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Master's Thesis

Protection of the environment through the criminal law

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ABSTRACT

This research explores the role of criminal law in protecting the environment by analyzing its deterrent and punitive functions. It investigates the development and implementation of international and national environmental criminal legislation, assessing their effectiveness and identifying enforcement challenges. By examining case studies and proposing improvements, the study aims to enhance the legal framework for environmental protection, ensuring accountability for individuals and corporations that harm the environment.

Keywords: environmental protection, criminal law, corporate liability, international conventions, enforcement, environmental crime, transposition.

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INTRODUCTION

Relevance of the Topic:

The rapid globalization and technological advances facing global society is the urgent need to establish an effective framework that protects our environment. With each passing year, human actions increasingly cause harm to nature, leading us closer to environmental devastation. This not only affects the world around us, but also our own well-being. As Amir Szönyi Dandachi rightly pointed out in her article: «*All the efforts of public authorities in one country are rendered powerless against pollution that crosses borders. No government can persuade migrating animals to remain within the national territory, refusing the migration that they have carried out for millennia to better protect them. Effective environmental protection is possible only through international cooperation.*¹»

The relevance of protecting the environment through criminal law has escalated in both theoretical and practical contexts, particularly as global environmental challenges intensify. Criminal law serves as a critical instrument in addressing severe violations that administrative and civil measures may inadequately deter. The significance of this topic is underscored by the increasing incidence of environmental crimes, such as illegal logging, hazardous waste disposal, and wildlife trafficking, which have profound impacts on ecosystems and human health. As Professor Neil Gunningham articulates, "Criminal sanctions are especially useful in cases when other regulations might be ignored or regarded merely as a cost of doing business".

Aims, Tasks, and Objectives:

The primary aim of this thesis is to comprehensively evaluate the effectiveness of criminal law in safeguarding the environment. This objective is pursued through the following tasks:

- 1 To analyze the role and efficacy of criminal law in deterring and addressing environmental crimes.
- 2 To investigate the evolution and implementation of international and national environmental criminal legislation.

¹ Szönyi Dandachi, A. (2003) 'La Convention sur la protection de l'environnement par le droit pénal', *Revue juridique de l'Environnement*, 28(3), pp. 281-288.

- 3 To assess the impact of key international conventions and national laws on environmental protection practices.
- 4 To identify existing challenges and propose actionable improvements to enhance the enforcement of environmental criminal laws.

By delineating these tasks, the thesis aims to answer critical questions regarding the capacity of criminal law to serve as a robust mechanism for environmental protection, the extent of its current application, and areas where it may be further strengthened.

Methods:

The methodology employed in this research is multi-faceted, encompassing doctrinal analysis, comparative legal analysis, and case studies. These methods are essential for providing a comprehensive understanding of the theoretical foundations and practical applications of environmental criminal law.

- 1 **Doctrinal Analysis:** This involves a detailed examination of primary legal sources, including statutes, regulations, and case law. Key legal texts and judicial decisions are analyzed to understand the current legal landscape and the application of criminal law in environmental contexts.
- 2 **Comparative Legal Analysis:** This method compares the environmental criminal laws of different jurisdictions to identify best practices and common challenges. By examining the laws of countries such as the United States, the European Union member states, and other relevant nations, the study seeks to highlight effective legal frameworks and enforcement strategies.
- 3 **Case Studies:** Detailed case studies of significant environmental crimes, such as the Volkswagen emissions scandal and the illegal logging in the Amazon, provide practical insights into the implementation and enforcement of criminal law. These case studies help illustrate the real-world impact of legal provisions and enforcement mechanisms.

Originality:

This thesis contributes original insights by critically analyzing the dual roles of criminal law in environmental protection—as a deterrent and as a punitive measure.

By examining recent developments and proposing innovative solutions, the thesis addresses gaps in the current literature. For instance, it discusses the potential inclusion of

ecocide in the Rome Statute of the International Criminal Court, reflecting the growing international consensus on the need for stronger legal mechanisms to protect the environment.

Novelty:

The novelty of this research lies in its comprehensive approach to understanding and improving the role of criminal law in environmental protection. Unlike previous studies that may focus narrowly on either deterrence or punishment, this thesis integrates both aspects to provide a fuller picture. Furthermore, it brings to light new and emerging issues, such as the concept of ecocide, and examines how these could be incorporated into existing legal frameworks to enhance their effectiveness. The comparative analysis of different jurisdictions also provides fresh insights into best practices and common challenges, contributing to a more nuanced understanding of global environmental criminal law.

Sources:

The research draws on a diverse array of sources to ensure a robust and comprehensive analysis. These include:

- 1 Academic Monographs and Journal Articles: Foundational texts such as Gunningham's "Environmental Law, Compliance, and Governance" and other scholarly works provide critical theoretical underpinnings and contemporary perspectives on environmental criminal law.
- 2 Legal Texts and Case Law: National statutes, international treaties, and landmark judicial decisions form the core legal materials analyzed. Conventions like MARPOL, the Basel Convention, and the Convention on the Protection of the Environment through Criminal Law are pivotal in understanding the international legal framework.
- 3 Reports and Publications: Documents from environmental organizations such as Greenpeace, and legal bodies like the International Criminal Court, offer practical insights and highlight ongoing efforts in environmental protection.

These sources collectively provide a comprehensive foundation for the analysis, ensuring that the research is grounded in both theoretical and practical realities.

The master's work consists of abstract, introduction, four chapters, conclusion, list of used sources.

CHAPTER 1: FOUNDATIONS OF INTERNATIONAL ENVIRONMENTAL CRIMINAL LAW

"Criminal sanctions are especially useful in cases when other regulations might be ignored or regarded merely as a cost of doing business"² (Gunningham, 1995).

1.1 The Role of Criminal Law in Deterring and Addressing Environmental Crimes

The role of criminal law in environmental protection is multifaceted, extending from local to national and international levels. One of its primary functions is the deterrent effect. The prospect of criminal prosecution and the associated severe penalties can act as a powerful deterrent to potential violators.³ For example, in cases of illegal hazardous waste disposal, criminal law not only imposes fines but also serves to publicly highlight the serious consequences of such actions, thereby deterring others.

Criminal law provides a framework for accountability, what is critically important because environmental harm is often not the result of accidental actions but the consequence of deliberate non-compliance with the law. For example, the prosecution of Volkswagen in the 2015 emissions manipulation case, where it was found that the company intentionally manipulated diesel engines to circumvent emissions tests, underscores how criminal proceedings can ensure corporate responsibility⁴, as noted in "Corporate Crime and Environmental Law."⁵ Criminal law ensures that both individuals and corporations are legally accountable, emphasizing that non-compliance with environmental standards is unacceptable.

The capacity of criminal law for effective enforcement in the realm of environmental protection is also crucial. It allows for immediate and decisive action in situations where environmental damage may have irreversible consequences. For instance, in the case of illegal logging in protected areas, which contributes to deforestation and biodiversity loss, criminal law not only punishes offenders but can also provide mechanisms for the restoration of affected areas.

² Gunningham, L. (2009) Environment Law, Regulation, and Governance: Shifting Architectures.

³ Gunningham, L. (2009) Environment Law, Regulation, and Governance: Shifting Architectures.

⁴ New York Times (2017) Volkswagen emissions scandal timeline.

⁵ Wells, C. (2017) Corporate Crime and Environmental Law

From the perspective of public safety, criminal law addresses actions that directly threaten human health. Illegal handling and disposal of toxic chemicals, which can contaminate water resources and agricultural lands, pose serious health risks. In such cases, the intervention of criminal law is vital, as it not only halts these practices but also prioritizes public health and safety over profit or convenience.

1.2 Development of Environmental Criminal Law

In many European countries, the concept of crime against environment is rarely used, its analogues are such concepts as environmental crime, crime against wild nature, etc. In addition, in the United States and other Western countries, the concept of "environment" is considered much wider and may not be associated with the natural environment at all. Thus, the word environment is more often defined as "all conditions that surround and affect the development of the organism" or "taken together physical, economic, cultural, aesthetic and social circumstances and factors that surround and affect the state and value of property, those that also affect the quality of human life"⁶.

Within the domain of criminal law, the primary focus is to establish the legal boundaries that classify certain actions as criminal offenses. This entails evaluating the extent of harm inflicted, the intention behind the actions, and the causal connections between these actions and their consequences. However, the intricacies of environmental crime surpass the conventional scope of criminal law, necessitating a nuanced exploration of the broader social and environmental contexts in which these offenses occur. In this context, criminal law is only a tool of last resort in the field of environmental protection, but it is also of particular importance because it has repressive and preventive functions.⁷

In the latter half of the 20th century, the urgency of environmental problems throughout the world, such as pollution, deforestation, and biodiversity loss, began to receive international attention and as a result awareness of these difficulties has led to an increase in interest in international regulation and coordination of actions to prevent these issues, including criminal repercussions. The issue of environmental protection through criminal law was not well defined at the time and was mostly handled at the national level. While environmental crimes were already covered by several state criminal laws, the majority of international law were concentrated on administrative and civil remedies. Hence, MARPOL, International Convention for the Prevention of Pollution from Ships,

⁶ BLACK H.C., *Black Law Dictionary with Pronunciations, 6th Edition, West Publishing, St. Paul, Minn,* 1990, p.534

⁷ European Committee on Crime Problems, 2022

signed in London in 1973 does not mandate criminal responsibility per se⁸, it does require states to enact all applicable laws, regulations, and other measures to implement the Convention's requirements. States parties should ensure a thorough investigation of every occurrence that has caused or threatened to cause pollution, according to Article 4 of this Convention. Furthermore, States are mandated by Article 4 to take necessary legal action against vessels that violate the convention's requirements, in accordance with their own legislation.

The same year was adopted Convention on International Trade in Endangered Species of Wild Fauna and Flora, more commonly known as CITES. Like MARPOL, it did not imply direct criminal responsibility for environmental crimes, but it did encourage some countries to include criminal sanctions in their national laws for serious breaches of the convention.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was adopted in 1989, which criminalizes the illegal trade in wastes and calls on countries to severely punish it. The Convention also does not prescribe specific criminal sanctions, but it requires States parties to adopt the legislative and other measures necessary to prevent and punish the illegal movement of hazardous wastes.

Finally, in light of these circumstances, in November 1998 the Council of Europe enacted the Convention on the Protection of the Environment through Criminal Law (CETS 172, 1998), which was the first legally binding international agreement that required the criminalization of actions that harm the environment.

⁸ International Maritime Organization, 1973/1978. MARPOL, Art. 4, para. 1.

CHAPTER 2: ENFORCING ENVIRONMENTAL PROTECTION THROUGH THE CRIMINAL LAW AT THE INTERNATIONAL LEVEL

The present chapter analyses how international criminal law adapts to the protection of the environment, assesses the current effectiveness of these measures and suggests ways to improve international norms and practices. A key element of the analysis is a review of existing conventions and their impact on national legislation, as well as a discussion of the potential of new international standards, such as the criminalization of "ecocide".

2.1. Assessing the Impact of Convention on the Protection of the Environment through Criminal Law

Convention on the Protection of the Environment through Criminal Law (CETS 172) was opened for signature in 1998, but like most international treaties, convention required ratification by national parliaments, therefore its adoption and ratification took time in different countries and Convention entered into force in 2002. Among the first international instruments, it advocated the criminalization of serious environmental crimes and provided a foundation for the further development of criminal legislation in the area of protection of the environment. The convention arises from a recognition that administrative and civil penalties alone are insufficient to deter significant environmental harm, proposing instead that such harm should be subject to criminal sanctions.

The categorization of deliberate offenses involving the unlawful release of dangerous substances that have the potential to seriously affect the environment or human health is outlined in Article 2 of the CETS Convention No. 172. Countries must make these crimes illegal⁹. Article 3 expands the definition of liability to include careless actions that cause comparable harm. This covers situations in which carelessness rather than deliberate action results in harm¹⁰. By extending the reach of criminal and administrative responsibility for actions that would not meet the stricter requirements outlined in articles 2 and 3, article 4 enhances the preceding articles. This covers a range

⁹ Council of Europe (1998). Article 2, Convention on the Protection of the Environment through Criminal Law.

