

# Should Ecocide Be Criminalized in the European Union? — A Normative Legal Analysis from an EU Environmental Criminal Law Perspective

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**Abstract:** The concept of ecocide has re-emerged in contemporary legal and policy discourse as a response to large-scale and irreversible environmental destruction. Within the European Union (EU), increasing concern over climate change, biodiversity loss, and corporate accountability has intensified debates on whether ecocide should be recognized as a criminal offence under EU law. This article examines the legal, philosophical, and normative justifications for the criminalization of ecocide in the EU. Through a doctrinal and normative legal analysis, the article evaluates the adequacy of existing EU environmental and criminal law frameworks, explores the relationship between environmental protection and human rights, and assesses alternative regulatory approaches. The article argues that current legal mechanisms remain fragmented and insufficient to address severe environmental harm and that the criminalization of ecocide would fulfil both preventive and expressive functions within EU law. The article concludes that the adoption of a harmonized and comprehensive definition of ecocide is a necessary step towards strengthening environmental protection and legal accountability in the European Union.

**Keywords:** Ecocide; European Union; Environmental crime; Criminal law; Human rights; Environmental protection

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## 1. Introduction

Environmental degradation has become one of the most pressing challenges of the twenty-first century. Climate change, biodiversity loss, pollution, and large-scale ecosystem destruction increasingly threaten not only ecological integrity but also human health, security, and socio-economic stability<sup>[1]</sup>. In response to these challenges, the concept of ecocide has gained renewed attention in international and regional legal discourse<sup>[2-3]</sup>. Broadly understood as the widespread or systematic destruction of the natural environment, ecocide has been proposed as a crime warranting the most serious legal condemnation<sup>[4]</sup>.

Within the European Union (EU), environmental protection has long been recognized as a core policy

objective. Nevertheless, despite an extensive body of environmental regulation, severe environmental harm continues to occur, often with limited accountability for those responsible<sup>[5]</sup>. This has prompted renewed debate as to whether existing regulatory and administrative mechanisms are sufficient, or whether criminal law should play a more central role<sup>[6]</sup>.

This article examines whether and to what extent the criminalization of ecocide within the EU legal order can be justified. It addresses the following research question: Does the current EU legal framework adequately address large-scale environmental destruction, and would the criminalization of ecocide provide a more effective and coherent response? The article proceeds in six parts. Following this introduction, Section 2 examines the conceptual foundations and contested definitions of ecocide. Section 3 analyses the normative and philosophical rationales for criminalizing ecocide in the EU. Section 4 evaluates the adequacy of existing EU legal frameworks in addressing severe environmental harm. Section 5 considers alternative, non-criminal approaches to addressing ecocide and assesses their limitations. Section 6 concludes by outlining the implications of criminalizing ecocide for EU law and policy.

## 2. Conceptualizing ecocide

The term ecocide is derived from the prefix “eco-”, referring to the environment, and the suffix “-cide”, denoting killing or destruction. It is commonly understood as the extensive damage to, destruction of, or loss of ecosystems, whether caused deliberately or through reckless conduct<sup>[3-4]</sup>. While the concept emerged prominently in the 1970s, particularly in response to the environmental devastation caused by the use of chemical agents during the Vietnam War, it has since evolved into a broader legal and normative category<sup>[4]</sup>.

Scholarly attempts to define ecocide have varied in scope and emphasis. Some definitions focus on intent and deliberate conduct, while others extend to reckless or negligent actions that result in severe and long-term environmental harm. The Independent Expert Panel for the Legal Definition of Ecocide, convened in 2021, proposed defining ecocide as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment. While this formulation represents a significant step towards legal clarity, it has also attracted criticism for its perceived restrictiveness.

The definitional debate is not merely semantic. In criminal law, clarity and precision are essential to ensure legality, foreseeability, and effective enforcement. An overly narrow definition risks excluding harmful conduct that ought to attract criminal liability, while an overly broad definition may undermine legal certainty. For the EU, which operates within a complex multi-level legal system, the challenge lies in developing a definition of ecocide that captures the gravity of environmental destruction while remaining compatible with fundamental principles of criminal law<sup>[7-8]</sup>.

## 3. Rationale for criminalizing ecocide in the European Union

### 3.1. Philosophical and normative foundations

Criminal law serves not only to punish wrongdoing but also to express societal condemnation of conduct deemed intolerable<sup>[9-10]</sup>. In the context of environmental harm, regulatory approaches have traditionally prioritized mitigation and compliance rather than outright prohibition. However, where environmental destruction reaches a scale that threatens ecological security and human survival, regulatory measures may be insufficient<sup>[11]</sup>.

Advocates of criminalizing ecocide argue that total prohibition, rather than mere regulation, is necessary to

address such harm. As Higgins has argued, criminalization represents a “trim tab” capable of triggering broader systemic change by reshaping corporate and governmental behavior. From this perspective, ecocide constitutes a moral and legal wrong of such magnitude that it warrants the strongest form of legal censure <sup>[12]</sup>.

