

New Challenges of the Environmental Criminal Law of the European Union

Bence Udvarhelyi

In 2024, the European Parliament and the Council adopted Directive (EU) 2024/1203 on the protection of the environment through criminal law which determines minimum rules with regard to the definition of criminal offences and penalties in order to protect the environment more effectively. The new directive contains more detailed and severe regulation both in connection with the punishable conducts and the sanctions applicable to national and legal persons. The member states have to implement the provisions of the directive into their national legal systems by 21 May 2026. The paper aims to present the most important challenges posed by the new environmental directive of the European Union and tries to answer the question whether the Hungarian criminal law needs to be modified with regard to the new EU requirements.

Keywords: protection of environment, criminal law, environmental crime, legal harmonisation, Green Deal

1. Introduction

It cannot be disputed that the intensive technical and economic development of the 20th-21th century also has negative consequences, for example the damage to the environment, which indirectly affects people's health. The preservation and protection of environmental values is of fundamental importance from the point of view of human health and quality of life, therefore acts that harm the environment must be dealt with harshly.

Environmental criminal offences causes serious harms to the society and to the future generation, since natural resources are finite (Lundh 2024). One of the most important characteristics of criminal offenses against the environment is that their consequences usually do not stop at state borders but they affect other states. Environmental crimes therefore have a transnational character and are often committed with the framework of organised criminal groups. These crimes are also often connected to other criminal offences, e.g. fraud, forgery of documents, corruption or money laundering (Lundh 2024). Along drug trafficking, human trafficking and counterfeiting, environmental crimes represents one of the four most prevalent criminal activities in the word (Grassin–Garruto 2024).

Because of their cross-border nature, international cooperation between states is essential to successfully fight environmental criminal offences. The European Union is also committed to the protection of environment which also requires the need of criminal measures and sanctions. In 2019, the European Commission presented a Communication

about the European Green Deal¹, a package of policy initiatives, which set the EU on the path to a green transition, with the ultimate goal of reaching climate neutrality by 2050. This Communication also promoted actions by the EU, its member states and the international community to step up efforts against environmental crime. As part of the Green Deal, the Commission revised the legal framework of the EU environmental criminal law and due to its lack of effectiveness, it decided to draw up a new directive which was adopted in 2024.

The first chapter of this paper presents the historical development of the environmental criminal law of the European Union and the main features of the new environmental directive. The second part of the article briefly summarises the main elements of the environmental crimes in the Hungarian legal system and intends to answer the question to what extent is the Hungarian criminal law is in compliance with the requirements of the new directive.

2. Environmental Criminal Law in the European Union

2.1. Environmental Protection and Environmental Policy in the Primary Law

Originally, the Founding Treaties of the European Communities did not contain any specific provisions relating to environmental protection, since they was primarily focused on economic integration. However, as integration gradually deepened, it became obvious that the different environmental protection rules of the member states could also hinder the achievement of the Community's economic objectives (Ligeti 2008). Initially, the development of environmental protection policy was fundamentally motivated by purely economic reasons and not by the different environmental problems, as a producer who uses environmentally friendly but costly technology can easily find himself at a competitive disadvantage compared to one who uses cheaper equipment that does not partly or fully comply with environmental standards. Therefore, the primary aim of the Union's environmental policy was to ensure the equality of competition, while the protection of environmental values played only a secondary role (Köhalmi 2009). Due to the lack of an appropriate legal basis, the European Community initially issued so-called environmental action programmes, which were soft-law documents, merely political statements but had no legal force (Laczi 2004). The common environmental policy was finally incorporated into the Treaty of Rome by the Single European Act adopted on 17 February 1986.

Currently, the detailed regulation of the environmental policy can be found in Articles 191–193 of the Treaty on the Functioning of the European Union (TFEU) which sets out the fundamental objectives and principles of EU environmental policy. Under Article 191(1)–(2) TFEU '*Union policy on the environment shall contribute to pursuit of the following objectives: preserving, protecting and improving the quality*

¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal [COM(2019) 640 final, 11.12.2019]

of the environment, protecting human health, prudent and rational utilisation of natural resources, promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay'. It is also worth highlighting that Article 11 TFEU states that 'environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development', which represent a holistic approach of environmental law. Under Article 4(2), point e) TFEU, environment belongs to the shared competences of the European Union, which means that both the Union and the member states have legislative competence in this field, but the latter shall exercise their competence only to the extent that the Union has not exercised its competence (Article 2(2) TFEU). However, Article 193 TFEU provides for the possibility of the member states to maintain or introduce more stringent protective measures than the EU standard if they are compatible with the Treaties. It means that EU rules only set out the minimum of environmental protection standards, while member states are free to decide whether to establish higher requirements (Laczi 2006).

