2022 |
|                     |  |  <a href="#">BRICMONT Saskia</a>       |            |
|                     |  <a href="#">Petitions</a>                                  |  | 01/03/2022 |

Council of the European Union  
European Commission

Commission DG  
[Justice and Consumers](#)

Commissioner  
REYNDERS Didier

## Key events

|            |   |   |         |
|------------|---|---|---------|
| 15/12/2021 | Legislative proposal published  | <a href="#">COM(2021)0851</a>   | Summary |
| 27/01/2022 | Committee referral announced in Parliament, 1st reading   |   |         |
| 21/03/2023 | Vote in committee, 1st reading  |   |         |
| 21/03/2023 | Committee decision to open interinstitutional negotiations with report adopted in committee     |   |         |
| 28/03/2023 | Committee report tabled for plenary, 1st reading  | <a href="#">A9-0087/2023</a>  | Summary |
| 29/03/2023 | Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71) |   |         |
| 17/04/2023 | Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71) |   |         |
| 11/12/2023 | Approval in committee of the text agreed at 1st reading interinstitutional negotiations         |   |         |
| 26/02/2024 | Debate in Parliament  |  |         |
| 27/02/2024 | Decision by Parliament, 1st reading   | <a href="#">T9-0093/2024</a>  | Summary |
| 26/03/2024 | Act adopted by Council after Parliament's 1st reading   |   |         |
| 11/04/2024 | Final act signed  |   |         |

## Technical information

|                            |  |
|----------------------------|--|
| Procedure reference        | 2021/0422(COD)   |
| Procedure type             | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype          | Legislation  |
| Legislative instrument     | Directive  |
|                            | Repealing Directive 2008/99 <a href="#">2007/0022(COD)</a>     |
| Legal basis                | Treaty on the Functioning of the EU TFEU 083-p2                |
| Other legal basis          | Rules of Procedure EP 159                                      |
| Stage reached in procedure | Procedure completed, awaiting publication in Official Journal  |
| Committee dossier          | JURI/9/08011   |

| Documentation gateway   |      |                               |            |     |         |
|---|------|-------------------------------|------------|-----|---------|
| Legislative proposal  |      | <a href="#">COM(2021)0851</a> | 15/12/2021 | EC  | Summary |
| Document attached to the procedure                              |      | SEC(2021)0428                 | 15/12/2021 | EC  |         |
| Document attached to the procedure                              |      | SWD(2021)0465                 | 15/12/2021 | EC  |         |
| Document attached to the procedure                              |      | SWD(2021)0466                 | 15/12/2021 | EC  |         |
| Committee draft report  |      | <a href="#">PE737.290</a>     | 12/10/2022 | EP  |         |
| Committee opinion   | ENVI | <a href="#">PE731.606</a>     | 26/10/2022 | EP  |         |
| Amendments tabled in committee                                  |      | <a href="#">PE738.572</a>     | 10/11/2022 | EP  |         |
| Amendments tabled in committee                                  |      | <a href="#">PE738.573</a>     | 10/11/2022 | EP  |         |
| Committee opinion   | DEVE | <a href="#">PE731.806</a>     | 07/12/2022 | EP  |         |
| Committee opinion   | PETI | <a href="#">PE732.916</a>     | 09/12/2022 | EP  |         |
| Committee opinion   | LIBE | <a href="#">PE737.180</a>     | 06/02/2023 | EP  |         |
| Committee report tabled for plenary, 1st reading/single reading |      | <a href="#">A9-0087/2023</a>  | 28/03/2023 | EP  | Summary |
| Text adopted by Parliament, 1st reading/single reading          |      | <a href="#">T9-0093/2024</a>  | 27/02/2024 | EP  | Summary |
| Draft final act   |      | 00082/2023/LEX                | 11/04/2024 | CSL |         |

| Additional information |                          |            |
|------------------------|--------------------------|------------|
| Research document      | <a href="#">Briefing</a> | 13/12/2023 |

## Protection of the environment through criminal law

**PURPOSE:** to strengthen the protection of the environment through criminal law.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** criminal law is one part of a comprehensive EU strategy to protect and improve the status of the environment. The current EU legislation that provides common minimum rules to criminalise environmental crime is [Directive 2008/99/EC](#) on the protection of environment through criminal law. Criminal law measures come in as a last resort when other measures have not sufficed to ensure compliance. Enforcement gaps have been identified in all Member States and at all levels of the enforcement chain (police, prosecution and criminal courts). The lack of coordination between administrative and criminal law enforcement and sanctioning often hinders effectiveness.

**CONTENT:** the proposed Directive establishes minimum rules concerning the definition of criminal offences and sanctions to protect the environment more effectively.

