



IMPEL WATER AND LAND CONFERENCE

Lisbon 2022

Prosecution of Water offences and the Revised Environmental Crime Directive

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Lisbon October 2022



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Water - Our most precious resource

Water: Surface Water, Groundwater, Coastal waters and the Sea

- **Surface Waters:** Rivers, streams, lakes, ponds, canals, ditches, reservoirs, channels, watercourses;
- **Groundwater:** Aquifers, wells and other underground sources;
- **Coastal waters and the Sea:** Territorial Waters and inlets, harbours, marinas, fjords, bathing waters and estuaries.



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Licensing Regimes for Water

Permitting process, Application, Consultation and Technical Assessment



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Water Resources Offences: “Water Theft”

Illegal Abstraction
Unlawful impoundment
Breach of licence or permit



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Water Quality Offences:

Illegal Discharge
Breach of licence or permit conditions



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Evidence in Water Resources cases

- Details of licence or permit
- Observation of circumstances of offence
- Witness evidence
- Duration of over abstraction (Meter?)
- Quantity of over abstraction (Annual returns?)
- Photos, videos, drone footage
- Interviews & Admissions
- Impact/risks/harm to the Environment
- Impact/risks/harm to other water users
- Evidence as to Culpability (state of mind/causation)
- Financial gain to offender



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Evidence in Water Quality cases

- Details of licence or permit
- Observation of circumstances of offence
- Witness evidence
- Nature and composition of discharge
- Quantity of material discharged
- Photos, videos, drone footage
- Interviews & Admissions
- Impact/risks/harm to the Environment
- Impact/risks/harm to other water users
- Culpability (Causation/state of mind)
- Financial gain to offender



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Revision of the Environmental Crime Directive New offences:

- Water Resource offending now included. Must be criminalised where behaviour is intentional
- Article 3 Paragraph 1: List of Offences includes:
- k) the abstraction of surface water or groundwater which causes or is likely to cause substantial damage to the ecological status or potential of surface water bodies or to the quantitative status of groundwater bodies;

Unlawful act + Intent



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Further new offence provisions

- **Article 3 Paragraph 2:**
- **Behaviour described at k) must be criminalised where committed with serious negligence.**
- **Unlawful act + serious negligence**



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Other offence provisions

- Article 3 Paragraph 1 and Paragraph 2: articles a) to e) and other paragraphs
- Other behaviour is criminalised where it:
 - “causes or is likely to cause death or serious injury to any person or **substantial** damage to air, water or soil quality...”
- Unlawful act + intent or serious negligence + actual/likelihood of substantial damage



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What is meant by Substantial?

List of Factors or elements to be taken into account:

- a) baseline condition of the affected environment
- b) whether damage is long lasting, medium or short term
- c) Severity
- d) Spread
- e) Reversibility



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What is meant by likely to cause?

- a) Does it require authorisation and if so, is it within the limits?
- b) Extent of Exceedance?
- c) Where the discharge is dangerous, hazardous or listed as harmful to human health.



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Negligible or non negligible quantities

- a) the number of items subject to the offence (quantity);
- b) Extent to which parameters exceeded
- c) Conservation status of fauna or flora concerned
- d) the cost of restoration of environmental damage



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Further Evidence which may now be needed

- Background levels of pollution, quantity and conservation/ecological status
- Evidence of culpability : Intent or Serious Negligence - Through interview primarily
- Expert evidence on possible remediation or reversibility and cost



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Involving environmental experts

Cover environmental issues:

- Ecological and Conservation status
- Endangered Species List
- Species citation
- Quantity and Quality of resources
- Impact of the offence in terms of damage or harm caused
- Financial impact on local communities
- Impact of pollutant on habitats



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Offence Provisions for Member States
Enforceable through domestic legislation.
Likely increased penalties and sanctions.



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