¹⁰ Council of Europe (1998). Article 3, Convention on the Protection of the Environment through Criminal Law.

of unlawful actions that damage the environment, such as factory operations and dumping damage.¹¹

States that have signed the convention should criminalize environmental violations based on the principle of illegality. Illegality in this context is defined in Article 1 as acts contrary to laws, administrative regulations or decisions of authorities aimed at environmental protection. Administrative law may specify which actions are permitted or prohibited to protect the environment, meaning that each country can determine what constitutes an acceptable level of environmental safety and risks, setting limits beyond which acts may be criminalized. This apparent freedom granted to States leads us to the first problematic issue of this convention - the freedom given to participating countries to determine levels of illegal activities may lead to uneven application of criminal law to environmental crimes. This may lead to a situation where the same act is considered a crime in one country and not in another. Such an approach potentially weakens international efforts to combat environmental crime and hampers cooperation and coordination at the international level.

“Each Party shall adopt, in accordance with the relevant international instruments, such appropriate measures as may be necessary to enable it to make the offences established in accordance with Articles 2 and 3 punishable by criminal sanctions which take into account the serious nature of these offences. The sanctions available shall include imprisonment and pecuniary sanctions and may include reinstatement of the environment.” (Article 6, CETS 172).

Article 6 of the Convention requires States parties to ensure adequate criminal sanctions for serious environmental crimes commensurate with their gravity. This includes the possibility of imprisonment and fines. The article also refers to the restoration of the environment as a possible measure that States may choose to take. Sanctions for legal persons are dealt with separately in article 9. It is important that sanctions adequately reflect the seriousness of offences, emphasizing the need for effective measures to prevent environmental violations.¹²

¹¹ Council of Europe (1998). Article 4, Convention on the Protection of the Environment through Criminal Law.

¹² Council of Europe (1998). Article 6, Convention on the Protection of the Environment through Criminal Law.

“Each Party shall adopt such appropriate measures as may be necessary to enable it to impose criminal or administrative sanctions or measures on legal persons on whose behalf an offence referred to in Articles 2 or 3 has been committed by their organs or by members thereof or by another representative.”

Article 9 regulates the liability of legal persons for environmental offences.¹³ The article underlines the difficulties of holding individuals acting on behalf of corporations accountable because of the complexity of the structure of large organizations. The Convention requires criminal law to include corporate liability even if the offences are committed on behalf of a legal person. However, it left States free to choose between criminal and administrative sanctions. States may also make reservations regarding the application of the article when ratifying or acceding to the Convention.¹⁴

There appeared to be some shortcomings regarding the Convention on the Protection of the Environment through Criminal Law, which pointed to general difficulties commonly encountered in the field of treaties.

First, the Convention on the Protection of the Environment through Criminal Law seeks to ensure its universal, if not very broad, application in a cultural, legal and environmental context. This is a noble objective, but it is very difficult to put into practice because it must take into account different national laws and enforcement capacities.

Second, Convention contains many rather vague formulations that give signatory States too much latitude to interpret and apply CETS 172. This flexibility results in uneven enforcement and effectiveness, given that countries may to some extent implement the Convention’s mandates depending on their national priorities and what they consider to be an environmental crime. Such ambiguity had weakened the very purpose of the convention in order to establish a fair international standard for the definition of crimes causing damage to the environment.

Nonetheless, as previously stated, this treaty played a key role in the development of environmental criminal law and the implementation of corporate responsibility for environmental crimes. Even though this treaty has only had 14 signatures and 1 ratification out of the expected 40 States, and it has not yet come into force, it is

¹³ Council of Europe (1998). Article 9, Convention on the Protection of the Environment through Criminal Law.

¹⁴ Council of Europe (1998) *Explanatory Report to the Convention on the Protection of Environment through Criminal Law*. Strasbourg, 4 November

important as it provides as a precedent to the Directive's adoption in the European Union.

The ongoing battle against environmental crime, which includes issues that transcend national borders, heavily relies on robust international cooperation. Such collaboration among nations is critical to ensure that their respective authorities, tasked with the prevention and prosecution of environmental crimes, operate in unison. Proposing a new legal instrument through the Council of Europe provides a prime opportunity to establish uniform regulations for enhanced global cooperation, leveraging existing international frameworks already in place by the Council.

The Council of Europe has made a long-standing commitment to assist European countries with their biggest challenges. Their objective is to provide coordinated responses to the legal, social, and political issues that face each of its member nations. The stakes are especially high considering increasing concerns regarding environmental protection, including the use of criminal law procedures to address such issues. Environmental problems are increasingly seen to be complex, systemic challenges spanning generations and directions, in addition to being ecological disasters.

These intricate problems need an organized strategy that goes above and beyond traditional solutions. The purpose of the Council of Europe's new legislative framework is to provide a coherent and well-thought-out global strategy for both environmental preservation and crime prevention by giving member states the tools they need to tackle these common challenges more successfully.

The complexity of these challenges has increased due to the involvement of organized crime and their global nature. According to INTERPOL and the United Nations Environment Program (UNEP), environmental crime ranks as the fourth most common criminal activity worldwide¹⁵. One significant challenge that has been identified is the absence of consistency in the classification of environmental crimes across different legal frameworks. By "forum shopping" to operate in places where their behaviors are not deemed unlawful, criminals take advantage of these variations and cause significant and long-lasting environmental harm.¹⁶

¹⁵ UNEP – INTERPOL Report: Value of Environmental Crime up 26%, 2016,

¹⁶ *Council of Europe to draft a new global convention to protect the environment through criminal law.* 24 November 2022

2.2 Balancing Sovereignty with International Criminal Law

In the case of sovereign or cosmopolitan crimes, where the issue of "impunity" becomes central, the reluctance to criminalize or enforce existing criminal offenses is linked to traditional assertions of sovereignty. In many cases, the state with jurisdiction is controlled by the very individuals who committed the offense. Interstate offenses can also be blocked by competing state interests, which can hinder the emergence of enduring offenses such as aggression. States may be more interested in suppressing transnational crimes, but the multiplicity of locations where these crimes are committed can make jurisdictional reach difficult.

Environmental harm creates its own impunity problem, which is not predominantly interstate or political in the narrow sense. Prosecution of environmental crimes that cause global harm can create unprecedented problems of extraterritoriality and potential interference in the internal affairs of other states, even if it is difficult to determine where the responsibility for prosecution lies. For instance, the Convention on the Protection of the Environment through Criminal Law (CETS No. 172) emphasizes that environmental protection should be achieved primarily through other measures, with criminal law playing a supplementary role, complicating the application of criminal sanctions to environmental offenses at the international level.

These problems of extraterritoriality and interference are further complicated by the question of who should bear responsibility for prosecution, especially when harm is inflicted on global commons. Such a situation can lead to states being reluctant to assume the responsibility of prosecuting environmental crimes, even if they recognize the long-term benefits of such actions. Furthermore, the immediate costs of conducting prosecutions and the potential economic and political costs may deter states from actively participating in the prosecution of environmental offenses.

2.3. Drafting a New Global Convention on Environmental Crime

The terms of reference for a new committee of experts (PC-ENV) were adopted by the Ministers' Deputies on November 23, during their 1449th meeting. The task assigned to CDPC-EC Working Group comprised of 32 experts representing 23 states is to draft a new Council of Europe convention that addresses environmental criminal protection. They also cited Consultative Council of European Prosecutors (CCPE) Opinion No. 17 (2022), which addresses the prosecutor's role in environmental protection.

This initiative is essential and urgent given the rate at which environmental degradation incidents, such as habitat destruction, biodiversity loss, resource depletion, and climate change are happening.

According to the examination of the 1998 Convention, the establishment of a new Convention on the Protection of the Environment by Criminal Law is based on two fundamental objectives:

1. Strengthen the battle against national and transnational environmental crimes.
2. Incorporate minimum rules for states into their national legislation.

When drafting a new convention, it is essential to provide universally accepted meanings for terminology. This involves interpreting the environmental issues that states are now dealing with, which supports the need for improved protection provided by unified criminal and administrative standards. In view of the above, primary and, as previously stated, essential changes should be implemented to Article 1.

Article 1 currently includes only two definitions:

a "unlawful" means infringing a law, an administrative regulation or a decision taken by a competent authority, aiming at the protection of the environment;

b "water" means all kinds of groundwater and surface water including the water of lakes, rivers, oceans and seas.¹⁷

In connection with the continuous evolution of environmental legislation, terms such as Environment, Waste, Biodiversity, Habitat, Ecosystems, Legal entity, Illegality and Victim can be discussed in possible future negotiations for a new convention.

As the Belgian delegation had very rightly pointed out, particular attention should be given to the inclusion of the term "ecocide" as one of the most important terms. Ecocide, proposed as a legal term for large-scale damage or destruction of ecosystems, has become increasingly relevant in the context of global environmental crises.

The inclusion of that term in the new convention not only underscored the seriousness of such crimes against the environment but also helped to build international consensus on the need to combat them. It could also encourage countries to comply more

¹⁷ Council of Europe (1998). Article 1, Convention on the Protection of the Environment through Criminal Law.

closely with environmental standards and discourage actions that could have irreversible consequences for nature and humanity.

The working group has repeatedly emphasized that in developing a potential new convention, the experts of the future Document Drafting Committee should maintain the essential interdependence of administrative and criminal law and find the most appropriate solution, considering the widely held view among member states about the need for such interdependence of administrative environmental law and criminal law. In most EU countries, non-compliance with administrative regulations is one of the constituent elements of a criminal offense. An example of such a transition from an administrative violation to a criminal offense can be found in Article 325 of the Spanish Criminal Code (Spain. Criminal Code, art. 325), which is key in the context of criminal liability for environmental crimes. This article establishes criminal liability for pollution if it can cause harm to human health or affect significant portions of the environment. Importantly, criminal liability arises if the actions or inaction that led to the pollution occurred in violation of specific administrative regulation.

The new Convention must tackle all the weaknesses of the prior convention, so at the first of four Commission of Experts meetings, each delegation was given questions to help provide an understanding of the problems facing the environmental crime convention and avoid developing a document that could fail again. The first question was asked why your state didn't sign or ratify the 1998 Convention on the Protection of the Environment through Criminal Law.

The primary argument put forward by European Union member states as Finland, France, and Germany for not ratifying the 1998 Convention was the existence of EU Directive 2008/99/EC, which supported the EU framework above competing foreign agreements. Despite establishing a more immediately applicable legal structure within the scope of EU legislation, the Directive essentially covers the same subjects as the Convention.

Non-EU countries, such as Norway and Switzerland, place less significance on EU directives. These countries are more concerned with how international conventions align with their national legislation than with EU legislation.

In the second question, participants were asked to identify specific components (and/or proposed articles) of the 1998 convention that, in your nation's opinion, are still

important today and need to be a part of any future conference. After review, the following 1998 Convention articles might be acceptable to remain in a future new Council of Europe Convention, perhaps with some modifications: Article 5 – Jurisdiction; Article 6 – Sanctions for environmental offence; Article 7 – Confiscation measures; Article 8 – Reinstatement of the environment ; Article 9 – Corporate liability; Article 10 – Co-operation between authorities; Article 11 – Rights for groups to participate in proceedings; Article 12 – International co-operation.

One of the primary challenges in combating environmental crimes is the variability in how they are defined across jurisdictions. The existing Article 1 of the convention provides basic definitions but lacks the specificity needed to encompass a broader spectrum of environmental damages that modern industries might inflict. The new convention proposes expanding these definitions to include terms like "biodiversity," "ecosystems," and notably, "ecocide."

Ecocide, as noted in the discussions, has emerged as a critical term in environmental law. It refers to extensive damage, destruction, or loss of ecosystems of a given territory, such that the peaceful enjoyment by the inhabitants has been or will be severely diminished. This term has gained traction globally and is under consideration by the International Criminal Court as a potential addition to its list of prosecutable offenses. By incorporating "ecocide" into the convention, the Council of Europe can provide a legal framework that aligns with international efforts to criminalize the most severe forms of environmental harm, setting a precedent for member states to follow.

The revised convention should integrate both preventative and repressive strategies for addressing grave environmental infractions. Preventative mechanisms should be designed to deter both individual offenders—from initiating or repeating transgressions—and the broader societal group from engaging in such activities. While restorative interventions typically reside within the domains of civil or administrative law, several national legal frameworks incorporate these restorative approaches within their criminal legislation. As such, the inclusion of "Sanctions for environmental offence", "Restorative Measures" or "Environmental Compensation Measures" should be deliberated as viable alternatives in the formulation of a forthcoming Convention.

