

EUFJE Conference 2015

Protection of the environment through criminal law: the implementation and application of the Eco-crime Directive in the EU Member States

Bolzano, 30 and 31 October 2015

Questionnaire

Introduction

On November 19, 2008 the European Parliament and the Council of the EU adopted Directive 2008/99/EC “*on the protection of the environment through criminal law*” (Eco-crime Directive)¹. The idea was that existing systems of penalties had not been sufficient to achieve compliance with EU-embedded environmental law and that compliance could be strengthened by the availability of criminal penalties “*which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law*”. The obligations of the directive relate to the EU directives and regulations listed in the annexes of the directive. The directive obligations, minimum rules, are quite simple:

- Member States have to ensure that serious breaches of the regulations and of the legislation implementing the EU directives listed in the annexes of the directive constitute an offence. These *serious environmental offences* are listed in Art. 3 of the directive.
- Member States have to ensure that those serious offences can be punished through *criminal law* when committed by *natural persons*, when committed *intentionally or with at least serious negligence*.
- The circle of natural persons that can be held criminally liable *should include* those who are “*inciting, aiding and abetting*” to commit Art. 3 offences *intentionally* (Art. 4 directive).
- The Member States have to ensure that perpetrators and those inciting, aiding and abetting, are punishable by “*effective, proportionate and dissuasive criminal penalties*” (Art. 5 directive).
- The directive does not interfere with the issue of the criminal liability of legal persons. But it does aim at a *liability for legal persons for Art. 3 offences*, when legal persons are *committing them as well as inciting, aiding and abetting to commit them*. Member states have to ensure such liability exists when the offences have been committed for the legal person’s benefit (a) by any person who has a leading position within the legal person, or (b) by any person who has not a leading position, when the commitment of the offence was made possible because of lack of supervision. (Art. 6.1 and 6.2 directive)
- These legal persons must be “*punishable by effective, proportionate and dissuasive penalties*” (Art. 7 directive)

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0099&from=EN>

- The directive does require that liability of a legal person under art. 6.1 or 6.2 does not exclude criminal proceedings against natural persons who are “*perpetrators, inciters or accessories*” of Art. 3 offences.

The deadline for transposition of the Directive was 26 December 2010.

Questions

1/ Who can be held criminally liable in your country?

a/ Natural persons only or natural as well as legal persons?

In the latter case: does their criminal liability extent to all types of crimes or only to very specific crimes?

Also: under which circumstances can they be held criminally liable? In particular: is there a precondition requiring a conviction or particular result of a criminal proceeding against a natural person? Are the hypotheses mentioned in art. 6.1 and 6.2 of the Eco-crime Directive covered?

b/ What about persons inciting, aiding and abetting the actual perpetrators of a crime?

2/ Are the Art. 3 offences criminal offences in your country?

Do you know about gaps in the transposition of Art. 3 of the directive (e.g.: not always serious negligence criminalized, one of the Art. 3 offences only partially transposed)?

3/ How were the Art. 3 offences implemented?

a/ Only in the criminal code, only as parts of environmental laws or combining both ways?

b/ Did the legislator choose for a “copy paste” or not?

c/ All but one of the Art. 3 offences are defined by specific circumstances, notably specific results or risks of results that need to be fulfilled:

- Four conducts need to be considered a criminal offence if “[causing] or (..) *likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants*” (art. 3.a, 3b, 3.d and 3.e)
- Four other conducts need only to be considered a criminal offence when involving a *non-negligible quantity / a non-negligible impact* (art. 3.c, 3.f, 3.g) or causing a “*significant*” deterioration.

Are those requirements present in your law? Or were they dropped when the legislator implemented the directive?

How do you feel as a judge about them? Would they hamper you when conducting a criminal case or could you rather easily cope with them?

4/ What about the availability of criminal sanctions to punish environmental offences?

a/ Do the principal criminal sanctions include fines as well as imprisonment?

What are the legal minimum (if applicable in your national system) and maximum levels of fines and prison sentences?

What impact does it have on sanction levels if the crime is committed by an organized criminal group?

b/ Is forfeiture of illegal benefits possible?

c/ Can criminal judges also impose remedial sanctions, for instance order the removal of waste, the closure of an illegal facility?

5/ *What about the actual use of criminal sanctions to punish environmental offences?*

a/ Are environmental offences brought to criminal courts? Does this happen rather often or only exceptionally? What kind of cases reach the court?

b/ What are the penalties inflicted to convicted offenders?

i) Is imprisonment used and, if yes, also without probation? If so, what is the length of the inflicted prison sentences? Please indicate to which category of offences under Article 3 your reply refers.

ii) How high are the fines that are imposed in practice? Is forfeiture of illegal benefits used as an additional monetary sanction?

iii) Do criminal courts also impose remedial sanctions?

c/ What is, to your opinion, the main reason why environmental offences would not reach a criminal court? Not enough inspections? Practical difficulties to prosecute environmental offences successfully (e.g. lack of training or specialization, lack of time, lack of financial resources, difficulties of proof, unclear criminal law)? Is there a tradition to rather sanction such offences with administrative sanctions? Or are environmental rules simply not, or nearly not, enforced?

Please provide, if available, empirical data of summaries of interesting cases that illustrate your answer.

6/ *As to structure of prosecuting environmental crime*

Are prosecution and/or court procedure for environmental crimes concentrated on specialized prosecution offices/ courts or specialized sections within prosecution offices/courts?

7/ *What about the availability of administrative sanctions to punish environmental offences?*

By 'administrative sanction' we mean sanctions imposed by an administrative body, an administration.

a/ Is it possible in your country to punish environmental offences by administrative fines?

If so,

i) could they be applied alongside criminal sanctions or only instead of them and at which point in the procedure has a decision to be made which "route" to follow;

ii) what are the legal minimum and maximum of those administrative fines;

iii) which are the administrative bodies who can inflict such fines?

b/ Which administrations can impose remedial sanctions to end environmental offences and remediate to the damages they caused?

And which are the remedial sanctions they can impose? Can they give remedial orders? Can they themselves clean-up the damages and oblige the offender to pay the bill? Can they order to stop an illegal conduct? Can they suspend permits until the cause of the pollution of offence was remediated? ...

8/ *What about the actual use of administrative sanctions against environmental offences?*

a/ Are environmental offences sanctioned by administrative authorities? Does this happen rather often or only exceptionally? In what kind of cases?

b/ What are the administrative sanctions that are used in practice?

Is fining used? How high are the fines that are imposed in practice?

Are remedial sanctions used frequently, are rather seldom? Are they effective?

Please provide, if available, empirical data of summaries of interesting cases that illustrate your answer.