

# Peculiarities of liability for environmental offenses in European law

Muradov Soltan İlqaroghlu

Master student, Baku State University,  
Department of International Private Law and European Law

**Key words:** Environmental law, European environmental policy, Environmental Liability directive, polluter-pay principle, Environmental inspection, environmental crime, European Union Forum of judges for the Environment

## ABSTRACT:

The current article deals with the environmental liability within the European Union.

The article looks through the liability for environmental offenses according to the European Law through which European Union makes effort to establish common environmental standards throughout the Union and to implement and enforce its environmental law and policy.

**Açar sözlər:** Ətraf mühit hüququ, Avropa ətraf mühit siyasəti, Ətraf mühit məsuliyyət direktivi, çirkləndirici-ödəmə prinsipi, ətraf mühitin təftişi, ətraf mühit cinayətləri, ətraf mühit üçün Avropa Birliyi hakimlər forumu

## Xülasə:

Bu məqalə Avropa Birliyi çərçivəsində ekoloji məsuliyyətdən bəhs edir. Məqalə Avropa Hüququnda Birliyin onun ərazisində ümumi standartlarını yaratmağa, tətbiq və icra etməyə çalışdığı ekoloji hüquqpozmalara tətbiq edilən məsuliyyəti nəzərdən keçirir.

**Ключевые слова:** Экологическое право, европейская экологическая политика, Директива об экологической ответственности, Загрязнение окружающей среды, Экологическое право, Экологическое суждение, Экологическое суждение, Форум Европейского союза для судей по

окружающей среде.

## Резюме:

В настоящей статье рассматривается экологическая ответственность в рамках Европейского Союза. В статье рассматривается ответственность за экологические правонарушения в соответствии с Европейским правом, в соответствии с которым Европейский союз прилагает усилия для установления общих экологических стандартов во всем Союзе и для осуществления и обеспечения соблюдения его природоохранного законодательства и политики.

During the last 40 years the European Union has adopted a significant and various range of environmental measures aimed at increasing the quality of the environment for European citizens and ensuring them with a high quality of life. Since the 1970s, the EU has agreed more than 200 acts of legislation to protect European environment. These range from waste water treatment and nature protection to measures to improve air quality and provide the public's right to information. European environment can only be well protected if Member States correctly and sufficiently implement the legislation they have signed.

Implementation of environmental legislation of European Union is to be provided in the first instance by Member States who need to monitor and report on it to the Commission.

In first place any implementation and enforcement of environmental legislation are taken at national level. The European Commission carries out the role of "Guardian of the

Treaty". According to Article 211 first indent of the EC Treaty, the Commission is to ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied. For the purpose performing that function, the Commission may open infringement procedures.

Close cooperation between national authorities and the European Commission brings about a better implementation of Unions' environmental law. Regional and local authorities are also main players and co-operation with the European Committee of the Regions is facilitated by a Technical Platform for Co-operation on the Environment.

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is a network of the environmental authorities of EU Member States, acceding and candidate countries, and Norway. It assures a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

Failure to implement legislation at the right moment and properly may cause many negative consequences. The human health and environment can be damaged. Industry of member states comes face to face with regulatory uncertainty. Agreed standards are implemented unequally across the Union. The cost of not implementing existing environmental legislation is estimated at some EUR 50 billion a year. Enough implementation of legal requirements can bring financial benefits.

To tackle this challenge the Commission has proposed ways to help Member States with effective implementation. It identified two themes: the need for better knowledge of the state of the environment and appropriate responsiveness in the ways problems are dealt with (see also separate article on access to justice).

#### Environmental Liability Directive

The directive-2004/35/EC of the European Parliament and of the Council on Environmental Responsibility has been adopted in order to prevent and eliminate environmental damage. This directive sets up a framework to prevent and resolve environmental damage based on the polluter pays principle. Principle of polluter-pays is intended in the Treaty on the Func-

tioning of the European Union (Article 191(2) TFEU). As the Environmental Liability Directive deals with the "pure ecological damage", it is based on the powers and duties of public authorities ("administrative approach") as distinct from a civil liability system for "traditional damage" (damage to property, economic loss, personal injury).

According to the Environmental Liability Directive there are several types of environmental damage such as damage to the protected species, natural habitats, damage to water and damage to soil.

Operators carrying out dangerous activities listed in Annex III of the Directive fall under strict liability (no need to prove fault). Operators carrying out other occupational activities than those listed in Annex III are liable for fault-based damage to protected species or natural habitats. The establishment of a causal link between the activity and the damage is always required. Affected natural or legal persons and environmental NGOs have the right to request the competent authority to take remedial action if they deem it necessary. (ELD)

The Environmental Liability Directive came into force on 30 April 2004. The EU Member States had three years to transfer the Directive in their internal law. The transposition of ELD was finished by July 2010.

Amendments on Environmental Directive was made three times through Directive 2006/21/EC on the management of waste from extractive industries, through Directive 2009/31/EC on the geological storage of carbon dioxide and amending several directives, and through Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC.

#### Environmental Inspection

Inspections are an essential way to provide the implementation and enforcement of EU environment legislation. In 2001, as there was a big difference between inspection systems in the Member States legislation, the European Parliament and the Council passed Recommendation 2001/331/EC ensuring for minimum criteria for environmental inspections in the Member States (RMCEI). The RMCEI intends non-obligatory standards for the design, fulfill, following up and reporting on

environmental inspections. Its target is to enlarge harmonization with EU environment law and to contribute to its more systematic implementation and enforcement in all Member States.

