

*Ivan Đokić, Ph.D.**
Faculty of Law, University of Belgrade
ORCID: 0009-0006-8076-0633

**NEW CRIMINAL OFFENSES
PROTECTING THE ENVIRONMENT
AND THEIR QUALIFYING CIRCUMSTANCES
Articles 3, 8, and 9 of Directive (EU) 2024/1203****

ABSTRACT: The insufficiently precise normative framework established by the 2008 Environmental Crime Directive (2008/99/EC), as well as the unsatisfactory and extremely modest effects of its application, prompted the proposal to improve the regulatory framework of the European Union in the field of environmental protection. This ultimately resulted in the adoption of the new Directive 2024/1203 on the protection of the environment through criminal law setting. The Directive also introduces a series of new solutions aimed at improving cross-border cooperation, as well as coordination and cooperation among competent authorities within

* e-mail: djokic@ius.bg.ac.rs, Associate Professor.

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each Member State. However, the revolutionary change lies in the way the Directive defines the relationship between criminal law and administrative law. For all criminal offenses introduced by the new Directive, the requirement remains that the conduct in question must constitute an unlawful act. Yet, under the new definition, conduct is considered unlawful not only when it breaches EU law, but even when it is carried out on the basis of a decision by a competent authority of a Member State, if that authorization was obtained through fraud, corruption, extortion, coercion, or if such authorization manifestly violates relevant substantive legal requirements. The question remains how Member States will incorporate this concept into their national legislation; a concept which, regardless of any criminal-policy justification, poses a serious risk to the principle of legality, which requires that the conditions for criminal liability be precisely and clearly defined. Moreover, the seemingly “iron rule” that criminal law must not sanction what another field of law explicitly permits appears to have lost its former value.

Keywords: environment, environmental crime, European Union, directive

1. INTRODUCTION

Criminal law long neglected the protection of the environment, although criminal legislation has long recognized criminal offenses that, alongside some other primary object of protection, also protected the environment. However, those criminal offenses afforded protection to the environment only indirectly, primarily by protecting another legal good. Only in the last few decades has the incorporation into criminal codes of criminalizations aimed primarily at protecting the environment become noticeable, although those criminal-law prohibitions were generally placed within already existing groups of criminal offenses. The most recent development in this field within national criminal-law systems is moving toward grouping a larger number of criminal offenses intended to provide the protection of the environment through criminal law into a separate chapter of criminal offenses. This was also done in the Criminal Code of Serbia, in Chapter XXIV,¹ which contains numerous criminal offenses, including some that had previously been found in ancillary criminal legislation. In that regard, given its importance and the undisputed criminal-policy need for separate protection, it is no longer disputed today that the environment constitutes an independent and primary group object of

¹ Criminal Code, *Official Gazette of the RS*, No. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, and 94/2024.

protection.² Admittedly, although significant changes have occurred in the field of criminal-law mechanisms aimed at implementing the idea of the necessary protection of the environment from the inception of that idea to the present day, the overall results in terms of the practical application of the relevant regulations fall far short of the goals set at the normative level.³ Namely, it is well known that criminal law in this field is traditionally ineffective and that the actual effects of criminal-law mechanisms in the field of environmental protection show modest results. The general-preventive effect of laws criminalizing certain activities harmful to the environment is minor. For the threat of punishment to have any effect on a potential perpetrator, it must be real; that is, there must be a sufficient number of cases in which criminal law is actually applied. The increasingly frequent appearance of major companies and industrial plants as polluters whose activities have serious consequences for various eco-media creates the need to take more decisive steps in the field of the protection of the environment through criminal law, toward improving the relevant regulations and applying them more effectively. This need has also been recognized beyond national systems, and, accordingly, a number of documents have been adopted within the European Union and the Council of Europe with the aim of improving the protection of the environment through criminal law.⁴ At

² Stojanović, Z. (2025). *Komentar Krivičnog zakonika*. Belgrade: Službeni glasnik, 895.

³ Stojanović, Z., Bodrožić, I. (2025). Possibilities and Scope of Environmental Protection Through Criminal Law – the New Environmental Crime Directive. *Nauka, bezbednost, policija*, 30(1), 2.