CHAPTER 3: EVOLUTION OF EU ENVIRONMENTAL CRIMINAL REGULATIONS

The European Commission puts emphasis on the efficient execution and adherence to its environmental legal framework more than before. To discourage especially significant activities that affect the environment and to encourage adherence to environmental legislation, criminal law has become recognized as essential.

An important attempt to unify and strengthen criminal law mechanisms for environmental protection at the EU level has been the adoption of Framework Decision of the Council of the EU 2003/80/JHA of January 27, 2003 "On Criminal Legal Environmental Protection" which was adopted taking into account the Council of Europe Convention of November 4, 1998 "On Criminal Legal Environmental Protection". In addition to being a requirement for States, the decision meant the establishment of uniform minimum criteria for criminal penalties across the European Union, which was a major step in harmonizing the legal systems of member states in this area. Major violations of environmental laws, such as significant contamination of the air, water, or land that might result in human or animal deaths or serious health risks, will be made unlawful by the members.

The European Commission sought to annul Council Decision 2003/80/JHA, arguing that it was based on an incorrect legal basis. The Commission argued that the decision should have been based on article 175 of the EU Treaty (now TFEU), which dealt with environmental policy, rather than on article 34 of the Treaty on European Union relating to police and judicial cooperation in criminal matters.¹⁸ ECJ found generally, neither criminal law nor the rules of criminal procedure fall within the Community's competence, but it does not prevent the Community legislature "from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective"¹⁹. In its judgment, the Court determined that the Framework Decision, which was indivisible and founded on an inappropriate legal basis, infringed upon the competencies conferred to the Community under Article 175 of the EU Treaty.

¹⁸ Council of the European Union (2003) Council Framework Decision 2003/80/JHA of 27 January 2003 on Protection of Environment Through Criminal Law.

¹⁹ Judgment of Court (Grand Chamber) 13 September 2005 In Case C-176/03, *Official Journal of European Union*, C 315/2., 10.12.2005;

Consequently, it was necessary to annul the decision as it contravened Article 47 of the EU Treaty.

Another step towards the improvement of criminal and legal norms at the level of the EU and its member states was The Sixth Community Environment Action Programme (6th EAP), established by Decision No 1600/2002/EC, primarily focused on setting the broad environmental goals and policy agenda for the European Union. Although it was not directly aimed at shaping criminal environmental law, its influence on this area can be understood in terms of setting priorities that led to the enhancement of legislative and enforcement frameworks within the EU.

The priorities and objectives outlined in the 6th EAP helped guide the development of specific environmental legislation that included provisions for criminal sanctions. For instance, the program's emphasis on issues like chemical pollution, waste management, and biodiversity protection highlighted the need for stringent enforcement measures, which often necessitated criminal penalties to ensure compliance.²⁰

Due to this, new or enhanced directives requiring Member States to establish criminal sanctions for significant environmental crimes were introduced. For example, the priorities established by the 6th EAP affected the ensuing Environmental Crime Directive (2008/99/EC).

With the goal to reach the EU's environmental objectives by 2012, the Sixth Community Environment Action Programme (6th EAP) created a framework for environmental policymaking inside the EU. It outlined how laws and environmental protection measures should be integrated across the Community. This framework is reinforced by the Environmental Crime Directive, which requires Member States to include criminal sanctions for serious violations of EU environmental standards in their national jurisdiction.

3.1 Directive of the European Parliament and the Council of November 19, 2008 "On Environmental Protection by Criminal Law

During the past 20 years, environmental protection has become one of the most significant legislative subjects in the EU. This process is thus continuing by Directive of the European Parliament and the Council of November 19, 2008 "On Environmental Protection by Criminal Law"(Directive 2008/99/EC) on the usage of criminal law to

²⁰ European Parliament and the Council of the EU, 2002. Article 2, Decision No 1600/2002/EC of 22 July 2002 laying down the Sixth Community Environment Action Programme

enforce environmental legislation. Importantly, though, it also represents the intersection between criminal law and environmental protection.²¹

By Directive 2008/99/EC EU member states have committed to several changes to their national legislation. These changes relate to the criminal liability of legal entities, liability for incitement and aiding, the introduction of new offenses (including for the sale of specimens of protected species of flora and fauna, their parts and products, behavior leading to the destruction of natural habitats in protected areas, production, import, export, introduction into circulation or use of substances that destroy the ozone layer) and clarification of existing criminal and legal prohibitions regarding the management of waste, hazardous substances, etc.

Directive 2008/99/EC is the main European instrument for protecting the environment through criminal law. It requires the criminalization of unlawful conduct that causes or is likely to cause harm to the environment or to flora and fauna, or the death or serious injury of individuals. Conduct is defined as ‘unlawful’ when it infringes obligations set out in the 72 pieces of EU legislation listed in the two annexes to the Directive or in any act of the Member States giving effect to such legislation.

This directive replaces the old system, which allowed Member States to independently determine the kind and degree of penalties for environmental infractions and resulted in significant variation within the Union. Significantly, for these acts to be regarded criminal under the legislation, they must be carried out illegally and with a high degree of negligence or malice. This emphasizes the directive's goal of standardizing environmental enforcement throughout Member States while focusing on the most serious offenses, and it ensures that only the most egregious crimes are prosecuted criminally.²²

This flexibility can lead to inconsistencies in enforcement and may dilute the directive's impact due to differing interpretations and applications by Member States. The omission of more detailed punitive measures from earlier drafts such as mandatory environmental restoration or public disclosure of convictions reduces the potential uniformity of enforcement and shifts the focus away from victim rights, contrasting with the EU's Environmental Liability Directive which places greater emphasis on the involvement of affected parties.

²¹ Cardwell, P.J., French, D. and Hall, M., 2011. Tackling environmental crime in the European Union: The case of the missing victim, p.

²² European Parliament and Council of the European Union, Proposal for a Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC, 2021

The introduction of Directive 2008/99/EC underscores the importance of standardized criminal offense rules to enhance investigative methods and facilitate interaction among member states. Based on Article 175 of the TEC (now Article 192 of the TFEU), the directive obligates member states to classify certain unlawful acts as criminal offenses and to apply sanctions that are effective, proportionate, and capable of deterring criminal activity. These acts are detailed in Article 3, characterizing behaviors that are illegal and committed either intentionally or with serious negligence.

“unlawful’ means infringing:

- (i) the legislation adopted pursuant to the EC Treaty and listed in Annex A; or
- (ii) with regard to activities covered by the Euratom Treaty, the legislation adopted pursuant to the Euratom Treaty and listed in Annex B; or
- (ii) 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 (i) or (ii)”

Unlawful behavior, as defined in Article 2 of the directive, includes actions that violate EU legislation specified in Annex A, legislation derived from the Euratom Treaty listed in Annex B, or any national law or administrative regulation implementing the mentioned Community legislation.

The directive requires that behaviors specified in Article 3 be criminalized when they are unlawful and committed intentionally or with serious negligence. This encompasses a range of actions that negatively impact key environmental elements such as quality of air, the quality of soil or the quality of water, or to animals or plants²³. Specifically, it criminalizes actions such as the unauthorized discharge of pollutants or radiation into the environment, waste management activities that pose significant risks to health and the environment, and the operation of facilities using hazardous substances in a manner that could cause extensive environmental damage.

The directive also categorizes more specific offenses, including illegal transportation of waste in significant quantities²⁴, as defined in Article 2(35) of Regulation (EC) No 1013/2006, and activities that seriously degrade habitats in protected

²³ EU. Article 3. 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,

²⁴ Article 2(35) of Regulation (EC) No 1013/2006

areas, as defined in EU directives. These actions must meet strict legal criteria to be considered criminal, emphasizing the necessity for intent or significant negligence, thereby aligning with the directive's main goal of correlating criminal liability with actual damage or a significant risk of damage.

Furthermore, the directive extends criminal liability to those who incite, aid, or abet the commission of these crimes²⁵. This extension ensures that all individuals involved in environmental crimes can be held accountable.

*“Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.”*²⁶

Regarding penalties, Article 5 insists that the offenses described in Articles 3 and 4 be subject to sanctions that are not only effective but also proportionate and capable of preventing future violations, underscoring the directive’s commitment to the strict prosecution of environmental crimes.

Articles 6 and 7 address the fundamental issue of corporate liability for environmental crimes, stipulating that corporations can be held accountable for crimes committed for their benefit by persons occupying leading positions. This provision ensures that corporations cannot evade responsibility due to hierarchical structures. Additionally, paragraph 3 of Article 6 clarifies that corporate liability does not exclude the criminal prosecution of individuals involved in the crimes, ensuring comprehensive legal accountability²⁷.

Finally, Article 7 requires that member states take necessary measures to ensure that legal entities found guilty under Article 6 are subject to effective, proportionate, and deterrent penalties, reinforcing the directive's stringent approach to protecting the environment through criminal law

In sum, while Directive 2008/99/EC is a progressive step towards unifying the criminal enforcement of environmental laws across the EU, its effectiveness is tempered by the autonomy allowed to Member States in its implementation.

²⁵ EU. Article 4. 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.

²⁶ EU. Article 5. 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.

²⁷ EU. Article 6. 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.

As a result, the fight against environmental crime has gained momentum since the Directive's introduction and is currently a top issue on the agenda of the European Union. In response, the EU has increased the scope of its work in this area and stepped up its efforts.

3.2. Legal and Natural Persons' Criminal Liability for Environmental Harm

Environmental protection stands as one of the most urgent challenges of our time, commanding a complex interplay between legal frameworks and ethical responsibilities. The degradation of our natural world not only jeopardizes biodiversity and ecosystems but also poses significant risks to human health and the stability of economies. In this context, the enforcement of environmental laws through criminal liability is a critical tool. This part explores the importance of imposing criminal liability on both natural and legal persons, individuals and corporations respectively for acts that harm the environment.

The concept of holding both individuals and entities accountable raises significant questions: Who is ultimately responsible for environmental harm - natural persons or legal persons? Can imposing liability on natural or legal persons alone prevent the environmental crimes, or the dual liability of natural and legal persons is only one guarantee of the protection of environment through the criminal law?

This section of the dissertation delves into the concept of dual criminal liability for environmental harm, applicable to both natural and legal persons. Initially, the discussion focuses on the rationales for imposing dual criminal liability, aiming to elucidate the necessity of holding both individuals and corporate entities accountable under legal frameworks. The exploration then shifts to the complexities associated with implementing dual liability. It includes an examination of the practical challenges encountered when enforcing these legal principles in real-world contexts. Through the analysis of relevant case studies and legal precedents, the challenges are illuminated, and their impact on the efficacy of environmental protection measures is assessed.

3.2.1 Justifications of dual criminal liability

The traditional belief that a corporation cannot be guilty of a criminal act is now partially outdated at both domestic and international levels. Historically, criminal law was concerned with assigning moral blame for specific actions, leading to the view that a legal entity, such as a business or corporation, which lacks moral agency, could not be held

criminally responsible. This perspective has shifted significantly, especially due to the modern activities of legal persons which could be the cause of the harm to environment.

A) Nuanced reinforcement of the role of legal persons' liability in environmental protection through criminal law

Today, legal liability offers the most effective protection of the environment through criminal law for several reasons. However, there is also some limits of this reinforcement.

First, the legal persons often have a much broader impact on the environment due to the scale of their operations. It means that the criminal liability of legal persons can potentially lead to significant environmental benefits. The legislative efforts such as Directive 2008/99/EC explicitly highlight the importance of holding legal persons accountable for environmental harm. The article 6 of the directive specifically addresses 'liability of legal persons,' underscoring the need to ensure corporate responsibility for environmental damage where such offences have been committed for their benefit.

In Article 6 of the Directive of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (2008/99/EC) is defined;

“Member States shall ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit (...)”.

However, its important to conclude that even if the directive proposes protection by establishing legal liability for environmental harm, it simultaneously limits this liability by conditioning it on the benefit to the legal entity. This nuanced approach to liability recognizes the importance of holding corporations accountable but restricts the scope to intentional or clearly beneficial actions, potentially leaving gaps in coverage for accidental harms. This seems to exclude the the criminal liability for accidental damage that presumably would fall under civil liability rules.

Additionally, the Article 7 outlines penalties specifically applicable to legal persons, further emphasizing the legislative intent to deter environmental offenses by corporations.

“Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 6 are punishable by effective, proportionate and dissuasive penalties”

The directive mandates Member States to ensure that legal persons held liable under the Article 6 face penalties that are effective, proportionate, and dissuasive. While this reinforces liability, it simultaneously introduces a limitation due to the subjective nature of these terms. The interpretation of what is considered “effective, proportionate, and dissuasive” can vary significantly among Member States, potentially leading to inconsistencies in the enforcement and severity of penalties across the EU. This variation might undermine the uniformity and predictability needed for robust environmental protection throughout the Union.

