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Nina Mladinić, Associate Professor

University Department of Forensic Sciences, University of Split, Croatia

E-mail: nina.mladinic@forenzika.unist.hr

ORCID ID: 0000-0001-6664-0375

THE NEW DIRECTIVE (EU) 2024/1203 ON THE PROTECTION OF THE ENVIRONMENT BY CRIMINAL LAW AND CORPORATE CRIMINAL LIABILITY

ABSTRACT

Inefficiency in the application of normative solutions in the area of standards of protection of the environment was stated by the European Union upon bringing in new Council Directive 2024/1203 on the protection of the environment through criminal law which was enacted in May 2024. The aim of this new directive is significant widening of the Directive on the protection of the environment by criminal law 2008/99/EC in terms of new criminal offences, types and measures of sanctions, particularly for legal entities. Given that ecological crime has become a very lucrative criminal activity the huge profit attracts even criminal associations across borders. The new Council Directive (EU) 2024/1203 especially emphasizes the duty of Member States to also put in place effective mechanisms against organized corporative ecological crime. This Council Directive (EU) 2024/1203 sets a range of EU member state obligations which by 21 May 2026 must be harmonized with national legislations in the area of environmental protection. This paper contains an overview of key Council Directive (EU) 2024/1203 provisions relating to the liability of legal entities for criminal offences against the environment and a review of the implications on the normative regulation of legal entity liabilities in the Republic of Croatia. The aim of this paper is to offer the legislator, by comparing a range of laws in the area of Croatian criminal law, the provisions of which are also applicable to legal entities, a review of the most significant changes which should be made in relation to the punishability of legal entities for ecological crimes.

Keywords: *environmental crimes, legal entities, EU directives, corporate criminal liability, organized environmental crimes*

1. INTRODUCTION

The environment is a supreme good the protection of which is regulated by a large number of international documents from the United Nations, the European Union

and the Council Europe.¹ It is primarily protected by non- criminal legal mechanisms due to the point of view that effective preventative effects can be achieved by the application of administrative punishments and sanctions of a reparatory nature. However, concern about the possibility of harmful effects to the environment and human health ordered accepting protection and criminal law instruments whereby a combined system of administrative, misdemeanor and criminal sanctions is accepted. The first, Council Directive (EU) 2008/99/EC (with 2009/123/EC on ship-source pollution),² listed criminal acts against the environment which the EU Member States had to include in their national legislature if offences were committed intentionally or with at least serious negligence. But, according to the assessment of the European Commission, it turned out that the directive did not have much effect in practice³ and was replaced by Council Directive (EU) 2024/1203 of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC.⁴ Given that this last Council Directive (EU) 2024/1203, which entered into force in May 2024, had the aim of significantly amending and widening provisions of Directive 2008/99/EC, in the interests of clarity totally replaced it.⁵

Due to the increasing severity of the consequences of corporative negligence to the ecosystem, the directives ordered members whose law prescribed criminal liability for legal entities,⁶ to prescribe effective, deterring, and proportional types

¹ More in Cvitanović, L., *Napomene uz kaznenopravnu zaštitu okoliša*, Kaznenopravna zaštita okoliša, HAZU, Zagreb 2017, p. 21-29.

² Council Directive (EU) 2008/99/EC (with 2009/123/EC on ship-source pollution), of 19 November 2008 on the protection of the environment by criminal law, OJ L 328/28, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2008:328:FULL>, 10 January, 2025.

³ Study on the implementation of this Directive in Member States of EU (Council of The European Union: Report of the Strategic Meeting towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust, 8101/14, Brussels, 24 March 2014.) showed that there are problems related to harmonization and defining certain concepts from the Directive, for example, *substantial damage* and so on as well as that there are no harmonization related to severity of sanctions for certain criminal offences which can endanger international cooperation. Pleić, M., *Kazneni progon i istraživanje kaznenih djela protiv okoliša*. Zbornik radova Pravnog fakulteta u Splitu, Split, year 53, 2/2016, p. 604.

⁴ 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, Official Journal of the European Union, 30. 4. 2024, <https://eur-lex.europa.eu/legal-content/HR/TXT/>, 10 January, 2025 (hereinafter: Council Directive (EU) 2024/1203).

⁵ Recital (71) Council Directive (EU) 2024/1203.

