

## **Criminal Law Approaches to Preventing Environmental Offences in the European Union within the Framework of Sustainable Development**

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### **Abstract**

Environmental crime represents one of the most significant challenges that humanity is currently facing and will continue to face in the near future. The establishment of effective preventive policies and mechanisms presents major difficulties, caused on the one hand by the poor awareness—especially at the „microsocial” and „individual” levels—of the danger posed by this type of crime not only to humanity but to the entire planet. On the other hand, the strongly cross-border nature of environmental crimes requires that prevention efforts involve proactive cooperation between states at both regional and international levels.

The emergence of the concept of sustainable development has made a significant contribution to raising awareness of environmental issues, including from the perspective of criminal law, the prevention of acts that cause harm to the environment. This study explores the interaction between the concept of sustainable development and existing environmental crime prevention policies at the European level. In the same vein, the study addresses the evolution of criminal law policies for the prevention of environmental crime within the EU, particularly in light of the new preventive mechanisms introduced by 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, replacing Directives 2008/99/EC and 2009/123/EC.

**Keywords:** sustainable development, environmental crime, prevention, offence, criminal sanction, etc.

### **Introduction**

The development of a concept that ensures sustainable economic growth while conserving natural resources—so that future generations may also benefit from them—has been a key objective marking a new stage in human development. The concept of sustainable development emerged at the end of the 20th century as a result of increasing awareness of environmental problems and the depletion of natural resources caused by the unprecedented growth of global industry, environmental pollution, excessive production of consumer goods, and a significant increase in population.

In the context of globalisation and the internationalisation of social relations, “sustainable development” appeared as an international concept aimed at achieving a compromise between present and future generations. This compromise seeks to ensure that future generations benefit, on the one hand, from favourable living conditions and, on the other hand, from progressive and sustainable economic development.

In 1983, the United Nations General Assembly established the World Commission on Environment and Development. At the conclusion of its evaluation activities in 1987, the Commission produced the report *Our Common Future*. For the first time, the notion of sustainable development was defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (Report of the World Commission).

In September 2015, the United Nations adopted the 2030 Agenda for Sustainable Development at the Sustainable Development Summit held in New York. The Agenda is highly complex and includes 17 broad goals and 169 specific targets that cover all key aspects of economic, social, and environmental development. It is essential to note that the Agenda was designed to be adaptable to the priorities and specific needs of each country.

Within the European Union, sustainable development constitutes one of the fundamental priorities of policies promoted at the European level, with the concept being regulated by several treaties. Thus, in accordance with Article 3(3) of the Treaty on European Union: “The Union shall establish an internal market. It shall contribute to the sustainable development of Europe, based on balanced economic growth and price stability, a highly competitive social market economy that aims for full employment and social progress, and a high level of environmental protection and quality improvement. It shall promote scientific and technological advancement” (TEU). Similarly, according to Article 11 of the Treaty on the Functioning of the European Union: “Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular to promote sustainable development” (TFEU).

The EU has committed to implementing the 2030 Agenda for Sustainable Development, elaborated by the UN. According to point 1 of the Joint Declaration of the European Parliament, the Council, and the European Commission from 2017: “The 2030 Agenda for Sustainable Development, adopted by the United Nations in September 2015, represents the international community’s response to the challenges and global trends in sustainable development” (Declaration 2017/C 210/01).

## **Materials and methods**

### **Materials**

Starting from the premise that the present study is dedicated to the field of law, a body of normative acts adopted by the European Union has been utilized, aimed at regulating social relations within the domain of criminal environmental protection and the implementation of the international concept of “sustainable development” (TEU, TEUF, Declaration 2017/C 210/01, The Convention of November 4th, 1998, etc.). These international normative acts represent the legal framework whose cognitive understanding, implementation, applicative analysis, and situational interpretation in strict accordance with the will expressed by the legislative bodies condition a proper comprehension of the prevention of environmental crimes as an integral part of sustainable development policies. In this context, to ensure the theoretical foundation of

the paper, specialized works elaborated within the doctrine dedicated to the criminal prevention of environmental crimes in the European context were utilized, reflecting prior scientific benchmarks on the subject matter (Ulianovschii, 2023; Faure, 2017; Cardwell P.J., 2011; Nastas, Cernomoreț, 2024; etc.). These works have further substantiated the inescapable congruence between the implementation of the sustainable development concept and the evolution of the criminalization of environmental offenses at the European level.