In contrast, natural liability is addressed within Article 6 but is confined to the third paragraph, indicating a lesser focus on individual responsibility compared to the comprehensive treatment of legal person liability throughout the directive.

Second, the legal persons typically have more resources than individuals, making it feasible for them to implement systemic changes needed to comply with environmental laws. Fines and penalties can be substantial enough to affect corporate behaviour without threatening the corporation's survival. At the same time, the individuals may not have the financial capacity to cover the extensive costs associated with cleaning up environmental damage or compensating for the loss of biodiversity and ecosystem services.

These issues were evident in the case *Spain v/Apostolos Mangouras* (2016) or “The Prestige Oil Spill case”. Even though the Spanish Supreme Court determined²⁸ the presence of an environmental crime even though the Provincial Court had only ruled on a disobedience crime, the only one criminal responsible was the captain of the vessel (sentence of 2 years imprisonment). The Court affirmed only the civil liability of the captain of the vessel, the vessel owner Mare Shipping Inc. and the insurer London P&I Club²⁹. It's evident that imposing criminal liability on the owner or insurer would better ensure accountability for these severe environmental damages. However, in the case *US v/ British Petroleum Exploration & Prod., Inc.* (2010) the legal person BP pleaded guilty to various environmental crimes. Finally, BP agreed to pay \$4 billion in fines and penalties, on of the largest criminal resolution at the time. It's also evident here that the

²⁸ Spain v. Apostolos Mangouras, "The Prestige Oil Spill case," 2016

²⁹ RECP (2016) Environmental Crime and Judicial Rectification of the Prestige oil spill

criminal liability of legal persons allows for more effective compensation for various environmental damages, which individual natural persons could not adequately ensure.

Third, in the majority of large corporations, it's difficult to pinpoint a single individual's responsibility due to the collective decision-making processes. Holding the legal person itself liable ensures that the entity cannot escape responsibility by attributing actions to complex internal processes. In the US v/Volkswagen case (2017), while some executives were charged, the company itself pleaded guilty to criminal charges. This was crucial because the fraudulent practice of installing "defeat devices" in diesel engines to cheat emissions tests was a result of decisions made at various levels of the company's hierarchy, illustrating the complex internal processes.

B) Stable importance of natural persons' liability in environmental protection through criminal law

Concentrating solely on corporate liability can also be problematic, particularly when environmental damage is rooted deeply within a company's operations. While corporations have more resources to effect significant changes, neglecting individual accountability might allow personal negligence or misconduct to go unchecked. Moreover, without holding individuals accountable, there could be less incentive for personal diligence and adherence to environmental regulations within corporate structures. For this reason, various documents establish rules regarding individual liability:

“Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4”³⁰

So there's still some reasons for saying that individual liability offers the important protection of the environment through criminal law.

First, charging natural persons holds those directly responsible for illegal actions accountable. This can act as a strong deterrent, as the consequence is personal and immediate, including possible imprisonment.

³⁰ Paragraphe 3 of Article 6 of the directive of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (2008/99/EC)

Second, knowing that they could be personally liable might make individuals within corporations more cautious and compliant with environmental regulations. It works as a preventive effect.

However, the recent report indicating a reduction in the total number of individuals sentenced to imprisonment for environmental crimes raises significant questions about the effectiveness and direction of natural liability enforcement in environmental law. If the reduction in imprisonment correlates with a decrease in environmental violations, it could indicate that the existing legal frameworks and penalties (other than imprisonment) are effectively deterring crimes. This might suggest that the threat or implementation of alternative penalties, along with enhanced regulatory measures, is sufficient to prevent individuals from committing environmental offenses. At the same time, the decrease in imprisoning individuals for environmental violations might also reflect a troubling trend towards insufficient accountability. Without the stringent consequence of imprisonment, individuals may feel emboldened to flout environmental regulations, particularly if they believe that the financial or alternative penalties are manageable or unlikely to be rigorously enforced.

C) Combination approach

Many experts advocate for a combination of both types of liability to comprehensively address environmental harms. This approach ensures that both individuals and corporations have strong incentives to comply with environmental laws. Holding individuals accountable prevents companies from hiding behind the corporate veil, while corporate liability ensures that broader, systemic issues within corporations are addressed.

Consequently, the dual liability provides a comprehensive legal strategy that covers all possibilities of offenses by holding both natural and legal persons accountable for environmental harm. This approach ensures that both individual actors and corporate entities are responsible for their actions, creating a more complete framework for addressing and deterring environmental offenses.

3.2.2. Difficulties of the implementation of dual liability

The shifting landscape of legal accountability for environmental degradation marks a pivotal moment in the evolution of global environmental governance. The cases in Germany and the Netherlands, where national courts have mandated stricter emissions

reductions, reflect a growing recognition of the inadequacy of existing governmental efforts in combating climate change. These decisions underscore a trend toward holding states accountable for not only adhering to international agreements like the Paris Accord but also for their inaction in the face of escalating environmental crises.

The case of *Milieudefensie et al. v. Royal Dutch Shell* represents a significant shift towards attributing not just state but also corporate responsibility for climate change³¹. This ruling is particularly noteworthy because it bridges the gap between environmental law and corporate responsibility, setting a precedent that could potentially catalyze similar claims worldwide. The court's decision to include emissions from all group companies and their consumers expands the scope of responsibility and suggests a holistic view of corporate environmental impact. This comprehensive approach may prompt businesses to reassess their environmental strategies not just from a compliance standpoint but as a core aspect of their operational and strategic planning.

The principle that emerges from this case is the notion of proactive rather than reactive compliance. Corporations are now expected to anticipate potential regulations and adjust their practices accordingly, not merely to respond to legal challenges after they arise. This proactive compliance is becoming increasingly important as courts begin to hold companies accountable for future harms, a trend that aligns with the growing severity and predictability of climate impacts.

Furthermore, the integration of human rights into the discourse on environmental responsibility represents a profound expansion of the scope of what is considered an environmental issue. Climate change is not only a matter of environmental law but is intrinsically linked to human rights, such as the right to health, clean water, and secure living conditions. The European Court of Human Rights' consideration of climate-related complaints could further solidify this linkage, potentially leading to more stringent and enforceable human rights obligations related to environmental protection.

This evolving legal landscape presents both challenges and opportunities for businesses. On one hand, increased legal responsibilities might pose significant compliance challenges, especially for multinational corporations with complex supply chains. On the other hand, there is an opportunity for businesses to lead on environmental issues, adopting and promoting sustainable practices that could set industry standards and enhance their brand reputation.

³¹ The Hague District Court, 2021. *Milieudefensie et al. v. Royal Dutch Shell*, ECLI:NL:RBDHA:2021:5339.

The potential criminalization of corporate environmental negligence introduces another layer of risk, incentivizing companies to develop more rigorous environmental due diligence processes. Legislation like Germany's LkSG underscores the trend towards extending corporate accountability beyond direct operations to include entire supply chains³², aligning with broader corporate social responsibility initiatives.

In conclusion, the convergence of environmental law, corporate responsibility, and human rights is crafting a new paradigm in legal and moral accountability for climate change. This convergence demands a reevaluation of corporate strategies towards more sustainable and responsible business practices. The emerging legal precedents signify a move towards a more holistic understanding of environmental impact, highlighting the interconnectedness of ecosystem health, corporate actions, and human well-being. This shift not only reinforces the urgency of addressing climate change but also reshapes the landscape of corporate governance in the face of global environmental challenges.

The European Union has developed an extensive framework of environmental legislation over the last few decades, highlighting its commitment to protecting the environment. Nevertheless, the effective implementation of this legislation remains a significant challenge for member states, as explicitly acknowledged in the 2012 Communication titled "Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness"³³. This document builds on the Commission's 2008 Communication, which outlined strategies for addressing breaches of EU environmental laws, emphasizing the need for enhanced implementation mechanisms.

Further underscoring the importance of reliable implementation, the Seventh Environmental Action Programme (EAP) to 2020, titled "Living well, within the limits of our planet,"³⁴ prioritizes maximizing the benefits of EU environmental legislation. It highlights the need to improve public access to information and strengthen monitoring and enforcement of environmental laws to protect citizens from environmental risks.

The challenge of implementation is particularly great for candidate countries, which need to integrate a large and complex corpus of EU legislation into their national

³² Bundesministerium der Justiz, 2021. Lieferkettensorgfaltspflichtengesetz (LkSG)

³³ European Commission, 2012. Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness

³⁴ European Parliament and Council, 2013. Decision No 1386/2013/EU of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'

systems. This process involves not only the adoption of EU directives and regulations but also significant adjustments to national laws and administrative practices. For example, alignment may require substantial changes to existing national legislation, or the introduction of new legislation tailored to specific directives.

Directive 2008/99/EC mandates that EU member states criminally prosecute certain actions harmful to the environment, such as illegal waste shipments, as specified in Article 3(c), which is directly linked to Regulation No 1013/2006. This directive embodies the *ultima ratio* principle, according to which criminal law should be applied as a last resort, only when necessary and when other measures are ineffective. However, in practice, its implementation reveals several challenges, particularly in integrating this principle.

One significant issue involves the criminal prosecution of actions traditionally considered administrative offenses. This can blur the line between administrative and criminal responsibility, violating the principle of proportionality by imposing criminal penalties for less serious violations. The European initiative on criminal policy³⁵ criticizes this approach, highlighting that it can lead to the criminalization of minor or purely formal misdemeanors, thus expanding the presumed use of criminal law beyond its optimal scope.

Furthermore, the ambiguity accompanying some Directive 2008/99/EC requirements, such as the criminal prosecution of "significant volume" illegal waste shipments, complicates the directive's application. Different member states interpret these requirements differently, creating legal uncertainty and complicating enforcement. In this regard, the ECJ case C-487/14 underscores that even minor non-compliance can be considered an "illegal shipment," illustrating problems in the interpretation and application of the directive.

The complexity of the Directive 2008/99/EC is further exacerbated by its extensive use of cross-references to other EU legislation, which complicates the transposition of the directive into national law. Incomplete or incorrect transpositions, as in the cases of Latvia and the Czech Republic, which failed to include necessary references to Regulation No 1013/2006, illustrate this problem.

³⁵ European Criminal Policy Initiative, 2011. Manifesto on European Criminal Policy

3.3. Legal challenges in identification of victims of environmental crimes

Another challenge on the path to effective implementation of all instruments of Environmental Criminal Law was described by Dr. Paul James Cardwell, a professor at King's College London. In his article "Tackling environmental crime in the European Union: The case of the missing victim?" he addresses the issue of the place of the victim in environmental crime, with particular reference to the implementation of the new EU Directive.

The issue of the rights of victims of environmental crimes occupies a unique position in the context of global legal practice. This is due to the complexity and multifaceted nature of defining a "victim" in cases of environmental impact, as harm can be inflicted not only on specific individuals but also on entire communities, ecosystems, and even future generations.

Such an approach to defining the victim in cases of environmental offenses complicates the application of traditional criminal law mechanisms, which presuppose a direct connection between the crime and the harm caused to a specific individual. This raises the question: should existing legal frameworks be modified, or should new approaches be developed to account for the peculiarities of environmental impact?

An example mentioned in the above article regarding the 2004 Crime Victims' Rights Act and the *W.R. Grace & Co.* case illustrates how judicial practice can adapt to recognize the rights of victims of environmental offenses. However, this also highlights deficiencies in the existing legislative frameworks when it comes to protecting these victims' rights.

The importance of this issue is underscored in the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which asserts that victims should have access to justice and be treated with respect and compassion. This declaration emphasizes that victims should be informed about their role, as well as about the timing, progress, and resolution of their cases. Despite this, in cases of environmental crimes, these standards often remain unattainable due to the complexities of defining and recognizing victims in such contexts.

Existing legal frameworks, as evidenced by the case of *W.R. Grace & Co.*, can adapt to include the definition of victims of environmental crimes, but require additional efforts for effective application. As stated in the document related to the *W.R. Grace &*

Co. case, the American legal process demonstrates how victims' rights can be incorporated under the 2004 Crime Victims' Rights Act, affirming the legal system's capacity to respond to environmental threats.

This leads to the necessity for further development and adaptation of legislation to adequately protect victims of environmental crimes. In this context, it is pertinent to consider recommendations arising from practice and theoretical discussions in Europe and the USA.

