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**CRIMINAL AND OTHER SANCTIONS AND MEASURES
UNDER EU DIRECTIVE (2024/1203)
ON THE PROTECTION OF THE ENVIRONMENT
THROUGH CRIMINAL LAW****

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

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State. However, the truly revolutionary change lies in the way in which the Directive defines the relationship between criminal law and administrative law. For all criminal offenses provided for by the new Directive, the conduct in question must constitute an unlawful act. Under the new definition, however, conduct is considered unlawful not only where it breaches a specific rule of Union law, but even where it is carried out on the basis of a decision of the competent authority of a Member State, if that authorization was obtained fraudulently or by corruption, extortion, or coercion, or if the authorization is in manifest breach of relevant substantive legal requirements. The question remains open as to how Member States will incorporate this concept into their national legislation, since, regardless of its potential criminal-policy effect, it poses a serious threat to the principle of legality, which requires the conditions for criminal liability to be determined precisely and clearly. Moreover, it appears that the “iron rule,” according to which criminal law must not sanction what another branch of law expressly permits, no longer has any value.

Keywords: Directive 2024/1203, criminal offenses, environment, criminal sanctions, measures

1. INTRODUCTION

According to United Nations estimates,¹ criminal offenses against the environment rank fourth among criminal activities in the world by the scale of their financial consequences, are estimated at USD 258 billion, and are increasing at an annual rate of 5–7 %, while being linked to other types of transnational crime. According to the results of UN research, more than 60 % of countries report new forms of environmental crime or techniques for committing such criminal offenses, which points to the increasing sophistication and adaptability of transnational criminal groups. Their connection with other criminal activities is particularly noteworthy: 84 % of countries record links with serious criminal offenses, including corruption (42 %), forgery (39 %), drug trafficking (36 %), cybercrime (23 %), and financial crime (17 %).

In April 2024, the European Union adopted a new Directive on the protection of the environment through criminal law (2024/1203),² thereby

¹ UNEP, *Environmental crime*. Available at: <https://www.unep.org/news-and-stories/story/environmental-crime>. Accessed on: September 12, 2025.

² 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, April 30, 2024. With the entry into force of the Trea-

continuing its efforts to protect the environment also through criminal-law instruments. The recitals of the Directive indicate that the rise in criminal offenses against the environment in the EU undermines the effectiveness of law in this area and increasingly extends beyond the borders of Member States. Such offenses pose a significant threat to the environment, and effective cross-border cooperation is therefore needed. At the same time, the existing rules on sanctions under Directive 2008/99/EC and EU environmental law are insufficient for the full protection of the environment. Effective, proportionate, and dissuasive criminal sanctions are necessary, with stronger social disapproval than that achieved through sanctioning in administrative proceedings.

The paper identifies the basic new features of Directive 2024/1203 and then analyzes in detail the provisions that prescribe criminal and other sanctions and measures. The author analyzes the advantages and disadvantages of the proposed solutions, with particular attention devoted to the effectiveness of individual criminal sanctions imposed on legal persons. The final chapter analyzes the significance of the newly adopted solutions in Directive 2024/1203 for domestic criminal legislation in the field of preventing and suppressing environmental criminal offenses.

2. NEW FEATURES INTRODUCED BY DIRECTIVE 2024/1203

The new Directive on the protection of the environment through criminal law entered into legal force in May of last year. Unlike the previous Directive 2008/99/EC,³ it introduces new criminal offenses, defines certain concepts,

ty of Lisbon, the three-pillar structure was abolished, while the new EU legal framework consists primarily of the Treaty on European Union and the Treaty on the Functioning of the European Union. In Article 83, paragraph 1, the latter Treaty provides for the power of the EU to adopt, by means of directives, minimum rules concerning the definition of criminal offenses and sanctions, while framework decisions as a type of legal instrument are not mentioned in the Treaty of Lisbon or in the Treaty on the Functioning of the EU. For more, see: Lukić, N. (2012). Organizovana kriminalna grupa u evropskom krivičnom pravu. *Razvoj pravnog sistema Srbije i harmonizacija sa pravom EU: prilozi projektu 2012*. Belgrade: Faculty of Law, University of Belgrade, 170–182.

³ Work on that Directive was marked by disagreement between the Council and the Commission of the EU regarding competence in the field of criminal law. The Council initiated the adoption of a Framework Decision on the protection of the environment through criminal law. The Commission, on the other hand, initiated the adoption of a directive on environmental crime, claiming that criminal law was necessary for the implementation of the European Commission's environmental policy. The dispute was resolved through two judgments of the European Court of Justice confirming the Commission's competence in criminal-law matters, while establishing certain limitations. In its judgment of September 13, 2005 in Case C-176/03, the Court held that, "while it is true that, as a general rule,

and determines criminal sanctions more precisely. The reasons for adopting the new Directive should also be sought in the partial ineffectiveness of the previous EU directive. Specifically, a study⁴ conducted to determine the extent to which Member States had harmonized their national legislation with Directive 2008/99/EC points to the following conclusions:

1. States have taken different approaches to harmonization. Some amended and supplemented existing environmental criminal offenses in their criminal codes, others opted to introduce the new rules into environmental protection laws, while a third group adopted special laws (Romania and Bulgaria have specific approaches);

2. There is no uniformity with respect to culpability, that is, in a number of states, the negligent form of certain criminal offenses under the Directive is not provided for. The same applies to the consequence in the form of concrete danger, since a number of states require, for certain criminal offenses, a consequence in the form of destruction or damage;

3. The “non-negligible” quantity mentioned in the Directive has not been accepted equally in all legal systems, since some countries (for example, Spain and Bulgaria) require a “substantial” quantity of waste;

4. A number of states have not implemented all criminal offenses from Article 3 of the Directive;

5. Inconsistencies also exist with respect to the liability of legal persons, that is, the definition of the responsible person within a legal person, the establishment of the liability of a legal person where supervision or control was not exercised, and the rule that the liability of a legal person does not preclude criminal proceedings against the responsible person.

6. There is a wide range of prescribed terms of imprisonment and fines (for responsible persons and legal persons), while a certain number of states

neither criminal law nor the rules of criminal procedure fall within the Community’s competence, this does not, however, prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, 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.” Cited according to: 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, 323–344.

⁴ Dupont, C., Rass-Masson, N. (2013). *Evaluation Study on the Implementation of Directive 2008/99/EC on the Protection of the Environment through Criminal Law by Member States*. Brussels: Milieu Ltd., 7–14.

show inconsistency with Article 5 of the Directive, which prescribes the characteristics that sanctions should have.⁵

In Article 3, the new Directive prescribes a total of 20 criminal offenses against the environment. Unlike the previous Directive, the new Directive thus introduces 12 additional criminal offenses. The following are criminalized: pollution of water, air, and soil; unlawful placing on the market of products polluting water, air, and soil; pollution by various chemical substances, particularly mercury compounds; the execution of projects without authorization; waste management; waste shipments (between Member States or into, from, or through the EU to third countries); ship recycling; ship-source pollution; dangerous activities or substances in industrial installations; the operation of offshore oil and gas installations; the management of radioactive substances; the abstraction of surface water or groundwater; the killing, destruction, taking, possession, sale, or offering for sale of species of wild fauna and flora; trade in and import of species of wild fauna and flora; control of invasive species on EU territory; the destruction of habitats within a protected site or the disturbance of animal species; the import or export of products associated with deforestation; control of ozone-depleting substances; and fluorinated greenhouse gases.