⁴ At the level of the European Union, until recently the most important act was Directive 2008/99/EC on the protection of the environment through criminal law, which aimed to harmonize national regulations in the field of criminal offenses protecting the environment, thereby creating the conditions for more effective conduct of criminal proceedings, the use of effective investigative methods, and the provision of assistance among Member States in the fight against environmental crime. The Directive also created an obligation for Member States to provide for the criminal liability of legal persons and adequate sanctions that would deter legal persons from committing criminal offenses against the environment. Within the Council of Europe, the Convention on the Protection of the Environment through Criminal Law was adopted in 1998. It was the first international convention to criminalize acts that cause or could cause damage to the environment and represented a very important event in the development of environmental criminal law. However, only thirteen states signed it, and none ratified it, which delayed its entry into force, since it was conditional on three ratifications. Stojanović, Z., Bodrožić, I. (2025). Possibilities and Scope of Environmental Protection Through Criminal Law – the New Environmental Crime Directive. *Nauka, bezbednost, policija*, 30(1), 10. In mid-May 2025, the Council of Europe adopted a new Convention on the Protection of the Environment through Criminal Law. It systematically criminalizes environmental offenses, introduces serious forms of environmental criminal offenses, establishes minimum internationally binding standards, provides instruments for cross-border cooperation in suppressing environmental criminal offenses, and encourages appropriate preventive measures. The Convention is open for

the same time, it is not at all disputed that criminal law should also represent the ultimate means of legal protection in this field, to be applied only if adequate protection cannot be provided by measures from other branches of law. The *ultima ratio* character of protection through criminal law is additionally imposed in the field of environmental protection because punishment must not disturb the balance that must exist in society between justified and necessary interventions in the environment and those that cannot be tolerated. For most undesirable conduct in this field, the possibilities offered by other branches of law should primarily be used, while criminal law should intervene rarely, mainly in cases of the most serious violations in relation to which other forms of response are neither sufficient nor adequate.⁵

Due to the increase in the rate of criminal offenses against the environment, the spread of their harmful consequences beyond national borders, and the fact that the application of the existing regulatory framework did not produce the expected results in the prevention of environmental crime, in April 2024, the European Union adopted the new Directive 2024/1203 in the field of the protection of the environment through criminal law.⁶ It replaced the 2008 Environmental Crime Directive 2008/99/EC,⁷ which was assessed as insuffi-

signature by Council of Europe member states, non-member states that participated in its drafting, and the European Union.

⁵ Stojanović, Z., Bodrožić, I. (2025). Possibilities and Scope of Environmental Protection Through Criminal Law – the New Environmental Crime Directive. *Nauka, bezbednost, policija*, 30(1), 6.

⁶ European Union: Council of the European Union, *Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC*, PE/82/2023/REV/1 OJ L, 2024/1203, 30 April 2024. Following evaluations conducted in 2019 and 2020, the European Commission (EC) found that the 2008 Directive had not achieved satisfactory results in terms of preventing environmental criminal offenses. The number of environmental crime cases successfully investigated and concluded with convictions remained very low, sanctions were too low to have a deterrent effect, and cross-border cooperation was insufficient. There were gaps in implementation in all Member States and at all levels of the criminal prosecution chain (police, prosecution, and criminal courts). The lack of reliable data also made it more difficult to monitor the effectiveness of proceedings in the field of environmental crime. The evaluation showed that the Directive did not have the appropriate effect, and the EC stated that “there are significant shortcomings in all Member States and at all levels of the enforcement chain, preventing environmental criminal law from being effective.” Stojanović, Z., Bodrožić, I. (2025). Possibilities and Scope of Environmental Protection Through Criminal Law – the New Environmental Crime Directive. *Nauka, bezbednost, policija*, 30(1), 11–12.

⁷ Directive 2008/99/EC was the first step toward introducing uniform criminal-law standards in the field of environmental protection at the level of the European Union, but, since its application, in part due to certain imprecisions in the text itself, did not meet expectations, it was replaced by the new Directive 2024/1203. Lukić, N. (2025). Nova direktiva EU o ekološkom kriminalitetu i potreba reforme domaćeg krivičnog zakonodavstva.

ciently effective. The new act therefore emphasizes, *inter alia*, that, for the purpose of more comprehensive protection of the environment through criminal law, Member States must define existing criminal offenses more precisely and introduce new ones, provide for more severe sanctions for violations of environmental protection regulations so that they can express stronger social disapproval, provide for additional sanctions or measures that would include the obligation to restore the damaged ecosystem, exclusion from access to public funding, and the withdrawal of permits and authorizations, as well as ensure, within national law, the consistency of criminal-law and administrative-law regulations in the field of environmental protection.