2.2. Development of EU Environmental Criminal Law

The protection of environment can be achieved by several means, e.g. administrative or civil law measure, but, as a last resort (*ultima ratio*), criminal sanctions also play important roles in this field. The European Union also realised that the number of crimes related to the environment is increasing, which is a common problem for the member states. Since the crimes that damage the environment are often cross-border in nature or have such an effect, it is essential to create a coherent EU framework in this field.

However, it was a serious obstacle that, prior to the entry into force of the Treaty of Lisbon, the European Union only had express criminal law powers under the so-called third pillar, and it was highly questionable whether environmental protection can be regulated by means of criminal law in the first pillar. However, since the effectiveness of the third pillar was limited, the seriousness of the environmental crimes encouraged the suggestions that, within the common environmental protection policy framework, the first pillar's legal instruments could contain criminal law provisions.

As a result of the disputes of competences between the two pillars, a dual legislative process began. In 2000, Denmark presented the third pillar framework decision which was adopted in 2003². Simultaneously, in 2001, the European Commission developed a first pillar directive proposal on environmental protection

² Council Framework Decision 2003/80/JHA of January 27, 2003, on environment protection through criminal law [OJ L 29, 05.02.2003, pp. 55–58]

under the criminal law, however, the proposal has not been adopted³. Nevertheless, the framework decision did not have a long life either, because the European Commission challenged its legal basis before the Court of Justice of the European Union and requested the annulment of the framework decision. The so-called '*battle of pillars*' was therefore finally decided by the ECJ, which agreed with the Commission in its judgment and annulled the framework decision. The Court stated that '*as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence. However, the last-mentioned finding does not 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*'.⁴ This ruling opened the way for the EU to adopt criminal law measures in the first pillar (see in details e.g. Fromm 2009, Hefendehl 2006, Herlin-Karnell 2007, Inglis 2006, Pereira 2007, Pohl 2006, Siracusa 2008). However, this general authorisation was later supplemented and slightly restricted by the Court of Justice which stated in another ruling that '*the determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence*'.⁵

Since the Council framework decision was annulled by the ECJ due to its form and legal basis, it is obvious that the establishment of EU rules on the criminal protection of the environment is still necessary (Görgényi 2011, p. 96). Therefore, the European Commission developed a new directive proposal which was finally adopted by the European Parliament and the Council on 19 November 2008⁶. Directive 2008/99/EC on the protection of the environment through criminal law was primarily based on the regulation of the annulled framework decision; however, it adopted several provisions from the previous directive proposal as well. However, the evaluations of the European Commission showed great shortcomings in the implementation of the directive, therefore the Commission suggested the revision of the directive (Faure 2024).

The possibility for the step forward was provided by the Treaty of Lisbon, which entered into force in 2009 and empowered the European Union with reinforced legislative competences. Under Article 83(2) TFEU, '*if the approximation of criminal laws and regulations of the member states proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of*

³ Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law [COM (2001) 139 final, 15.03.2001]

⁴ Judgment of the Court (Grand Chamber) of 13 September 13 2005, in Case C-176/03 Commission v Council [ECLI:EU:C:2005:542], points 47–48.

⁵ Judgment of the Court (Grand Chamber) of 23 October 2007, in Case C-440/05 Commission v Council [ECLI:EU:C:2007:625], point 70.

⁶ Directive 2008/99/EC of the European Parliament and of the Council of November 19, 2008, on environment protection through criminal law [OJ L 328, 6.12.2008, pp. 28–37].

criminal offences and sanctions in the area concerned'. As it could be seen, the Treaty adopted and institutionalised the *ratio decidendi* of the judgment of the ECJ of 2005 with this legislative competence. Based on this legal competence, the European Commission issued a new directive proposal in 2021⁷ which was finally adopted in 2024⁸.