⁶ In the German administrative system with the power to give high fines should be compensated by the inability to criminal prosecution of companies, but the Dieselgate case in which Volkswagen received administrative sanctions of up to 1 a billion Euro led to great

and levels of criminal sanctions towards legal entities. The biggest threat to the environment are precisely large corporations working in the area of excavating, processing and using various natural resources (oil, gas, metal, and the like.) chemical companies, agricultural holdings, energy and transport companies, all in the aim of maximizing profits.⁷ The reality shows that they are responsible for the biggest ecological catastrophe and largest environmental pollution in recent decades.⁸ Ecological crime has become a very lucrative criminal activity, the huge profit of which attracts criminal association across borders and some legal entities have been formed in order to commit such crimes or to mainly carry out crime.⁹ It has become the third most lucrative industry for organized criminal groups generating up to 280 billion US dollars per annum¹⁰ Environmental crime is highly lucrative, it can be as profitable as illegal drug trafficking, but the sanctions are much lower, and it is harder to detect. These factors make it highly attractive,¹¹ especially for well-structured organizations capable of connecting at a local and international level.¹² Europol has mapped 821 highly threatening criminal networks operating within the EU. Among these networks, four specialize in waste and pollution crimes, while three focus solely on wildlife crimes. Additionally, 12 networks engage in environmental crime alongside other criminal activities, primarily drug trafficking.¹³ EU priorities are on trading in waste and disposing of dangerous waste¹⁴ and trading in wild bird species and the Council Directive (EU)

criticism as being inadequate for environmental protection. Colantoni, L.; Sarno, G. S.; Bianchi, M., *Fighting Environmental Crime in Europe. An Assessment of Trends, Players and Action*, Rome, IAI and AMBITUS, May 2022, p. 24.

⁷ Kuznetsova, N.; Urda, M., *Back to the problem of criminal liability of legal entities: two views on the problem (using the example of environmental crimes)*, Russian Journal of Criminology, vol. 17, 6/2023, pp. 567-576.

⁸ Derenčinović D., *Zakon o odgovornosti pravnih osoba za kaznena djela, s uvodnim napomenama, komentatorskim bilješkama, pojmovnim kazalom i prilogima*, Nocchi d.o.o., Zagreb 2003, p. 14.

⁹ See Uhm, D. P.; Nijman, R. C. C., *The convergence of environmental crime with other serious crimes: Subtypes within the environmental crime continuum*, European Journal of Criminology, 19 4/2022, pp. 542-561.

¹⁰ Olsen Lundh, C., *The Revised EU Environmental Crime Directive Changes and Challenges in EU Environmental Criminal Law with Examples from Sweden*, Eu crim, 2/2024, p.164, <https://eucrim.eu/articles/>, 20 February, 2025.

¹¹ The annual value of transnational environmental crime is estimated to be worth USD 70 to 213 billion annually. <https://www.europol.europa.eu/crime-areas/environmental-crime>, 10 March, 2025.

¹² Colantoni, *et al.*, *op.cit.* note 6, p. 79.

¹³ Olsen Lundh, *op. cit.*, note 10, p. 164.

¹⁴ Trading in waste is one of the biggest criminal offences because of the possibility of international trade, complexity of regulations and the increasing wish of many companies to save on managing waste which is more and more expensive due to stricter environmental rules. Organized crime routes for smuggling waste are those which include Italy and eastern European countries, and waste is imported/exported from countries outside of the EU, e.g., from China. Colantoni, *et al.*, *op. cit.* note 6, p. 79. This is due to the fact that in this crime of smuggling dangerous waste is mostly done by organized criminal groups is additionally

2024/1203 also regulates instruments to combat, uncover and prosecute those and other forms of serious crime.