2. DIRECTIVE 2024/1203 AND NEW CRIMINAL OFFENSES IN THE FIELD OF ENVIRONMENTAL PROTECTION

Compared with the earlier Directive 2008/99/EC, which contained only nine criminal offenses (three offenses in the field of pollution control, two offenses in the field of waste management, three offenses in the field of biodiversity, and one offense in the field of air-pollution management), Directive 2024/1203 provides for a total of twenty criminal offenses, which are not specifically named (Article 3, paragraph 2). Some of the criminal offenses provided for by Directive 2024/1203 were also prescribed by Directive 2008/99/EC, but their description is now partly or substantially more detailed. Most of them could be classified as criminal offenses of harm or concrete endangerment, because they require that a certain threshold of (likely) environmental damage be reached. There are, however, also criminal offenses of abstract endangerment, which do not depend on the fulfillment of a particular threshold of environmental damage, that is, offenses in which danger to the environment is irrebuttably presumed.⁸ In addition to the expanded catalogue of criminal offenses (including illegal timber trade, unlawful ship recycling, unlawful abstraction of surface water or groundwater, serious breaches of

Zbornik radova sa međunarodne naučne konferencije "Izazovi međunarodnog krivičnog prava i krivičnog prava-tom 2", eds. Škulić, M., Miljuš, I., Škundrić, A. Palić: Association for International Criminal Law, 323. In an effort to upgrade the system of the protection of the environment through criminal law and provide a better platform for its more effective application, a significantly more substantive and richer text was adopted in 2024 compared with the earlier regulatory framework. If the two acts are compared, from the preamble to the final articles, the provisions contained in the earlier directive appear as rudimentary rules in comparison with the norms provided for in the newly adopted directive.

⁸ Pereira, R. (2024). A Critical Evaluation of the New EU Environmental Crime Directive 2024/1203. *Eucrim*, 2, 159.

chemicals legislation, and legislation on invasive species), the main feature of the new Directive, in relation to the prescribed criminal offenses, is also the prescription of qualified forms of criminal offenses against the environment (Article 3, paragraph 3), further clarification of the legal terms used (Article 3, paragraphs 6, 7, and 8), and the establishment of a list of mitigating and aggravating circumstances (Articles 8–9).

Directive 2024/1203 provides for the following criminal offenses:

1) the discharge, emission, or introduction of a quantity of materials or substances, energy, or ionizing radiation, into air, soil, or water, which causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

Compared with Directive 2008/99/EC, this criminal offense has been supplemented because the discharge, emission, or introduction of *energy* is now also mentioned. The preamble also clarifies the concept of injury, so that it is interpreted broadly and covers all forms of physical harm, temporary, chronic, or fatal diseases, malfunctions of the body or cells, and other deterioration of physical, but not mental, health.⁹

2) the placing on the market, in breach of a prohibition or another requirement aimed at protecting the environment, of a product the use of which on a larger scale, namely the use of the product by several users, regardless of their number, results in the discharge, emission, or introduction of a quantity of materials or substances, energy, or ionizing radiation into air, soil, or water and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

3) 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. The prescribed criminal offense has a blanket character because the following part of the provision refers to specific EU regulations governing the placing on the market and use of substances such as biocidal products, various chemicals, and plant protection products.¹⁰

⁹ Lukić, N. (2025). Nova direktiva EU o ekološkom kriminalitetu i potreba reforme domaćeg krivičnog zakonodavstva. *Zbornik radova sa međunarodne naučne konferencije "Izazovi međunarodnog krivičnog prava i krivičnog prava-tom 2"*, eds. Škulić, M., Miljuš, I., Škundrić, A. Palić: Association for International Criminal Law, 335.

¹⁰ Lukić, N. (2025). Nova direktiva EU o ekološkom kriminalitetu i potreba reforme domaćeg krivičnog zakonodavstva. *Zbornik radova sa međunarodne naučne konferencije*

4) the manufacture, use, storage, import, or export of mercury, mercury compounds, mixtures of mercury, and mercury-added products where such conduct is not in compliance with the requirements set out in Regulation (EU) 2017/852 of the European Parliament and of the Council and 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.

5) the execution of projects within the meaning of Article 1(2)(a), as referred to in Article 4(1) and (2), of Directive 2011/92/EU of the European Parliament and of the Council, where such conduct is carried out without a development consent and causes or is likely to cause substantial damage to the quality of air or soil, or the quality or status of water, or substantial damage to an ecosystem, animals, or plants.