Issues to be considered more deeply include:

- a. How should "victims" of environmental crimes be defined in legislation to account for both immediate and delayed harm?
- b. What mechanisms should be implemented to effectively protect these victims' rights in practice?
- c. Should special provisions be introduced to protect the rights of collective victims, such as communities or groups of individuals threatened by environmental violations?

The definition of a victim should include not only physical and psychological injuries but also social, economic, and cultural losses. For instance, legislation could introduce concepts such as "environmental heritage," which encompasses damage to historical or natural objects of significance to society or culture. Additionally, attention should be paid to developing new approaches and mechanisms in criminal law that would more effectively protect the interests of victims of environmental violations, including mechanisms for protecting the rights of collective victims, such as granting communities the right to collective action. This provides communities the opportunity to act unitedly against companies or governments responsible for environmental damage

3.4. Formulation of an Enhanced EU Directive for Environmental Protection

The European Union committed to maintain a high standard of environmental protection in its founding treaties. In order to achieve this, the EU adopted the Directive on the Protection of the Environment through Criminal Law in 2008, requiring Member States to deem certain environmental harming acts illegal. Further examinations of this Directive's effectiveness revealed severe flaws in the way it was implemented in each Member State. It also emerged that there wasn't as much of an increase predicted in the number of cross-border investigations and convictions for environmental crimes within the EU. The European Commission has proposed a new regulation, deeming the current

one inadequate, given that environmental crime rates worldwide are rising annually by 5% to 7%, causing enduring damage to habitats, wildlife, human health, and the income of governments and enterprises³⁶.

The proposal preparation process comprised numerous crucial steps. From October 10, 2019, until January 2, 2020, the European Commission held a public and stakeholder consultation on the implementation of the Environmental Crime Directive as well as developing environmental crime concerns. Following this, on October 28, 2020, the Commission released its evaluation of the directive, identifying a number of areas that needed improvement. On December 1, 2020, a roadmap was released explaining the endeavor to improve the directive, including an initial effect assessment.

A second round of public discussions was held between February and May 2021, receiving about 500 comments. The majority of the comments were in favor of changing the directive. A number of important issues were brought up, such as the need to update the list of EU laws that apply, define new criminal offenses under the directive, improve data collection, and strengthen judicial cooperation between authorities within and between Member States. These steps highlight a thorough strategy for improving the legal system in order to more effectively combat environmental crime.

The European Parliament and the Council reached a tentative agreement on a new regulation addressing environmental crimes on November 16, 2023. The new directive, which was proposed by the Commission in December 2021, will combat the most serious environmental offenses that can have catastrophic consequences for the environment and public health. This will increase the efficacy of criminal law enforcement and aid in the accomplishment of European Green Deal³⁷ goals.

The European Commission's comprehensive approach to amending the Environmental Crime Directive through extensive public and targeted stakeholder consultations was strategically designed to ensure that the revision process addresses the practical realities and needs of those affected by or involved in the enforcement of the Directive. Here's a breakdown of how these consultations align with the six main objectives outlined for the Directive's amendment³⁸:

³⁶ ECA Maastricht, n.d. 2024. The new European Commission's Environmental Crime Directive (ECD)

³⁷ European Commission (2024) 'The European Green Deal'

³⁸ European Commission, 2021. Explanatory Memorandum to COM(2021)851 - Protection of the environment through criminal law

- Clarify and update the scope of the Environmental Crime Directive;
- Clarify legal terms used to define environmental criminal offences;
- Improve availability of dissuasive and comparable sanction types and levels;
- Improve cross-border cooperation;
- Improve the collection and dissemination of information and statistical data; and
- Improve the functioning of the enforcement chain (training, coordination and cooperation, resources, strategic approach).

With the implementation of the updated directive, member states will be required to refine the categorization of environmental offenses within their criminal legislation, ensuring definitions are clear and precise. They will also need to establish strong and deterring penalties for those found guilty of these crimes. This revamped legal structure is designed to guarantee that severe environmental violations receive appropriate punishment. By enforcing strict consequences, the directive aims to prevent pollution and environmental damage, safeguarding our natural resources for future generations. This approach marks a significant enhancement over the 2008 Directive, extending the range of recognized environmental crimes and placing a greater emphasis on the accountability and penalization of corporations.

This development is part of a growing trend where environmental issues are emerging as top concerns in corporate compliance. The proposed directive is set to intensify the existing regulatory frameworks within member states' jurisdictions, but further challenges in environmental compliance are on the horizon, from both governmental and non-governmental fronts. Some member states are moving towards enforcing 'corporate climate liability,' where companies could be held directly responsible for their greenhouse gas emissions, affecting both their direct operations and their supply chains. At the same time, climate activists and non-governmental organizations (NGOs) are increasingly turning to legal avenues. Launching criminal complaints against companies for environmental violations may soon become routine. Together, these evolving situations present substantial compliance risks, compelling businesses to take proactive steps.

This Directive is an integral component of a series of European Union initiatives aimed at steering the EU towards a climate-neutral and environmentally sustainable

future, encapsulated in the EU's "Green Deal." Among these initiatives is the Corporate Sustainability Reporting Directive (CSRD), which came into effect on January 5, 2023. The CSRD obligates specific companies to provide detailed reports on their environmental impacts, highlighting both the risks and opportunities related to their sustainability practices³⁹. This not only promotes transparency but also encourages businesses to integrate sustainability into their strategic planning.

Further strengthening this framework, the Corporate Sustainability Due Diligence Directive (CSDDD) was passed by the EU Parliament on April 24, 2024, after extensive negotiations and multiple delays. This directive mandates companies to undertake thorough due diligence regarding the actual and potential adverse impacts on the environment and human rights within their supply chains. This is a significant step, as it extends corporate accountability beyond direct operations to encompass the entire supply chain, thus amplifying the directive's reach and impact on global environmental and human rights standards.

Both directives represent crucial elements of the EU's comprehensive strategy to ensure that its economic activities align with its ambitious environmental and social goals. By enforcing these directives, the EU not only sets a regulatory standard but also sends a strong signal to the global market about the importance of corporate responsibility in the fight against climate change and environmental degradation.

Finally, On April 30, 2024, the European Union officially published Directive 2024/1203, which focuses on environmental protection through criminal law, in its Official Journal. This Directive had previously been adopted by the European Parliament on February 27, 2024, and was endorsed by the European Council on March 26, 2024.

Let's have a look at the key changes and improvements in the new directive's text compared to the prior one. When analyzing the new directive, four main areas can be identified that have been supplemented: Definition of Environmental crime; Penalties for Legal and Natural Persons; Corporate Liability; Jurisdiction.

Deinitions of Environmental crime:

One of the first substantial changes is to the definition of environmental offenses. Article 3 of the new Directive on the Protection of the Environment through Criminal

³⁹ European Commission, n.d. Corporate Sustainability Reporting Directive

Law has a more comprehensive and extensive list of criminal offenses, reflecting an expansion of the scope and complexity of environmental control.

“Member States shall ensure that conduct listed in paragraphs 2 and 3 of this Article, where it is intentional, and conduct referred to in paragraph 4 of this Article, where it is carried out with at least serious negligence, constitutes a criminal offence where that conduct is unlawful.

For the purpose of this Directive, conduct shall be unlawful where it breaches:

Union law which contributes to pursuit of one of the objectives of the Union’s policy
a) on the environment as set out in Article 191(1) TFEU; or

a law, regulation or administrative provision of a Member State, or a decision taken
b) by a competent authority of a Member State, which gives effect to the Union law referred to in point (a).

Such conduct shall be unlawful even where it is carried out under an authorisation issued by a competent authority of a Member State if such authorisation was obtained fraudulently or by corruption, extortion or coercion, or if such authorisation is in manifest breach of relevant substantive legal requirements.”

As we can see, the new directive makes the legal clarity and compliance requirements set forth in the law more concise and contains more clarity on the fact that illegal conduct, even if authorized by a permit, shall be deemed unlawful if said authorization has been obtained fraudulently or when it clearly contravenes substantive legal requirements. These gaps are closed by the addendum—that is, actions which theoretically could be authorized shall no longer allow the causing of serious environmental harm to take place (Article 3, paragraph 1).

“(….)the manufacture, placing or making available on the market, export or use of substances, whether on their own, in mixtures or in articles, including their incorporation into articles, where such conduct causes or is likely to cause the death of, or serious injury to, any person, substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants and:

is restricted pursuant to Title VIII of and Annex XVII to Regulation (EC) No 1907/2006
i) of the European Parliament and of the Council ;

is prohibited pursuant to Title VII of Regulation (EC) No 1907/2006;

ii)

*is not in compliance with Regulation (EC) No 1107/2009 of the European Parliament
iii) and of the Council ;*

*is not in compliance with Regulation (EU) No 528/2012 of the European Parliament
iv) and of the Council ;*

*is not in compliance with Regulation (EC) No 1272/2008 of the European Parliament
v) and of the Council ; or*

*is prohibited pursuant to Annex I to Regulation (EU) 2019/1021 of the European
vi) Parliament and of the Council “*

New Directive adds new rules to be applied, such as EU legislation on chemicals, wastes, and other hazardous items, and also describes and broadens the sorts of operations that must be carried out. The circumstances under which these actions turn into crimes are also described in detail. For example, they may become illegal if they conflict with certain EU legislation, such as Regulation (EC) 1907/2006 and Regulation (EC) 528/2012 (Article 3, paragraphs (c)(i-vi)).

The list of basic criminal offenses addressing various ways of conduct has been significantly expanded. The old Article 3 provided a general list of actions considered criminal offenses when unlawfully committed intentionally or at least with serious negligence. These included the discharge of materials or radiation, waste management, waste transportation, operation of hazardous plants, handling of hazardous substances, and trading in protected species. Now, Article 3 of the Directive on the protection of the environment through criminal law describes a broader and more specific set of criminal offenses compared to the previous version, reflecting an expansion in the scope and detail of environmental regulations and increasing the list to 20 basic criminal offenses addressing various ways of conduct.

Conduct in this respect relates, for example, to

- a. the harmful discharge, emission or introduction of materials or substances, energy (such as heat, sources of energy and noise) or ionising radiation into air, soil or water.

- b. the placing on the market of a product that is potentially harmful when used on a large scale, in breach of a prohibition or another requirement aimed at protecting the environment.
- c. the manufacturing, placing or making available on the market, export or use of certain harmful substances.
- d. the harmful collection, transport, recovery or disposal of waste, the supervision of such operations and the after-care of disposal sites, including action taken as a dealer or a broker.
- e. trade with timber in violation of the EU Regulation on Deforestation-free products.

“ Member States shall ensure that criminal offences relating to conduct listed in paragraph 2 constitute qualified criminal offences if such conduct causes:

the destruction of, or widespread and substantial damage which is either irreversible a) or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or

widespread and substantial damage which is either irreversible or long-lasting to the b) quality of air, soil or water.”

The directive also established a new concept of "qualified criminal offences," which include activities that cause significant, potentially irreversible damage to ecosystems or habitats of significant size or value (Article 3, section 3).

The EU categorizes certain environmental offenses as "qualified criminal offences" if they cause "the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil, or water." This classification underlines the gravity of such offenses and underscores the necessity for them to incur more severe penalties than those typically applied to other environmental infractions detailed in the Directive.

Additionally, in its recitals, the Directive makes an important connection to the concept of 'ecocide,' highlighting that such conduct is recognized under the laws of certain Member States and is currently a subject of international discourse. By including actions comparable to ecocide within the scope of qualified criminal offenses, the

Directive acknowledges the growing international consensus on the need to address extreme environmental harm legally.

Corporate Liability:

“Member States shall ensure that legal persons can be held liable for criminal offences referred to in Articles 3 and 4 where such offences have been committed for the benefit of those legal persons by any person who has a leading position within the legal person concerned, acting either individually or as part of an organ of that legal person, based on:

- (a) a power of representation of the legal person;*
- (b) an authority to take decisions on behalf of the legal person; or*
- (c) an authority to exercise control within the legal person.”*

The Directive tackles the issue of criminal offenses committed for the benefit of legal persons, apart from the individual misbehavior. Other legal persons shall be provided by member states to be held liable for acts of any individual within their concerned legal person by way of a position of leadership in the legal person, be it through the power of representation, the capacity to take decisions, or the ability to exercise control within the entity.

