

I assent.

(L.S.)

GEORGE ABELA
President

10th July, 2012

ACT No. XI of 2012

AN ACT to implement Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and commencement.

1. (1) The short title of this Act is Crimes Against the Environment Act, 2012.

(2) This Act shall come into force on such date as the Minister responsible for Justice may, by notice in the Gazette appoint, and different dates may be so appointed for different purposes and for different provisions of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires:

"Directive 2008/99/EC" means Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law;

"the Euratom Treaty" means the Treaty establishing the European Atomic Energy Community done at Rome on the 25th March, 1957;

"habitat within a protected site" means any habitat of species for which an area is classified as a special protection area pursuant to Article 4(1) or (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, or any natural habitat or a habitat of species for which a site is designated as a special area of conservation pursuant to Article 4(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

"protected wild fauna and flora species" means:

- (a) for the purposes of article 3(1)(f) those listed in:
 - (i) Annex IV to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora,
 - (ii) Annex I to, and referred to in Article 4(2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds,
- (b) for the purposes of article 3(1)(g), those listed in Annex A or B to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein;

"the Treaty" means the Treaty establishing the European Community done at Rome on the 25th March, 1957;

"unlawful" means infringing:

- (a) the legislation adopted pursuant to the EC Treaty and listed in Annex A to the Directive 2008/99/EC; or
- (b) with regard to activities covered by the Euratom Treaty, the legislation adopted pursuant to the Euratom Treaty and listed in Annex B to the Directive 2008/99/EC; or
- (c) a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the Community legislation referred to in paragraphs (a) or (b).

3. (1) Whosoever shall knowingly commit any of the unlawful acts referred to in sub-article (2), shall be guilty of an offence and shall be liable, on conviction to the punishments set out in this Act.

Crimes against
the
environment.

(2) For the purposes of this Act, a crime against the environment means any of the following acts:

(a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause the death or grievous bodily harm 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;

(b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare of disposal sites, and including action taken as a dealer or a broker in waste management, which causes or is likely to cause the death or grievous bodily harm 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;

(c) the shipment of waste, falling within the scope of Article 2(35) of Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;

(d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause the death or grievous bodily harm 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;

(e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause the death or grievous bodily harm 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;

(f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;

(g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, unless, it is proved to the satisfaction of the court that the conduct concerns a negligible

quantity of such specimens and has a negligible impact on the conservation status of the species;

(h) any conduct which causes the significant deterioration of a habitat within a protected site;

(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.

4. Whosoever, through imprudence or negligence shall commit an unlawful offence referred to in article 3, shall, on conviction, be liable - Involuntary offences.

(a) if the death of any person is caused thereby, to the punishments established in article 225 of the Criminal Code increased by one or two degrees;

(b) if any grievous bodily harm with any of the effects mentioned in article 218 of the Criminal Code is caused thereby, to imprisonment for a term not exceeding four years or to a fine (multa) not exceeding ten thousand euro (€10,000);

(c) if any grievous bodily harm without any of the effects aforesaid is caused thereby, to imprisonment for a term not exceeding one year or to a fine (multa) not exceeding five thousand euro (€5,000);

(d) in any other case, to imprisonment for a term not exceeding six months or to a fine (multa) not exceeding one thousand euro (€1,000).

5. (1) When as a result of the offence referred to in article 3, a person shall perish, the offender shall be liable to the punishment of imprisonment for life. Aggravating circumstances.

(2) When as a result of the offence referred to in article 3, grievous bodily harm is caused to any person, the offender shall be liable to the punishment established for offences of grievous bodily harm under articles 216 or 218 of the Criminal Code, as the case may be, increased by one or two degrees according to the gravity of the offence. Cap. 9.

Provided that if grievous bodily harm is caused to two or more persons the punishment laid down in this subarticle shall apply and shall not be awarded in its minimum.

(3) When as a result of the offence referred to in the last preceding article, any serious damage is caused to the quality of the

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air, soil or water, or to animals or plants, or in any other manner serious spoil is caused to the environment, the punishment shall be that of imprisonment for a term from eight months to seven years or a fine (*multa*) of not less than twelve thousand euro (€12,000) and not exceeding two million and five hundred thousand euro (€2,500,000), or such imprisonment and fine (*multa*).

Applicability of
certain articles.
Cap.9.

6. (1) The provisions of articles 121D and 248E(4) of the Criminal Code shall *mutatis mutandis* apply to any offence under this Act.

(2) The provisions of article 328K of the Criminal Code shall also *mutatis mutandis* apply to any offence under this Act as if the reference therein to article 328J of the Criminal Code were a reference to article 121D of the Criminal Code.

Passed by the House of Representatives at Sitting No. 498 of the 4th July, 2012.

MICHAEL FRENDU

Speaker

RAYMOND SCICLUNA

Clerk to the House of Representatives