2.3. Regulatory Framework of the New EU Directive

According to Article 1, the '*directive establishes minimum rules with regard to the definition of criminal offences and penalties in order to protect the environment more effectively, as well as with regard to measures to prevent and combat environmental crime and to effectively enforce Union environmental law*'. In connection with this provision, it is worth highlighting that the directive provides for a so-called '*minimum harmonisation*', which imposes on member states the obligation to comply with the minimum standards laid down in the EU legal act, criminalise the conducts defined in the directive as criminal offences and prescribe minimum sanction for the perpetrators committed the offences (Asp 2012, Klip 2012). However, member states are allowed to introduce or maintain stricter rules compared to the EU requirements, e.g. national legislators are entitled to criminalise other conducts or to prescribe more severe penalties (Satzger 2016). This provision of the directive is therefore in compliance with Article 193 TFEU.

The directive first determines the punishable conducts which the member states shall criminalise. The definition of criminal offences covers both acts and omissions, where applicable (Lundh 2024). The punishable conducts are the following:

- a) the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation, into air, soil or water;
- b) 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 ionising radiation into air, soil or water;
- c) 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 is restricted, prohibited or in not in compliance with the relevant EU regulations;
- d) the manufacture, use, storage, import or export of mercury, mercury compounds, mixtures of mercury, and mercury-added products where such

⁷ Proposal for a Directive of the European Parliament and of the Council on environment protection through criminal law and replacing Directive 2008/99/EC [COM (2021) 851 final, 15.12.2021]

⁸ 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 [OJ L, 2024/1203, 30.4.2024, ELI: <http://data.europa.eu/eli/dir/2024/1203/oj>] Date of access: 24 August, 2024.

conduct is not in compliance with the requirements set out in the relevant EU regulation;

- e) the execution of projects within the meaning of the relevant EU directive;
- f) 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;
- g) the shipment of waste, whether executed in a single shipment or in several shipments which appear to be linked;
- h) the recycling of ships, where such conduct is not in compliance with the relevant EU regulation;
- i) the ship-source discharge of polluting substances, except where such itsatisfies the conditions for exceptions set out in the relevant EU directive;
- j) 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 the relevant EU directives;
- k) the construction, operation and dismantling of an installation, where such conduct and such an installation fall within the scope of the relevant EU directive;
- l) 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 the relevant EU directives;
- m) the abstraction of surface water or groundwater within the meaning of the relevant EU directive;
- n) 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 the relevant EU directives;
- o) the trade of a specimen or specimens, or parts or derivatives thereof, of a species of wild fauna or flora, listed in the relevant EU regulation;
- p) 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 the relevant EU regulation;
- q) any conduct which causes the deterioration of a habitat within a protected site, or the disturbance of animal species listed in the relevant EU directive;
- r) 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 the restrictions set out in the relevant EU regulation;
- s) the production, placing on the market, import, export, use, or release of ozone depleting substances, whether alone or as mixtures, as referred to in the relevant EU regulation, 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;

- t) the production, placing on the market, import, export, use, or release of fluorinated greenhouse gases, whether alone or as mixtures, as referred to in the relevant EU regulation, 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, or the putting into operation of such products and equipment (Points a)-t) of Article 3(2)).

Compared with the previous directive, which listed nine criminal offences, it can be seen that the new directive expanded the scope of criminal offences and contains a total of twenty different punishable offences. It means that the new EU directive requires the criminalisation of eleven new criminal conducts, e.g. illegal manufacture of mercury products, illicit ship recycling, illegal abstraction of surface water or groundwater, illegal timber trade, importation of invasive species, illegal production of fluorinated greenhouse gases, etc. However, despite the significant expansion, critical remarks were emerged that other activities with significant environmental and health impact could also have been added, e.g. illegal, unreported and unregulated fishing, fraud in EU carbon markets, illegal trade in genetically modified organisms, causing forest fires, etc. (Pereira 2024).

