

LEGISLATIVE DECREE NO. 81/2026 BETWEEN CRIMINAL PROTECTION OF THE ENVIRONMENT AND CORPORATE LIABILITY: NEW DEVELOPMENTS INTRODUCED IN IMPLEMENTATION OF DIRECTIVE (EU) 2024/1203

1. Objectives Pursued by the Legislator

On 2 June 2026, Legislative Decree No. 81 of 21 April 2026 entered into force and was published in the *Official Gazette of the Italian Republic* (General Series No. 113) on 18 May 2026.

The Decree implements Directive (EU) 2024/1203 concerning the protection of the environment through criminal law, which aims to establish new criminal offences causing damage to the environment, according to the precautionary principle, the principle that environmental damage should as a priority be rectified at source, and the “polluter pays” principle.

In line with this approach, the Decree seeks to strengthen the protection of the environment through criminal law, with particular regard to activities likely to cause damage to the environment. The environment is thereby protected as a single and integrated legal interest, including ecosystems, habitats, biodiversity, flora and fauna. The Decree also strengthens the sanctions applicable to environmental offences committed by natural and legal persons and enhances cooperation among Member States.

For the purposes of the Decree, “ecosystem” means a dynamic complex of plant, animal, fungal and microorganism communities and their non-living environment interacting as a functional unit. “Habitat within a protected site” means a habitat of a species for which an area is classified as a Special Protection Area, or a natural habitat or habitat of a species for which a site is designated as a Special Area of Conservation or identified as a Site of Community Importance.

2. Amendments to Environmental Offences under the Italian Criminal Code

The Decree amends Article 452-*bis* of the Criminal Code on environmental pollution, extending the relevant criminal protection.

Previously, the destruction of a habitat was taken into account only as an aggravating circumstance where it occurred within a protected natural area or an area subject to specific protection measures.

The amended provision provides that the deterioration or impairment of a habitat causing significant and measurable damage constitutes environmental pollution

irrespective of whether the conduct affects a protected natural area or an area subject to specific protection measures. In such cases, the penalty is increased by one-third to two-thirds. The offence is punishable by imprisonment for a term of two to six years and a fine of between EUR 10 000 and EUR 100 000.

The penalty for environmental pollution shall be increased by one-third to one-half where the pollution is caused: (i) within a protected natural area or an area subject to landscape, environmental, historical, artistic, architectural or archaeological protection measures; (ii) to the detriment of protected animal or plant species; or (iii) to the detriment of an ecosystem of considerable size or where the effects of the pollution are long-lasting. The penalty shall be further increased where the contamination gives rise to a danger to human life or health.

One of the most significant amendments introduced by the Decree is the insertion of Article 452-*bis*.1 into the Criminal Code, establishing the new offence of trade in polluting products.

The offence is punishable by imprisonment for a term of two to six years and a fine of between EUR 10 000 and EUR 100 000. It applies to any person who unlawfully places on the market or otherwise makes available a product the use of which, through the discharge, emission or release into air, soil or water of materials, substances, energy or ionising radiation, causes significant and measurable damage to: (i) water or air, or to extensive or significant parts of soil or subsoil; or (ii) an ecosystem, a habitat, biodiversity, including agricultural biodiversity, flora or fauna.

For the purposes of this provision, conduct shall be regarded as unlawful where it is carried out in breach of Union or national law, including where the relevant authorisation has been obtained by fraud, violence, threats or through offences against the public administration.

The penalty shall be increased where the offence gives rise to: (i) a danger to human life or health; (ii) a substantial risk to the quality of air, soil or water, or to an ecosystem, a habitat, fauna or flora; (iii) pollution affecting a protected area or an area subject to protection measures; (iv) damage to protected animal or plant species; or (v) pollution affecting an ecosystem of considerable size or producing long-lasting effects.

Where pollution of a habitat within a protected natural area or an area subject to protection measures results in the destruction of that habitat, the penalty shall be further increased by one-third to two-thirds.

This provision extends criminal liability to the placing on the market of products which, by their nature, are capable of causing damage to the environment and, consequently, to human health.