6) the collection, transport, or treatment of waste, the supervision of such operations, and the after-care of disposal sites, including action taken as a dealer or a broker, where such conduct:

- concerns hazardous waste as defined in Article 3(2) of Directive 2008/98/EC of the European Parliament and of the Council, and it concerns a non-negligible quantity of such waste; or

- concerns waste other than that referred to in point (i) and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

7) the shipment of waste, within the meaning of Article 2, point (26), of Regulation (EU) 2024/1157 of the European Parliament and of the Council, where such conduct concerns a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked.

8) the recycling of ships falling within the scope of Regulation (EU) No 1257/2013, where such conduct is not in compliance with the requirements referred to in Article 6(2), point (a), of that Regulation.

9) the ship-source discharge of polluting substances falling within the scope of Article 3 of Directive 2005/35/EC into any area referred to in Article 3(1) of that Directive, except where such ship-source discharge satisfies the conditions for exceptions set out in Article 5 of that Directive, which causes or is likely to cause deterioration in the quality of water or damage to the marine environment. By including this criminal offense in Directive 2024/1203, Directive 2009/123/EC, which amended Directive 2005/35/EC on

“Izazovi međunarodnog krivičnog prava i krivičnog prava-tom 2”, eds. Škulić, M., Miljuš, I., Škundrić, A. Palić: Association for International Criminal Law, 335.

ship-source pollution and on the introduction of penalties for infringements, ceased to be valid.

10) the operation or closure of an installation in which a dangerous activity is carried out or in which dangerous substances or mixtures are stored or used, where such conduct and such dangerous activity, substance, or mixture fall within the scope of Directive 2012/18/EU of the European Parliament and of the Council or of Directive 2010/75/EU of the European Parliament and of the Council, and such conduct causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

11) the construction, operation, and dismantling of an installation, where such conduct and such an installation fall within the scope of Directive 2013/30/EU of the European Parliament and of the Council, and such conduct causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

12) the manufacture, production, processing, handling, use, holding, storage, transport, import, export, or disposal of radioactive material or radioactive substances, where such conduct and such a material or substances fall within the scope of Council Directives 2013/59/Euratom, 2014/87/Euratom, or 2013/51/Euratom, and such conduct causes or is likely to cause the death of, or serious injury, to any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

13) the abstraction of surface water or groundwater within the meaning of Directive 2000/60/EC of the European Parliament and of the Council, where such conduct causes or is likely to cause substantial damage to the ecological status or ecological potential of surface water bodies or to the quantitative status of groundwater bodies.

14) the killing, destruction, taking of, possession, sale, or offering for sale of a specimen or specimens of a species of wild fauna or flora listed in Annex IV, or in Annex V where species in that Annex are subject to the same measures as those adopted for species in Annex IV, to Council Directive 92/43/EEC and of a specimen or specimens of the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council, except where such conduct concerns a negligible quantity of such specimens.

15) the trade of a specimen or specimens, or parts or derivatives thereof, of a species of wild fauna or flora, listed in Annexes A and B to Council Regulation (EC) No 338/97, and import of a specimen or specimens, or parts or derivatives thereof, of such species listed in Annex C to that Regulation, except where such conduct concerns a negligible quantity of such specimens.

16) the placing or making available on the Union market or the export from the Union market of relevant commodities or relevant products, in breach of the prohibition set out in Article 3 of Regulation (EU) 2023/1115, except where such conduct concerns a negligible quantity.

17) any conduct which causes the deterioration of a habitat within a protected site, or the disturbance of animal species listed in Annex II, point (a), to Directive 92/43/EEC within a protected site, within the meaning of Article 6(2) of that Directive, where such deterioration or disturbance is significant.

18) the bringing into the territory of the Union, placing on the market, keeping, breeding, transporting, using, exchanging, permitting to reproduce, growing, or cultivating, releasing into the environment, or the spreading of invasive alien species of Union concern, where such conduct breaches:

- restrictions set out in Article 7(1) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants; or
- a condition of a permit issued under Article 8 of Regulation (EU) No 1143/2014 or of an authorization granted under Article 9 of that Regulation and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil, or water, or substantial damage to an ecosystem, animals, or plants.

19) the production, placing on the market, import, export, use, or release of ozone-depleting substances, whether alone or as mixtures, as referred to in Article 2, point (a), of Regulation (EU) 2024/590 of the European Parliament and of the Council, or the production, placing on the market, import, export, or use of products and equipment, and parts thereof, containing ozone-depleting substances or whose functioning relies upon those substances as referred to in Article 2(b) of that Regulation.