The offences listed in the directive have to constitute a criminal offence if an objective and a subjective condition is met. The objective requirement of criminalisation is that the conduct concerned has to be unlawful. The definition of unlawfulness covers three cases. Firstly, a conduct is unlawful if it breaches Union law which contributes to pursuit of one of the objectives of the Union's policy on the environment as set out in Article 191(1) TFEU. Secondly, unlawfulness could be established if the a law, regulation or administrative provision of a member state, or a decision taken by a competent authority of a member state, which gives effect to the Union law is violated. And thirdly, a conduct shall also be unlawful '*even where it is carried out under an authorisation issued by a competent authority of a Member State if such authorisation was obtained fraudulently or by corruption, extortion or coercion, or if such authorisation is in manifest breach of relevant substantive legal requirements.*' (Article 3(1)). This latter provision represents an important step forward. According to the previous directive, the criminal liability required the violation of the administrative obligations and no criminal liability could be established as long as the conditions of an administrative permit are met. With this provision, the new directive introduced a truly autonomous environmental criminal law, since criminal liability no longer depends upon the violation of administrative provisions, which also means that compliance with administrative provisions solely could no longer exclude criminal liability (Faure 2024). The existence of a lawful authorisation therefore does not exempt the holder from criminal liability if they fail to comply with all the conditions of the authorisation or other applicable legal obligations that fall outside the scope of authorisation (Lundh 2024). However, as the preamble emphasises, the manifest breach of relevant substantive legal requirements '*should be interpreted as referring to an obvious and substantial breach of relevant substantive legal requirements, and is not intended to include*

breaches of procedural requirements or minor elements of the authorisation' (Preamble (10)).

The subjective, *mens rea* element is that the criminal offences have to be committed intentionally or, with the exception of points e), h) and r)(i), with at least serious negligence (Article 3(1) and 3(4)). However, the directive does not define the meaning of serious negligence. According to the preamble, '*the notion of 'serious negligence' should be interpreted in accordance with national law, taking into account relevant case law of the Court of Justice. This Directive does not require the introduction in national law of the notion of 'serious negligence' for each constituent element of the criminal offence, such as possession, sale or offering for sale, placing on the market and similar elements. In such cases, it is possible for member states to decide that the notion of 'serious negligence' is relevant for elements of the criminal offence such as the protection status, 'negligible quantity', or the 'likelihood' of the conduct to cause substantial damage.*' (Preamble (27)).

Furthermore, the directive also contains additional conditions of criminalisation in connection with the different listed conduct. Points a)-f), j)-l), r) shall be punishable if the 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*'. Point f) could also be criminalised if the criminal conduct was committed to non-negligible quantity of hazardous waste. Points g) and n)-p) shall be punishable if they are committed to non-negligible quantity. In case of point i), the condition of criminalisation is that the conduct causes or is likely to cause '*deterioration in the quality of water or damage to the marine environment*', while in case of point m), the conduct has to cause likely to cause '*substantial damage to the ecological status or ecological potential of surface water bodies or to the quantitative status of groundwater bodies*'. Furthermore, some points directly refer to the violation of different secondary EU law.

One of the most important novelties of the new directive is that it introduced the concept of '*ecocide*'. According to the directive, it shall constitute a qualified criminal offence with higher penalty if the criminal conduct causes 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 to the quality of air, soil or water (Article 3(3)). This provision could enlarge the scope of criminal liability and raise the effectiveness of environmental criminal law (Faure 2024).

The new directive can be considered a significant step forward compared to the previous directive as it contains more severe criminal penalties. While the previous directive only required member states to prescribe effective, proportionate, and dissuasive criminal penalties, but the determination of the type and level of sanctions was left to the member states, the new directive also prescribe the minimum level of the upper limit of the sanctions. As a general rule, the maximum level of imprisonment has to be three years (in case of points m)-o) and q)-r)) or five years (in case of points a)-l), p) and s)-t)). In case of ecocide, the imprisonment has to be at least eight years. In case of the most serious case, if the criminal offence in points a)-d), f), j)-l) and (r) causes death, the penalty has to be at least ten years imprisonment. Conducts in points a)-d), f), j)-l) committed with serious negligence

are also punishable with five years imprisonment but only if they cause the death of any person (Article 5(2)). Beside the imprisonment, other additional sanctions are also determined: obligation to restore the environment or pay compensation for the damage to the environment; fines; exclusion from access to public funding (tender procedures, grants, concessions and licences); disqualification from holding a leading position within a legal person; withdrawal of permits and authorisations to pursue activities; temporary bans on running for public office; and publication of all or part of the judicial decision (Article 5(3)). Some of these accessory penalties have not criminal but rather administrative character. With this provision, the directive follows a so-called '*toolbox approach*', since the EU legislator realised that not only criminal, but other sanctions and remedies could serve as the effective protection of environment (Faure 2024, Pereira 2024).