Taken together, these provisions strengthen the protection of the environment by addressing conduct liable to cause damage to ecosystems, habitats, biodiversity, flora and fauna, thereby ensuring a high level of environmental protection.

The Decree also amends Article 452-*ter* of the Criminal Code on death or bodily

injury resulting from environmental pollution by increasing the maximum term of imprisonment applicable where the offence results in death to twelve years.

3. New Criminal Offences

The reform introduces two new criminal offences without amending the Criminal Code.

The first offence concerns the production, import, export, placing on the market, use or release of ozone-depleting substances, as well as products containing such substances or whose functioning depends on them. The offence is punishable by imprisonment for a term of two to five years and a fine of between EUR 10 000 and EUR 80 000.

The second offence concerns the same activities in relation to fluorinated greenhouse gases. It constitutes a contravention and is punishable by arrest for a term of six months to one year or a fine of between EUR 10 000 and EUR 150 000.

These provisions strengthen the protection of the environment by criminalising activities involving substances that are particularly harmful to the environment, thereby contributing to the prevention of environmental damage and to a high level of environmental protection.

4. Amendments to Legislative Decree No. 231/2001: Liability of Legal Persons

The Decree also extends the scope of liability of legal persons for environmental offences and strengthens the applicable sanctions regime.

In particular, the list of offences giving rise to liability under Article 25-*undecies* of Legislative Decree No. 231/2001 has been expanded to include the offence referred to in Article 452-*bis*.1 of the Criminal Code (trade in polluting products), as well as the offences relating to the production and trade of ozone-depleting substances and fluorinated greenhouse gases.

As a result, liability may arise not only for entities using polluting substances, but also for manufacturers and distributors involved in the placing on the market of products capable of causing environmentally harmful emissions or releases.

In addition, new paragraph 1-*quater* of Article 25-*undecies* increases by one-third the pecuniary sanctions applicable to legal persons in cases involving aggravated environmental offences.

These amendments further strengthen the role of compliance measures in preventing environmental offences. Companies should therefore ensure that their internal policies, procedures and control systems are adequately designed and implemented to prevent conduct capable of giving rise to liability under Legislative Decree No. 231/2001.

5. Amendments to Legislative Decree No. 152 of 3 April 2006 (Environmental Code)

The Decree also amends Article 256(4) of Legislative Decree No. 152/2006 on unauthorised waste management activities. The provision applies where the conditions laid down in an authorisation are not complied with or where the requirements for registrations and notifications required under environmental legislation are not fulfilled in relation to the collection, transport, recovery, disposal, trade or brokerage of waste.

Under the amended provision, infringements involving non-hazardous waste are punishable by arrest for a term of two to six months or a fine of between EUR 2 000 and EUR 18 000. Where the conduct concerns hazardous waste, the offence is punishable by imprisonment for a term of six months to three years.

6. Statistical Reporting, Coordination Mechanisms and National Strategy

In addition to introducing new criminal offences and strengthening the applicable sanctions regime, the Decree provides for monitoring and coordination mechanisms aimed at improving the prevention, detection, investigation and prosecution of environmental offences. For that purpose, the Ministry of Justice is required to submit annual statistical data to the European Commission concerning criminal proceedings, final convictions, dismissals, the natural and legal persons concerned, and the penalties and sanctions imposed.

The Decree also establishes a national coordination system for combating environmental crime within the Office of the Prosecutor General at the Court of Cassation. Responsibility for its operation is entrusted to the Prosecutor General at the Court of Cassation.

In addition, Parliament is required to adopt, by 21 May 2027, a national strategy for combating environmental crime. The strategy is intended to identify the objectives, resources and legislative and operational measures necessary to ensure a high level of environmental protection and effective enforcement of environmental criminal law.

7. Concluding Remarks

In the context of climate change, biodiversity loss and ecosystem degradation, the Decree contributes to ensuring a high level of environmental protection by strengthening the framework for the prevention and prosecution of environmental offences.

The amendments underline the importance of effective compliance measures and due diligence processes aimed at ensuring compliance with environmental requirements throughout supply chains and business activities, thereby contributing to the prevention of environmental damage and environmental crime.

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