20) the production, placing on the market, import, export, use, or release of fluorinated greenhouse gases, whether alone or as mixtures, as referred to in Article 2, point (a), of Regulation (EU) 2024/573 of the European Parliament and of the Council, or the production, placing on the market, import, export, or use of products and equipment, and parts thereof, containing fluorinated greenhouse gases or whose functioning relies upon those gases as referred to in Article 2, point (b), of that Regulation, or the putting into operation of such products and equipment.

Despite the exhaustive list of criminal offenses provided for by the Directive, there are also views in the literature that it could have gone one step further, because some activities with a significant impact on the environment have not been specifically criminalized, including illegal fishing, fraud on the EU carbon market, the illegal trade in genetically modified organisms

(GMOs) and their knowing release into the environment, and the causing of forest fires.¹¹

In order to be considered a criminal offense, any of the previously listed forms of conduct must be unlawful in the specific case (Article 3, paragraph 1). Since this is a general criminal-law condition for punishability, that condition is not disputed in itself. However, a novelty in this respect is the provision under which conduct is considered unlawful not only where it constitutes a breach of certain Union law (or a law or other regulation of a Member State), but even where it is *carried out on the basis of a decision of a competent authority of a Member State, if that authorization was obtained fraudulently, by corruption, extortion, or coercion, or if such authorization is in manifest breach of relevant substantive legal requirements*. The literature has rightly described this solution as a revolutionary novelty of Directive 2024/1203, which *de facto* introduces into the European legal framework the category of autonomous criminal offenses against the environment, thereby simultaneously redefining the traditional relationship between criminal law and administrative law in this field.¹² It is well known, namely, that in the field of environmental protection the accessory nature of criminal law in relation to administrative-law regulations has traditionally been pronounced, given the inevitability of tolerating a certain impact on the environment, which is primarily determined by the relevant administrative-law regulations on the protection, preservation, and improvement of the environment, and only through a violation of which entry into the criminal zone occurs. In some states, unlike in our legislation, the relevant environmental criminal offense is also committed by acting contrary to individual administrative acts (for example, the Federal Republic of Germany), and this was also a reason for Directive 2024/1203 to include, under the concept of unlawfulness, conduct contrary to a decision of a competent authority of a Member State giving effect to Union law concerning environmental protection (Article 3, paragraph 1, point b). In fact, the immediate reason for the radical step chosen by the drafters of the Directive in defining the concept of unlawfulness is the increasingly frequent occurrence of cases in which a particular activity damaging the environment is carried out formally entirely in

¹¹ Pereira, R. (2024). A Critical Evaluation of the New EU Environmental Crime Directive 2024/1203. *Eucrim*, 2, 159.

¹² It is interesting that the new Council of Europe Convention on the Protection of the Environment through Criminal Law, adopted this year, also provides in Article 3 (which contains definitions of certain terms) that conduct carried out on the basis of an authorization of the competent authority of a State Party is also considered unlawful if that authorization was obtained fraudulently, by corruption, extortion, or coercion.

accordance with the law and individual authorizations.¹³ Even in such a case, according to the new provision, the conduct will be qualified as unlawful if the authorization was obtained through the commission of specific criminal offenses. Nevertheless, this raises the question of how it will be proved that a specific authorization was issued through the commission of a specific criminal offense, but it seems that the second part of the provision defining the concept of unlawfulness raises an even greater dilemma, since, under it, an activity carried out on the basis of an authorization that is *in manifest breach of relevant substantive legal requirements* is also considered unlawful. This implies a situation in which an individual administrative act has been adopted in breach of substantive law (application of the wrong regulation, incorrect interpretation of the correct regulation, exceeding authority based on discretionary assessment, or adopting an act contrary to the purpose for which the authority was granted).¹⁴ In other words, criminal liability is not entirely excluded in this way, even though a certain harmful activity is formally carried out in accordance with regulations or individual acts, if the substantive legal conditions for issuing the permit have thereby been seriously breached.¹⁵ Admittedly, it is not disputed that the formulation “in manifest breach of relevant substantive legal requirements” should be interpreted as referring to an obvious and substantial breach of relevant substantive legal requirements, and that it therefore could not cover less significant breaches of procedural requirements or some

¹³ There are many cases of serious environmental pollution in the EU that cause danger, and, in some cases, harm to human health, in which criminal law cannot provide protection because the actors causing the damage act in accordance with the conditions of the relevant permits. Two well-known examples in the Netherlands include Tata Steel, which emitted various pollutants that caused serious harm to health and an increased risk of cancer among the population living near the plant, and Chemours (formerly DuPont), which journalists revealed had released harmful chemicals into the air, soil, and surface waters while being aware of their harmful effects on the local population. In both cases, company representatives claimed that their polluting activities complied with the permits issued. In Belgium as well, the company Umicore, located near Antwerp, emitted lead, which led to serious harm to the health of children in the surrounding area. When asked about the pollution in a television program, the company’s CEO stated that the company’s activities were “strictly in compliance with the permit issued.” Faure, M. G. (2024a). The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law?. *Journal of Environmental Law*, 36(3), 328.

