

Environmental Protection and the New Safeguards Provided in Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal Law

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Abstract — The research carries out an in-depth analysis of Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC as a normative instrument for criminal environmental protection within the European Union. The Directive is a reaction to the growing environmental crime with a transnational dimension, requiring complex and modern measures for prevention and punishment. The main practical challenges arising from the transposition and application of the Directive are outlined. The conclusion of the study underlines that in order to achieve the objectives of the Directive and the effectiveness of the measures envisaged, it is not only necessary to harmonize legislation, increase the capacity of law enforcement and investigative authorities and enhance international cooperation, but it is essential to develop standardized investigative methods in relation to the different environmental crimes, taking into account their specificities. Efforts in this direction are indeed worthwhile, because the objective pursued is the protection of the environment, so important to our existence.

Keywords — *criminal protection, Directive, environment, protection measures*

I. INTRODUCTION

To date, humans are already indebted to the environment, which has responded appropriately with a series of escalating natural disasters that have claimed thousands of lives and caused untold economic, social and security dimensions. The satisfaction of inexhaustible human needs at any cost, through the limitless extraction and pollution of natural resources, are among the main causes of the breakdown of the links between the various

components of the environment that ensure ecological balance.

According to reports from a number of global organizations such as the UN, WHO, UNESCO, etc., over 2 billion people in the world now live in areas affected by a lack of clean drinking water [1]. Every year, millions of people die from waterborne diseases, more than all forms of violence combined [2]. A number of scientists are signaling that we are in the sixth major species extinction due to human activity [3]. And the disrupted ozone layer in the Arctic is the cause of melting ice, according to a 2020 study published in Nature Climate Change. Pollutants deposited on land and in soil are also a global problem, with airborne and waterborne pollutants found even on the highest peaks and most remote beaches. Although some pollutants break down in the soil over time others remain forever and inevitably affect people's lives.

As early as October 1972, the Paris European Council stated the need for Community political decisions and an environmental action programme to accompany economic development. As a result of the decisions taken, multiannual "environmental action programmes" have been drawn up since 1973 and continue to this day, with the right of citizens to a healthy and favorable environment as a fundamental principle during this period. To date, European legislation has undergone considerable development. Hundreds of regulations have been adopted governing the use of natural resources and the protection of the environment [4]. Moreover, even Article 3(3) of the Treaty on European Union (TEU) and Article 191 of the Treaty on the Functioning of the European Union (TFEU) guarantee the European Union (EU) a high level of

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protection and improvement of the quality of the environment.

The emerging need for stricter measures to protect it has also led to the adoption of a Directive on the protection of the environment through criminal law. This was the first Community law act to contain requirements for the harmonization of criminal policy. Its adoption was prompted by the increase in environmental crimes and their consequences, which extend beyond the borders of the countries where they are committed.

In 2021, the European Commission, as a commitment to the Green Pact and in response to the ineffectiveness of existing environmental sanctions, adopts a proposal for a new directive on combating environmental crime, adopted on 11 April 2024 and replacing Directives 2008/99/EC and 2009/123/EC.

It is the analysis of this new directive that is the subject of this study, as a guarantee for more effective criminal protection against serious environmental violations in the EU.

II. MATERIALS AND METHODS

The research is a theoretical and legal study of Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law. The chosen objective is to bring out the strengths and weaknesses of the commented legislative solution with a view to effective environmental protection. In order to achieve the aims and objectives of the research, the method of scientific analysis and synthesis, comparative legal method, as well as various methods of interpretation of the legislative text have been used. The comparative law method used aims to provide a clear analysis of the key features of Directive (EU) 2024/1203 compared to previous legislation and to assess its effectiveness as well as the prospects for transposition into national legal systems.

III. RESULTS AND DISCUSSION

Directive (EU) 2024/1203 is the result of the EU's efforts to provide criminal protection for the environment by applying common principles, objectives and sanctions to increasingly complex forms of offences. It introduces minimum rules on the definition and sanctioning of criminal environmental offences.