The Directive requires (Article 3, paragraph 1) that all criminalized conduct be unlawful.⁶ Under the Directive (Article 3, paragraph 1), unlawful conduct exists where the conduct is: 1) contrary to EU law that contributes to the pursuit of one of the objectives of Union policy in the field of environmental protection, in accordance with Article 191, paragraph 1 of the Treaty on the Functioning of the European Union, or 2) contrary to a law or other regulation of a Member State, or to a decision taken by a competent authority of a Member State, giving effect to the EU law referred to in the preceding point. Unlike the previous Directive, the new definition of unlawfulness has the advantage of not containing a list of regulations to which it refers. The aim is also to connect the application of national criminal law with EU law, thereby preventing differences between national legal systems from creating inconsis-

⁵ 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, 333.

⁶ The Council of Europe Convention on the Protection of the Environment through Criminal Law also provided for a so-called autonomous criminal offense against the environment, for which unlawfulness is not required and, accordingly, there is no link to the norms of other branches of law (it concerns pollution of eco-media that results in, or creates a serious risk of, death or serious injury to a person). The new Council of Europe Convention on the Protection of the Environment through Criminal Law was adopted in May 2025 and will enter into force once it has been signed by ten states (Article 53).

ency in criminal prosecution. However, conduct is considered unlawful even if it is carried out on the basis of a decision of a competent authority of a Member State if the authorization was obtained by fraud, corruption, extortion, or coercion, or if that authorization is in manifest breach of substantive legal requirements (Article 3, paragraph 1). This approach to defining the concept of unlawfulness is guided by situations involving threats to the environment that are at the same time lawful, that is, carried out in accordance with a permit. However, such an approach may be criticized because it calls into question the unity of the legal order. Namely, it is not justified for the same conduct to be permitted under administrative law, but not under criminal law.⁷

For a significant number of the criminal offenses prescribed in the new Directive, it is required not only that the specific conduct be contrary to regulations, but also that a certain consequence occur. A distinction may be drawn between criminal offenses whose consequence consists of abstract danger (for example, ship recycling), criminal offenses whose consequence consists of concrete danger (for example, in a large number of offenses, the formulation used is “thereby causing or *being likely to cause* the death of, or serious injury to, a person, or substantial damage to the quality of air, water, or soil, or substantial damage to animals or plants”), and, finally, result offenses, in which the harm consists of damage or destruction.

The Directive also clarifies certain concepts. In addition to the already mentioned concept of unlawfulness, Article 2, paragraph 2 defines an ecosystem as a dynamic complex of plant, animal, fungi, and microorganism communities and their non-living environment, interacting as a functional unit, and includes habitat types, habitats of species, and species populations. Injury, which appears as a consequence in most criminal offenses, is defined (recital 14 of the Preamble) as any form of physical harm, including a change in body function or cell structure, the causing of a temporary, chronic, or fatal disease, a malfunction of the body, or other deterioration of physical health, but excluding mental health.

⁷ Heghmanns, M. (2024). Die neue EU-Richtlinie über den strafrechtlicjen Schutz der Umwelt v. 11 April. *Zeitschrift für Internationale Strafrechtswissenschaft*, 4, 260.

3. CRIMINAL AND OTHER SANCTIONS AND MEASURES UNDER EU DIRECTIVE 2024/1203

3.1. Natural Persons

Article 5 of the Directive prescribes sanctions for natural persons. Unlike Directive 2008/99/EC, which did not prescribe criminal sanctions determined by measure or type, the new Directive does so. Thus, for example, depending on the gravity of the criminal offense, different terms of imprisonment are also provided. For the most serious cases of criminal offenses (Article 5, paragraph 2, point (a)), which result in death, the Directive provides that the maximum term of imprisonment should be at least ten years. It is then provided that, for qualified forms of criminal offenses, the maximum term should be at least eight years of imprisonment. Qualified forms include two situations: 1) 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; 2) widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil, or water. By prescribing qualified forms, the Directive points to possible catastrophic consequences for the environment and to the need to criminalize conduct that has been defined in the literature, but also in certain national legal systems, as ecocide.⁸ The Directive itself, in recital 21, also uses the term “ecocide” for the prescribed qualified forms of criminal offenses. Since concepts such as substantial damage are legal standards, Article 3, paragraphs 6 and 7 provide guidelines for assessing whether substantial damage is at issue, or whether the conduct may endanger the quality of eco-media, an ecosystem, plants, or animals. Such guidelines may be useful, bearing in mind that formulations of criminal offenses that are blanket in nature or contain legal standards may be one of the reasons for their weak application in case law. The Directive also provides that, for a certain number of prescribed criminal offenses, Member States should also criminalize the negligent form, that is, serious negligence. For negligent forms whose qualified consequence is death, a maximum term of at least five years of imprisonment is prescribed. In cases in which death is not the graver consequence and the criminal offenses are committed intentionally,

⁸ For more on the concept of ecocide, see: Randelović, V. (2022). Izazovi u definisanju ekocida u pravu Evropske unije. *Usklađivanje pravnog sistema Srbije sa standardima Evropske unije*. Faculty of Law, University of Kragujevac, 369–380. Škundrić, A. (2023). Ekocid u međunarodnom krivičnom pravu. *Raskršća međunarodnog krivičnog i krivičnog prava: reforma pravosudnih zakona Republike Srbije*. Belgrade: Association for International Criminal Law, 443–458.

maximum terms of at least five or three years of imprisonment are prescribed (Article 5, paragraph 2, points (d) and (e)).

In addition to imprisonment, Member States may also provide for other sanctions and measures for environmental criminal offenses committed by natural persons. These include compensation for damage, restoration of the environment where the damage is not irreparable, fines whose amount should be consistent with the extent of the damage, the benefit obtained, the financial situation of the natural person, the gravity of the criminal offense committed, and other circumstances, exclusion from participation in public procurement procedures and from access to grants, concessions, and licenses, prohibition from further exercising a function connected with the committed criminal offense, withdrawal of permits for the activity connected with the committed criminal offense, a temporary ban on running for public office, and, where there is a public interest, the publication of part or all of the judicial decision.