### **Methods**

In the context of preparing the present study, a combination of research methods was employed: *the method of logical analysis*, focused on using logical reasoning to interpret European law norms, which allowed the legal argumentation of the theses, findings, and scientific results; *the method of critical analysis*, which enabled the synthesis and critical examination of doctrinal theses and existing legislative solutions regarding environmental offences; *the comparative method*, which consists of the comparative study of various European normative acts concerning the standards for criminalizing environmental offences; *the classification method*, which allowed the identification of different categories of environmental offences provided for in Community legislation, etc.

### **Results and discussion**

#### **Sustainable Development and Criminal Prevention of Environmental Offences**

Sustainable development is inextricably linked to environmental protection, as it is the unique setting in which the human species can exist and thrive. The concept of sustainable development emerged at a time when environmental issues were at the forefront of political debates. As a result of the United Nations Conference on Environment and Development (UNCED), held from June 3 to 14, 1992, in Rio de Janeiro, the international community officially recognized the necessity to integrate economic development and environmental protection within the goal of sustainable development. Furthermore, the growing importance of international environmental law was affirmed as a mechanism for codifying and promoting sustainable development” (Ulianovschii, 2023, p. 324).

Environmental protection is achieved through a set of social, political, economic, legal, and cultural measures and actions applied to maintain, protect, and improve natural environmental conditions, as well as to reduce or eliminate pollution and its sources. In academic doctrine, it is stated that “one of the principal elements of the object of criminology as a science is criminality, without the study of which it is impossible to clarify certain criminological issues related to the determinants of criminality and the organization of the process of combating it” (Nastas, Cernomoreț, 2023, p. 38).

Among the measures for protecting the environment are also preventive measures of a criminal nature, which consist in the criminalization and sanctioning of harmful acts whose commission entails actual harm or the emergence of a danger to the environment, including natural resources. Criminal preventive measures are only part of the legal tools ensuring environmental protection. They have a punitive character,

representing the harshest legal measures, as they involve applying criminal sanctions to individuals who persist in criminal behavior by committing environmental offences.

There is an inseparable link between the emergence of the concept of sustainable development and the development of criminal models for environmental offences in national criminal legislations. Firstly, it concerns a shift in perspective triggered by the scope of the sustainable development concept, which allowed raising awareness of the social danger posed by acts committed against the environment that have destructive effects on environmental elements and natural resources, not only in the present but also for the future. Secondly, the ongoing concern in the field of conservation and improvement of environmental conditions has made it possible to identify criminal acts, without the prevention of which it is impossible to ensure effective environmental protection within the context of sustainable development.

Under such conditions, a new social value subject to criminal protection has emerged in national criminal legislations. This protection is ensured through a mechanism specific to criminal law, which consists in the criminalization of dangerous conduct (harmful actions or omissions) that threaten social relations related to environmental protection, as well as the penal sanctioning of those who commit such acts.

When the legislator classifies a dangerous act as an environmental crime and establishes the corresponding criminal penalties, several criteria are taken into account to assess the social danger posed by the act: the character and nature of the actions, the hazard of polluting materials or substances, the source of pollution, the extent of pollution, the consequences that occurred, the *modus operandi*, the means used, the purpose, and so on.

Based on the strict requirements of the principle of legality, in the abstract evaluation of the social danger related to environmental offences and the imposition of penalties within criminal legislation, EU Member States will consider the incrimination standards prescribed by EU Directives.

In doctrine, it is rightly noted that “environmental criminal law is therefore no longer merely an appendix to environmental statutes, which predominantly have an administrative law character. In many legal systems, the environment has received more autonomous protection within the criminal law system” (Faure, 2017, p. 139).

#### **The Necessity of Criminal Protection of the Environment in the EU**

According to Article 4(2)(e) of the Treaty on the Functioning of the European Union (TFEU), the EU exercises shared competence in the field of “environment.” Under this competence, both the EU and the Member States may adopt laws and other binding acts concerning the protection, conservation, and improvement of the environment. At the same time, Member States exercise their competence restrictively, meaning they may act only to the extent that the EU has not exercised its competence. Furthermore, Member States may again exercise their competence if the EU decides to cease exercising that competence.