The directive also regulates the conditions for the responsibility of legal persons and the sanctions against them. Legal persons could be held liable if the environmental offences have been committed for the benefit of the legal person by any person who has a leading position within it, acting either individually or as part of an organ of that legal person. Furthermore, the liability of legal persons could also be established if the lack of supervision or control by a leading person has made possible the commission of a criminal offence for the benefit of the legal person by a person under its authority. Sanctions against legal persons are criminal or non-criminal fines and other criminal or non-criminal penalties or measures. Some of these sanctions are the same than in case of natural persons, but others are specifically suited for legal persons (exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of business activities; placing under judicial supervision; judicial winding-up; closure of establishments used for committing the offence; an obligation to establish due diligence schemes for enhancing compliance with environmental standards). In connection with the sanctions, one of the most important innovations of the directive, which has not been included in any other previous EU criminal law directive, is that it determines the upper limit of fines, which cannot be less than 5% of the total worldwide turnover of the legal person or 40 million EUR, or in case of offences in points m)-o), q)-r), it cannot be less than 3% of the total worldwide turnover or 24 million EUR (Articles 6-7).

The directive also determine aggravating and mitigating circumstances if they do not form part of the constituent elements of the criminal offences. According to the preamble, the '*notion of "aggravating circumstances" should be understood either as facts enabling the judge to pronounce more severe sentences for the same criminal offence than the sentence normally imposed without such facts, or as the possibility to treat several criminal offences cumulatively in order to increase the level of penalty. Therefore, member states are not obliged to provide for specific aggravating circumstances where national law already provides for separate criminal offences that can lead to more severe penalties. Member states should ensure that at least one of the aggravating and mitigating circumstances provided for in this Directive is provided for as a possible aggravating or mitigating circumstance in accordance with applicable rules in their legal system. In any case, it should remain within the discretion of the judge or the court to determine whether to increase or to decrease the sentence, taking into account the specific*

circumstances in each individual case' (Preamble (40)-(41)). Under the directive, aggravated circumstance could be if the offence caused the destruction of, or irreversible or long-lasting substantial damage to, an ecosystem; was committed in the framework of a criminal organisation⁹; involved the use of false or forged documents; was committed by a public official when performing his or her duties; generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly; was committed within an area classified as a special protection area, or a site designated as a special area of conservation, or a site listed as site of Community importance in accordance with the relevant EU directives. It could also be regarded as an aggravating circumstance if the offender has previously been convicted by a final judgment of offences of the same nature; or destroyed evidence, or intimidated witnesses or complainants. By contrast, it could be regarded as a mitigating circumstance if the offender restores the environment to its previous condition, or takes steps to minimise the impact and extent of the damage or remediates the damage before the start of a criminal investigation; or if 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 (Articles 8–9).

Furthermore, the directive regulate other relevant issues which can be classified to the general part of the criminal law or to the criminal procedural law, e.g. freezing and confiscation instrumentalities and proceeds from the criminal offences (Article 10), statutory limitation period (Article 11), establishment of jurisdiction (Article 12), protection of persons who report environmental criminal offences or assist the investigation thereof (Article 14), preventive measures aiming to reduce environmental criminal offences and the risk of environmental crime (Article 16), cooperation between competent authorities of the member states and between the member states and the Union bodies (Articles 19–20).

3. Protection of Environment in the Hungarian Criminal Law

The protection of the environment has an utmost importance in Hungary, it also appears at the constitutional level. The Fundamental Law of Hungary stresses that '*Hungary shall recognize and implement the right of all to a healthy environment*' (Subsection (1) of Section XXI). Furthermore, the Fundamental Law also declares that '*(n)atural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation's common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual.*' (Article P)).

The currently effective Criminal Code (Act C of 2012) regulates the environmental criminal offences in a separate chapter. The chapter '*Criminal Offences against the Environment and Nature*' contains the following eleven criminal offences:

⁹ See: Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime [OJ L 300, 11.11.2008, p. 42–45]

- Environmental Offenses (Section 241)
- Damaging the Natural Environment (Sections 242-243)
- Cruelty to Animals (Section 244)
- Poaching Game (Illegal hunting) (Section 245)
- Poaching Fish (Illegal fishing) (Section 246)
- Organization of Illegal Animal Fights (Section 247)
- Violation of Waste Management Regulations (Section 248)
- Criminal Offenses with Ozone-Depleting Substances (Section 249)
- Misappropriation of Radioactive Materials (Section 250)
- Illegal Operation of Nuclear Installations (Section 251)
- Crimes in Connection with Nuclear Energy (Section 252).