3.2. Legal Persons

The liability of legal persons for criminal offenses is regulated in the same manner as in Directive 2008/99/EC, and Article 6 prescribes the conditions for such liability. Where Member States provide for the liability of legal persons for criminal offenses, they should ensure that sanctions for environmental criminal offenses comply with the Directive. Where such a type of liability does not exist, the legal systems of those Member States should prescribe other sanctions and measures that, in type and level, comply with the Directive (recital 33). Sanctions for legal persons are provided for in Article 7. The Directive allows Member States, in addition to criminal sanctions, to prescribe other sanctions and other measures that should be effective, proportionate, and dissuasive. Those other measures and sanctions provided only for legal persons, and not for natural persons, are the exclusion from entitlement to public benefits or aid, judicial supervision, a judicial winding-up order, the closure of establishments used for committing the criminal offense, and an obligation to establish due diligence schemes for enhancing compliance with environmental protection standards.

The Directive also provides for fines for legal persons. For a large number of criminal offenses from Article 3, paragraph 2 (points (a)–(l), (p), (s), and (t)), two alternative possibilities are prescribed: a) that the maximum level of the fine be at least 5 % of the total worldwide turnover of the legal person in the business year preceding the year in which the criminal offense was committed or in the business year preceding the year in which the fine was imposed; b) that the maximum level be at least EUR 40 million. For the

remaining criminal offenses (Article 3, paragraph 2, points (m), (n), (o), (q), and (r)), the maximum level of the fine is equivalent to 3 % of total worldwide turnover or an amount of at least EUR 24 million. Where it is not possible to determine the amount of the fine on the basis of total worldwide turnover, Member States are left the possibility of prescribing their own rules for such situations. Member States are also left to determine penalties or other sanctions and measures for qualified forms of criminal offenses, and those should be more severe than the sanctions prescribed for the criminalizations under Article 3, paragraph 2.

Article 8 of the Directive provides for aggravating circumstances which, if they are not already an element of the statutory definition of the prescribed criminal offenses, courts may take into account when determining the sentence. These are the following circumstances: the criminal offense caused the destruction of, or irreversible, or long-lasting substantial damage to, an ecosystem; the criminal offense was committed in the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA (Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime);⁹ the criminal offense involved the use by the offender of false or forged documents; the criminal offense was committed by a public official when performing his or her duties; the offender has previously been convicted by a final judgment of criminal offenses of the same nature as those referred to in Article 3 or 4 of the Directive;¹⁰ substantial financial benefit was obtained or expected, or substantial expenses were avoided; the offender destroyed evidence or intimidated witnesses or complainants; or the criminal offense was committed within specially protected areas in accordance with Directive 2009/147/EC and Directive 92/43/EEC. Aggravating circumstances are not taken into account for qualified forms of criminal offenses. Article 9 also provides for mitigating circumstances: the offender restored the environment to its previous condition, provided that this was not already an obligation under Directive 2004/35/EC, or, before the start of a criminal investigation, took steps to minimize the impact and extent of the damage or remediated the damage; the offender provided judicial or administrative authorities with information that they could not otherwise have been able to obtain and thereby helped them identify or bring to justice other offenders or find evidence.

Article 10 of the Directive provides that, with respect to the prescribed criminal offenses, attempts, and participation, the necessary measures

⁹ European Union: Council of the European Union, *Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime*, OJ L 300, November 11, 2008, 42–45.

¹⁰ Article 4 provides for punishment for complicity and attempt.

shall be applied to enable the tracing, identifying, freezing, and confiscation of instrumentalities and proceeds. Paragraph 2 refers to Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union,¹¹ and states that the states bound by Directive 2014/42/EU will fulfill their obligations under paragraph 1 in accordance with it. Directive 2014/42/EU regulates confiscation in Article 4 and extended confiscation in Article 5.

Table 1 provides an overview of the prescribed terms of imprisonment for natural persons and fines for legal persons.

Table 1: Terms of imprisonment for natural persons and fines for legal persons under Directive 2024/1203¹²

	Offense	In Directive 2008/99/EC	Max. imprisonment (natural person)	At least 10 years if death occurs	Fine for legal person (max.)
a	Pollution of water, air, and soil		At least 5 years		5 % of worldwide turnover or EUR 40M
b	Unlawful placing of products on the market	X	At least 5 years		
c	Chemical pollution	X	At least 5 years		
d	Mercury pollution	X	At least 5 years		
e	Projects without authorization	X	At least 5 years	X	
f	Waste management		At least 5 years		
g	Waste shipments		At least 5 years	X	
h	Ship recycling	X	At least 5 years	X	

¹¹ European Union: European Parliament and Council of the European Union, *Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union*, OJ L 127, April 29, 2014, 39–50.

¹² Nicholson, M. (2024). *A new EU Environmental Crime Directive – A diverging approach with the UK?*. Policy Briefing, Institute for European Environmental Policy UK, 13.

¹³ In accordance with Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC Text with EEA relevance.

i	Ship-source pollution	X	At least 5 years	X	5 % of worldwide turnover or EUR 40M
j	Dangerous activities or substances in industrial installations		At least 5 years		
k	Offshore installations ¹³	X	At least 5 years		
l	Radioactive substances		At least 5 years		
m	Water abstraction		At least 3 years	X	3 % worldwide turnover or EUR 24M
n	Killing, taking, possession, sale, or offer for sale of wild fauna or flora		At least 3 years	X	
o	Trade in and import of wild fauna or flora		At least 3 years	x	3 % worldwide turnover or EUR 24M
p	Import or export of deforestation-related products:	x	At least 5 years	x	5 % of worldwide turnover or EUR 40M
q	Destruction of habitats within a protected site or disturbance of animal species		At least 3 years	x	3 % of worldwide turnover or EUR 24M
r	Invasive species control in the EU	x	At least 3 years		
s	Ozone-depleting substances control		At least 5 years	x	5 % of worldwide turnover or EUR 40M
t	Fluorinated greenhouse gases control	x	At least 5 years	x	

4. ADEQUACY OF CRIMINAL SANCTIONS IN SUPPRESSING CORPORATE CRIME

One of the disputed issues concerning the liability of legal persons for criminal offenses is the justification and purpose of criminal sanctions. Opinions differ, and proponents of the view that a legal person cannot be held liable for a criminal offense argue, *inter alia*, that a legal person, which does not have a will of its own but can express it only through natural persons, cannot be sanctioned and cannot understand the message carried by a criminal sanction,

especially a penalty linked to culpability. Consequently, the penalty cannot achieve its purpose.¹⁴ Under a different approach, a legal person has its own will, which it expresses through natural persons (the vicarious model or identification model), or a certain model of autonomous liability of legal persons is accepted. Accordingly, it is considered possible to achieve the purpose of punishment, whether general or special prevention is at issue.¹⁵ Some authors take the view that general prevention should be presumed possible in relation to legal persons, although not to the same extent as with natural persons.¹⁶ Proponents of deterrence as a negative form of general prevention,¹⁷ regardless of whether it concerns deterring other legal persons or the one that has been punished, start from the assertion that corporate crime is based on rational decisions made by actors who decide on behalf of those companies and for their benefit or for both the company's and their own benefit. Therefore, starting from utilitarian ideas, among which Bentham's "hedonistic calculus" is perhaps the best known, they consider that the penalty should outweigh the benefit obtained through the commission of the criminal offense. In practice, this generally leads to the tightening of prescribed and imposed penalties and may result in the bankruptcy of legal persons.¹⁸ However, although there are cases confirming that responsible corporate actors are calculating and, despite possible consequences, choose to commit a criminal offense in order to obtain benefits or prevent financial losses,¹⁹ numerous examples show that cases of corporate crime are not always the result of a clear calculation,²⁰ but

¹⁴ For more, see: Đorđević, M. (1968). *Privredni prestupi*. Belgrade: Naučna knjiga, 76–77.