In accordance with Article 191(2) TFEU, environmental policy is based, on one hand, on the idea of a high level of protection and, on the other hand, on the criterion of effectiveness, taking into account the diversity of situations in the various regions where the EU intervenes. The specific principles upon which the EU exercises its competence in the environmental field are: the precautionary principle, the principle of

preventive action, the principle of remedying ecological damage at the source as a priority, and the “polluter pays” principle.

The principle of preventive action allows the EU to develop and implement a set of preventive policies and measures, including those of a penal nature. Competences in criminal matters are exercised by the EU strictly in accordance with the provisions of Article 83(1) of the Treaty on the Functioning of the European Union (TFEU).

The need to establish criminal protection of the environment within the EU through incriminatory standards and sanctioning models is justified by several arguments.

First, the European community has been alarmed by the exponential increase in the number of environmental offences, as well as by their long-term negative effects on environmental resources and human health. In addition, by their very nature, these acts clearly have the potential to produce the impact beyond the borders of the states where they are committed. The action or inaction constituting an environmental offence may take place in one country, while the resulting harm may occur in another. Therefore, the transboundary nature of such acts is evident, which calls for an appropriate response from the entire community. Legal scholars acknowledge that “environmental crime is equally one of the most profitable forms of transboundary criminal activity” (Cardwell, 2011, p.3). Under these circumstances, it became necessary for the EU to develop legal mechanisms to establish social control over environmental crime.

Second, systems of sanctions based on administrative or compensatory liability for breaches of environmental legislation have proven ineffective. In this context, it was considered that the arsenal of preventive ecological protection measures would be strengthened and made more effective through the introduction of criminal sanctions. Moreover, criminal sanctions are repressive measures that express a more substantial degree of social disapproval and have a greater deterrent effect compared to other categories of sanction.

Third, the existence of common substantive criminal law norms enables the development and implementation of joint mechanisms and methodologies for investigating environmental offences. This is a logical conclusion, since the same offences can be detected using uniform investigative methods and mutual assistance procedures in the Member States where they were committed or in which their effects were felt.

#### **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**

In 2008, the EU adopted Directive 2008/99/EC on the protection of the environment through criminal law, which reinforced Member States' stance of condemnation and zero tolerance towards environmental law violations. This legal act was strongly inspired and influenced by the 1998 Convention on the Protection of the Environment through Criminal Law of the Council of Europe. The preamble of the Convention sets out the positive obligations of the signatory states to develop domestic criminal law aimed at preventing serious dangers to the environment caused by “the uncontrolled use of technical means and the excessive exploitation of resources.” The Convention criminalizes acts such as: the disposal, emission or introduction of a quantity of substances or ionizing radiation into the atmosphere, soil, or water, which has caused death or serious injury to persons or which poses a significant risk in this regard; the illegal disposal, treatment, storage, transport, export, or import of hazardous

waste; the unlawful operation of a plant where a dangerous activity is carried out, as well as the manufacture, treatment, storage, use transport, export, and illegal import of hazardous waste; the unlawful operation of a plant engaged in a dangerous activity, as well as the manufacture, treatment, storage, use, transport, export, and illegal import of nuclear materials or other hazardous radioactive substances, etc. (The Convention of November 4<sup>th</sup>, 1998).

Through this Directive, the EU governance has established a high level of environmental protection, an objective also stated in Article 191(2) (formerly Article 174(2)) of the Treaty on the Functioning of the European Union. The Directive established the obligation for Member States to provide in their national legislation criminal sanctions for serious breaches of the provisions of EU environmental law.