With regard to penalties for legal persons,, the Directive expands calls for effective, proportionate, and dissuasive penalties for legal persons by specifying that penalties can be either criminal or non-criminal and must be proportionate to the offense's nature and the legal person's circumstances.(Article 7, section 2) This is supposed to include fines which shall be proportionate to the seriousness of the conduct and to the “individual, financial and other circumstances of the legal person concerned”.

Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:

(a) for criminal offences covered by Article 3(2), points (a) to (l), and points (p), (s) and (t):

(i) 5 % of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding that of the decision to impose the fine, or

(ii) an amount corresponding to EUR 40 000 000;

(b) for criminal offences covered by Article 3(2), points (m), (n), (o), (q) and (r):

(i) 3 % of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding that of the decision to impose the fine, or

(ii) an amount corresponding to EUR 24 000 000.

Beyond that, the Directive obliges Member States to take the necessary measures to ensure that legal persons held liable for “ecocide” are punishable by more severe penalties or measures.

Further measures or sanctions with respect to legal persons may include:

(a) the obligation to restore the environment or pay compensation for the damage to the environment;

(b) exclusion from entitlement to public benefits or aid;

(c) exclusion from access to public funding, including tender procedures, grants, concessions and licenses;

(d) temporary or permanent disqualification from the practice of business activities;

(e) withdrawal of permits and authorizations to pursue activities that resulted in the relevant criminal offense;

(f) placing under judicial supervision;

(g) judicial winding-up;

(h) closure of establishments used for committing the offense;

(i) an obligation to establish due diligence schemes for enhancing compliance with environmental standards;

(j) where there is a public interest, publication of all or part of the judicial decision relating to the criminal offense committed and the penalties or measures imposed, without prejudice to rules on privacy and the protection of personal data.

Penalties:

“Member States shall take the necessary measures to ensure that criminal offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties. Criminal penalties for individuals must be effective, proportionate and dissuasive.”

The revised Article 5 on penalties introduces significant changes and additions compared to the original text, offering a much more detailed and structured approach to penalization for environmental crimes under the directive. The original Article 5 is succinct and general, stating simply that Member States must ensure that offenses referred to in Articles 3 and 4 are punishable by effective, proportionate, and dissuasive criminal penalties. In contrast, the new version expands significantly on this premise, specifying not only general requirements but also exact terms of imprisonment and additional penalties based on the severity and type of the environmental offense.

introduces precise imprisonment terms related to the severity of offenses:

(a) At least 10 years for causing death under specified conditions.

(b) At least eight years for offenses under Article 3(3).

(c) At least five years for offenses causing death under specific subparagraphs of Article 3(2).

(d) At least five years for a broad range of offenses.

(e) At least three years for other specified offenses

The introduction of specific minimum sentences for environmental crimes—ranging from three to ten years depending on the severity of the offense—addresses one of the main issues of the original text: the lack of a deterrent effect due to the vagueness and inconsistency in sentencing. For instance, the original directive allowed member states considerable leeway in determining the severity of penalties, which led to a disparate pattern of law enforcement, often insufficient to deter major environmental violations. With the new structured system of penalties, the directive mandates severe sanctions for the most serious violations, such as those leading to death or significant environmental damage, now punishable by up to ten years of imprisonment.

This specificity not only enhances the deterrent potential of the directive but also promotes the harmonization of environmental law enforcement across the EU. This is critically important to prevent situations where differences in national implementations

lead to uneven environmental protection. A well-documented case illustrating the potential impact of such specific penalties is the red mud disaster in Hungary in 2010, when a dam break at an aluminum plant in Ajka released about one million cubic meters of toxic waste, flooding nearby villages, killing ten people, and causing significant damage to the environment and private property. As a result of this incident, the Hungarian government and the international community intensified their efforts to reform environmental legislation⁴⁰.

After lengthy legal proceedings, in 2016, the Veszprém court acquitted all defendants related to the disaster, citing a lack of evidence that they could have prevented the breach. This decision caused public discontent and highlighted the need for stricter and clearer environmental standards and penalties in legislation, which was one of the reasons for the strengthening of legislative measures in subsequent years.

Moreover, these innovations draw attention to how businesses approach compliance with environmental regulations. Clearly defined severe penalties encourage companies to invest more in compliance measures and due diligence. For example, under the new rules, companies are motivated to establish strict environmental protections to avoid the high costs associated with non-compliance, including significant fines and prison terms. This could lead to widespread improvements in corporate environmental practices, similar to the changes that occurred following the introduction of the EU General Data Protection Regulation (GDPR), which similarly introduced strict penalties for non-compliance, leading to enhanced data protection in business. Article 81 of the GDPR established strict data protection requirements, introducing heavy fines for violations, which can reach up to 4% of a company's global annual turnover or 20 million euros. This regulation stimulated companies to take data protection more seriously, implementing adequate protective measures and transparency.

Furthermore, the revised directive responds to growing public demand for stricter environmental protections, as seen in the increasing support for policies aimed at combating climate change and environmental degradation. By intensifying penalties, the EU responds to these public demands, strengthening legality in environmental matters.

⁴⁰ The Guardian (2016) 'Outrage as plant bosses acquitted over fatal toxic spill in Hungary'

Jurisdiction:

Directive 2008/99/EC on criminal offenses concerning environmental protection did not have clearly established provisions regarding jurisdiction. This meant that the document lacked specific guidance on the conditions under which member states could or should apply their national legislation to transboundary or local environmental crimes. This deficiency led to legal uncertainty and hindered coordination between countries in cases of transboundary environmental infractions, where actions committed in one country caused harm in another.

The absence of clearly defined jurisdiction in Directive 2008/99/EC complicated the resolution of issues related to determining responsibility for crimes, which in some cases led to insufficiently effective prosecution of offenders. Crimes could remain without proper investigation and legal prosecution, especially when it was difficult to determine which country should conduct the proceedings.

Article 12 of the Directive delineates the jurisdictional scope for Member States concerning environmental offenses, encapsulating both territorial and extraterritorial dimensions. According to this Article, Member States are empowered to assert jurisdiction over environmental crimes if:

- (a) the offence was committed in whole or in part within its territory;*
- (b) the offence was committed on board a ship or an aircraft registered in the Member State concerned, or flying its flag;*
- (c) the damage which is one of the constituent elements of the offence occurred on its territory;*
- (d) the offender is one of its nationals*

A State may also extend its jurisdiction to crimes committed outside its territory if:

- a) the offender is a habitual resident in its territory;*
- (b) the offence is committed for the benefit of a legal person established in its territory;*
- (c) the offence is committed against one of its nationals or its habitual residents;*
or

(d) the offence has created a severe risk for the environment on its territory

An example of cooperation under Article 12 could be seen in cases where crimes involving several countries required a coordinated approach. For example, if the crime was committed on a ship registered in one State but causing environmental damage in the territorial waters of another State, new text provided a mechanism for determining which country would assume jurisdiction in the case. This is particularly important in marine pollution cases where Directive also provides mechanisms for resolving jurisdictional conflicts between States, requiring them to cooperate in determining which state will prosecute.

The Directive mandates a robust set of measures for Member States to enhance their capacity to prevent and prosecute environmental offenses effectively. Authorities are required to develop capabilities to trace, identify, freeze, and confiscate instruments and proceeds from environmental crimes, ensuring that offenders cannot benefit from illegal activities. Furthermore, effective and proportionate investigative tools must be available to address and prosecute environmental offenses adequately, reinforcing the legal and procedural framework.

To mitigate the risk and occurrence of environmental crimes, Member States must launch information campaigns and educational programs targeting key stakeholders in both public and private sectors. These initiatives are crucial for raising awareness and promoting preventive measures. It is also mandatory for national authorities involved in detecting, investigating, prosecuting, and adjudicating environmental crimes to be equipped with adequate personnel and the necessary financial, technical, and technological resources, ensuring efficient and effective enforcement of environmental laws.

Specialized and regular training programs should be provided for judges, prosecutors, police, judicial staff, and staff of competent authorities, focused on the objectives of the Directive to enhance understanding and implementation of environmental laws. The Directive emphasizes the need for robust mechanisms for coordination and cooperation both within Member States and across borders, including collaboration with the European Commission, and Union bodies, offices, or agencies, which is crucial for a unified approach to combating environmental crimes.

Each Member State is required to establish, publish, implement, and regularly review a national strategy focused on combating environmental criminal offenses. This strategic approach ensures a proactive stance against environmental crimes. Effective monitoring of actions against environmental offenses is supported by the collection and provision of anonymized statistical data, which helps assess the effectiveness of measures implemented under the Directive and guides future enhancements. This multifaceted approach not only strengthens the legal framework but also fosters a culture of compliance and environmental stewardship across Member State.

CHAPTER 4: ANALYSIS OF NATIONAL CRIMINAL LEGISLATIONS OF FOREIGN COUNTRIES ON ENVIRONMENTAL CRIMES

Regarding the criminalization and prosecution of environmental crimes, there is a very great divergence in how countries approach it with each one trying to harmonize its enforcement capability, legal traditions, and policy focuses. In this regard, this section highlights these divergences and how they impinge on the capability of national legislations to deliver with the international environmental agreements in operation today. Examining these various tactics can provide useful insights into each system's strengths and limits, resulting in a better knowledge of protection of the environment through the criminal law

4.1. Integrating Directive 2008/99/EC under National Legislation

Directive 2008/99/EC, which aims to protect the environment through criminal law, has been transposed by EU Member States with careful consideration of their unique legal traditions and national contexts. The methods of transposition vary significantly, ranging from the integration of the Directive's provisions into existing criminal and environmental codes to the adoption of specific legislative acts tailored to meet the Directive's requirements.

In Austria, the transposition was executed through modifications to the Criminal Code and additional legislation, such as the Trade of Species Act and the Corporate Liability Act. The Criminal Code amendments specifically integrated offenses and penalties outlined in the Directive, including Articles 180 and 181, which delineate various environmental offenses. For instance, offenses concerning the illicit trade in species are governed by the Trade of Species Act⁴¹ while corporate accountability is stipulated under the Corporate Liability Act⁴².

Belgium has implemented the Directive through a robust framework of environmental laws and sector-specific statutes at both the federal and regional levels. At the federal level, legislation concerning the transboundary shipment of waste delineates the offenses and applicable penalties. In the Flemish Region, the primary legislative document is the Decree on General Provisions on Environmental Policy⁴³, which pertains

⁴¹ Austrian Trade of Species Act (Artenschutzgesetz) (2019)

⁴² Austrian Corporate Liability Act (Gesetz über die Verantwortlichkeit von Unternehmen) (2006)

⁴³ Belgian Environmental Code (Decreet betreffende algemene bepalingen inzake milieubeleid) (1995)

to all Flemish environmental laws. Conversely, in the Brussels-Capital and Walloon Regions, the transposition was executed through sector-specific statutes, such as those related to water resources and waste management.

Bulgaria has revised its Criminal Code incorporate all offenses and sanctions pertaining to environmental crimes, including Articles 352 and 353⁴⁴, which deal with water and air pollution. Moreover, the Administrative Violations and Sanctions was amended to impose fines on legal entities that benefit from environmental offenses⁴⁵.

Cyprus and Greece have opted to transpose the Directive through dedicated acts. In Cyprus, the Law on the Protection of Environment through Criminal Law directly reproduces the Directive's provisions, detailing offenses and corresponding sanctions. An annex to the law lists all legislative acts, violations of which constitute unlawful conduct under the Directive⁴⁶. Similarly, Greece adopted a specific law to align penalties with the provisions of a new act that encapsulates the Directive's requirements.

Finland and Hungary have amended their Criminal Codes to effectively transpose the Directive. In Finland, environmental offenses are covered in the chapter on environmental crimes (Chapter 48 of the Criminal Code), and partially in chapters addressing crimes against public health (Chapter 44). In Hungary, most relevant provisions are considered framework offenses, requiring courts to interpret them in conjunction with pertinent sectoral environmental legislation. For example, Chapter XXIX⁴⁷ of the Hungarian Criminal Code encompasses articles on crimes against the environment.

France has integrated the Directive's provisions within its Environmental Code and sectoral laws. Predominantly, the offenses and sanctions included in the Directive have been incorporated into the Environmental Code, facilitating France's utilization of existing legislation to meet the Directive's requirements. Notably, Articles L.216-6 and L.218-73⁴⁸ of the Environmental Code deal with issues related to water and air pollution.