¹⁵ Đorđević, M., *Op. cit.*, 77.

¹⁶ Stojanović, Z., Shine, R. (2007). *Komentar Zakona o odgovornosti pravnih lica za krivična djela*. Ministry of Justice of the Republic of Montenegro, Podgorica, 83.

¹⁷ The positive form of general prevention consists of strengthening citizens' trust in the legal order.

¹⁸ Imprisonment for perpetrators of environmental criminal offenses, especially where they are responsible persons within legal persons, is rare. However, there are sporadic examples of high fines imposed on companies for environmental criminal offenses. For more, see: Lukić, N. (2023). *Zelena kriminologija*. Belgrade: Faculty of Law, University of Belgrade, 114–115.

¹⁹ The case of the Ford Pinto automobile is well known. Placing the defective model on the market led to several fatal outcomes, and it was later discovered that all consequences would have been avoided had the company decided to spend an additional USD 11 per vehicle. According to: Lukić, N. (2021). *Kriminalitet kompanija*. doctoral dissertation. Belgrade: Faculty of Law, University of Belgrade, 77.

²⁰ Moore likewise points to numerous factors affecting corporate crime, thereby calling into question the thesis of rational decision-making. See: Moore, C. A. (1987). *Timing the Giant Corporation? Some Cautionary Remarks on the Deterrability of Corporate Crime. Crime and Delinquency*, 33, 379–402.

may involve ignorance, omission, and, especially given the number and inter-connection of legal norms regulating corporate operations, internal conflicts within the organization or the conditioning of decision-making by institutional and organizational elements (so-called bounded rationality).²¹ Numerous studies have been conducted on the effects of deterrence on the conduct of employees in companies. Thus, for example, Sampson and her coauthors conducted a meta-analysis on corporate environmental crime using questionnaires with hypothetical cases in order to obtain the most candid possible answer. It was concluded that conduct is influenced by positive outcomes of decisions (for example, bonuses and promotion), but that informal forms of response to a criminal offense against the environment (dismissal, loss of the company's good reputation) have a stronger inhibiting effect than the application of criminal law.²² Special prevention is also possible to a certain extent, primarily through the imposition of security measures or a suspended sentence with protective supervision, but this too is difficult to achieve in the case of companies characterized by subcultures that "coerce or encourage the commission of criminal offenses."²³

The question also arises whether retribution as a purpose of punishment can be achieved in relation to legal persons. Unlike the idea of deterrence, which proceeds from the claim that people are rational, retributivists consider that people *ought* to be rational.²⁴ Different views also exist in this regard. According to one view, the evil contained in punishment affects the legal person through its bodies and members.²⁵ According to another, the retributivist view is characterized by the understanding that punishment is an evil, that is, suffering, and that this suffering and possible remorse can be expressed only by a natural person, not by a legal person. There are certain submodels of

²¹ Vaughan, D. (2007). Rational Choice, Situated Action and the Social Control of Organizations. Simpson, S., Gibbs, C. (eds.) *Corporate Crime*. Hampshire: Ashgate, 24–25.

²² For more, see: Lukić, N. (2023). Krivičnopravni i kriminološki aspekti usklađenosti poslovanja, in: Ignjatović, Đ. (ed.) *Kaznena reakcija u Srbiji XIII*. Belgrade: Faculty of Law, University of Belgrade, 277–301.

²³ Friedrichs, D. O. (2009). *Trusted Criminals: White-Collar Crime in Contemporary Society*. Belmont: Wadsworth, 226–229.

²⁴ In the literature, the synonym "just deserts" is also used for retribution as a purpose of punishment. Although they are often used as synonyms, a distinction is nevertheless emphasized. While both approaches advocate the view that punishment should be proportionate to the gravity of the criminal offense, retributivists advocate a stricter overall level of penalties, while proponents of the milder "just deserts" approach opt for less severe penalties. For more, see: von Hirsch, A. (2017). Just Deserts. Cullen, F. T., Jonson, C. L. (eds.) *Correctional Theory, Context and Consequences*. London: Sage, 44–76.

²⁵ Stojanović, Z., Shine, R. (2007). *Komentar Zakona o odgovornosti pravnih lica za krivična djela*. Ministry of Justice of the Republic of Montenegro, Podgorica, 83.

retributivist understandings that could also fit the punishment of legal persons (according to which the essence of punishment consists of deprivation and social condemnation, that is, labeling), but it cannot be accepted that a legal person can “feel” the suffering that punishment generally carries.²⁶

The removal (incapacitation) of the offender also exists as a purpose of punishment, and this is achieved primarily through imprisonment. As early as 1975, James Wilson, in his book “Thinking about Crime,” emphasized that evil people exist and that nothing helps except separating them from the innocent. At that time, the prison population in the United States numbered “only” 240,000 people, so the Harvard scholar’s idea did not seem bad. Today, that number in all American prisons is six times higher.²⁷ Incapacitation in relation to environmental criminal offenses committed by legal persons can be achieved by imprisoning responsible persons, although courts in practice do not often impose imprisonment in such cases. This purpose is therefore easier to achieve through certain other measures (for example, security measures), by prohibiting responsible persons from carrying out an activity or from holding a position connected with the commission of the criminal offense.²⁸ As a last resort, a sanction consisting of the liquidation of the legal person may also be applied. There are also proposals in the literature that nationalization of the company would be a good solution because, in that way, the consequences would not affect those who did not participate in the commission of the offense in any way – the employees. In addition, if a company has a subsidiary or a parent company, the transfer of assets to a company that was not involved in criminal activities may be considered.²⁹ The EU Directive provides several such options. These are, first, a judicial winding-up order, but also measures aimed at prohibiting the pursuit of business activity (the Directive mentions both permanent and temporary bans), the withdrawal of permits, and the closure of establishments connected with the commission of the criminal offense. Even without liquidation, the other measures often affect legal persons more severely than a high fine, which is also emphasized in recital 31.

The fine is very widespread in practice when it comes to corporate crime. The most common objection is that average fines are insufficiently high and that, often, especially for large and successful companies, they represent merely a cost of doing business that is frequently more “profitable” for them

²⁶ Rich, S. (2016). Corporate Criminals and Punishment Theory. *Canadian Journal of Law and Jurisprudence*, 29(1), 97–118.