Article 3 of the Directive enshrines a list of environmental offences, which are serious violations of EU environmental law. This effectively sets the minimum incriminatory standards for Member States by outlining the serious acts that constitute ecological crimes. Following the usual legislative technique, which involves describing criminal acts without using titles, these offences may conventionally be designated as follows:

- a) pollution of the air, soil, or water by substances or ionising radiation;
- b) breach of regulations concerning the management and disposal of waste;
- c) breach of regulations governing the transport of waste;
- d) operation of installations where hazardous activities are conducted or where hazardous substances or waste are stored;
- e) illegal trafficking of nuclear materials or other hazardous radioactive substances;
- f) killing, destruction, possession, or obtaining of specimens of protected wild fauna or flora species;
- g) trade in specimens of protected wild fauna or flora species, including parts or derivatives thereof;
- h) significant deterioration of a habitat within a protected site;
- i) production, importation, exportation, placing on the market, or use of substances that deplete the ozone layer (Directive 2008/99/EC points a-d).

Certain offences established are characterised as material offences, the severity of which is contingent upon the occurrence of detrimental consequences. Typically, such consequences involve "causing or creating a significant risk of death or serious injury to a person," or "substantial harm to the quality of air, soil, or water, as well as to flora and fauna," among others. Other offences are classified as formal offences, whose gravity is presumed by virtue of the mere commission of the illegal acts or omissions.

Regarding sanctions, it is essential to note that Directive 2008/99/EC does not prescribe specific minimum or maximum sanctioning standards applicable to environmental offences by Member States. Nevertheless, Member States are obligated to impose criminal penalties that are effective, proportionate to the seriousness of the offence, and capable of producing a deterrent effect.

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**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 repealing Directives 2008/99/EC and 2009/123/EC**

Despite numerous existing legal instruments at the European level, in recent decades there has been an exponential increase in environmental crime, which has been declared one of the most dangerous forms of cross-border criminal activity. According to the European Commission's Recommendation and the Council Decision of 7 July 2023:

“Crimes against the environment and significant damage to the environment and human health have become increasingly alarming for the EU and the entire world. The estimated annual losses related to environmental crimes range between USD 91 billion and USD 258 billion. This means that environmental crimes constitute the fourth largest criminal activity worldwide, after drug trafficking, human trafficking, and counterfeiting. Environmental crimes have been increasing annually by between 5% and 7%. Crimes such as illegal logging, water, air, and soil pollution, trafficking in ozone-depleting substances, poaching, overfishing, and other criminal acts seriously affect biodiversity, harm human health, and destroy entire ecosystems” (Recommendation of the European Commission, ETS No. 172).

In the context of the increasing spread of environmental crimes and the concerning damage they cause to human health and natural resources, the need to reform European legislation on criminal liability for environmental offenses has arisen. As a result of evaluations, fundamental issues related to the implementation of Directive 2008/99/EC across all EU Member States were highlighted. Among the main problems, the European Commission listed: “the absence of comprehensive data on environmental crimes; lack of clarity regarding certain legal terms; significant disparities in penalties applied from one Member State to another, including ancillary sanctions and sanctions for legal persons; lack of flexibility in adapting the scope of the Directive; deficiencies in cross-border cooperation, including the insufficient awareness of prosecutors and judges regarding the situation” (Report on the Replacement of Directive 2008/99/EC).

Consequently, within the EU, 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, repealing Directives 2008/99/EC and 2009/123/EC, was adopted. The new Directive aims to achieve the following objectives: enhancing cross-border cooperation in the field of environmental crimes; clarifying relevant legal terms used in the definition of offenses; improving data collection mechanisms; ensuring a clearly defined sanctioning regime that is effective, dissuasive, and proportionate to the harmfulness of environmental offenses; and expanding the range of preventive measures applicable to environmental crimes.

The new Directive revises the list of environmental offenses by introducing new serious violations of environmental law. It also seeks to increase the precision of the terms and expressions used in defining environmental crimes, thereby facilitating both legal classification and the detection of offenses in this area. The introduction of new environmental offenses is based, among other sources, on the Commission communications of 11 December 2019 on the “European Green Deal” and of 20 May 2020 on the “EU Biodiversity Strategy for 2030 – Bringing nature back into our lives”.

