ABBOZZ TA' LIĠI
msejjaħ

Att biex jimplimenta d-Direttiva 2008/99/KE tal-Parlament Ewropew u tal-Kunsill tad-19 ta' Novembru 2008 dwar il-protezzjoni tal-ambjent permezz tal-liġi kriminali.

Il-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, ħareġ b'liġi dan li ġej:-

Titolu fil-qosor u bidu fis-seħħ.

1. (1) It-titolu fil-qosor ta' dan l-Att hu Att tal-2012 dwar Reati Kontra l-Ambjent.

(2) Dan l-Att għandu jiġi fis-seħħ f'dik id-data li l-Ministru responsabbli għall-Ġustizzja jista' b'avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal finijiet differenti u għal disposizzjonijiet differenti ta' dan l-Att.

Tifsir.

2. F'dan l-Att, sakemm ir-rabta tal-kliem ma tkunx teħtieġ xort'oħra:

"id-Direttiva 2008/99/KE" tfisser id-Direttiva 2008/99/KE tal-Parlament Europew u tal-Kunsill tad-19 ta' Novembru 2008 dwar il-protezzjoni tal-ambjent permezz tal-liġi kriminali;

"ħabitat f'post protett", tfisser kull ħabitat ta' speċi li għalihom żona tkun ikklassifikata bħala żona speċjali ta' protezzjoni skont l-Artikolu 4(1) jew (2) tad-Direttiva 79/409/KEE tat-2 ta' April 1979 dwar il-konservazzjoni ta' għasafar selvaġġi, jew kull ħabitat naturali jew ħabitat ta' speċi li għalihom sit jintgħażel bħala żona speċjali ta' konservazzjoni skont l-Artikolu 4(4) tad-Direttiva tal-Kunsill 92/43/KEE dwar il-konservazzjoni tal-ħabitat naturali u tal-fawna u l-flora selvaġġi;

"illegali" tfisser ksur:

(a) tal-leġislazzjoni adottata skont it-Trattat KE u elenkata fl-Anness A tad-Direttiva 2008/99/KE, jew

(b) fir-rigward tal-attivitajiet koperti mit-Trattat Euratom, il-leġislazzjoni adottata skont it-Trattat Euratom u elenkata fl-Anness B tad-Direttiva 2008/99/KE, jew

(ċ) ta' liġi, regolament amministrattiv ta' Stat Membru jew deċiżjoni meħuda minn awtorità kompetenti ta' Stat Membru li tagħti effett lil-leġislazzjoni Komunitarja msemmija fil-paragrafi (a) jew (b);

"speċi protetti tal-fawna u l-flora selvaġġi" tfisser:

(a) għall-finijiet tal-artikolu 3(1)(f) dawk li huma elenkati:

(i) fl-Anness IV tad-Direttiva tal-Kunsill 92/43/KEE tal-21 ta' Mejju, 1992 dwar il-konservazzjoni tal-ħabitat naturali u tal-fawna u l-flora selvaġġa;

(ii) fl-Anness I għal, u msemmi fl-Artikolu 4(2) tad-Direttiva tal-Kunsill 79/409/KEE tat-2 ta' April 1979 dwar il-konservazzjoni tal-għasafar selvaġġi; u

(b) għall-finijiet tal-artikolu 3(1)(g), dawk li huma elenkati fl-Annessi A jew B tar-Regolament tal-Kunsill (KE) Nru 338/97 tad-9 ta' Diċembru 1996 dwar il-protezzjoni ta' speċi ta' fawna u flora selvaġġi billi jkun regolat il-kummerċ fihom;

"it-Trattat" tfisser it-Trattat li jistabbilixxi l-Komunità Europea magħmul f'Ruma fil-25 ta' Marzu, 1957;

"it-Trattat tal-Euratom" tfisser it-Trattat li jistabbilixxi l-Komunità tal-Enerġija Atomika Europea magħmul f'Ruma fil-25 ta' Marzu, 1957.

Reati kontra l-ambjent.

3. (1) Kull min iwettaq xi wieħed mir-reati msemmija fis-subartikolu (2), jkun ħati u jeħel, meta jinstab ħati, l-pieni stabbiliti fl-Att.

(2) Għall-finijiet ta' dan l-Att, reat kontra l-ambjent ifisser xi wieħed mill-atti li ġejjin:

(a) ir-rimi, l-emissjoni jew l-introduzzjoni ta' kwantità ta' materjali jew radjazzjoni jonizzanti fl-arja, fil-ħamrija jew fl-ilma li jikkawżaw, jew x'aktarx li jikkawżaw, il-mewt jew

feriment gravi lil xi persuna jew ħsara sostanzjali lill-kwalità tal-arja, il-kwalità tal-ħamrija jew il-kwalità tal-ilma, jew lill-annimali jew lill-pjanti;

(b) il-ġbir, it-trasport, l-irkupru jew ir-rimi tal-iskart, inkluża s-superviżjoni ta' operazzjonijiet bħal dawn u l-manutenzjoni ta' wara ta' impjanti tar-rimi tal-iskart, u inkluża l-azzjoni meħuda bħala negozjant jew sensar fl-imaniġġar tal-iskart, li tikkaġuna jew li x'aktarx tikkaġuna l-mewt jew feriment gravi lil xi persuna, jew ħsara sostanzjali lill-kwalità tal-arja, il-kwalità tal-ħamrija jew il-kwalità tal-ilma, jew lill-annimali jew lill-pjanti;