Ireland and the United Kingdom have employed sectoral legislation to transpose the Directive. In Ireland, each individual act transposing the Directive's provisions

⁴⁴ Bulgarian Criminal Code (Наказателен кодекс) from 14 May 2024. (1965).

⁴⁵ Bulgarian Administrative Violations and Sanctions Act (Закон за административните нарушения и наказания) from 21 March 2021 (1969)

⁴⁶ Cyprus Law on the Protection of Environment through Criminal Law (*Νόμος για την Προστασία του Περιβάλλοντος μέσω του Ποινικού Δικαίου*) (2012)

⁴⁷ Hungarian Criminal Code (Büntető Törvénykönyv) (2012)

⁴⁸ French Environmental Code (Code de l'environnement)(2007)

includes relevant responsibility and sanction clauses. For instance, the Environmental Protection Agency Act 1992 encompasses provisions on offenses and sanctions. In the United Kingdom, most sectoral laws transposing the Directive were already in effect and required minimal amendments, such as the Environmental Protection Act 1990.

As we observe, the diverse transposition of Directive 2008/99/EC across EU member states highlights the complexity and challenges of harmonizing environmental protection through criminal law amidst varied legal systems. This diversity can be viewed as an advantage, allowing for the adaptation of the Directive's provisions to national contexts and legal traditions. However, it also presents significant challenges that may impact the overall effectiveness of efforts to protect the environment.

One of the main advantages of this diverse approach is the potential for tailoring the implementation of the Directive to the specific legal and cultural contexts of each member state. This could potentially enhance the effectiveness and acceptance of the Directive's provisions, as countries with developed environmental codes could seamlessly integrate these provisions into their existing legal frameworks and enforcement mechanisms. Yet, this diversity also leads to notable challenges, particularly in terms of discrepancies in application and enforcement of environmental criminal laws across the EU, which can create disparities in environmental protection standards, leading to loopholes that may be exploited, thus undermining the overall effectiveness of the Directive. For instance, the variance in how member states approach corporate liability can lead to different levels of corporate accountability depending on the jurisdiction. While countries like Austria and Belgium have incorporated corporate responsibility into their legislative frameworks, others, such as Bulgaria, rely more on administrative penalties for legal entities. This difference can complicate cross-border law enforcement and weaken the deterrent effect.

Moreover, integrating the provisions of the Directive into national laws without modifications can lead to a fragmentation of the legal system. This fragmentation creates significant difficulties for lawyers and law enforcement officers who must navigate a complex network of laws and regulations to effectively prosecute environmental crimes.

This issue extends beyond Directive 2008/99/EC and pertains to a broader context of international instruments for environmental protection. Harmonizing environmental laws at the international level faces similar challenges, as evidenced by agreements such as the Paris Agreement or the Basel Convention on the Control of Transboundary

Movements of Hazardous Wastes. The effectiveness of these instruments often depends on the consistency and rigor of their implementation and enforcement by individual countries.

Directive (EU) 2024/1203 of the European Parliament and the Council of 11 April 2024 effectively addresses the issues identified in the transposition of Directive 2008/99/EC by establishing uniform standards and definitions of environmental crimes and penalties for all member states. This helps eliminate discrepancies in national legislations and prevent legal loopholes. The new Directive also enhances international cooperation through information exchange, coordination of joint investigations, and mutual recognition of judicial decisions, which improves cross-border law enforcement. The introduction of mandatory corporate responsibility for environmental crimes ensures a more consistent approach to holding legal entities accountable. Additionally, mechanisms for regular monitoring and reporting increase transparency and encourage compliance with standards.

4.2 United Kingdom: developed system of criminal laws

Contrary to numerous European countries, the United Kingdom has been fortunate enough to have never encountered transboundary pollution. The prevailing winds blow in a southwesterly direction, and there are no international rivers traversing the country. Keeping with this trend, the legal framework of the UK also operates in a unique manner. Unlike its counterparts, there is no written constitution or codified laws specifically tailored to protect the natural environment. In fact, there is not even a single legislative act that serves as the foundation for environmental laws in the UK. This is largely attributed to the absence of a distinct and well-defined sector of law dedicated to the environment.

The UK has faced significant challenges but has made efforts to safeguard the environment through various legislative measures. To make these laws more accessible, the government has taken steps to streamline the process by providing guidelines. These guidelines, which were officially released on 26 February 2014 and took effect on 1 July 2014, serve as the ultimate resource for dealing with environmental offenses⁴⁹.

The first important observation is that offenses differ for individuals and organizations, reflecting the distinctions in capacities and the harm to the environment that these different types of entities can cause.

⁴⁹ Sentencing guidelines, definitive guidelines for environmental offences, 2014;

The second important observation is that offenses are ranged by categories so the court should determine the offence category using only the culpability and harm factors. There are some offenses by categories:

category 1 (polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects; major adverse effect or damage to air or water quality, amenity value, or property; polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health, or flora etc)

category 2 (significant adverse effect or damage to air or water quality, amenity value, or property; significant adverse effect on human health or quality of life, animal health or flora; significant costs incurred through clean-up, site restoration or animal rehabilitation etc)

category 3 (minor, localised adverse effect or damage to air or water quality, amenity value, or property; minor adverse effect on human health or quality of life, animal health or flora etc)

The court should determine the appropriate level of fine in accordance with this guideline, which requires that the fine must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.

The range of fines can vary significantly, from 25% to 700% of the relevant weekly income for individuals and from £100 to £3,000,000. This broad spectrum reflects the gravity of the penalties for the offense at hand and allows for fines to be more proportionate to the severity of the offense and the financial capacity of the offender.

The UK's reliance on guidelines and the categorization of offenses can lead to a more tailored approach to prosecution and sanctioning, potentially enhancing the effectiveness of the legal framework by aligning penalties more closely with the nature and severity of the offense. However, this lack of a foundational law dedicated solely to the environment could lead to inconsistencies in enforcement and might complicate the integration of international treaties into national law, as the foundational legislative framework is less defined.

4.3 Latvia and Estonia: different degrees of sanctions in neighbouring countries

Crimes against the environment are contained in Chapter XI "Criminal Offenses Against the Natural Environment" of the Criminal Code of the Republic of Latvia⁵⁰. In Latvia, crimes against the natural environment include violations of provisions regarding the management and utilisation of the earth, or its depths, waters and forests (Article 96), violations of provisions regarding the utilisation of the natural resources of the sea (Article 97), violations of provisions regarding the circulation of radioactive and chemical substances etc. Among the most dangerous crimes against the natural environment, for which an individual faces severe criminal liability, the Latvian legislator includes qualified intentional forest arson - imprisonment for up to 15 years or a fine for up to eighty times the minimum monthly wage (Article 107) and unauthorised burial of hazardous substances in waters and depths of the Earth - imprisonment for up to 20 years (Article 100). The implementation of longer prison sentences and important fines are expected to have a strong impact on promoting adherence to environmental laws and deterring individuals from participating in practices that could lead to significant harm to the environment.

At the same time, the Estonian legislator has another point of view on regulation of criminal offences against the environment. The Criminal Code of the Republic of Estonia with his chapter 20 "Offences against the Environment"⁵¹ provides for liability for the following crimes relating to the natural environment: activities dangerous to flora (Article 353); damaging or destruction of trees or shrubs (Article 354); illegal cutting of trees or shrubs (Article 356) etc. However, the sanctions are less severe than in Latvia, and the maximum imprisonment term does not exceed 5 years. The codified fines are also less severe than in Latvia, but the court is free to impose an appropriate fine for other offenses, providing it with some latitude for interpretation. The system that adopts shorter maximum imprisonment terms places a greater emphasis on rehabilitation rather than punishment. This perspective is in line with the objective of assisting offenders with reintegration into society following their completion of their sentences, but it also helps to reduce resources for the maintenance of criminals.

Latvia's stringent approach with severe sanctions, including substantial imprisonment terms for environmental offenses, reflects a strong legislative intent to deter environmental crimes and emphasize the gravity of such offenses. This can significantly

⁵⁰ Criminal Code of the Republic of Latvia, 2015;

⁵¹ The Criminal Code of the Republic of Estonia, 2015;

enhance the effectiveness of the law in preventing environmental damage. In contrast, Estonia's less severe penalties may reflect a more rehabilitative approach, focusing on correction and social reintegration of offenders. The variation between these neighboring countries underscores the challenges in harmonizing environmental laws across borders, which could complicate collaborative enforcement efforts and the establishment of common standards in international agreements.

4.4 Germany: system of long terms of imprisonment

The main source of criminal law of the Federal Republic of Germany (FRG) is the Criminal Code (Strafgesetzbuch) of 15.05.1871 as amended in 13.11.1998⁵². The need to criminalize new types of socially dangerous acts, in particular environmental ones, led to changes in the criminal legislation of Germany. Significant changes were made by laws of 28.03.1980 "On criminal acts against the environment" and of 27.06.1994 "On the fight against crime associated with attacks on the environment" to Article Article 321-330 of the former division of the 28 Code. The current version of the Criminal Code of Germany contains division 29 entitled "Offences against environment," which unites 13 paragraphs, of which only 10 (Article Article 324-330a) are aimed at protecting nature, and three – are "technical" in nature: define the general concepts of Division 29 (Article 330d), provide for the basis for exemption from liability in connection with active repentance (Article 330b), the seizure of objects and means of committing an offense (Article 330c). The Criminal Code of Germany has differentiated responsibility for encroachment on individual elements of the environment. Thus, Article 324-326 contain the composition of crimes related to the pollution of reservoirs, soils and air. A significant part of the compositions for criminal pollution of the environment are designed as torts of danger, that is, it is a question of creating a threat of dangerous consequences.

A necessary requirement in assessing such a danger as a criminal offense should be the reality and obviousness of the threat of harm. It is the real threat that is a reflection of the future likely criminal outcome. At the same time, negative consequences do not occur only due to timely measures taken or due to other circumstances that do not depend on the will of the guilty person.

At the same time, some crimes are designed as formal. Thus, according to the disposition Article 324 "Pollution of reservoirs," the punishment is imposed on the one who illegally pollutes the reservoir or otherwise changes its properties disadvantageously.

⁵² German Criminal Cod, Federal Law Gazette I, 1998, p. 3322;

Under the reservoir, in accordance with Article 330d, in this norm are understood as terrestrial water resources and groundwater, and the sea. To apply the norm, it is not necessary to prove damage to water bodies. It is enough to establish the fact of pollution of a water body in violation of the rules enshrined in other environmental laws, in particular the Law on the Organization of Water Management (WHG), the Law on the Procedure for Obtaining Permits for the Discharge of Wastewater into Water Bodies (AbwAG). As noted in the special literature, the basis of responsibility is a systematic (regular) process of sewage pollution. A feature of criminal law is the attitude to the criminalization of careless environmental crimes. Article 15 of the Criminal Code of Germany states that only intentional action is punishable if the law does not directly provide for punishment for careless action. In division 29 of the Criminal Code of the Federal Republic of Germany, negligence is singled out in a separate part of each article, and the punishment for it is less severe (part 3 Article 324, paragraph 2, part 1 Article 324A, part 3 Article 325, part 5 Article 326, part 3 Article 327, part 5 Article 328, part 4 Article 329)

Criminal sanctions of division 29 of the Criminal Code of Germany, as a rule, provide for punishment in the form of imprisonment for up to five years, and for careless crimes – up to three years. In accordance with Article 330, the punishment is tightened for particularly serious deliberate attacks on nature – up to ten years in prison. If intentional pollution of nature caused the death of a person, then the punishment will be up to 10 years in prison (paragraph 2 of para. 4 Article 330). The implementation of longer prison sentences and important fines are expected to have a strong impact on promoting adherence to environmental laws and deterring individuals from participating in practices that could lead to significant harm to the environment.

In addition to division 29, criminal-legal norms of an environmental nature are also contained in other sections of the Criminal Code of Germany. So, Article 292 "Poaching" and Article 293 "Poaching" are placed in division 25 "Mercenary crimes." These rules are punishable by violation of someone else's right to hunt or catch fish. In addition, Article 294 establishes the possibility of criminal prosecution of persons who committed unqualified types of poaching, only at the request of the victim, if it was committed by a relative or in an area where the person had the right to hunt or fish to a limited extent. Also draws attention to the content of par. 2 Article 292, which lists the circumstances aggravating the punishment. One of them is the commission of acts provided for in paragraph. 1 Article 292, in the form of fishing or regularly. Outside of

division 29, crimes related to radioactive and ionizing radiation have been committed (Article Article Article 307, 309-312). These articles establish responsibility for creating the danger of an explosion when using nuclear energy, the manufacture of a nuclear technical installation with the admission of error, abuse, release of ionizing radiation and are placed in Division 28 "Generally dangerous criminal acts." At the same time, the norms providing for liability for illegal operation of structures (nuclear-technical installation) – Article 327, as well as illegal handling of radioactive substances and other hazardous substances and resources – Article 328, are placed in division 29.

