

CRIMINALISING ECOCIDE IN EU MEMBER STATES

A PRACTICAL GUIDE FOR TRANSPOSING THE ECD'S QUALIFIED OFFENCE

EU Directive 2024/1203 on environmental protection through criminal law (ECD) took effect on 20 May 2024. It mandates EU Member States to introduce environmental crime laws within two years, including provisions for cases resembling ecocide (“qualified offences”). States must meet minimum ECD standards but may impose stricter measures.

The ECD prohibits **ecocide-like qualified offences** where intentional actions cause:

- The destruction of, or significant, long-term damage to a large or ecologically valuable ecosystem or protected habitat; or
- Widespread, substantial, and lasting harm to air, soil or water quality.

Severe penalties apply to such cases due to their broader impact on the environment.

The **Working Group on the National Criminalisation of Ecocide** issued a **Manual** in February 2025 to assist governments in codifying the qualified offence.

It considers how to implement the minimum standards for ecocide-like offences set out in the ECD, but also how to introduce more protective laws that further protect the environment and still align with legal principles.

The Manual focuses on the following **five key elements** for criminalising ecocide as a qualified offence under the ECD.

MENS REA

Mens rea refers to the criminal intent or awareness a person has regarding the wrongfulness of their actions. It plays a crucial role in most criminal offences because it defines the mental state of the person committing the crime. In cases of environmental harm, the issue of mens rea becomes more complex since potential violators rarely aim to cause environmental damage as their primary goal; rather, harm is often a by-product of profit-driven activities.

The ECD requires ecocide-like qualified offences to be committed intentionally or when one anticipates but disregards the possibility of a harmful consequence.

RECOMMENDATION:

- Consider expanding mens rea to include where one acts with **serious negligence** or ‘**culpa**’.

UNLAWFULNESS

Some jurisdictions require environmental destruction to be already prohibited by existing law (e.g. environmental regulations) before it can constitute a crime. The alternative is to create autonomous environmental crimes which do not depend on the breach of existing legal provisions. In such cases, the unlawfulness of the act is established by the new offence.

The ECD adopts the former approach, further defining unlawful conduct as that which breaches EU law or national law implementing EU law aimed at environmental protection. The ECD also states that conduct would be considered unlawful even where it is carried out under an authorisation (e.g. a permit) issued by a competent authority if it was obtained by fraud, corruption, extortion or coercion.

RECOMMENDATIONS:

- Consider expanding and/or clarifying the ECD’s list of circumstances in which authorisations have **no shielding power**.
- Consider introducing an **autonomous environmental crime of ecocide**, where the harmful acts would not need to contravene a pre-existing law or regulation. This approach provides the highest level of protection for the environment.

THRESHOLD OF ENVIRONMENTAL HARM

The criminalisation of ecocide aims to punish conduct that causes the most serious kinds of environmental damage and thus requires the harm to reach a certain threshold. The ECD requires the environmental harm to be:

- (i) **substantial**,
- (ii) **widespread, and**
- (iii) **irreversible or long-lasting**.

RECOMMENDATIONS:

- Consider **clarifying the definitions** of these three terms.
- Consider following the proposed international definition for a more protective approach, where conduct is criminalised if it is substantial and **either** widespread **or** long-lasting/irreversible.

EXTRATERRITORIAL JURISDICTION

Extraterritorial jurisdiction refers to a state enforcing laws beyond its territory. The principle of state sovereignty traditionally limits a state's jurisdiction to its territory and citizens. However, environmental harm frequently transcends borders. This raises the question of whether and when states should be able to assert extraterritorial jurisdiction.

The ECD establishes both mandatory and optional extended grounds for jurisdiction which enables Member States to expand their reach in specific cases and address environmental cross-border acts and harm more effectively.

RECOMMENDATIONS:

- Implement the **optional extended grounds** for jurisdiction where these align with the national legal practice.
- Consider introducing **universal jurisdiction for ecocide**, to align it with offences such as genocide and crimes against humanity.

INFRINGEMENT & ENDANGERMENT

Criminal law distinguishes between infringement and endangerment offences. An infringement offence involves an actual and immediate violation of law, whereas an endangerment offence creates a risk of harm. The ECD formulates the ecocide-like qualified offence as an infringement offence.

RECOMMENDATIONS:

- Consider creating **both** endangerment offences (acts that create a serious risk of ecological disasters) and infringement offences (if prevention measures fail and actual harm occurs).
- An infringement offence would address the most severe environmental consequences, and attract higher penalties.

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**EU Member States only have until May 2026 to transpose the ECD.
The time to criminalise ecocide is **now**.**