²⁷ Wilson, J. (2017). Incapacitation. Cullen, F. T., Jonson, C. L. (eds.) *Correctional Theory, Context and Consequences*. London: Sage, 113–145.

²⁸ Tombs, S., Whyte, D. (2007). *Safety Crimes*. Cullompton: Willan Publishing, 172.

²⁹ Tombs, S., Whyte, D. (2007). *Safety Crimes*. Cullompton: Willan Publishing, 184–185.

than investing money, for example, in air purifiers. If the demand for higher fines is viewed through the prism of the theory of retribution, it follows that the gravity of the criminal offense³⁰ and the culpability of the offender³¹ play the main role in assessing the amount of the fine. There are two potential problems in that case. First, if the damage is substantial and can be precisely measured in advance, the fine would be too high and could lead to bankruptcy. Second, for environmental damage of the same scale, companies with different financial situations would pay the same fine, which means that companies with weaker economic strength would be more affected.³² For that reason, there are proposals that the penalty be measured in relation to the ability to pay (unit fines)³³ or the value of the company itself (equity fines).³⁴ In light of deterrence theories, fines should exceed the benefit obtained or expected, or the losses avoided. In addition to the already mentioned objections concerning the possibility that excessive fines may cause bankruptcy (where smaller companies would again be more affected) and concerning the rationality of actors who make decisions on behalf and for the account of companies, it should also

³⁰ The gravity of the criminal offense is determined on the basis of the damage caused or financial benefit obtained and the degree of risk to the public interest (for example, that risk would be greater if a polluted river is a drinking-water source for a large number of people than if a small local lake is polluted and the pollution affects a small number of people). For more, see: Stojanović, Z., Shine, R. (2007). *Komentar Zakona o odgovornosti pravnih lica za krivična djela*. Ministry of Justice of the Republic of Montenegro, Podgorica, 92–93.

³¹ The degree of culpability is somewhat more difficult to determine with respect to legal persons and would depend on the adopted conception of liability of legal persons. When it comes to derivative liability, the assessment is made on the basis of the culpability of the responsible person. However, when it comes to original (autonomous) liability, criteria such as corporate subculture and the encouragement or non-tolerance of violations of regulations, and the taking of measures to prevent the creation of such a subculture, are used. For more, see: Lukić, N. (2023). *Zelena kriminologija*. Belgrade: Faculty of Law, University of Belgrade, 285.

³² One proposal offered by retributivists is that not all offenders fall into the same category, but that over time, as an increasing number of them are punished, a distinction can be made, that is, similar cases can be punished similarly. For more, see: Duus-Otterstrom, G. (2025). Retributivism and Severity. Ryberg, J. (ed.) *The Oxford Handbook of the Philosophy of Punishment*. Oxford: Oxford University Press, 306–322.

³³ A day-fine system would be adequate in that case.

³⁴ Tombs, S., Whyte, D. (2007). *Safety Crimes*. Cullompton: Willan Publishing, 181–182. Where the value of the company is taken as the starting point, the idea is to affect the owners, which is also subject to certain criticisms. There are, however, such cases in practice as well. Thus, in one case in Britain, the court imposed a fine of GBP 250,000 and stated that it would certainly fall on the shareholders as well, but that it expected them, for that reason, to choose other people who would prevent similar situations from recurring in the future. According to: Croall, H. (2001). *Understanding White-Collar Crime*. Buckingham: Open University Press, 136–137.

be emphasized that prescribing high fines without certainty of their application will not achieve the desired effect. In making such calculations, companies take into account precisely the chances that their violation of regulations will be detected and then punished. If those chances are low, success cannot be expected in terms of either general or special prevention through deterrence.

In recital 33, the Directive emphasizes that, where legal persons are concerned, Member States that provide for the criminal liability of such entities should ensure that criminal sanctions are proportionate, dissuasive, and effective. If they do not provide for the liability of legal persons for criminal offenses, they should also ensure that other sanctions have the same characteristics. The Directive therefore provides that a sanction should be proportionate, which means that the gravity of the criminal offense must be taken into account. Proportionality also means that states should take into account the gravity of different environmental criminal offenses, and the same recital 33 states that maximum penalties should be imposed in cases of the most serious criminal offenses. On the other hand, this is not the only aim; the deterrent effect is also mentioned, which means that, taking into account the circumstances of the specific case, the sanction may also be higher in relation to the gravity of the criminal offense. In line with this, it is emphasized that the financial and other circumstances of legal persons must be taken into account.³⁵ Moreover, recital 5 expressly states that penalties should be strengthened in order to enhance their deterrent effect. Effectiveness refers both to the conduct of criminal proceedings and to the imposition of sanctions, because only the consistent and relatively prompt application of criminal law after the commission of a criminal offense can contribute to achieving the purpose of criminal sanctions.

High fines, removal of responsible persons, temporary prohibition of business activity, and even liquidation do not mean that the companies on which penalties or other sanctions and measures have been imposed will not continue committing criminal offenses in the future. It is therefore emphasized that sanctioning should aim to achieve rehabilitation, rather than deterrence, retaliation, or incapacitation. Rehabilitation should bring about a change in corporate conduct by changing the organizational structure and procedures that led to the criminal offense. The literature points out, however, that, when it comes to criminal offenses resulting in death or endangerment of health, practice shows that such criminal offenses arise from inadequate internal control, poor communication systems, or authoritarian management regimes. Very often, these are not accidental circumstances, but intentional conduct designed to enable or facilitate the commission of a criminal offense. Braithwaite, on

³⁵ Recital 35 of the Directive also mentions taking into account the economic strength of legal persons.

the other hand, considers that courts should order companies to correct such failures because this is easier to achieve with legal persons than with natural persons, from whom a change of personality is expected. These measures are most often imposed together with a suspended sentence. A suspended sentence was first imposed on a company in 1971 in the United States, on the oil company “ARCO,” which was required to prepare a compliance program during the probationary period. In the event of a breach of obligations, a fine is imposed, and there is also the possibility of imposing community service.³⁶ Community service can achieve rehabilitation, but also restitution (not only through compensation to injured parties). The criticisms concern the leniency of the response³⁷ and the morality of such a sanction, bearing in mind examples in which those who violated regulations taught others how to comply with them (for example, where a director is required to teach about violations of workplace regulations while having been the responsible person of a company that committed a criminal offense by violating those regulations).³⁸ Shaming is also connected with the purpose of rehabilitation, and is advocated by certain authors who consider it a civilizing process that has contributed to the reduction of violent criminal offenses, and that shaming and loss of social status should therefore be pursued in environmental criminal offenses.³⁹ Shaming can be achieved through sanctions imposing an obligation to apologize to the victim, while publication of the judgment is also used for this purpose in the case of legal persons. Companies pay great attention to reputation and fear that it may be threatened. However, how a decision will affect consumers depends on several factors. Thus, for example, if a company has a dominant market position, it will be less threatened than a smaller company, because customers will have fewer options to switch to a competing company. The type of regulatory violation and citizens’ attitudes toward those criminal offenses are also relevant. Thus, for example, the discovery of environmental regulatory violations by “Volkswagen” did not affect its operations because it retained a high market position by number of cars sold even after paying the fine.⁴⁰

³⁶ Tombs, S., Whyte, D. (2007). *Safety Crimes*. Cullompton: Willan Publishing, 186.

