



NGO position paper on the transposition of Directive 2024/1203 on the protection of the environment through criminal law

Directive 2024/1203 on the protection of the environment through criminal law entered into force on 20/05/2024. As a coalition of environmental, conservation, and animal protection organisations, we firmly believe that the EU must put in place the necessary tools and measures to effectively combat the billion-euro industry that is environmental crime. Consequently, we warmly welcome the revised Directive and urge EU Member States to promptly and robustly transpose and implement it.

However, the Directive only sets out the minimum rules that must be put in place across the Union. As such, the Directive's **provisions should be viewed by EU Member States as the baseline for their transposition process**, and where needed, they should **introduce stricter measures**. In particular, we would like to highlight the opportunity for EU Member States to adopt more ambitious provisions into their national law, during the transposition process, on the following critical elements of the Directive:

OFFENCES

- **Article 3 - Illegal, unreported and unregulated fishing (IUU)** is one of the most lucrative forms of environmental crime, yet it is not criminalised in the majority of the EU and rather left up to non-criminal enforcement and sanctioning regimes, which do not have access to the necessary enforcement tools. Serious infringements of the EU Common Fisheries Policy should be established as criminal offences in national laws.
- **Article 3 (2) sub-paragraph (a)** - This article covers the discharge, emission or introduction of energy, including **underwater noise pollution** into water. According to Directive 2008/56/EC and Directive 2010/75/EU, anthropogenic acoustic emissions released in the aquatic environment can cause substantial damage to the quality of air, soil or water, or to biodiversity, ecosystem services and functions, animals or plants. In the interests of clarity, the discharge, emission or introduction of underwater noise pollution should be explicitly referenced into national laws.
- **Article 3 (3)** - In the Directive, the "**qualified offence**" applies to the offences defined under Article 3 (2). Yet, to effectively protect the environment, it should not be restricted only to existing offences, but instead EU Member States should ensure that it covers all unlawful or wanton acts causing severe and widespread or long-term environmental harm. Some EU Member States already have such provisions in their laws, similar to **ecocide**, which can serve as good examples for other Member States. Sentencing should be commensurate with national provisions for serious or international level crimes.
- **Article 3 (5)** - The Commission and EU Member States should promptly amend the list of criminal offences covered by Article 3 (2) when **new environmental offences** are introduced in future legal instruments to ensure legal clarity, and guarantee these offences are sanctioned in accordance with the Directive.
- **Articles 3 (6), 3 (7) and 3 (8)** - EU guidelines should be developed to assist enforcement and judicial authorities in **determining whether an offence causes substantial damage or involves a negligible quantity**. For example, in the case of wildlife crime, the number of specimens concerned can be small, but still have severe ecological implications at the population, species or ecosystem

levels. Such guidelines should be established in consultation with relevant stakeholders, including civil society organisations. Besides, the monetary value of the environmental damage caused by the offence, and the scale of financial benefits gained by committing the offence, should be additional considerations in assessing whether a damage is substantial or a quantity negligible.

- **Article 8 - Undermining the conservation of wild animals and plants** protected under the Wildlife Trade Regulations (Council Regulation (EC) No 338/97), Birds Directive (Directive 2009/147/EC), or Habitats Directive (Council Directive 92/43/EEC) should be considered an **aggravating circumstance** in relation to criminal offences covered by the Directive. Similarly, causing unnecessary and avoidable suffering to animals should be considered an aggravating circumstance, in accordance with national laws.

SANCTIONS

- **Article 5** - The Directive tackles the most serious infringements of Union environmental law. However, not all of the **penalties for natural persons** are in line with the internationally recognised threshold of the United Nations for serious crime, i.e. four years or more of imprisonment. As such, criminal offences covered by Article 3(2), points (m), (n), (o), (q) and (r) should be punishable by a maximum term of imprisonment of at least four years.
- **Article 7** - Sanctions will only be considered dissuasive and effective when they will present a sufficient risk to offenders, across all EU Member States, and deter criminal conducts. Therefore, **penalties for legal persons** should be calculated on the basis of a percentage of their total worldwide turnover, instead of a fixed amount. The maximum limit of fines should be set at not less than 10% of the average worldwide turnover of the legal person in the three business years preceding the fining decision. Only then can sanctions be truly effective, proportionate and dissuasive. In addition, where not already provided for, national laws should be amended to allow for the criminal liability of legal persons. Criminal law is essential for upholding societal norms and is critical in enabling competent authorities to enforce the law effectively.
- **Article 13** - Access to **investigative tools**, in particular special investigative tools, is often contingent upon the level of penalty prescribed for the offence in the law. Therefore, penalties should be high enough to enable enforcement and judicial authorities to access these tools, when necessary.

FREEZING AND CONFISCATION

- **Article 10** - As per CITES Resolution Conf. 17.8 on Disposal of illegally traded and confiscated specimens of CITES-listed species and the EU Wildlife Trade Regulations, EU Member States shall ensure that **seized and confiscated live animals** are appropriately managed to provide for their well-being, and to maximise the chances of returning them safely to the wild where possible. EU Member States should also consider, where possible, using **frozen and confiscated assets** to support the fight against environmental crime, including through reparation of environmental damage, appropriate management, housing and care of confiscated live animals and plants, support for law enforcement efforts, the development of public awareness campaigns, etc.

JURISDICTION

- **Article 12 (1)** - To increase accountability and responsibility of legal persons, EU Member States should ensure that **jurisdiction** over criminal offences is extended to offences committed for the benefit of legal persons established in their territory.
- **Article 12 (2) sub-paragraph (d)** - According to this article, a Member State can extend its jurisdiction if 'the offence has created a severe risk for the environment on its territory'. The term 'environment' must be understood in its widest sense to ensure the **possibility to extend jurisdiction** if an offence has created a severe risk for a protected wildlife population or habitat on its territory.

ENVIRONMENTAL DEFENDERS AND ACCESS TO JUSTICE

- **Article 14 - Environmental defenders, whistleblowers, and people cooperating in the context of criminal proceedings** should be guaranteed the same basic rights and protection across EU Member States. As such, national laws should protect any person, natural or legal, reporting criminal offences from retaliation, and provide the necessary support and assistance to persons providing evidence or otherwise cooperating with the investigation, prosecution or adjudication of such offences.
- **Article 15** - For a legal system to function properly and fairly, **access to justice** is essential. Hence, where not already provided for in national laws the public concerned should benefit from procedural rights, such as those awarded to a civil party to a criminal case.

In addition to promptly transposing the Directive into their national law, EU Member States should already **start implementing some specific provisions of the Directive, such as those on resources, prevention, training, specialisation, national strategies, and data collection**. It is essential that all relevant stakeholders, including civil society organisations, are consulted to ensure that these provisions are well planned and executed.

As concerned NGOs, we urge you to consider the elements outlined above to effectively transpose the Directive and successfully tackle environmental crime in the EU.

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