

FEATURES OF CRIMINAL LIABILITY FOR ENVIRONMENTAL OFFENCES IN THE EUROPEAN UNION

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ABSTRACT:

This article deals with the criminal liability for environmental offences in the European Union. Also this article looks through notion of the criminal offences against environment, importance of Directive 2008/99/EC on the protection of the environment through criminal law and today's circumstance of protection of European environment through criminal law.

Environmental crimes give serious damage to the environment in Europe and the world. Environmental crime includes acts that violate environmental legislation and cause serious harm or risk to the environment and human health. The most usual areas of ecological offence are the illegal spreading or unloading of materials to air, water or land, illegal trade in wildlife, illegal trade of ozone-depleting substances, and the removal of illegal transport or waste [1, p.11].

The area of 'environmental crime including endangered species of flora and fauna' is broad and, for the time being, a universally accepted definition does not exist: any illegal action with a negative, harming impact on the environment can be regarded as environmental crime, as well as any offence in relation to endangered species. In some jurisdictions, crimes in relation to the food chain or to food safety are also considered to be environmental crimes, as well as the emerging threat represented by illegal sand mining [3]. The European Commission suggests that the concept of "environmental crime" covers acts which "breach environmental legislation and cause significant harm or risk to the environment and human health" and the Directive 2008/99/EC covers crimes in relation to pol-

lution, waste, use or release of dangerous substances, protected species and habitats. Therefore, there are different possibilities to categorize these crimes, but it is important to realize potential overlaps: illegal dumping of waste will usually put soils and ground water at risk; the use of fuel oil mixed with waste oil will cause air pollution, etc.

Notwithstanding their broad and uncertain extension, environmental crimes share some peculiarities. Similarly, the approach to fighting environmental crimes has similar features in most jurisdictions.

The issue of environmental crime has been debated for a long time on numerous global and European forums. A proposition for a directive directed at preserving the environment through criminal law has been admitted by the European Commission.

After long institutional discussions and the European Court of Justice's two decisions on the competence of Community criminal justice, the Council and the European Parliament consented on the text of the directive on the protection of the criminal justice system.

Directive 2008/99 / EC on the protection of criminal law: The Justice and Home Affairs Council formally accepted the directive of 24 October 2008. The Directive will have to be transferred by the Member States until December 2010.

Directive 2008/99/EC on the protection of the environment through criminal law – more commonly known as the Environmental Crime Directive – is an EU directive aimed at increasing compliance with EU environmental law [4, p. 41].

The Directive requires EU Member States to establish criminal offenses for certain violations of EU environmental law. Article 3 of the Directive lists 9 general types of acts against the environment that must be criminalized by Member States. Summarized, these acts are as follows [1, p.25]:

1) Illegal discharge of harmful substances or radiation into air, soil, or water;

- 2) Collection, transport, recovery or disposal of waste in an unlawful manner;
- 3) Shipping waste in an unlawful manner;
- 4) Operation of an industrial installation in which dangerous substances are stored or used in a way that causes or threatens environmental harm;
- 5) Management or handling of nuclear materials or other hazardous radioactive substances in an unlawful manner;
- 6) Illegally killing or transporting protected plants, animals, or specimens thereof;
- 7) Illegally trading in specimens of protected plants and animals;
- 8) Causing habitat deterioration on protected lands; and
- 9) Production, trade, or use of ozone-depleting substances.

The author made a note also, in accordance with Article 2 of the Directive, the above acts are made unlawful when they are committed with at least serious negligence and violate legislation adopted pursuant to the EC Treaty (now the TFEU), the Euratom Treaty or any law or regulation of the Member State passed to implement EU environmental law. A full list of relevant EU legislation is provided in Annexes A and B to the Directive and reproduced in Annex B of this report [5]. Article 6 of the Directive requires Member States to ensure that “legal persons” may also be held criminally liable for the above-listed acts. “Legal persons”, for the purposes of the Directive, means any legal entity, with the exception of States, those exercising state authority and public international organizations.

Why is a Directive that will protect the environment with criminal law?