Environmental offenses under Directive 2024/1203 can conventionally be referred to as:

- a) pollution of air, soil or water by materials or substances, energy or ionizing radiation;
- b) placing on the market in violation of prohibitions or requirements of products resulting in air, soil or water pollution;
- c) violation of the rules of circulation of substances dangerous to the environment or to human health or life
- d) violation of the rules of circulation of mercury, mercury compounds, mercury mixtures and mercury-added products;
- e) operation of projects without development consent;
- f) violation of waste movement rules;
- g) transfer of waste in violation of prohibitions;
- h) ship recycling in violation of requirements;
- i) discharge of polluting substances from ships;
- j) operation or closure of a facility where a hazardous activity is carried out or where hazardous substances or mixtures are stored or used;
- k) the construction, operation and dismantling of a plant in which a dangerous activity is carried out or in which dangerous substances or mixtures are stored or used;
- l) violation of the rules of movement of radioactive materials or substances;
- m) abstraction of surface or ground water;
- n) killing, destroying, taking, taking, possessing, selling or offering for sale a specimen or specimens of a species of wild fauna or flora;
- o) trade in a specimen or specimens, or parts or derivatives thereof, of species of wild fauna or flora;
- p) placing or making available on the Union market or export from the Union market of raw materials or other relevant products associated with deforestation and forest degradation in violation of the prohibitions;
- q) damaging a habitat within a protected site or disturbing animal species;
- r) illegal movements, including the spread of invasive alien species of concern to the Union;
- s) the production, placing on the market, import, import, export, use or release of ozone-depleting gases in pure form or as mixtures;
- t) the production, placing on the market, import, export, use or release of fluorinated greenhouse gases (Directive EU 2024/1203).

Most of the recorded offenses are described as material offenses, with their severity conditioned by the occurrence of consequences provided in relation to each specific offense. It is plausible that the Directive contains criteria for evaluating these harmful consequences, which results from the requirements of the principle of legality of incrimination. For example, according to point (14) of Directive 2024/1203, "for the purposes of this Directive, the term 'injury' should be understood as any form of physical injury to a person, including a change in bodily function or cellular structure, causing temporary, chronic, or fatal illness, malfunctioning of the organism, or any other physical health impairment, but excluding mental health" (EU Directive 2024/1203).



Another approach of the 2024 Directive concerns the sanctioning system applicable to environmental offenses. To enhance the deterrent effect of criminal prevention, harsher sanctions have been introduced. Moreover, unlike the 2008 Directive, the 2024 Directive sets maximum limits for criminal sanctions that Member States may impose for environmental offenses.

In addition to imprisonment, a range of complementary criminal sanctions may be applied to natural persons (Article 5(2) of the 2024 Directive): the obligation of the offender to restore the environment within a determined timeframe, provided the damage is reparable; the obligation to pay compensation if the offender is unable to restore the environment; fines proportional to the severity of the offenses and the financial situation of the offender; exclusion from access to public funds; exclusion from public procurement procedures, grants, concessions, licenses, etc.

The limits of criminal sanctions applicable to legal persons are stipulated in Article 7 of the 2024 Directive. For more serious environmental offences, the maximum fine level must not be less than 5% of the total worldwide annual turnover of the legal person or an amount equivalent to 40,000,000 euros. For other offences, the maximum fine level must not be less than 3% of the total worldwide annual turnover of the legal person or an amount equivalent to 24,000,000 euros (EU Directive 2024/1203).

### **Conclusions**

In light of the examinations carried out in this study, we observe an indispensable connection between the implementation of the Sustainable Development Goals and the progressive trends of criminalising environmental offences within the EU. This trend is natural, as the protection of the environment and natural resources, key elements of sustainable development, cannot be ensured without the prevention and repression of the most serious acts that jeopardise them and result from human activity. In this context, the criminal prevention of environmental offences was initially enshrined in international instruments and later incorporated into EU legislation and the criminal laws of Member States.

The criminal policy aimed at preventing environmental crime must focus on the transnational nature of environmental offences, determined by their inherent susceptibility to be committed and to cause harm at a cross-border level. Therefore, to ensure effective prevention and combat activities, it is imperative that the arsenal of preventive criminal measures also has a cross-border character. This arsenal is primarily shaped by international legal assistance in criminal matters and common standards for the incrimination, sanctioning, and investigation of environmental offences.

Consequently, environmental criminal law can no longer be viewed as a marginal branch, but rather as a strategic dimension of public policies for sustainable development, in a joint effort to protect the world's natural heritage.

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