¹⁴ Lukić, N. (2025). Nova direktiva EU o ekološkom kriminalitetu i potreba reforme domaćeg krivičnog zakonodavstva. *Zbornik radova sa međunarodne naučne konferencije “Izazovi međunarodnog krivičnog prava i krivičnog prava-tom 2”*, eds. Škulić, M., Miljuš, I., Škundrić, A. Palić: Association for International Criminal Law, 334.

¹⁵ Faure, M. G. (2024a). The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law?. *Journal of Environmental Law*, 36(3), 325.

ancillary elements of the authorization.¹⁶ Although part of the doctrine supports such an approach, with the explanation that administrative bodies may, by circumventing regulations, set standards that are not in the public interest (the relationship between the state and corporations is especially dangerous, because certain state structures may, through abuse of authority connected with the issuance of permits, *de facto* enable environmental pollution), serious criticisms of the new direction in defining the relationship between administrative law and criminal law are nevertheless also encountered. In that context, the literature emphasizes that the “iron rule,” according to which criminal law must not prohibit something that is expressly permitted in another branch of law, would no longer have any value.¹⁷ In addition, a case in which an authorization is in manifest breach of relevant substantive legal requirements may also include a situation in which the entity to which such authorization was granted is not aware of that circumstance at all, so that culpability for using such a permit does not necessarily have to be attributed to it. Thus, the principle of culpability is seriously called into question in this way. It is therefore correctly observed that the possible incorporation of the mentioned definition of unlawfulness into national frameworks would make sense only if the permit holder were required to have actual knowledge (in the form of direct intent) of the breach of substantive law as an additional prerequisite for criminal liability.¹⁸ Otherwise, this concept would result in criminal law, which is, in principle, merely accessory, abandoning that role and becoming the primary means of protection, a role that, at least in this area, it cannot by its very nature assume. In addition, the formal contradiction between the norms of administrative law and criminal law would not be avoided even in the solution proposed above; rather, it would only be temporarily concealed.¹⁹ Uncritical acceptance of fluid concepts that are questionable from the standpoint of legal dogmatics could lead to systemic ruptures within criminal law, which cannot be justified by

¹⁶ Faure, M. G. (2024b). The Creation of an Autonomous Environmental Crime through the New EU Environmental Crime Directive. *Eucrim*, 2, 154.

¹⁷ Heghmanns, M. (2024). Die neue EU-Richtlinie über den strafrechtlichen Schutz der Umwelt v. 11. April 2024. *Zeitschrift für Internationale Strafrechtswissenschaft*, 4, 260.

¹⁸ Negligence, or even *dolus eventualis*, would not be sufficient in this respect, because, having regard to the complexity of environmental law, this would impose excessive demands on citizens; any reasonably conscientious citizen would always have to consider the possibility that the competent authority may have misapplied complex law that they themselves cannot fully grasp (and would thus be acting with *dolus eventualis*). Heghmanns, M. (2024). Die neue EU-Richtlinie über den strafrechtlichen Schutz der Umwelt v. 11. April 2024. *Zeitschrift für Internationale Strafrechtswissenschaft*, 4, 260.

¹⁹ Heghmanns, M. (2024). Die neue EU-Richtlinie über den strafrechtlichen Schutz der Umwelt v. 11. April 2024. *Zeitschrift für Internationale Strafrechtswissenschaft*, 4, 260.

any special position of environmental criminal law in relation to other parts of criminal-law subject matter.²⁰

For the vast majority of the prescribed criminal offenses, the Directive provides for punishment not only for intentional, but also for negligent commission of the relevant wrong (Article 3, paragraph 4). A significant novelty introduced by Directive 2024/1203 is also the obligation to prescribe qualified forms of the criminal offenses provided for by it. Under Article 3, paragraph 3, of the Directive, Member States are obliged to prescribe aggravated forms of criminal offenses if the acts of those criminal offenses result in: (a) 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 (b) widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water.²¹ As emphasized in the preamble to the Directive itself, the drastic consequences of criminal offenses against the environment also require the prescription of aggravated forms which, in terms of their scale, are comparable to so-called ecocide, as a kind of capital offense against the environment, “which is already covered by the law of certain Member States and which is being discussed in international fora.”