The main objectives of the Directive relate to:

1. Extending the scope of criminalized acts to reflect the most serious breaches of EU environmental legislation.
2. More precise definition of specific environmental crimes and harmonization of the type and level of penalties in EU Member States.
3. Stronger, effective, proportionate and dissuasive penalties, accessory sanctions (for environmental restoration) and measures for confiscation of funds and proceeds of crime.

4. Establish a clear and effective framework for law enforcement and cross-border cooperation in the fight against environmental crime, with a view to greater effectiveness in the detection, investigation, prosecution and sentencing of environmental crime.

The EU's objectives aim to achieve a high level of environmental protection and improvement. Measures taken by Member States to transpose them into national legislation should comply with the basic principles enshrined in EU environmental legislation - the "precautionary principle", the "preventive action principle", the "priority at source principle" and the "polluter pays principle".

Directive (EU) 2024/1203 is undoubtedly a step forward in environmental protection in the European Union, building on the directives it repealed. The objectives set imply a more effective counteraction to environmental crime and an increase in the likelihood of detecting and punishing offenders.

In this research, an in-depth analysis of the framework and the requirements it sets for the Member States is carried out. The aim is to highlight both the positive aspects of the Directive and its shortcomings which could hinder the achievement of a high level of environmental protection. The analysis has been carried out on the basis of the objectives it sets and their possible achievement.

1. Extension of the scope of criminalized acts

Directive (EU) 2024/1203 has significantly extended the scope of criminalized acts. It includes new offences covering a wider range of activities constituting serious environmental offences – pollutant discharges, illegal waste management, illegal marketing of products, damage to ecosystems, deforestation, invasive species offences, ship-related offences, etc.

In order to constitute a criminal offence, all these activities must be carried out in violation of the rules laid down in one of the European Union's regulations governing the use of natural resources, environmental protection and other parts of environmental legislation. Acts committed intentionally and with gross negligence, by act or omission, are criminal. Incitement and aiding and abetting, as well as attempt to commit the offence, are punishable for certain offences.

The criminalization of negative impacts on more of the components of the environment (air, water, ecosystems, wild flora and fauna, etc.) compared to Directive (EU) 2008/99 EC ensures more effective protection of the environment as a whole. On the other hand, the description of the environmental damage to the component concerned, as an element of the offence, means the identification of this damage by the investigating authorities, with all the difficulties that this entails.

An indisputable contribution and a positive aspect is the differentiation of administrative offences from criminal offences, with the development of clear criteria for this –

the requirement to derive a quantitative and qualitative threshold.

This threshold has been proposed to be in line with the constitutive harm that has occurred [5], which for an offence must be “substantial”. This notion is not clarified, but the Directive sets out certain elements to be taken into account when assessing various environmental crimes and environmental components, namely: the baseline state of the affected environment; whether the harm is long-term, medium-term or short-term; its extent and reversibility; what the relevant regulatory threshold is and how many times it is exceeded; the conservation status of the species affected; the costs necessary to restore the environment, etc.

The Directive also provides for qualified offences for some of the criminal infringements leading to catastrophic consequences. Again, the criterion is ecological damage, but this time in terms of: destruction or widespread and significant damage that is irreversible and long-lasting to an ecosystem of significant size or significant ecological value, or to a habitat within a protected area, or to air, soil and water quality.

A significant contribution to the fight against environmental crime is the requirement to criminalize acts committed despite a permit issued by a competent authority, if that permit was obtained through fraud, corruption, extortion or coercion, or if it was issued in clear violation of the requirements for their issuance. The criminalization of the abstraction of surface water and groundwater, where significant damage is caused or is likely to be caused to the ecological status or the ecological potential of surface water bodies or to the quantitative status of groundwater bodies, is of fundamental importance with regard to water as a natural resource.

Criminalizing activities such as the introduction, spread, cultivation, release into the environment, etc. of invasive species also provides more effective protection for biodiversity.

In view of the foregoing, extending the scope of criminalized acts to the components of the environment adversely affected would contribute to more effective protection. Protection from excessive abstraction of surface water, for example, will always also provide protection for hydrobionts, flora, soil, etc. (even humans) in view of their interconnectedness.

However, criminalizing multiple acts without effective enforcement would not achieve the desired goal [6], [7].