Corporate crime in general today and the international nature of this crime is emphasized due to multinational corporations and global technological development and demonstrates a strong correlation with other types of crime, in particular white collar crime, economic and organized crime.¹⁵ In the criminal sense, ecological crime also belongs to the concept of organized transnational crime and the concept of economic or „white collar“ crime because perpetrators and motives are mainly economic¹⁶ while organized crime undermines the legal activity of companies, for example in the area of waste disposal.¹⁷ Therefore, the participation of multinational corporations in the commission of crimes against the environment with the acquisition of huge profits represents a great threat to world security.¹⁸ The assessment that serious danger exists that only symbolically criminalizing the violation of environmental protection rules without any guarantees of effective implementation,¹⁹ has led to the bringing in of the new Directive, the aim of which is to harmonize national criminal legislation.²⁰

Given that the Council Directive (EU) 2024/1203 compels Member States by 21 May 2026 to adopt laws and other necessary regulations in order to harmonize national legislation, this paper methodologically includes an overview of key demands related to punishing legal entities. The example of Croatian criminal legislation is used. Protection of the environment was the most comprehensive and demanding area in the Republic of Croatia's accession to the EU and included

made more difficult due to the fight against ecological crime. Bugarski, T. D., *Challenges of organized environmental crime*, Zbornik Radova Pravnog fakulteta u Novom Sadu, 49, 3/2015, p. 1097-1108.

¹⁵ Šikman, M., *Corporate Crime - New Approaches and Future Challenges*. Ed. Čaleta, D., Vršec, M., Management of Corporate Security-New Approaches and Future Challenges. Ljubljana: Institute of Corporate Security, 2013, pp. 103-114.

¹⁶ Vagliasindi, G. M., *Environmental crime and the EU*, 2015, <http://efface.eu>, 25 February, 2025.

¹⁷ Eurojust, Press release, 29 October 2019, <http://www.eurojust.europa.eu/press/>, 15 February, 2025.

¹⁸ Those criminally gained means raise the question of the possibility of also financing terrorism. See Wang, S.; Tian, Z., *New challenges in financial supervision: environmental crime terrorism financing*. Trends Organ Crim 27, 2/2023, pp. 212-228.

¹⁹ Faure, M., *The Development of Environmental Criminal Law in the EU and its*, RECIEL 26, 2/2017, pp. 139-146.

²⁰ In its proposal the European Commission goes from aims of environmental protection policies towards judicial cooperation to strengthen the autonomy of the Union in this area. Rizzo, A., *Criminalizing“ environmental wrongdoings under European Union law: a proposal from the European Commission in the light of old and new challenges*, Rivista.eurojus.it, 1/2022, pp. 69-91, <https://rivista.eurojus.it/wp-content/uploads/pdf/Here5.pdf>, 15 February, 2025.

around 300 legal documents.²¹ However, the data show that, also in Croatian judicial practice, protection is inadequate because for example from 2019-2023 only a total of 71 legal entities were reported for crimes against the environment, of which only 13 legal entities were found guilty of ecological crime. In most cases, small fines or suspended sentences were issued.²² An overview of key Council Directive (EU) 2024/1203 determinants in this paper focuses on an analysis of introducing new criminal acts against the environment, the quantitative or qualitative threshold necessary for dealing with the presented criminal offence, form of guilt, incitement, aid and abetting and attempt, aggravating and mitigating circumstances, sanctions and other measures for legal entities and instruments the Council Directive (EU) 2024/1203 prescribed for preventing organized and across borders ecological crime. The aim of this paper is to provide insights into the numerous duties ordered by the Council Directive (EU) 2024/1203 and help harmonize national legislation in matters dealing with liability of legal entities for ecological crimes to ensure more effective protection of the environment.

2. OVERVIEW OF KEY COUNCIL DIRECTIVE (EU) 2024/1203 PROVISIONS

The Council Directive (EU) 2024/1203 establishes minimal rules for defining criminal acts and sanctions and measures for preventing and combatting criminal offences against the environment with the aim of effective implementation of EU law in that area. Simultaneously, the Council Directive (EU) 2024/1203 together with obligations prescribes that Member States can bring in or keep stricter rules in the area of criminal law.

2.1. Widening the concept of ecological criminal offence

Equalizing criminal provisions starts from a demand that criminal offences against the environment are defined the same way in all EU Member States ensuring precise and faithful application of legal provisions.²³ In relation to previous

²¹ Pavlović, Š., *Kazneni zakon. Zakonski tekst, komentari, sudska praksa*. Libertin naklada, Rijeka 2015, p. 889.

²² Data from the Government Department of statistics, legal entities in Croatia most often due to profits gained by committing offences are liable for economic crime and due to this violation of duty of supervision and for criminal offences against general safety, <https://podaci.dzs.hr/>, 28 February, 2025.