From these criminal offences, this article will focus on the five crimes which have relevance in connection with the EU directive, namely Environmental Offenses, Damaging the Natural Environment, Violation of Waste Management Regulations, Criminal Offenses with Ozone-Depleting Substances and Misappropriation of Radioactive Materials.

The '*Environmental Offenses*' (or with a better translation: '*Damaging the Environment*') means the pollution of the earth, the air, the water, the biota (flora and fauna) and their constituents. The criminal conduct has to result the endangerment or the damage of the aforementioned subjects. The damage could be restorable or irreparable. The sanction for the criminal offence varies on the result of the crime, it could be imprisonment not exceeding three years in case of a mere danger, imprisonment between one to five years in case of restorable damage and in imprisonment between two to eight years in case of irreparable damage. The criminal offence can be committed intentionally and negligently as well. In case of negligent conducts, the punishment can be maximum one, two or three years imprisonment, depending on the seriousness of the result.

The criminal offence '*Damaging the Natural Environment*' punishes the perpetrator who obtains, possesses, distributes, imports, exports, transports through the territory of Hungary, engages in the trafficking of, damages or destroys any species of protected or specially protected living organisms or species of flora and fauna. The criminal offence is punishable with imprisonment not exceeding three years, however, the punishment is higher (imprisonment from one to five years) if the damage done to the natural environment results in the destruction of the species of living organisms to an extent where it jeopardizes the survival of the living organisms, if the perpetrator applied poison or laid bait capable of destroying an animal, or if the offence endangered the lives of several animals. The criminal offence also encompasses the unlawful and significant alteration, deterioration or destruction of Natura 2000 areas, protected caves, protected sites and the population or natural habitat of protected living organisms, which is punishable with maximum three years or from one to five years imprisonment. The negligent conducts are also punishable by imprisonment not exceeding two years.

The '*Violation of Waste Management Regulations*' has two different punishable conduct. The first provision punishes the engagement of waste

management activities without registration, notification or authorization, or by exceeding the scope of the authorization; as well as the engagement of any other unlawful activity involving waste that may be hazardous to human life, bodily integrity or health, or the earth, the air, the water, and their constituents, and the species of living organisms. The second criminal conduct is the disposal of waste at a site that has not been authorized by the competent authority, that may either be hazardous to human life, bodily integrity or health, or the earth, the air, the water, and their constituents, and the species of living organisms, or in a substantial quantity (more than 1000 kg or 10 m³). In these cases, the punishment could be maximum three years imprisonment, while the perpetrator could face a prison sentence from between one to five years if the criminal offense involving hazardous waste, or a particularly substantial quantity of waste (more than 10.000 kg or 100 m³). The most serious case, which is punishable with imprisonment between two and eight years, is if the crime was committed to particularly substantial quantity of hazardous waste. Both intentional and negligent perpetrators have to be punished, in the latter case with maximum one, two or three years imprisonment.

The '*Criminal Offenses with Ozone-Depleting Substances*' can be committed, either intentionally or with negligence, by any person who manufactures or uses, imports into or exports from the territory of the country or places on the market any substance that depletes the ozone layer, or any product that contains such substances. Intentional commission is punishable with maximum three years, while negligent conducts with maximum one year imprisonment.

The criminal offence of '*Misappropriation of Radioactive Materials*' punishes any person who produces, stores, disposes or transports hazardous radioactive substances; acquires, possesses, manages, distributes, processes or otherwise uses hazardous radioactive substances, or transfers such to an unauthorized person, treats, imports or exports such materials or transports them in transit through the territory of the country. Within the context of the Criminal Code, '*hazardous radioactive substance*' means any material from natural or artificial sources containing one or more radionuclides capable of emitting ionizing radiation, and that is deemed hazardous to human life and health, as well as to the animate and inanimate environment. The perpetrator is punishable if the criminal conducts were committed without notification or by exceeding the scope of the authorization. The punishment is imprisonment between one to five years, or imprisonment between two to eight years if criminal offense was committed in criminal association with accomplices (See: Article 459(1), point 2). Negligent commission is also punishable by imprisonment not exceeding two years.

If we want to compare the Hungarian regulation with the EU requirements, it can be observed that while the EU directive contains a more detailed regulation and lists the punishable conducts in a total of twenty points, the Hungarian criminal law has a more abstract regulatory concept. For example, the criminal offence of '*Environmental Offenses*' can be committed by any means which results in the endangerment or in the damage of the nature. The following table summarises the correlation between the relevant Hungarian criminal offences and the punishable conducts of the directive.