2. A more precise definition of specific environmental crimes and harmonization of the type and amount of penalties in EU Member States

Achieving more precise definitions of the different types of environmental crime and harmonizing the law across the EU is a laudable objective of Directive (EU) 2024/1203. However, the approach in the description of criminal offences and the reference to multiple pieces of sectoral legislation, in terms of concepts, regulatory

thresholds, etc. is no different from the previous repealed Directive. Moreover, for the interpretation and derivation of the concept of “gross negligence”, reference is even made to the case-law of the Court of Justice of the European Union. In this respect, the effective transposition of the directive and the harmonization of the laws of the Member States may again not be achieved.

The clarification of some concepts, such as “ecosystem”, “habitat in a protected area”, “aggravating circumstances”, “damage”, etc. is commendable, but it is far from sufficient. In the numerous European Union acts, a number of concepts have been derived which overlap, are mutually exclusive or are relevant only to some components of the environment and not to others. For example, the notion of “disability” in the preamble to the Directive refers only to disability of persons.

A positive aspect in favor of harmonization of the Directive between Member States is the exclusion of certain forms of energy – such as heat, heat sources, noise, including underwater noise and other sources of acoustic energy, vibration, electromagnetic fields, electricity or light - among the causes of environmental harm. But again, the concept of 'energy' is derived from multiple regulations regarding different components and achieving harmonization is questionable.

The envisaged minimum and maximum limits of imprisonment for the different offences is a good approach which, if transposed effectively, would achieve the intended effect of harmonization of penalties.

3. Stronger, effective, proportionate and dissuasive penalties, alternative sanctions and measures for confiscation of the proceeds of crime

Directive (EU) 2024/1203 introduces a new, multi-layered system of sanctions for environmental crime. Central to it is the penalty of imprisonment, differentiated according to the gravity of the offence and the scale of the damage caused. This approach allows for the imposition of a fairer and more proportionate penalty, taking into account the specific circumstances of each act. The precise approach reinforces the deterrent effect, as more serious crimes are punished more severely.

The Directive takes an innovative stance by focusing not only on punishment, but also on restitution of environmental damage as ancillary sanctions and measures. These are in addition to the main penalty and include:

a) Restoration of the environment: the offender shall restore the environment to its former state as far as possible. If restoration is impossible or impracticable, financial penalties shall be imposed to compensate for the damage caused. The amount of the compensation shall be determined in accordance with the severity of the damage caused, established on the basis of expert assessments.

b) Financial penalties: The Directive provides for the imposition of fines, the amount of which is proportionate to the gravity of the offence as well as to the financial

situation of the offender. In determining the amount of the fine, factors such as the duration of the offence, the financial benefits of the criminal activity and the significance of the environmental damage caused are taken into account.

c) Additional sanctions: The Directive provides for a range of additional measures, such as disqualification from public funding (including prohibition from public procurement), revocation of permits, temporary bans on holding office, bans on standing for election, confiscation of the proceeds and proceeds of crime, etc. These measures are designed to deter future criminal activities and limit the offender's opportunities.

d) Publicity: In the public interest, the Directive allows for the publication of judicial decisions and sanctions imposed, including the personal data of convicted persons, but only in strictly justified exceptional cases to ensure a balance between the right to the protection of personal data and the public interest.

The combination of major penalties and ancillary sanctions is intended to create an effective and fair system for combating environmental crime, encouraging responsible environmental behavior and deterring future offences. In this respect, the system of sanctions envisaged is an excellent solution. The obligation to restore the environment by offenders would make a significant contribution to achieving the EU's main objective – a high level of environmental protection and improvement in the quality of the environment.

However, collateral sanctions and measures are conditional on the detection of crimes and their perpetrators and the conviction of offenders. Their implementation requires effective action by law enforcement authorities in the Member States. In this respect, the next objective is set out in the Directive.

4. Establish a clear and effective framework for law enforcement and cross-border cooperation in the fight against environmental crime

Directive (EU) 2024/1203 represents a significant advance in the fight against environmental crime, especially in terms of cross-border cooperation. The emphasis on coordination between Member States and European Union agencies (Eurojust and Europol) is a positive aspect, especially given the cross-border nature of many of these crimes. Differences in national legislation as regards the means of investigation, the authorities that carry them out and the lack of trained personnel with multilayered expertise seriously hampers the investigation [8] of cross-border crime.