²³ Criminal legislature for continental legal system is based on the principle of *nullum crimen, nulla poena sine lege* which demands predictability precision of offence and punishment. The importance of precision was emphasized by the Court of the European

directives, the new directive significantly widens the list of criminal offences against the environment and contains 21 various offences.²⁴ The Council Directive (EU) 2024/1203 deals with a wide spectrum of ecological policy issues, in particular with controlling pollution (including mercury pollution), waste managements, dangerous activities in plants, polluting offshore installations, pollution of radioactive substances, invasive species, implementation of interventions/assessment of impact on the environment, dispatching waste, recycling ships, pollution from ships, work of plants, radioactive materials, placing goods on the market /illegal wood trading, substances that destroy the ozone layer, fluorinated greenhouse gases, illegally capturing water, killing/possessing endangered species, illegal trade of wildlife/CITES and habitat deterioration.²⁵

Some criminal offences include a qualitative threshold for the conduct to constitute a criminal offence, namely, that such conduct causes the death of, or serious injury to, a person or substantial damage to the quality of air, water or soil, or to an ecosystem, animals or plants.²⁶ The majority of these offences could be classified as "concrete endangerment offences" because they require that a specified threshold of environmental harm be met.²⁷ There are also "abstract endangerment offences," which do not depend on a threshold of environmental harm being met.²⁸

Article 3. the Council Directive (EU) 2024/1203 defines criminal offences as unlawful behaviour,²⁹ and in paragraphs 2 and 3 states it as behaviour with intent,

Union while the concepts used in defining illegal behavior must be interpreted according to definitions EU law on environmental protection. Olsen Lundh, *op. cit.*, note 10, p. 165.

²⁴As opposed to the Directive of 2008 which contains a total of nine criminal offences (including three offences related to checking pollution, two offences related to waste management, three biodiversity offences and one atmospheric pollution management offences) Council Directive (EU) 2024/1203 introduces 12 new criminal offences. Pereira, R., *A Critical Evaluation of the New EU Environmental Crime Directive 2024/1203*, *Eucrim*, 2/2024, p. 159, <https://eucrim.eu/articles/>, 25 February, 2025.

²⁵ *Loc.cit.*

²⁶ Recital (13) Council Directive (EU) 2024/1203.

²⁷ Under the Council Directive (EU) 2024/1203, the threshold of environmental damage for most offences is typically that the prohibited conduct causes or is likely to cause "the death of, or serious injury to, any person, substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants." Pereira, *op. cit.*, note 24, footnote 46, p. 162.

²⁸ E.g., the ship recycling offence (Art.3(2) point h); the trade in ozone depleting substances offence (Art. 3(2) point s) and the trade in fluorinated greenhouse gases offence (Art.3(2) point t). *Ibid.*

²⁹ Behavior is illegal if it violates: (a) Union rights contributing to the achievement of a Union political aim in the area of the environment as stated in article 191(1) of UFEU; or (b) the law or other Member State regulation or a decision reached by an authoritative Member State body which implements Union law from point (a).

and in paragraph 4 if the behaviour is at least with extreme carelessness.³⁰ The important innovation is that an act is also unlawful if it is committed under an authorization granted by a competent authority of a Member State, if that authorization was obtained fraudulently or through corruption, extortion or coercion or if such authorization is in manifest breach of relevant substantive legal requirements (art. 3 paragraph 1). If the proscribed unlawful behaviour leads to serious consequences, it is a qualified criminal offence on the condition that it causes:

(a) destruction or far reaching and significant damage, which is either irreversible or long term, is great or of significant value to the ecosystem, or for the habitat within a protected area; or

(b) widespread and considerable damage, which is irreversible or long term or to the quality of the air, soil or water (art. 3 paragraph 3).³¹

³⁰ Member States ensure that behavior stated in 2 points from (a) to (d), points (f) and (g), points from (i) to (q), point (r) subpoint ii. and points (s) and (t) represent a criminal offence of that behavior is illegal and committed out of gross negligence.