Table 1. Hungarian environmental criminal offences and the punishable conducts of the EU directive

Hungarian Criminal Code	Directive 2024/1203 (Art. 3(2))
Environmental Offenses (Damaging the Environment)	Points a), i) Points b), e), j), k), m) (<i>with broad interpretation</i>)
Damaging the Natural Environment	Points n), o), q)
Violation of Waste Management Regulations	Points f)-g)
Criminal Offenses with Ozone-Depleting Substances	Point s)
Misappropriation of Radioactive Materials	Point l)

Source: own construction

It can be seen in the table that some points of the directive can be corresponded to the Hungarian criminal offences, in these cases, the punishable conducts are almost the same. Some of the listed criminal offences could also be covered by the Hungarian criminal law, but only if the offence is interpreted in a very broad sense. However, there are criminal conducts (e.g. illegal conducts related to mercury products, recycling of ships, placing or making available on the Union market of illegally harvested timber or of timber products, the introduction or spread of invasive alien species, unlawful conducts related to fluorinated greenhouse gases), which, according to our point of view, don't have equivalents in the Hungarian criminal law. Therefore, the more exhaustive regulation of the punishable conducts in directive necessitates legislative amendments in some points.

A further important difference between the Hungarian and the EU regulation is that the directive punishes certain conducts which causes or is likely to cause not only substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants, but also death or serious injury to any person. The Hungarian Criminal Code doesn't determine such results, if they do occur, different crimes (e.g. negligent homicide, bodily harm) can be established cumulately with the environmental offence.

The directive requires the member states to criminalise the conducts if they were committed intentionally as well as, with some exceptions, with serious negligence. In this context, the Hungarian regulation fully meets the EU requirements, since all the aforementioned criminal offences can be committed either intentionally or negligently.

In connection with the sanctions, the new directive created a more severe regulatory framework and require the member states to take the necessary measures to ensure that the offences are punishable by imprisonment. The minimum amount of imprisonment is determined in a progressive scale, from three up to ten years. As it can be seen from the table, here the Hungarian Criminal Code needs to be amended in some points, since not all criminal offences have such high sanctions (the problematic level of sanctions is marked italics).

Table 2. Sanctions of the intentional environmental criminal offences in the Hungarian Criminal Code and in the EU directive

Hungarian Criminal Code	Directive (EU) 2024/1203 (Art. 5(1))
<i>Environmental Offenses (Damaging the Environment)</i> <ul style="list-style-type: none"> – imprisonment not exceeding three years (in case of endangerment) – imprisonment between one to five years (in case of restorable damage) – imprisonment between two to eight years (in case of irreparable damage) 	
<i>Damaging the Natural Environment</i> <ul style="list-style-type: none"> – imprisonment not exceeding three years – imprisonment between one to five years (aggravating circumstances) 	Member states shall take the necessary measures to ensure the (intentional) offences are punishable by a maximum term of imprisonment of: <ul style="list-style-type: none"> – <i>at least 3 years (points m)-r))</i>
<i>Violation of Waste Management Regulations</i> <ul style="list-style-type: none"> – imprisonment not exceeding three years – imprisonment between one to five years (aggravating circumstances) – imprisonment between two to eight years (aggravating circumstances) 	<ul style="list-style-type: none"> – <i>at least 5 years (points a)-l), s-t))</i> – <i>at least 8 years (in case of ecocide)</i>
<i>Criminal Offenses with Ozone-Depleting Substances</i> <ul style="list-style-type: none"> – imprisonment not exceeding three years 	<ul style="list-style-type: none"> – <i>at least 10 years (if they cause or are likely to cause death or serious injury to any person)</i>
<i>Misappropriation of Radioactive Materials</i> <ul style="list-style-type: none"> – imprisonment between one to five years – imprisonment between two to eight years (aggravating circumstances) 	

Source: own construction

4. Conclusion

It can be summarised that the new directive of the EU created a more detailed and severer regulatory framework in connection with the criminal law protection of the environment. With the establishment of autonomous environmental crimes, the extension of the scope of criminal offences, the determination of more severe criminal penalties and additional sanctions, the directive could contribute to a more effective environmental protection.

The member states are required to implement the directive by 21 May 2026 (Article 28). As it could be seen, the Hungarian Criminal Code mostly complies with newly envisaged provisions of the EU directive, but in some points amendments from the legislation might be needed.

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