Effective law enforcement in relation to this type of crime requires significant resources - training of specialists, equipment of laboratories, funding of investigations, etc. The Directive does not provide specific mechanisms for securing these resources, which may make it difficult to implement in practice.

Proving environmental crime is often complex, requiring immediate and thorough expert investigative action. In many cases, specific expertise is required and evidence may be difficult to access or require expensive analysis [9]. In this respect, the introduction of effective and proportionate means of investigation, even with enhanced cooperation between Member States, is a difficult task.

For example: Investigating air pollution requires specific analyses of air samples, modeling of contaminant distribution, and identification of the source of the pollution. Cooperation with meteorological services and specialized laboratories is often necessary. The study of pollution from industrial sources, such as factories or thermal power stations, usually requires the application of sensors to measure specific pollutants such as sulphur dioxide, nitrogen oxides and fine particulate matter. In addition, a public health impact assessment is carried out. Contamination of water bodies requires water sampling at various points, identification of the contaminants, identification of the source of the contamination and assessment of the extent of the harm. All this should be done as quickly as possible and by different teams, in view of the water's ability to dissolve substances and the rapid spread of pollution. The use of specialized equipment and cooperation with hydrologists and biologists may be necessary. When investigating contamination of bodies of water, such as rivers and lakes, following incidents such as chemical accidents or spills, underwater drones and specialized equipment are often used to take samples from inaccessible locations. Analysis of aquatic plants and aquatic organisms can provide information on long-term effects on ecosystems. Illegal waste management requires verification of documentation, inspection of waste disposal sites, analysis of waste composition and identification of those responsible. Waste management experts, geologists and chemists may be needed. In cases of pesticide contamination, it is important to use specialized laboratories to measure the levels of chemicals in soil and water. This process involves agronomists and soil science experts who assess the potential risks to nature and human health. Poaching requires field work, animal tracking, DNA analysis and collaboration with foresters, conservationists and biologists.

In order to achieve effective and unified enforcement, the Directive needs to go further by developing standardized investigative methods that take into account the specificities of different types of environmental crime, the diverse forms of criminal activity, the specificities of different environmental components and the interrelationships between them.

Another positive aspect and contribution to the fight against environmental crime is the decisions on the EU-wide unification of the statute of limitations for this type of crime, which is linked to the penalty of imprisonment. Another good proposal is the possibility for Member States to provide that the statute of limitations should start to run from the moment the offence is detected, because many offences are detected at a later stage.

The decision to provide protection to persons reporting environmental crime or assisting in the investigation of such criminal activity is also positive. Granting procedural rights in environmental crime proceedings to the public concerned in the form of affected citizens, NGOs promoting environmental protection and others with an interest is also a step forward. NGOs have sufficient resources to exert public pressure on law enforcement authorities to carry out effective investigations and render fair convictions.

The introduction of a system of statistics on environmental crime and its perpetrators should also be recognized as an important step in the fight against environmental crime.

Although the many guidelines for effective enforcement throughout the EU provided for in the Directive would achieve the desired effect, more specific guidelines are needed for investigating environmental crime and proving the criminal outcome.

IV. CONCLUSIONS

Directive (EU) 2024/1203 represents a significant advance in the fight against environmental crime. It proposes an innovative and effective system of sanctions, based on a differentiated approach, with a focus on environmental restoration through accessory sanctions. By identifying real environmental threats and clearly distinguishing administrative offences from environmental crimes, the directive undoubtedly provides more effective environmental protection than the directives it repeals.

However, achieving the desired effect depends on its successful transposition by EU Member States. A weak point is the approach retained in writing out the criminal elements and the reference to the numerous acts of the Union, which is not a good approach to inferring the elements in a criminal offence.

In order to fully achieve the objectives, set out in the Directive, further action is needed to define criminal offences more clearly, with minimal reference to environmental law to derive their elements, to develop

standardized methods for investigating and proving environmental damage, and to provide sufficient resources in this respect.

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