³⁷ Croall, H. (2001). *Understanding White-Collar Crime*. Buckingham: Open University Press, 136–137.

³⁸ Tombs, S., Whyte, D. (2007). *Safety Crimes*. Cullompton: Willan Publishing, 186–189.

³⁹ Mares, D. (2010). Criminalizing Ecological Harm: Crimes Against Carrying Capacity and the Criminalization of Eco-Sinners, *Critical Criminology*, 18, 279–293.

⁴⁰ van Rooij, B., Fine, A. D. (2020). Preventing Corporate Crime from Within: Compliance Management, Whistleblowing and Internal Monitoring. *The Handbook of White Collar Crime*, ed. M. L. Rorie. Hoboken: Wiley Blackwell, 230.

Among other sanctions and measures, the EU Directive also provides for those of a restorative character and those aimed at achieving rehabilitation. Thus, for example, it provides for the restorative measure of compensation for damage caused to the environment or restoration of the environment. The possibility for a legal person to establish a due diligence scheme for enhancing compliance with environmental protection standards is precisely an attempt to use compliance measures to influence changes in patterns of conduct within the legal person in order to prevent violations of regulations. Finally, the Directive also provides for the measure or sanction of publication of the judicial decision.

5. SIGNIFICANCE OF DIRECTIVE 2024/1203 FOR SERBIAN CRIMINAL LEGISLATION

The implementation of Directive 2024/1203 into national legislation will require amendments to several laws: the Criminal Code (CC), the Law on the Liability of Legal Persons for Criminal Offenses (LLLPCO), the Criminal Procedure Code (CPC), the Law on the Seizure and Confiscation of Proceeds from Crime, and the Law on Economic Offenses. The 2025 Draft Law on Amendments to the Criminal Code⁴¹ largely harmonizes domestic law with the criminal offenses provided for in Directive 2024/1203. Unlike the current text of the CC, qualified forms are introduced where there is a risk of substantial damage to the quality of air, water, or soil, to an ecosystem, or to animal or plant life; where substantial damage occurs that is irreparable or long-lasting to the quality of air, water, or soil, or where animal or plant life is destroyed or significantly damaged; or where there is danger to human life or health, or serious bodily injury, serious impairment of health, or death occurs. Depending on the gravity of the consequence, the threatened penalties are also significantly more severe than under the current solutions. Thus, for example, in Article 260 (Environmental Pollution), the Draft prescribes a penalty of one to eight years if the acts of commission from paragraphs 1 and 2 cause substantial damage that is irreparable or long-lasting to the quality of air, water, or soil, or if animal or plant life is destroyed or significantly damaged. If the consequence is serious bodily injury or serious impairment of health, a penalty of two to ten years is prescribed, and if the death of one or more persons occurs, the prescribed term of imprisonment ranges from three to twelve years. Article 266 of the Draft (Unlawful Bringing into Serbia, Processing, Disposal, and

⁴¹ Available at: <https://ekonsultacije.gov.rs/topicOfDiscussionPage/528/4>.

Storage of Hazardous Waste) provides for even more severe penalties.⁴² For the most serious form, provided for in paragraph 4, a penalty of five to fifteen years of imprisonment is prescribed.

Prescribing new criminal offenses is only the first step toward more effective suppression and prevention of environmental crime. The previous practice of criminal courts confirms this, bearing in mind that most criminal offenses from the group of criminal offenses against the environment are rarely applied.⁴³ The dominant criminal offense in case law is Timber Theft, followed by a criminal offense that is, in fact, violent in nature – Killing and Abuse of Animals. In addition to these two offenses, Illegal Hunting and Forest Devastation also appear. According to the reports of the Statistical Office of the Republic of Serbia for 2023 and 2024, the situation has changed somewhat, bearing in mind, for example, the significant increase in the number of criminal complaints for the criminal offense of Bringing Hazardous Substances into Serbia and Unlawful Processing, Disposal, and Storage of Hazardous Substances.⁴⁴ The weak application of criminal law with respect to the other criminal offenses from Chapter Twenty-Four of the CC is connected with the perception of environmental crime as less important, with weak specialization and training of competent state authorities,⁴⁵ weak links with other competent authorities (for example, inspections and institutions competent to conduct expert examinations), while several circumstances may be identified in the field of substantive criminal law: the blanket nature of a large number of criminal offenses against the environment and their connection with numerous regulations in other branches of law; establishing a causal link;⁴⁶ the question

⁴² In the Draft, Article 266, paragraph 4 refers to paragraph 3, which is not logical and probably should have referred to paragraphs 1 and 2. Namely, paragraph 3 regulates conduct involving waste that is not hazardous and prescribes a penalty of one to eight years of imprisonment and a fine where it resulted in, or could have resulted in, death or serious bodily injury, or substantial damage to the quality of air, soil, or water, to an ecosystem, or to animal or plant life. Paragraph 4 is a qualified form whose consequence consists of the death of one or more persons. It is therefore likely that the idea was to link that consequence to the acts from paragraphs 1 and 2, in which the object of the act is hazardous waste.

⁴³ Bejatović, S., Dokić, S. (2024). *Krivična dela protiv životne sredine – norma, praksa i mere unapređenja*. Belgrade: Serbian Association for Criminal Law Theory and Practice, 204–205.

⁴⁴ Compared with 2022, when the number of criminal complaints was seven, in the last two years it amounted to 107 and 155, respectively.

⁴⁵ For more, see: Miljuš, I. (2023). *Specijalizacija nosilaca pravosudnih funkcija i svest građana kao instrumenti suprotstavljanja ekološkim kaznenim deliktima*. *Glasnik of the Bar Association of Vojvodina*, 95(4), 1319–1364.