Article 8 of Directive (EU) 2024/1203 also provides for a catalogue of aggravating circumstances, which are relevant in sentencing insofar as they do not constitute elements of the criminal offenses under Article 3, because otherwise this would amount to a violation of the principle against double counting. In that sense, states are obliged, in accordance with national law, to provide for one or more of the following circumstances as aggravating circumstances when determining the sentence for environmental criminal offenses, if: (a) the offense caused the destruction of, or irreversible or long-lasting substantial damage to, an ecosystem (this aggravating circumstance does not apply to the qualified forms of criminal offenses covered by Article 3, paragraph 3); (b) the offense was committed in the framework of a criminal organization within the meaning of Council Framework Decision 2008/841/JHA; (c) the offense involved the use by the offender of false or forged documents; (d) the offense was committed by a public official when performing his or her duties; (e) the

²⁰ Heghmanns, M. (2024). Die neue EU-Richtlinie über den strafrechtlichen Schutz der Umwelt v. 11. April 2024. *Zeitschrift für Internationale Strafrechtswissenschaft*, 4, 266.

²¹ The 2025 Draft Law on Amendments to the Criminal Code, which announced numerous amendments in the field of criminal offenses against the environment, implemented the qualified forms of criminal offenses under Article 3, paragraph 3, of the Directive through the following formulation: If the offense ... caused substantial damage to the quality of air, water, or soil that is irreparable or long-lasting, or the destruction of or substantial damage to animal or plant life. Articles 49–51 of the Draft.

offender has previously been convicted by a final judgment of offenses of the same nature as those referred to in Article 3 or 4; (f) the offense generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly, to the extent that such benefits or expenses can be determined; (g) the offender destroyed evidence, or intimidated witnesses, or complainants; and (h) the offense was committed within an area classified as a special protection area pursuant to Article 4(1) or (2) of Directive 2009/147/EC, or a site designated as a special area of conservation in accordance with Article 4(4) of Directive 92/43/EEC or a site listed as site of Community importance in accordance with Article 4(2) of Directive 92/43/EEC.

Among mitigating circumstances, Directive (EU) 2024/1203 specifically emphasizes that account may be taken of the circumstance that: (a) the offender restores the environment to its previous condition, where such restoration is not an obligation under Directive 2004/35/EC, or, before the start of a criminal investigation, takes steps to minimise the impact and extent of the damage or remediates the damage; and (b) the offender provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to identify or bring to justice other offenders or to find evidence.

3. CONCLUSION

In contemporary conditions, the shaping of a special strategy in the field of environmental protection is becoming an increasingly important segment of general crime-control policy. The high growth rate of environmental crime, which, because of enormous revenues and a low risk of detection, is increasingly committed by organized criminal groups,²² requires an appropriate criminal-law response. However, there is hardly any other field in which criminal law declaratively shows such interest and readiness to intervene at the legal level, while not being applied at all in practice, as is the case with the

²² In recent literature, the term eco-mafia has also been used for organized groups created for the purpose of committing criminal offenses against the environment. Gudin, F. (2024). EU rule of law actors and the environmental crime directive: upholding the law in a new era of ecological challenges. *ERA Forum*, 25, 344–345. Some estimates indicate that environmental crime is the fourth largest activity of organized crime, with an annual growth of 5–7 %. Stojanović, Z., Bodrožić, I. (2025). Possibilities and Scope of Environmental Protection Through Criminal Law – the New Environmental Crime Directive. *Nauka, bezbednost, policija*, 30(1), 11.

field of the protection of the environment through criminal law.²³ In practice, proceedings concerning some of the criminal offenses against the environment most often involve petty offenses, in which the harmful impact on a particular eco-medium cannot be characterized as very serious, rather than the most serious cases involving drastic violations of environmental protection regulations. The criminal-law response to the far-reaching harmful consequences to the environment caused by certain business entities is absent, while proceedings are occasionally conducted, and final judgments rendered, in relation to relatively insignificant acts by individuals.²⁴ It is difficult to say what the reasons are for the devastating effect of criminal-law norms in the field of environmental protection. Treating the environment as a kind of *res nullius*, due to the low level of awareness of the need to preserve it for the entire human race, is probably the reason why criminal law in this field generally has a symbolic character. The blanket character of criminal-law norms in this field, the lack of clarity in the regulations governing the system of protection and preservation of the environment, the violation of which is a prerequisite for criminal liability, and the low probability that those who pollute the environment the most will be held liable for their harmful activities, which are often masked by the useful function of the main activity through which an attack on some eco-medium is incidentally carried out, make criminal law in the sphere of legal environmental protection truly resemble a net that catches small fish while letting the big ones through.