EC Environmental law has existed for 30 years. More than 200 directives in the environmental field are in place today. However, there are still many cases where Community environmental law (practice website)

is not taken seriously. The EU environmental acquisitions make up a major portion of European Union law, consisting of some 300 legislative acts [6, p. 25]. The introduction of criminal punishment is intended to increase compliance with environmental law across Europe by making the penalties for violations more severe and more standardized across Member States. Harmonizing criminal offenses across Member States ensures that actors are equally deterred from committing crimes in each country that has transposed the Directive.

Environmental law needs to be carried out efficiently. This is the reason Commission is offering a directive requiring Member States to ensure criminal sanctions for the most severe environmental crimes, since such measures are satisfactory and deterrent to ensure that environmental law is properly implemented.

In February 2000, Denmark presented an initiative for a Framework Decision on Environmental Crime. Same country has made a proposal for a Directive on the Protection of the Environment through Criminal Law. Both proposals, defined offences as infringements of secondary environmental legislation or implementing national legislation of and participation in such activities were also considered an offence. On sanction, the proposals obliged European Union states to provide for natural persons for criminal penalties, involving in serious cases deprivation of liberty. The Directive proposal went through the first reading of the European Parliament, after which an amended proposal was adopted. But Council never took up the proposal for discussion, only adopting the Danish Framework Decision proposal in 2003 [4, p. 56].

The EU law ‘Directive 2008/99/EC on the protection of the environment through criminal law’ identifies a number of environmental offences that are punishable as a criminal offence in all EU countries.

These offences include all environmental crimes listed above, as well as the unlawful operation of dangerous activities (including the manufacture or handling of nuclear materials) and the unlawful treatment of waste. Under the law, all EU countries have to apply effective, proportionate and dissuasive criminal sanctions for an environmental crime, if committed intentionally or with serious negligence. Inciting, aiding and abetting an environmental crime are also punishable as a criminal offence.

The available information indicates that there are

great distinctions in the penal sanctions envisaged for environmental crimes in the Member States. Existing criminal sanctions are not tight enough to provide a high level of environmental protection across the Community [6].

The main structure of the directive: the minimum requirements to be imposed in national criminal law.

The proposed Directive ensures a list of environmental offenses that should be considered criminal offenses by all Member States if they are committed because of intentional or serious negligence. The proposed directive does not compile a list of new illegal acts. The present law already insures these forbiddances. By transferring this directive, Member States should only introduce some criminal sanctions against these existing prohibitions [1, p. 28].

Encouraging, assisting and abusing the commission of these offenses should be penalized as a criminal illegal act.

Member States should ensure that legal entities are held accountable for the crimes committed by their interests. This responsibility may be guilty or of another nature.

Member States should ensure that the offense commission is subject to effective, proportionate and dissuasive criminal sanctions. Sanctions for legal entities may be non-criminal.

The proposed Directive sets up a minimum environmental guarding standard only with criminal law admissible to the Member States. Member States are unrestricted to preserve or offer tighter protective measures.

The proposed directive does not establish measures for criminal procedure and does not refer to the competence of prosecutors and judges.

Environment crime is among the European Union's central concerns. The Tampere European Council of 15 and 16 October 1999 at which a first work program for the European Union action in the field of Justice and Home Affairs was adopted asked that efforts be made to adopt common definitions of offences and penalties focusing on a number of especially important sectors, amongst them environment crime [4, p. 177]. But despite this agreement about the importance of joint the European Union action, environmental criminal law has become the center of a serious institutional fight between the European Commission, supported by the European Parliament on the one hand and the Council,

supported by the great majority of the European Union member states on the other hand. At stake is nothing less than the distribution of powers between the first and the third pillars, and therefore also between the Commission and the European Union's member states. The effect of this fight is currently a legal vacuum on general environmental criminal law that was closed with the Directive 2008/99/CE, taking into consideration the cross-border dimension of environmental crime and the existing significant differences in the national legislation of the European Union member states [2].

Offences are also any conduct which causes the significant deterioration of a habitat within a protected site and the production, importation, exportation, placing on the market or use of ozone depleting substances. All the European Union states shall ensure (Article 4) that inciting, aiding and abetting the intentional conduct referred to the offences above-mentioned are punishable as a criminal offence, by effective and proportionate, dissuasive penalties for any legal person who don't respect the stipulations of this Directive.

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