

ENVIRONMENT & CLIMATE CHANGE | INVESTIGATIONS & WHITE COLLAR

DIRECTIVE (EU) 2024/1203 ON THE
PROTECTION OF THE ENVIRONMENT
THROUGH CRIMINAL LAW

VdA EXPERTISE



June 2024

Directive (EU) 2024/1203 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC was published on 11 April 2024.

This legislation aims to strengthen environmental protection through criminal law in the EU by introducing new criminal offences based on serious breaches of environmental law and significantly increasing the level of sanctions and fines, ensuring they are effective, proportionate and dissuasive.

New list of environmental criminal offences

The new legal framework increases the number of conducts that constitute criminal offences, from nine to twenty offences. These are listed in Article 3 of the Directive and correspond to the following conducts, where they are in breach of requirements laid down by EU law or by national legal or administrative acts transposing EU law, and are intentional (or, in some cases, at least severely negligent):

- the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation, into air, soil or water causing or likely to cause harm to human health or to the environment;
- 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, results in the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water causing or likely to cause harm to human health or to the environment;
- the manufacture, placing or making available on the market, export or use of substances, in breach of EU legislation, causing or likely to cause harm to human health or to the environment;
- the manufacture, use, storage, import or export of mercury products, causing or likely to cause harm to human health or to the environment;
- the execution of projects subject to a mandatory environmental assessment procedure without the necessary development consent, causing or likely to cause harm to human health or to the environment;
- the shipment of waste in a non-negligible quantity;
- the collection, transport or treatment of waste, the supervision of such operations and the after-care of disposal sites, which (i) concerns hazardous waste in a non-negligible quantity, or (ii) concerns waste other than hazardous waste and causes or is likely to cause serious harm to human health or to the environment;
- the recycling of ships in breach of the requirements of Article 6(2), point (a), of Regulation (EU) 1257/2013;
- the ship-source discharge of polluting substances causing or likely to cause deterioration in the quality of water or damage to the marine environment;
- the operation or closure of an installation in which a dangerous activity is carried out or in which dangerous substances or mixtures are stored or used, causing or likely to cause serious harm to human health or to the environment;
- the construction, operation and dismantling of an installation, falling within the scope of Directive 2013/30/EU, and causing or likely to cause serious harm to human health or to the environment;
- the manufacture, production, processing, handling, use, holding, storage, transport, import, export or disposal of radioactive material or radioactive substances, causing or likely to cause serious harm to human health or to the environment;
- the abstraction of surface water or groundwater, causing or likely to cause substantial damage to the ecological status or ecological potential of surface water bodies or to the quantitative status of groundwater bodies;
- the killing, destruction, taking of, possession, sale or offering for sale of a specimen or specimens of certain protected species of wild fauna or flora, in a non-negligible quantity;
- the trade or import of a specimen or specimens, or parts or derivatives thereof, of certain protected species of wild fauna or flora, in a non-negligible quantity;
- the placing or making available on the EU market or the export from the EU market of relevant commodities or relevant products in a non-negligible quantity, in breach of Article 3 of Regulation (EU) 2023/1115;
- any conduct which causes significant deterioration of a habitat within a protected site, or significant disturbance of certain animal species, breaching Directive 92/43/EEC;

- the bringing into the EU territory, placing on the market, keeping, breeding, transporting, using, exchanging, permitting to reproduce, growing or cultivating, releasing into the environment, or the spreading of invasive alien species of EU concern, in breach of Regulation (EU) 1143/2014, causing or likely causing harm to human health or to the environment;
- the production, placing on the market, import, export, use, or release of ozone depleting substances, or the production, placing on the market, import, export or use of products and equipment, and parts thereof, containing ozone-depleting substances or whose functioning relies upon those substances;
- the production, placing on the market, import, export, use, or release of fluorinated greenhouse gases; or the production, placing on the market, import, export, use or putting into operation of products and equipment containing fluorinated greenhouse gases or whose functioning relies upon those gases.
- a maximum prison term of at least **8 years** for qualified criminal offences;
- a maximum prison term of at least **5 years** for certain offences carried out with at least serious negligence that cause the death of any person;
- maximum prison terms of at least **5 years** or at least **3 years** for other criminal offences.