### **3.2. Censure, deterrence, and the expressive function of criminal law**

Theories of criminalization emphasize the role of criminal law in censuring conduct that causes unreasonable harm. According to Gardner and Feinberg, criminal sanctions serve not merely instrumental purposes but also communicate societal condemnation. Environmental destruction on a massive scale causes harm that is irreversible, transboundary, and intergenerational, thereby meeting the threshold of seriousness traditionally associated with criminal offences <sup>[6-8]</sup>.

The criminalization of ecocide would also serve a deterrent function. While deterrence alone cannot justify criminalization, it remains relevant where environmental harm is often driven by economic incentives. The prospect of criminal liability, particularly for corporate executives and decision-makers, may encourage greater consideration of environmental risks and foster more responsible conduct.

### **3.3. Human rights and environmental protection**

An increasing body of scholarship recognizes the intrinsic link between environmental protection and human rights. A safe, clean, healthy, and sustainable environment is now widely regarded as a prerequisite for the enjoyment of fundamental rights, including the rights to life, health, food, and water. This understanding has been reflected in the United Nations General Assembly’s recognition of the right to a healthy environment <sup>[13]</sup>.

Within the EU context, environmental degradation has direct implications for human rights protection. Severe pollution, ecosystem collapse, and climate-related disasters disproportionately affect vulnerable communities and future generations. Criminalizing ecocide would therefore not only protect the environment as an autonomous interest but also reinforce the EU’s commitment to fundamental rights.

## **4. Adequacy of the existing EU legal framework**

The EU has developed an extensive body of environmental law, complemented by criminal law measures aimed at combating environmental offences <sup>[5]</sup>. Article 83(2) of the Treaty on the Functioning of the European Union (TFEU) permits the establishment of minimum rules concerning the definition of criminal offences where necessary to ensure the effective implementation of EU policies. This provision has enabled the adoption of directives addressing environmental crime.

Despite these developments, existing EU measures remain limited in scope. Environmental offences are often treated as regulatory violations or misdemeanours, attracting relatively mild sanctions. Moreover, EU criminal law largely focuses on harmonization rather than the creation of autonomous EU crimes, resulting in fragmented enforcement across Member States <sup>[6]</sup>.

Notably, EU law does not currently recognize environmental destruction as a crime in itself, particularly where such harm is not directly linked to personal gain or specific prohibited activities <sup>[8]</sup>. This creates enforcement gaps and undermines the effectiveness of environmental protection. In light of the scale and complexity of contemporary environmental harm, the current framework appears ill-equipped to address conduct amounting to ecocide.

## 5. Alternative approaches to addressing ecocide

Several non-criminal approaches have been proposed as alternatives or complements to criminalizing ecocide. One such approach involves recognizing the rights of nature, thereby granting ecosystems legal standing and protection. While this model has gained traction in certain jurisdictions, its effectiveness within the EU legal system remains uncertain.

Other proposals include strengthening corporate due diligence obligations, enhancing environmental impact assessments, and regulating financial institutions to prevent the funding of environmentally harmful projects<sup>[1]</sup>. These measures play an important preventive role but are primarily regulatory in nature and may lack the expressive and deterrent force associated with criminal law<sup>[9,11]</sup>.

While these approaches are valuable, they do not fully address the moral gravity and systemic nature of ecocide. As such, they should be viewed as complementary rather than substitutive measures. Criminalization remains a necessary component of a comprehensive response to severe environmental harm.

## 6. Conclusion

This article has examined the case for criminalizing ecocide within the European Union. It has argued that existing EU environmental and criminal law frameworks are fragmented and insufficient to address large-scale environmental destruction. Drawing on philosophical, normative, and human rights-based arguments, it has demonstrated that ecocide constitutes a form of harm warranting the strongest legal condemnation.

The criminalization of ecocide would enhance environmental protection, strengthen accountability, and reinforce the EU's commitment to human rights and sustainable development. By elevating severe environmental destruction to the level of a criminal offence, EU law would acknowledge the gravity of ecological harm and its profound implications for present and future generations.

Nevertheless, the effectiveness of such criminalization depends on the adoption of a clear, comprehensive, and harmonized definition of ecocide. This definition must balance legal certainty with sufficient breadth to capture the diverse forms of large-scale environmental harm. In addition, effective enforcement mechanisms and cooperation among Member States will be essential to ensure that the criminalization of ecocide does not remain merely symbolic.

Ultimately, recognizing ecocide as a crime within EU law would represent a significant step towards addressing the environmental challenges of the twenty-first century. While criminal law alone cannot resolve the ecological crisis, it can play a crucial role within a broader regulatory and normative framework aimed at safeguarding the environment, protecting human rights, and promoting sustainable development.

## Disclosure statement

The author declares no conflict of interest.

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