The European framework for the protection of the environment through criminal law has been significantly improved by the adoption of Directive 2024/1203. Starting with the large number of new, more detailed criminalizations, the prescription of aggravated forms of environmental criminal offenses, which the literature emphasizes represent the statutory recognition of so-called ecocide, the specification of the type and level of criminal sanctions, the more detailed regulation of the liability of legal persons, and numerous other novelties, the Directive establishes a solid normative basis for building a more effective system of the protection of the environment through criminal law. It remains to be seen how states will integrate the solutions from the Directive into their national systems and whether they will do so within the prescribed deadline (May 2026).

²³ Stojanović, Z., Bodrožić, I. (2025). Possibilities and Scope of Environmental Protection Through Criminal Law – the New Environmental Crime Directive. *Nauka, bezbednost, policija*, 30(1), 7.

²⁴ Stojanović, Z., Bodrožić, I. (2025). Possibilities and Scope of Environmental Protection Through Criminal Law – the New Environmental Crime Directive. *Nauka, bezbednost, policija*, 30(1), 6.

Bearing in mind that, with respect to the 2008 Environmental Crime Directive (2008/99/EC), there was no response at all by the Serbian legislature (although Serbia is not a member of the European Union, its candidate status indirectly obliges it to align its legislation with European Union regulation), Serbian criminal legislation is not sufficiently aligned with standards at the level of the European Union. In any event, the situation regarding the application of the criminal offenses from Chapter XXIV of the Criminal Code is extremely unsatisfactory, and these criminal offenses have a modest share in the overall structure of crime.²⁵ However, the solutions from the new Directive 2024/1203 will, in all likelihood, very soon, even within the period left to the Member States, be incorporated into the text of the Criminal Code. Namely, the 2025 Draft Law on Amendments to the Criminal Code, Articles 49–57, provides for significant amendments and supplements to Chapter XXIV of the Criminal Code, that is, to the group of criminal offenses against the environment. The immediate motive for the proposed solutions is precisely the catalogue of new criminal offenses contained in Directive 2024/1203. In this regard, the official explanatory statement to the Draft states:

“Since Serbia’s Criminal Code was not fully aligned even with the earlier directive, it is now necessary to introduce a larger number of amendments, including the introduction of new criminal offenses and the clarification of existing ones, thereby expanding the range of criminalized acts and protected legal interests, harmonizing in detail the concepts and structure of criminal offenses, introducing qualified forms with stricter penalties, as well as liability for offenses committed through negligence, in accordance with the highest standards of environmental protection in European law.”

It seems that the proponent, in an effort to fulfill the obligations arising from Directive 2024/1203 while retaining a harmonious and functional criminal-law system, formulated the novelties within the group of criminal offenses in a highly acceptable legislative-drafting manner, avoiding some insufficiently precise and disputed formulations provided for by the Directive. The hope remains that not only changes to the legislative framework, but also the appropriate application of the relevant regulations, will have a more noticeable impact on the prevention of environmental crime. The starting point in the entire process should certainly be sought in the recognition of nature as a

²⁵ According to official data from the website of the Statistical Office of the Republic of Serbia, in 2024 the share of criminal offenses against the environment in the total structure of criminal offenses was only 1.59%. Of a total of 396 convictions for the mentioned criminal offenses, the largest share related to the criminal offense of Timber Theft (233, or almost 60%). Available at: <https://publikacije.stat.gov.rs/G2025/Pdf/G20251190.pdf>.

common good that should be protected from all serious sources of pollution, which certainly corresponds to the protective function of criminal law, that is, the “protection of the individual and other fundamental social values” (Article 3 of the CC).²⁶

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²⁶ Marković, I. (2025) Evropska Direktiva o ekološkom kriminalitetu iz 2024. godine i srpsko krivično pravo. *Zbornik radova sa međunarodne naučne konferencije “Izazovi međunarodnog krivičnog prava i krivičnog prava – tom 2”*, eds. Škulić, M., Miljuš, I., Škundrić, A. Palić: Association for International Criminal Law, 377.

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