For legal persons:

- A maximum fine corresponding to at least **5%** of the worldwide turnover *or* of at least **€40.000.000** is applicable to certain more serious offences;
- A maximum fine corresponding to at least **3%** of the worldwide turnover *or* of at least **€24.000.000** is applicable to other criminal offences.

Accessory criminal or non-criminal penalties or measures may also be applied, such as obligations to restore or compensate, exclusion from access to public fundings, temporary or permanent disqualification from the business activity, or the withdrawal of permits or authorisations.

The new Directive also provides that individuals and legal entities shall be criminally liable, not only as main perpetrators, but also for inciting, aiding, and abetting environmental offenses, and that Member States must ensure that attempt is punishable.

Qualified criminal offences

Along with the new list of conducts that shall constitute environmental crimes, the EU legislator has introduced the concept of '*qualified criminal offence*' within the context of environmental crimes. This refers to environmental criminal offences that provoke *one of the following consequences*:

- i. the destruction of, or irreversible or long-lasting, widespread and substantial damage to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or
- ii. irreversible or long-lasting, widespread and substantial damage to the quality of air, soil or water.

Sanctions and penalties

The new Directive introduces sanctions and penalties that Member States must ensure to lay down, to be uniformly applied across the EU for both natural and legal persons (except State authorities and public international organisations). It establishes **minimum levels** for maximum criminal penalties applicable to natural persons, as well as criminal and non-criminal fines applicable to legal persons.

For natural persons:

- a maximum prison term of at least **10 years** for certain more serious intentional offences when they cause the death of any person;

Freezing and confiscation

EU Member States must establish the necessary legal and procedural framework to trace, identify, freeze, and confiscate tools and financial gains derived from the criminal offenses outlined in the Directive. This includes any equipment used to commit the environmental crimes and any money or benefits obtained from such crimes.

The new legislation also specifies that Member States which are subject to Directive 2014/42/EU (on the freezing and confiscation of instrumentalities and proceeds of crime) must implement the measures at issue in accordance with the latter's provisions, ensuring a harmonised approach across the EU to the freezing and confiscation of criminal assets.

Limitation periods

The new Directive further establishes that Member States must set limitation periods that are long enough to effectively address the environmental crimes specified therein, both for the investigation, prosecution, trial and adjudication of criminal offences, and for the enforcement of penalties imposed.

Investigation, prosecution, trial and adjudication:

- Crimes punishable by a maximum imprisonment of at least 10 years – limitation period of at least 10 years from the date of the offence;
- Crimes punishable by a maximum imprisonment of at least 5 years – limitation period of at least 5 years from the date of the offence;
- Crimes punishable by a maximum imprisonment of at least 3 years – limitation period of at least 3 years from the date of the offence.

Enforcement of penalties:

- Penalties involving imprisonment of more than 5 years or for crimes punishable by a maximum term of at least 10 years – limitation period of at least 10 years from the date of final conviction;
- Penalties involving imprisonment of more than 1 year or for crimes punishable by a maximum term of at least 5 years – limitation period of at least 5 years from the date of final conviction;
- Penalties involving imprisonment of up to 1 year or for crimes punishable by a maximum term of at least 3 years – limitation period of at least 3 years from the date of final conviction.

Derogations:

Member States may set a limitation period shorter than 10 years, but no shorter than 5 years, with the condition that this period can be interrupted or suspended if certain specified acts occur.

Publication of information and access to justice

Additionally, this legislation requires Member States to guarantee appropriate procedural rights in proceedings concerning environmental criminal offences and rights of access to information on the progress of said proceedings, in line with the rights that already exist in national law for proceedings concerning other criminal offences, to:

- i. persons affected or likely to be affected by those offences;
- ii. persons having sufficient interest or maintaining the impairment of a right;
- iii. environmental NGOs.

Next steps

The Directive has been in force since 1 May 2024 and shall now be transposed by Member States into their domestic laws, until 21 May 2026.

Contacts



ASSUNÇÃO CRISTAS
ACR@VDA.PT



CATARINA PINTO CORREIA
CPC@VDA.PT



SOFIA RIBEIRO BRANCO
SRB@VDA.PT