⁴⁶ This problem may arise especially with the adoption of new criminal offenses against the environment with qualified graver consequences.

of whether it is justified to prescribe negligent forms because this enters the zone of socially acceptable conduct; overlap with other legal norms and, in connection with that, the question of whether criminal offenses whose consequence consists of abstract danger should be prescribed;⁴⁷ and inconsistency regarding the protected good.⁴⁸

When it comes to punishing legal persons, the Directive leaves Member States the possibility of choosing a system of fines. The first system is linked to the total worldwide turnover of the legal person. If a state opts for this system, it should determine whether turnover will be established for the business year preceding the year in which the criminal offense was committed, or for the business year preceding the year in which the fine was imposed. States should also provide criteria for cases in which the amount of total turnover cannot be determined (for example, total worldwide turnover in another business year). If those rules involve the use of fixed amounts, the highest amount of fines determined in that way does not necessarily have to coincide with the minimum amount of the maximum level of the fine provided for by the Directive. The second system is the system of fixed amounts. The highest amounts prescribed by the Directive should be applied in the case of the most serious criminal offenses and, as emphasized in recital 35, in the case of financially strong legal persons. Member States should prescribe the conditions for imposing the highest fines, as well as the methods of calculating them. The Law on the Liability of Legal Persons for Criminal Offenses⁴⁹ provides for fines in fixed amounts, with the general maximum being five hundred million dinars. Harmonization with the Directive regarding the fining of legal persons can be achieved either by amending the LLLPCO, but in that case, this would mean that higher fixed amounts or a system linked to total worldwide turnover would apply to all criminal offenses, not only to offenses against the environment. The problem is that the LLLPCO is almost never applied in practice, so harmonization with yet another legal document does not mean that the situation will change.

When it comes to other sanctions and measures for natural and legal persons, the Directive provides for several different possibilities and leaves Member States to decide which ones to introduce. Some of those sanctions and

⁴⁷ Mansdörfer, M. (2011). *Zur Theorie des Wirtschaftsstrafrecht, Zugleich eine Untersuchung zu funktionalen Steuerungs- und Verantwortlichkeitsstrukturen bei ökonomischem Handeln*. Heidelberg, 83.

⁴⁸ There is no agreement as to whether this is a single protected object or, rather, several different ones depending on the type of criminal offense. See more in: Škulić, M. (2023). *Osnovne karakteristike i dominantan ratio legis krivičnopravne zaštite životne sredine. Kaznena reakcija u Srbiji XIII*, ed. Đ. Ignjatović. Belgrade: Faculty of Law, University of Belgrade, 13.

⁴⁹ *Official Gazette of the RS*, No. 97/2008.

measures are already known to our criminal legislation. When natural persons are concerned, the CC provides for security measures prohibiting the exercise of a profession, activity, or duty, and publication of the judgment, while one of the obligations that may be imposed in a suspended sentence with protective supervision is the elimination or mitigation of damage caused by the criminal offense. In addition, the Draft Law on Amendments to the CC, in Article 260, paragraph 8, provides that, together with a suspended sentence, the court may impose an obligation to undertake certain prescribed measures for the protection, preservation, and improvement of the environment within a specified period.⁵⁰ As for legal persons, Article 22 of the LLLPCO provides for a suspended sentence with protective supervision, which may include one or more of the prescribed obligations: 1) organizing control for the purpose of preventing the further commission of criminal offenses; 2) refraining from business activities, if they may provide an opportunity or incentive for the renewed commission of criminal offenses; 3) eliminating or mitigating the damage caused by the criminal offense; 4) performing community service; 5) submitting periodic business reports to the authority competent for the execution of protective supervision. Article 23 of the LLLPCO also prescribes three security measures: 1) prohibition of the performance of certain registered activities or operations; 2) confiscation of objects; and 3) publication of the judgment. There are also certain legal consequences of conviction prescribed by other laws outside criminal-law subject matter. The Law on Public Procurement,⁵¹ for example, provides that the contracting authority must exclude a business entity from a public procurement procedure if, *inter alia*, it determines that the business entity, in the period of the preceding two years from the expiry of the deadline for submitting tenders or applications, violated obligations in the field of environmental protection.⁵²

⁵⁰ Thus, for example, Article 102 of the Law on Environmental Protection, *Official Gazette of the RS*, Nos. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – decision of the Constitutional Court, 14/2016, 76/2018, 95/2018 – other law, 95/2018 – other law, and 94/2024 – other law, determines the measures that legal and natural persons are obliged to undertake in order to ensure environmental protection (for example, introducing more energy-efficient technologies, using renewable natural resources, and using products, processes, technologies, and practices that pose a lesser threat to the environment).

⁵¹ *Official Gazette of the RS*, No. 91/2019 and 92/2023.

⁵² Article 111, paragraph 1, point 3. In the same Article, point 1 of the Law also prescribes specific criminal offenses for which the business entity and its representative are obliged to prove that they have not been finally convicted in the period of the previous five years from the expiry of the deadline for submitting tenders. That list of criminal offenses could also be expanded to include certain criminal offenses against the environment, because the period is longer (five years compared with two years for the current formulation “violation of obligations in the field of environmental protection”).

Article 95 of the Criminal Code⁵³ provides for various legal consequences of conviction, on the basis of which other laws (primarily in the field of environmental protection) could also prescribe a concrete consequence of a final conviction in criminal proceedings. These could include, for example, the consequences of losing certain permits or approvals granted by a decision of a state authority or local self-government authority, or a prohibition on obtaining certain permits or approvals. Similarly, Articles 27–28 of the LLLPCO regulate the issue of the legal consequences of conviction and prescribe their types. Both laws provide that the maximum duration of the legal consequences of conviction is ten years and is calculated from the moment the judgment becomes final. Unlike the CC, which provides that the legal consequences of conviction cannot arise where a fine, a suspended sentence (unless revoked), or a judicial admonition has been imposed, or where punishment has been waived, the LLLPCO provides that legal consequences arise in the case of a final judgment imposing a fine (Article 29). The reasons why both laws limit the possibility that legal consequences of conviction will arise only to certain imposed penalties lie in the fact that the legal consequences of conviction may seriously affect the offender, that is, more severely than, for example, an imposed suspended sentence.

The Law on Economic Offenses is also relevant for punishing legal persons. In case law, legal persons are in fact punished far more often for economic offenses in the field of environmental protection than for criminal offenses from Chapter Twenty-Four of the CC. The law in question has not been amended since 2005, and there is a need for amendment in order to harmonize it with criminal legislation. The introduction of new criminal offenses against the environment, and the amendment of existing ones, in the Draft Law on Amendments to the CC raises the issue of harmonization with sanctions, primarily fines, for environmental economic offenses. For example, Article 260, paragraph 1 provides that a person who, in violation of regulations on the protection, preservation, and improvement of the environment, discharges, introduces, or disposes of a certain quantity of material, substance, or ionizing radiation into air, water, or soil, and thereby causes danger to the life, body, or health of people, or danger of substantial damage to the quality of air, water, or soil, to an ecosystem, or to animal or plant life, shall be punished by imprisonment of up to three years. Therefore, this criminal offense requires an act by which regulations in the field of the environment are violated and a consequence in the form of danger. On the other hand, Article 79, paragraph 1, point

⁵³ *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.