The maintenance of the RMCEI has heavily affected provisions on environmental inspections in sectorial pieces of environment and climate change legislation.

The European Union Network for the Implementation and Enforcement of Environment Law (IMPEL) played an important role in the preparation of the RMCEI and through its activities has also played an important role in its implementation.

#### Environmental crime

Environmental crime criteria is very important task both European supranational law and domestic law of every member state. Environmental crime encompasses acts that infringe environmental legislation and bring about significant damage or risk to the environment and human health. The most known areas of environmental crime are the illegal emission or discharge of substances into air, water or soil, the illegal trade in wildlife, illegal trade in ozone-depleting substances and the illegal shipment or dumping of waste. Environmental crimes cause significant damage to the environment in Europe and the world. At the same time they provide for very high profits for perpetrators and relatively low risks of detection. Very often, environmental crimes have a cross border aspect. Environmental crime is a serious and growing problem that needs to be tackled at European level.

The problem of environmental crime has been discussed in many international and European forums for many years. Building on this work, the European Commission adopted a proposal for a directive aiming to ensure the protection of the environment through criminal law.

After lengthy institutional discussions and two judgments of the European Court of Justice on the extent of the Community's competence in the area of criminal law, the Council and the European Parliament agreed on the text of the directive on the protection of the environment through criminal law.

The Justice and Home Affairs Council formally adopted the directive on 24 October 2008. The Directive will have to be transposed

by Member States by December 2010. There are several reasons why European environment must be protected through criminal law. Although European environmental law has arisen since 40 years and more than 200 directives in the field of environment have adopted by the European Parliament and the Council, but there are still many cases of severe non-observance of Community environmental law. Environmental law needs to be implemented in an influential way. That is the reason why the Commission suggested a directive which calls for the Member States to ensure for criminal sanctions for the most serious environmental offences because only this type of measures seems adequate, and deterrent enough, to achieve proper implementation of environmental law. The available survey indicates that there are big dissimilarities between the criminal sanctions provided for environmental offences in the Member States. The existing criminal sanctions are not enough strict to provide a high level of environmental protection within the Community.

Main content of the Directive are consist of minimum requirements to be implemented in domestic criminal laws of member states. The proposed directive lays down a list of environmental offences that must be considered criminal offences by all Member States, if committed intentionally or with serious negligence. The proposed directive does not create a list of new illegal acts. The existing law already provides for these prohibitions. The Member States, by transposing this directive will only have to attach to these existing prohibitions some criminal sanctions. Inciting, aiding and abetting the commission of these offences must be punishable as a criminal offence as well. Member States must ensure that legal persons can be held liable for offences committed for their benefit. This responsibility can be of criminal or other nature. Member States must ensure that the commission of the offences is subject to effective, proportionate and dissuasive criminal sanctions. For legal persons the sanctions can be of a non-criminal nature. The proposed directive only sets a minimum standard of environmental protection through criminal law to be adopted by the Member States. The Member States are free to maintain or introduce more stringent protective measures. The proposed directive

does not lay down measures concerning the procedural part of criminal law nor does it touch upon the powers of prosecutors and judges.

European Union Forum of judges for the Environment

The European Union Forum of judges for the environment was established in Paris on February 28, 2004, on the initiative of chairmen of Supreme Courts of France, Italy, Belgium and England.

This association, established under the law of Belgium, is open to all EU and European Free Trade Association judges. The objective of the Forum is to promote the enforcement of national, European and international environmental law by contributing to a better knowledge by judges of environmental law, by exchanging judicial decisions and by sharing experience in the area of training in environmental law.

During the Brussels Conference in 2010 the Forum brought together for the first time public prosecutors from the different members states of the EU. In doing so, the Forum has played an essential role in the establishment of the European Network of Prosecutors for the Environment (ENPE). This Forum played important role in the preparation of the initiative of Environmental Liability Directive.

The Environmental Implementation Review

The Environmental Implementation Review (EIR), publicized in 2016. EIR is an implement to assist deliver the benefits of EU environmental law and policies for businesses and citizens through better implementation. It directs to address the causes of implementation gaps and find answers before problems become serious and reach the stage of infringements. The European Commission issued the first ever comprehensive overview of how EU environmental policies and laws are applied on the ground. The EIR package includes 28 country reports which map national strengths, opportunities and weaknesses; a Communication identifying common challenges across countries, and suggested actions for improvement for all EU Member States presented in an Annex.

Conclusion:

As mentioned above, the European Union has several strong methods to implement and en-

force European environmental law and policy. For this purpose, European Union adopts decisive directives, inspects activities of responsible authorities in the field of environment, fights against environmental crime, organize judicial cooperation between the member states, takes measures to control and analyze the current situation of member states in the ecological field. Because poor implementation of environmental law and policies has many negative effects, such as the environmental, economic and social costs, unequal playing level field for economic operators, and the loss of credibility of both national authorities and the EU. Full implementation of EU environmental legislation could save the EU economy €50 billion every year in health costs and direct costs to the environment. The EU waste policy alone could create an additional 400,000 jobs by 2020, and full implementation of water legislation could bring annual benefits of nearly €2.8 billion. That is why European Union takes measures to improve its environmental policy year after year and to implement and enforce its legislation more strictly.

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