Germany's detailed and differentiated approach to environmental crimes, with specific penalties linked to the nature of the offense and its impact, exemplifies a highly structured and methodical legislative framework. This can lead to effective deterrence and precise targeting of various types of environmental offenses. However, the complexity of such a detailed categorization might pose challenges in international law enforcement cooperation, as aligning these detailed provisions with broader international standards could require significant adaptation and negotiation.

4.5. Denmark, Sweden and Austria: assimilation of environmental crimes to other crimes

While the Criminal Code of Denmark⁵³ may not have a specific section addressing environmental crimes, it still incorporates pertinent provisions within its current structure. The paragraphs 186 and 196 exemplify these provisions by acknowledging and tackling behaviors that can harm the environment and public health. Paragraph 186 deals with contamination and scarcity of drinking water, while Paragraph 196 addresses various forms of pollution and improper waste disposal, recognizing their impact on environment.

Similarly, the Criminal Code of Sweden also recognizes environmental crimes, including the destruction of animals and plants in section 8 of chapter 13, as encroachments on “public danger”, alongside offenses such as arson, sabotage, and vessel seizure⁵⁴.

According to the Austrian Criminal Code⁵⁵, actions impacting the natural environment are categorized in the seventh section along with other societal criminal acts, such as negligent creation of a fire situation, etc. Austrian legislation includes intentional and negligent harm to the environment among crimes against the natural environment

⁵³ Criminal Code of Denmark, cf. Consolidated Act no. 1068 of 6 November 2008, LBK No. 1034, 2009;

⁵⁴ The Swedish Criminal Code, brottsbalken, SFS, 1962;

⁵⁵ Austrian Criminal Code, *Strafgesetzbuch, StGB*, Federal Law Gazette I, 1988, p. 945, p. 3322;

(Article 180, 181); severe harm associated with noise use (Article 181a); intentional actions posing a threat to the environment involving waste handling and disposal (181); creation of other threats to the state of animal or plant life (Article 182) and others.

Ironically, some common criminal actions against the natural environment are situated within the category of criminal acts that impact property relations. For example, this section stipulates liability for violating someone else's right to hunt or fish (Article 138); the use of force by a poacher (Article 140). In the Austrian Criminal Code, provisions establishing responsibility for crimes in the field of nuclear and radiation safety are placed alongside other environmental norms in the section titled "General Hazardous Criminal Acts and Criminal Acts Against the Natural Environment."

Based on this study, it can be determined that certain states have robust legal provisions which can effectively combat crimes against the environment. It is essential to meticulously assess and incorporate these regulatory frameworks into the legal systems of other nations, as they provide invaluable guidance for the development of a comprehensive approach to addressing environmental crimes in the future.

By incorporating environmental offenses into the broader realm of criminal activity, a more comprehensive legal strategy can be implemented, recognizing the interconnected nature of environmental harm with other crimes. Yet, there is a concern that within this expansive scope of law, the severity and distinctive characteristics of environmental offenses may become diluted or overshadowed by other crimes, potentially resulting in less stringent enforcement.

The assimilation of environmental crimes with other forms of criminal activity in Denmark, Sweden, and Austria suggests an integrated approach to criminal law, where environmental offenses are treated with similar seriousness as other major crimes. This could foster a broader societal understanding of the importance of environmental protection. However, the potential downside is that specific environmental issues might not be given the attention or specialized treatment they require, possibly diluting the focus and reducing the efficacy of environmental legislation.

4.6 India: example of insufficient environmental protection through criminal laws

Prime Minister of India, Narendra Modi, has eliminated several environmental regulations since taking office, making room for more coal mining and other commercial endeavors.. He also blocked funds to Greenpeace and other environmental groups and is

known to be vehemently anti-NGOs⁵⁶. There has been much buzz and differing viewpoints surrounding the environmental regulations adopted during his tenure, stimulating lively conversations. Let's start considering these problems from the Indian criminal law.

Crimes against the environment are contained in chapter XIV "Of offences affecting the public health, safety, convenience, decency and morals" ⁵⁷. There are two main articles, Articles 277 and 278, that regulate environmental pollution. The first one named "Fouling water of public spring or reservoir," states that whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both".

The prescribed consequences for violating this law may be deemed excessive or insufficient, depending on the specific circumstances. Consider the scenario where a person unintentionally contaminates a public spring with a harmless substance in a one-time accident. In this case, a penalty of up to three months imprisonment or a fine of five hundred rupees may seem appropriate, especially if only a fine of five hundred rupees is retained. However, if an industrial organization is caught intentionally and repeatedly polluting a public reservoir with dangerous chemicals, resulting in severe damage to the environment and public health, a punishment of three months in prison or a substantial fine would be reasonable or even insufficient, especially if only a fine of five hundred rupees is retained.

Interesting provisions relating to the reform of criminal law, has Indian jurisprudence on natural objects. Yes, the sale of a tree on the root (raw-growing tree stand) belonging to another person is not theft, but if someone else's tree is cut down for the purpose of "dishonest" seizure of it, then theft is committed. Wild animals killed on someone's land become the property of the owner of this land and can be stolen. A fish is movable property if it is deprived of its natural freedom in the body of water from which it is stolen. If she can "at her discretion" swim out of the pond, then she cannot be kidnapped. These imperatives can serve in the qualification in order to distinguish the subject of crimes against the environment (except for the provision that the object of

⁵⁶ "Is Narendra Modi a climate sceptic?", Guardian on 09/09/2014;

⁵⁷ Indian Penal Code, 1860;

property includes what human labor is spent on) from the objects of crimes encroaching on property relations.

Certain reform ideas are contained in the provisions of Indian criminal law and judicial practice also regarding the destruction and damage to property, in particular and some objects of nature. For instance, such acts will not be considered property damage if the owner, while in her ownership, fell a raw tree on her property, to which the local populace transported a statue of a deity for annual public worship.

India's example demonstrates the challenges faced in countries where economic growth and environmental protection are in constant tension. The loosening of environmental regulations to promote industrial activities can undermine the effectiveness of environmental protection laws. This situation highlights the potential conflicts between development policies and environmental sustainability, posing significant challenges for the implementation of international environmental agreements, especially in regions where economic priorities may overshadow environmental concerns.

4.7 USA: system of "each day violation"

As the study of the criminal law of the United States shows, there is a feature of white-collar crimes, which manifests itself in violation of the legislation on environmental protection, the task is to harm not specific persons or categories of persons or state bodies, but practically the entire population, including future generations. The system of legislative acts concerning the analyzed sphere includes⁵⁸:

1. the law "On State Policy in the Field of the Environment" of 1969;
2. Environmental Quality Improvement Act 1970;
3. the federal law "On water pollution control";
4. the law "On clean air" ;
5. the law "On control over harmful noise" ;
6. the law "On the elimination of solid waste" and others.

In all these regulations, along with measures of administrative and civil liability, criminal sanctions are also provided. Almost all of the above-mentioned acts provide for imprisonment for up to 1 year and a fine of up to 25,000\$ for each day of violation, and if

⁵⁸ Law of the State of New York, 1983 p. 4901, p.6901;

these crimes are re-committed, a person faces imprisonment of up to 2 years and a fine of up to 50,000\$ for each day of violation. In some states, there is (for example, the Vermont law of 1969⁵⁹, which is known among specialists under the name "Act 250") a ban on the use of agricultural land for non-agricultural purposes.

Such use is allowed only if there is no other possibility of placing the object or carrying out activities and all necessary measures are taken to prevent or minimize the negative environmental effect. The same law defines criminal liability in the form of a fine of not more than 500\$ or imprisonment for up to two years for each day of unlawful activity, starting from the day the violation was discovered, or both at the same time. By implementing daily fines, individuals are more likely to take immediate action to resolve and correct any violations, thus greatly reducing the duration of environmental harm. Such a measure encourages a prompt response and is highly effective at minimizing negative effects on the environment.

Incorporating the U.S. perspective into the global analysis of environmental crime legislation illuminates the range of enforcement mechanisms and their respective efficacy. The American system's reliance on severe penalties and its unique daily violation approach can serve as a model for countries looking to strengthen their compliance mechanisms. However, the aggressive nature of U.S. environmental policies may also necessitate diplomatic negotiation skills to harmonize these standards with international partners, especially those with differing economic priorities or enforcement capabilities.

The global diversity in handling environmental offenses, as demonstrated by the varied approaches from the UK's guideline-based system to the USA's rigorous per-day violation policy, underscores the complex interplay between national interests, legal cultures, and environmental protection objectives. This diversity presents both challenges and opportunities for international environmental governance, advocating for adaptable frameworks that respect national differences while striving for effective global standards.

⁵⁹ Vermont, 1969. Act 250, Vermont's Land Use and Development Act, 10 V.S.A. Article 6001,

CONCLUSIONS

Analysis of the Role and Efficacy of Criminal Law in Deterring and Prosecuting Environmental Crimes

Criminal law plays a pivotal role in deterring and prosecuting environmental crimes, serving as a potent deterrent. It prevents infractions and ensures legal accountability in cases of serious environmental violations. High-profile scandals, such as the Volkswagen emissions scandal and illegal deforestation in the Amazon, demonstrate that criminal prosecutions can significantly alter corporate behavior and improve environmental conditions. However, the efficacy of criminal law hinges on the consistency of its enforcement and its adaptation to national contexts.

Evolution and Implementation of International and National Environmental Criminal Legislation

The analysis of international conventions and directives, such as the Convention on the Protection of the Environment through Criminal Law (CETS 172) and Directive 2008/99/EC, has shown that they play a key role in promoting the criminalization of serious environmental crimes at the international level. Despite the limited number of ratifications of the first one and the difficulties in implementation into national legislations of the second one, these documents set an important precedent for the development of legislation aimed at enhancing the protection of the environment through criminal law. The study demonstrated that combining the criminal liability of both natural and legal persons, made possible through evolving international conventions and directives, is the most effective approach to ensuring environmental protection. The introduction of dual liability allows for the accountability of not only direct perpetrators but also corporate structures, preventing evasion of responsibility through complex organizational schemes. However, the integration of international and European legal norms into national legislations faces challenges due to differences in legal systems and practices. It seems essential to adopt harmonized legislation to avoid these issues, and the new Directive aims to address this need. Observing the development of environmental protection over the next few years will be crucial to evaluate the effectiveness of these measures in protection of environment through the criminal law..

Assessment of the Impact of Key International Conventions and National Laws on Environmental Protection Practices

International conventions and national laws have significantly influenced environmental protection practices, fostering the development of criminal legislation and enhancing accountability for environmental crimes. However, the flexibility and heterogeneity in enforcement dilute the overall impact of international conventions, necessitating regular reforms and adaptation to emerging environmental challenges to maintain their relevance and efficacy.

Identification of Existing Challenges and Proposals for Enhancing the Enforcement of Environmental Criminal Laws

The principal challenges in enforcement include jurisdictional disputes, economic pressures, and issues in interpreting legal norms. Addressing these challenges requires clear mechanisms for international cooperation, support for businesses during transitional periods, and adequate funding for law enforcement and judicial systems. The introduction of clear and unified definitions of environmental crimes and penalties will help avoid discrepancies and improve predictability in enforcement.

Future Directions and the Impact of Criminal Law on Environmental Protection

The future of environmental protection through criminal law will be characterized by strengthened international cooperation and the establishment of more stringent standards. Conventions and directives, such as the new Convention on Environmental Protection and Directive 2024/1023, will serve as essential tools for improving and modernizing national legislations. They provide a foundation for developing more rigorous and effective legal norms at the national level. The inclusion of the concept of ecocide will play a crucial role in recognizing and prosecuting major environmental crimes. Preventive and restorative measures aimed at preventing environmental offenses and compensating for damage will be highly significant. Rapid technological changes necessitate the continual updating and adaptation of legal norms to ensure their relevance and efficacy in a rapidly changing world. As a result criminal law will play a crucial role in environmental protection, ensuring rigorous and equitable enforcement, the harmonization of international standards, and the development of new legal concepts to adequately address environmental challenges.

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