(ċ) il-vjeġġi ta' skart, fejn din l-attività taqa' fil-kamp ta' applikazzjoni tal-Artikolu 2(35) tar-Regolament (KE) Nru 1013/2006 tal-Parlament Ewropew u tal-Kunsill tal-14 ta' Ġunju 2006 dwar vjeġġi ta' skart u tiġi mwettqa fi kwantità li mhix negliġibbli, kemm jekk issir fi vjeġġ uniku jew f'diversi vjeġġi li jidhru li jkunu konnessi;

(d) it-tħaddim ta' impjant li fih titwettaq attività perikoluża jew li fih jinħażnu jew jintużaw sustanzi jew preparazzjonijiet perikolużi u li, barra mill-impjant tikkawża jew x'aktarx li tikkawża l-mewt jew feriment gravi lil xi persuna, jew ħsara sostanzjali lill-kwalità tal-arja, il-kwalità tal-ħamrija jew il-kwalità tal-ilma, jew lill-annimali jew lill-pjanti;

(e) il-produzzjoni, l-ipproċessar, l-immaniġġar, l-użu, iż-żamma, il-ħażna, t-trasport, l-importazzjoni, l-esportazzjoni jew ir-rimi ta' materjali nukleari jew ta' sustanzi radjoattivi oħra perikolużi, li jikkawżaw jew li x'aktarx jikkawżaw il-mewt jew feriment gravi lil xi persuna, jew ħsara sostanzjali lill-kwalità tal-arja, lill-kwalità tal-ħamrija jew il-kwalità tal-ilma, jew lill-annimali jew lill-pjanti;

(f) il-qtil, il-qerda, il-pussess jew it-teħid ta' kampjuni ta' speċi protetti tal-fawna jew flora selvaġġa, ħlief għal każijiet fejn l-imġiba tikkonċerna kwantità negliġibbli ta' dawn il-kampjuni u jkollha impatt negliġibbli fuq l-istatus tal-konservazzjoni tal-ispeċi;

(g) il-kummerċ f'kampjuni ta' speċi protetti tal-fawna jew tal-flora selvaġġa jew partijiet jew derivattivi tagħhom, ħlief meta tinġieb prova għas-sodisfazzjoni tal-qorti li l-imġiba tikkonċerna kwantità negliġibbli ta' dawk il-kampjuni u jkollha impatt negliġibbli fuq l-istatus ta' konservazzjoni tal-ispeċi;

(h) kull imġiba li tikkawża d-deterjorament sinjifikattiv ta’ ħabitat f’sit protett;

(i) il-produzzjoni, l-importazzjoni, l-esportazzjoni, it-tqegħid fis-suq jew l-użu ta’ sustanzi li jnaqqsu l-ożonu.

Ċirkostanzi aggravanti.

4. (1) Meta bħala riżultat tar-reat imsemmi fl-artikolu 3 persuna titlef ħajjitha, il-ħati jeħel il-piena ta’ priġunerija għal għomru.

Kap. 9.

(2) Meta bħala riżultat tar-reat imsemmi fl-artikolu 3, issir offiża gravi fuq xi persuna, il-ħati jeħel il-piena stabbilita għal reati ta’ offiża gravi fuq il-persuna skont l-artikoli 216 jew 218 tal-Kodiċi Kriminali, skont il-każ, miżjuda bi grad jew żewġ gradi skont il-gravità tar-reat:

Iżda jekk l-offiża gravi fuq il-persuna ssir fuq żewġ persuni jew iżjed il-piena stabbilita f’dan is-subartikolu għandha tapplika u ma tingħatax fil-minimu tagħha.

(3) Meta bħala riżultat tar-reat imsemmi fl-artikolu qabel dan, issir ħsara serja lill-kwalità tal-arja, lill-ħamrija jew lill-ilma, jew lil annimali jew pjanti, jew b’xi mod ieħor jiġi kkawżat tgħarriq serju lill-ambjent, il-piena tkun waħda ta’ priġunerija għal żmien minn tmien xhur sa seba’ snin jew multa ta’ mhux anqas minn tnax-il elf euro (€12,000) iżda mhux iżjed minn żewġ miljuni u ħames mitt elf euro (€2,500,000), jew dik il-priġunerija u dik il-multa flimkien.

Applikabilità ta’ ċerti artikoli. Kap. 9.

5. (1) Id-dispożizzjonijiet tal-artikoli 121D u 248E(4) tal-Kodiċi Kriminali għandhom *mutatis mutandis* japplikaw għal kull reat taħt l-Att.

(2) Id-disposizzjonijiet tal-artikolu 328K tal-Kodiċi Kriminali għandhom *mutatis mutandis* ukoll japplikaw għal kull reat taħt dan l-Att bħallikieku r-referenza f’dak l-artikolu, għall-artikolu 328J tal-Kodiċi Kriminali kienet riferenza għall-artikolu 121D tal-Kodiċi Kriminali.

Għanijiet u Raġunijiet

L-għanijiet ta’ dan l-Abbozz huma sabiex jimplementaw id-Direttiva 2008/99/KE tal-Parlament Ewropew u tal-Kunsill tad-19 ta’ Novembru 2008 dwar il-protezzjoni tal-ambjent permezz tal-liġi kriminali.

A Bill
entitled

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:-

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

(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.

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

"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).

Crimes against the environment.

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

(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.

Aggravating circumstances.

4. (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.

(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 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.

5. (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.

Objects and Reasons

The objects of this Bill are 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.