³¹ In Art.3(3) points a) and b) the Council Directive (EU) 2024/1203 introduces two new qualified offences for acts comparable to ecocide, largely thanks to the interventions of the European Parliament in the course of the directive negotiations. Pereira, *op. cit.* note 24, p. 160. On the need that ecocide is declared an international crime for the authority would be ICC and that those who destroy the environment are punished in times of war and peace above all big companies multinational corporations more Stock, C., *A Fifth core crime: Crime of ecocide as a new puzzle of the international criminal law*, Yearbook of International & European Criminal and Procedural Law, vol.1, 1/2022, pp. 248-284. That in particular due to the Statute of Rome supporting explicit authority of the ICC for crimes against the environment in particular because EU supervision regarding cooperation in the area of criminal law and ecological standards is shared with the authority of member states. Rizzo, A., *In Search of Ecocide Under EU Law. The International Context and EU Law Perspectives* Freedom, Litivity & Justice: European Legal Studies, 3/2021, pp. 163-196. More on considering crime against the environment as crime against humanity and the concept of ecocide as an international law Fronza, E., *Towards a new crime of ecocide: the moving frontiers of international criminal law*, Strafrecht und Systemunrecht Festschrift für Gerhard Werle zum 70. Geburtstags, 2022, pp. 93-104, <https://www.mohrsiebeck.com/buch/strafrecht-und-systemunrecht-9783161588624/>, 20 February, 2025.; Alberro, H.; Daniele, L., *Ecocide: why establishing a new international crime would be a step towards interspecies justice*, 2021, The Conversation, <https://theconversation.com/ecocide-why-establishing-a-new-international-crime-would-be-a-step-towards-interspecies-justice-162059>, 10 February, 2025.; Sarliève, M., *Ecocide: Past, Present, and Future Challenges*, in book: *Life on Land* 2021, pp. 233-243 <https://www.researchgate.net/publication/347137341>, 10 February, 2025.; Higgins, P.; Short, D.; South, N., *Protecting the planet: a proposal for a law of ecocide*, Crime Law Soc Change, Springer, 2013, <https://www.researchgate.net/profile/Damien-Short/publication/257552825>, 10 February, 2025.; Sziebig, O. J., *The Crime of Ecocide through Human Rights Approach The "Universal" Right to a Healthy Environment as a Driving Force Calling for Ecocide Legislation*, ACTA HUMANA, 2/2024, pp.75–89 and Hansen, O. T., *Accountability for Environmental Crimes in Conflict Zones: Why Expanding the International Criminal Court's Jurisdiction Is Not the Best Solution*, New York University Journal of International Law and Politics 56, 3/2024, pp. 879-923.

The Council Directive (EU) 2024/1203 also provides the elements for assessing the extent of the damage or likely damage as significant or non-significant.³² Regarding criminal law institutes, the Council Directive (EU) 2024/1203 in art.4 orders punishment for inciting and aiding and abetting in criminal offences against the environment and for attempting these acts: inciting and assisting in relation to the commission of intentional criminal acts from art. 3 paragraphs 2 and 3 and attempting to intentionally commit a criminal act which causes or is likely to cause death or serious injury to persons or which causes or is likely to cause significant damage to the environment or in another way is considered particularly harmful.³³ Therewith the concept of „attempting” is interpreted in keeping with national law. The definition of criminal acts in the Council Directive (EU) 2024/1203 includes commission, as well as omission, that is, failure to fulfil legal duties.

2.2. Presumptions of liability of legal entities

The concept of a legal entity includes every legal subject of that status on the basis of applicable national law, apart from state or public bodies executing government functions and public international organizations (art. 2 paragraph 2 (a). Art. 6 paragraph 1 stipulates those legal entities are liable for criminal offences from

³² Member States shall ensure that, in assessing whether the damage or likely damage is substantial, as regards conduct listed in paragraph 2, points (a) to (e), point (f) subpoint ii, points (j) to (m), and point (r), one or more of the following elements is taken into account, where relevant: a) the baseline condition of the affected environment, b) whether the damage is long-lasting, medium-term or short-term, c) the extent of the damage, d) the reversibility of the damage. Member States shall ensure that, in assessing whether conduct listed in paragraph 2, points (a) to (e), point (f)(ii), points (i) to (m), and point (r), is likely to cause damage to the quality of air or soil, or the quality or status of water, or to an ecosystem, animals or plants, one or more of the following elements is taken into account, where relevant: (a) the conduct relates to an activity which is considered to be risky or dangerous for the environment or human health, and requires an authorization which was not obtained or complied with; (b) the extent to which a regulatory threshold, value or another mandatory parameter set out in Union or national law referred to in paragraph 1, second subparagraph, points (a) and (b), or in an authorization issued for the relevant activity is exceeded; (c) whether the material or substance is classified as dangerous, hazardous or otherwise listed as harmful to the environment or human health.