10 of the Law on Air Protection⁵⁴ provides that a legal person shall be punished by a fine ranging from 1,500,000 to 3,000,000 dinars if it uses and maintains a stationary point source of pollution that emits polluting substances into the air in quantities exceeding the emission limit values (referring to Article 54, paragraph 1). For the economic offense to exist, air pollution must exceed the limit values. The same act may satisfy the requirement for the mentioned criminal offense, but in addition, it would have to be proved that a consequence in the form of concrete danger occurred. In practice, however, this may create problems, because it raises the question of when exceeding limit values (which is necessary for the act to be contrary to regulations) creates a danger of *substantial* damage to air quality. This will probably not be the case if the exceedance is negligible, but in all other situations, it would have to be determined, that is, assessed by expert examination, when that condition is met. One possible way is for the regulations governing emission limit values to establish, for each substance, a threshold whose exceedance endangers the life or health of people or eco-media, and not merely the minimum threshold whose exceedance means entry into the zone of an economic offense.⁵⁵ If the solution from Article 260, paragraph 1 of the Draft is adopted, it follows that a legal person committing that criminal offense could be punished by a fine ranging from 1,000,000 to 2,000,000 dinars (Article 14, paragraph 3, point 2 of the LLLPCO), which is lower than the fine for the economic offense under the Law on Air Protection.

⁵⁴ *Official Gazette of the RS*, No. 51/2025.

⁵⁵ For determining emission limit values, the relevant regulations are the Regulation on Limit Values for Emissions of Polluting Substances into the Air from Combustion Plants, *Official Gazette of the RS*, No. 6/2016 and 67/2021, the Regulation on Limit Values for Emissions of Polluting Substances into the Air from Stationary Sources of Pollution, Except Combustion Plants, *Official Gazette of the RS*, No. 111/2015 and 83/2021, and the Regulation on Measurements of Emissions of Polluting Substances into the Air from Stationary Sources of Pollution, *Official Gazette of the RS*, No. 5/2016. It should be mentioned that Article 4, paragraph 1, point 13 of the Regulation on Limit Values for Emissions of Polluting Substances into the Air from Stationary Sources of Pollution, Except Combustion Plants, defines *critical pollution* as the concentration of polluting substances in the air above which, according to existing knowledge, direct harmful effects on receptors such as humans, plants, ecosystems, or materials may occur. However, the Regulation contains definitions only for limit values. The Regulation on Conditions for Monitoring and Air Quality Requirements, *Official Gazette of the RS*, No. 11/2010, 75/2010, and 63/2013, on the other hand, contains calculated values that are dangerous to human health and vegetation (in cases of exceedances of critical values for human health, the Regulation provides for an obligation to inform the public and a misdemeanor if that obligation is not fulfilled), but these are values obtained by measurement in zones or agglomerations, not in plants. According to: Lukić, N. (2023). Krivičnopravni i kriminološki aspekti usklađenosti poslovanja, in: Ignjatović, Đ. (ed.) *Kaznena reakcija u Srbiji XIII*. Belgrade: Faculty of Law, University of Belgrade, 99.

At the same time, the existence of the criminal offense requires one additional condition, namely the occurrence of concrete danger.

The Law on the Seizure and Confiscation of Proceeds from Crime⁵⁶ does not provide for the possibility of applying its provisions to criminal offenses against the environment. Bearing in mind that EU Directive 2024/1203 refers to Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU, which also provides for the confiscation of proceeds from crime, it remains possible to expand the catalog of criminal offenses in the Serbian law in question. This is justified when taking into account that organized criminal groups also commit environmental criminal offenses, because the threatened penalties are more lenient, some offenses are difficult to detect and prosecute, and the profit can be substantial.⁵⁷

6. CONCLUDING CONSIDERATIONS

EU Directive 2024/1203 was adopted within a broader agenda aimed at combating climate change and reducing greenhouse gas emissions. Thus, Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) No. 401/2009 and (EU) 2018/1999 (“European Climate Law”)⁵⁸ set the goal of reducing those emissions by 55 % by the end of 2030 compared with 1990 levels. The previous 2008 Directive on the protection of the environment through criminal law did not achieve satisfactory results, which is why Directive 2024/1203 provides for a series of significant innovations. In addition to prescribing new criminal offenses, the

⁵⁶ *Official Gazette of the RS*, No. 32/2013, 94/2016 and 35/2019.

⁵⁷ Thus, the literature states that criminal organizations (including those of the mafia type) have been involved in activities such as illegal disposal of waste and hazardous waste. They do this for others, but there have also been examples of companies being forced out of business through blackmail and violence so that criminal groups could manage those activities through their own companies. They are also involved in illegal trade in protected plant and animal species, which command a high price on the black market. Organized criminal groups have also become involved in forest devastation. Violence has also been used in all these activities. For more, see: Lukić, N. (2023). *Krivičnopravni i kriminološki aspekti usklađenosti poslovanja*, in: Ignjatović, Đ. (ed.) *Kaznena reakcija u Srbiji XIII*. Belgrade: Faculty of Law, University of Belgrade, 53; 61–62; 66–67; Passas, N. (2023). *Zakonito, ali užasno: “Legalni korporativni zločini.” Crimen*, 1, 3–23.

⁵⁸ European Union: European Parliament and Council of the European Union, *Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’)*, PE/27/2021/REV/1, OJ L 243, 9 July 2021.

Directive defines important concepts, defines the concept of unlawfulness of criminal offenses differently, and also prescribes criminal sanctions, which, unlike the previous Directive, it partly determines by type and level. Imprisonment is prescribed for criminal offenses committed by natural persons, and depending on their gravity, the minimum level of the maximum penalty should be ten, five, or three years of imprisonment. With legal persons, it also establishes minimum levels for maximum fines, and two methods are provided for calculating the fine. The Directive also prescribes a series of other sanctions and measures which, as it rightly points out, may affect perpetrators of environmental criminal offenses more severely than penalties. Member States are left to decide on some of those sanctions and measures. In addition, the prescribed aggravating and mitigating circumstances should assist in selecting the level of sanction, and the Directive also refers to the appropriate application of EU rules on the confiscation of property obtained through and derived from criminal offenses.

Serbia is not an EU Member State, but, as a candidate for membership, it is taking measures to harmonize its legislation with EU regulations. Directive 2024/1203 requires amendments to several Serbian laws in the field of criminal legislation, but other laws that do not regulate criminal-law matters may also be considered for amendment. The Draft Law on Amendments to the CC prescribes a series of new criminal offenses against the environment and revises existing ones in order to achieve harmonization. This is only the first step, while the problem of the weak application of these criminal offenses in case law remains. This is particularly true of legal persons, which are punished for committing economic offenses in the field of environmental protection, while the LLLPCO is applied extremely rarely. There are several reasons for this situation with criminal offenses against the environment: the perception of the importance of these criminal offenses, the time needed for proof, the training and specialization of the police, public prosecutor's offices, and courts, cooperation with other state authorities and institutions, blanket legal norms, overlap with other regulations in the field of penal law, etc. However, bearing in mind the full gravity of the consequences caused by environmental criminal offenses, criminal law must be used as a last resort in cases in which the application of other preventive and repressive mechanisms has not proved effective.

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