The proposal has six objectives:

(1) Improve the effectiveness of investigations and prosecution by updating the scope of the Directive

The following new categories of criminal offences have been proposed in the revised Environmental Crime Directive: (i) illegal timber trade; (ii) illegal ship recycling; (iii) illegal water abstraction from ground- or surface water; (iv) serious breaches of EU chemicals legislation; (v) serious breaches related to dealing with fluorinated greenhouse gases; (vi) serious breaches of legislation on invasive alien species with Union concern; (vii) serious circumvention of requirements to get a development consent and to do environmental impact assessment causing substantial damage; (viii) source discharge of polluting substances from ships.

(2) Improve the effectiveness of investigations and prosecutions by clarifying or eliminating vague terms used in the definitions of environmental crime

The proposal clarifies undefined legal terms used to describe environmental crime in the current Directive, such as for instance 'substantial damage'. This will lead to a more harmonised application of criminal law and understanding of environmental crime across the EU, and more legal certainty to duty-holders.

(3) Ensure effective, dissuasive and proportionate sanction types and levels for environmental crime

The Commission proposes to set a common minimum denominator for sanctions for environmental crimes. Where offence cause or are likely to cause death or serious injury to any person, Member States should provide at least up to ten years imprisonment. The draft directive also proposes additional sanctions, including the restoration of nature, exclusion from access to public funding and procurement procedures or the withdrawal of administrative permits.

#### (4) Foster cross-border investigation and prosecution

Criminal activities related to the environment often have a cross-border dimension, while some environmental crimes usually impact several countries (for example the illicit trafficking of waste, of protected species or of wildlife products, or have cross-border effects (e.g. in the case of cross-border pollution of air, water and soil). Cross-border cooperation between law enforcement and judicial authorities is therefore essential.

#### (5) Improve informed decision-making on environmental crime through improved collection and dissemination of statistical data

The proposal addresses the need to systematically collect information on efforts to combat environmental crime and to provide statistical data on environmental crime. It requires Member States to collect, publish and send relevant statistical data to the Commission. It also establishes an obligation for the Commission to regularly publish a report based on the statistical data provided by the Member States. This provision also aims to help address the current limited availability of environmental crime data which would assist in evaluating the effectiveness of national systems in fighting environmental criminal offences.

#### (6) Improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning

To ensure an effective, integrated and coherent enforcement system that includes administrative, civil and criminal law measures, Member States should organise internal cooperation and communication between all actors along the administrative and criminal enforcement chains and between punitive and remedial sanctioning actors. Following the applicable rules, Member States should also cooperate through EU agencies, in particular Eurojust and Europol, as well as with EU bodies, including the European Public Prosecutors Office (EPPO) and the European Anti-Fraud Office (OLAF), in their respective areas of competence.

## Protection of the environment through criminal law

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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 Unions 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 persons 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 persons 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 persons 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 persons 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 or 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).

## Protection of the environment through criminal law

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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.

| Transparency    |                   |      |            |                               |
|-----------------|-------------------|------|------------|-------------------------------|
| TOUSSAINT Marie | Shadow rapporteur | JURI | 16/01/2024 | European Environmental Bureau |
| TOUSSAINT Marie | Shadow rapporteur | JURI | 30/11/2023 | Greenpeace France             |
| TOUSSAINT Marie | Shadow rapporteur | JURI | 31/08/2023 | Stop Ecocide                  |
| TOUSSAINT Marie | Shadow rapporteur | JURI | 09/06/2023 | Association Sherpa            |
| TOUSSAINT Marie | Shadow rapporteur | JURI | 06/06/2023 | Stop ecocide international    |
| TOUSSAINT Marie | Shadow rapporteur | JURI | 12/04/2023 | Avaaz Foundation WeMove       |
| TOUSSAINT Marie | Shadow rapporteur | JURI | 30/03/2023 | EEB                           |
| TOUSSAINT Marie | Shadow rapporteur | JURI | 28/02/2023 | Association Sherpa            |
| TOUSSAINT       | Shadow            | JURI | 30/01/2023 | WWF European Policy           |

| Marie               | rapporteur |            |                     | Programme   |
|---------------------|------------|------------|---------------------|---|
| MANDERS<br>Antonius | Rapporteur | JURI       | 11/01/2023          | European Environmental<br>Bureau<br>Stichting BirdLife Europe |
| WÖLKEN Tiemo        | Member     | 15/03/2023 | Avaaz<br>Foundation |   |
| TOUSSAINT<br>Marie  | Member     | 20/09/2022 | Europaparc          |   |