Member States shall ensure that in assessing whether a quantity is negligible or non-negligible for the purposes of paragraph 2, point (f)(i), and points (g), (n), (o) and (p), one or more of the following elements is taken into account, where relevant: (a) the number of items concerned; (b) the extent to which a regulatory threshold, value or another mandatory parameter set out in Union or national law referred to in paragraph 1, second subparagraph, points (a) and (b), is exceeded; (c) the conservation status of the fauna or flora species concerned; (d) the cost of restoration of the environment, where it is feasible to assess that cost.).

³³ Taken from art. 3(2) points of (a) to (d), points (f) and (g), points from (i) to (m) and points (o), (p), (r), (s) and (t), punishable as a criminal act.

Articles 3 and 4 of the Council Directive (EU) 2024/1203, if such criminal offences were committed for the benefit of those legal entities by any person who has a leading position within the legal entity concerned, acting either individually or as part of an organ of that legal entity, based on:

- (a) a power of representation of the legal entity;
- (b) an authority to take decisions on behalf of the legal entity; or
- (c) an authority to exercise control within the legal entity.

Member States are ordered to ensure that legal entities are responsible and if non implementation of supervision or checks on the part of such persons enabled another person supervisory to the legal entity to commit a crime from articles 3 and 4 in favor of the legal entity (art. 6 paragraph 2). Furthermore, liability of legal entities must not prevent criminal proceedings against natural persons who are perpetrators, and those who incite or assist in criminal acts from articles 3 and 4 of the Council Directive (EU) 2024/1203 (art. 6 paragraph 3).

2.3. Types of sanctions and measures for legal entities

The Council Directive (EU) 2024/1203 in art. 7 stipulates a duty for Member States to ensure that sanctions or measures for legal entities considered liable on the basis of Article 6 paragraphs 1 or 2 for criminal offences from Articles 3 and 4 to include criminal or non-criminal fines and other criminal or non-criminal sanctions or measures such as the following(a) an obligation to: i. restore the environment within a given period, if the damage is reversible, or ii. pay compensation for the damage to the environment, if the damage is irreversible or the offender is not in a capacity to carry out such restoration; (b) exclusion from entitlement to public benefits or aid; (c) exclusion from access to public funding, including tender procedures, grants, concessions and licences; (d) temporary or permanent disqualification from the practice of business activities; (e) withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence; (f) placing under judicial supervision; (g) judicial winding-up; (h) closure of establishments used for committing the offence; (i) an obligation to establish due diligence schemes for enhancing compliance with environmental standards; (j) where there is a public interest, publication of all or part of the judicial decision relating to the criminal offence committed and the penalties or measures imposed, without prejudice to rules on privacy and the protection of personal data.

Furthermore, the Council Directive (EU) 2024/1203 stipulates that Member States ensure that, at least for liable legal entities, criminal offences contained in Art. 3 paragraph 2 punishable by criminal or non-criminal monetary fines the amount of which is commensurate with the seriousness of the behaviour, and individual,

financial, and other circumstances of that particular legal entity. Moreover, Member States are free to choose the amount of fine for legal entities between amount of turnover of the legal entity or determining a fixed amount. For the worst breaches of the environment fines must be at least 5% of their overall world profits³⁴ or a fixed amount of 40 million euro³⁵ and for other breaches 3% of profits or 24 million euro.³⁶ Member States must ensure that liable legal entities for offences contained in Art. 3 paragraph 3 of the Council Directive (EU) 2024/1203 (qualified offences against the environment) can be punished with stricter criminal or non-criminal sanctions or measures than those applicable to summary offences (contained in Art. 3 paragraph 2). The highest level of monetary fines should be applied to the most serious offences committed by financially strong legal entities.³⁷

The Council Directive (EU) 2024/1203 in Art. 8 stipulates the circumstances when determining the amount of fine, one or more of which do not characterize offences against the environment, consider as aggravating if (a) the offence caused the destruction of, or irreversible or long-lasting substantial damage to, an ecosystem; (b) the offence was committed in the framework of a criminal organization within the meaning of Council Framework Decision 2008/841/JHA; (c) the offence involved the use by the offender of false or forged documents; (d) the offence was committed by a public official when performing his or her duties; (e) the offender has previously been convicted by a final judgment of offences of the same nature as those referred to in Article 3 or 4; (f) the offence generated or was expected to generate substantial financial benefits, or avoided substantial expenses, directly or indirectly, to the extent that such benefits or expenses can be determined; (g) the offender destroyed evidence, or intimidated witnesses or complainants; (h) the offence was committed within an area classified as a special protection area pursuant to Article 4(1) or (2) of Directive 2009/147/EC, or a site designated as a special area of conservation in accordance with Article 4(4) of Directive

³⁴ In the financial year preceding when the criminal offence was committed or in the financial year preceding the decision on issuing a fine, Member States can establish rules for cases where it is not possible to determine the amount of fine based on overall world profit of the legal entity and determine a method to calculate these highest levels of fines including their particular conditions (Recital (34) Council Directive (EU) 2024/1203).

³⁵ The highest levels of such fines should be applied to the most serious forms of criminal offences as defined in the Council Directive (EU) 2024/1203 committed by financially strong legal entities.

³⁶ Pinggen, A.; Wahl, T., *New EU Rules on Protection of the Environment through Criminal Law*, Eucrim, 1/2024, pp. 32-33, <https://eucrim.eu/news/>, 26 February, 2025.

³⁷ Member States are asked to regularly examine the level of fines set in fixed amounts taking into consideration rates of inflation and other fluctuations in monetary value.

92/43/EEC or a site listed as site of Community importance in accordance with Article 4(2) of Directive 92/43/EEC.³⁸

Mitigating circumstances are considered to be if: a) the offender restores the environment to its previous condition, where such restoration is not an obligation under Directive 2004/35/EC, or, before the start of a criminal investigation, takes steps to minimize the impact and extent of the damage or remediates the damage; (b) the offender provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to: i. identify or bring to justice other offenders; ii. find evidence.

The Council Directive (EU) 2024/1203 obliges Member States to also prescribe *sui generis* the tracing, identifying, freezing and confiscation of instrumentalities and proceeds from the environmental crimes.³⁹

In Art. 11 of the Council Directive (EU) 2024/1203 minimum rules are prescribed for deadlines for statute of limitations for processing offenders of ecological crime and executing sanctions, existing general rules for statute of limitations are applicable from the moment of commission of offence that is, date of enforceability of judgement. However, Member States are given the right to foresee that the deadline for statute of limitations commences from the moment the offence is committed, on condition that the moment is clearly confirmed pursuant to national law. Furthermore, establishing a shorter statute of limitations deadline is permissible, but no less than five years on condition that it is possible to terminate or suspend such a deadline in the case of precisely determined acts.⁴⁰

2.4. Instrumentalities to combat organized ecological crime

The Council Directive (EU) 2024/1203 emphasizes the need in criminal proceedings and trials that the inclusion of organized criminal groups is taken into consideration. These groups work in ways that have a negative impact on the environment.⁴¹ Therefore, criminal proceedings related to criminal offences against the environment must deal with corruption, money laundering, cybercrime

³⁸ Aggravated circumstances from point (a) of this article is not applied in qualified criminal offences against the environment.

³⁹ Art.10 Council Directive (EU) 2024/1203.

⁴⁰ Art.11(4) Council Directive (EU) 2024/1203.

⁴¹ Transnational ecological crime is specially organized, because it demands across border cooperation among various public and private participants. Stefes, Ch., *Environmental crime and the EU : Synthesis of the research project 'European Union Action to Fight Environmental Crime' (EFFACE)*, 2016, p. 40, <http://efface.eu/sites/default/files/publications>, 27 February, 2025.

and forging documents as well as, where business activities are concerned, offenders aim to achieve the greatest profits possible or cut costs (Recital (28) Council Directive (EU) 2024/1203). Namely, these criminal offences are often related to serious forms of criminal offences against the environment causing significant damage to the environment and people's health including devastating effects on nature. The Council Directive (EU) 2024/1203 considers as particularly concerning that some committed criminal offences against the environment where authority administration or officials carrying out their duties, tolerate or actively support.⁴² Therefore, such behaviour is illegal even if it is carried out on the basis of authorization issued by the authorizing body of Member States if such authorization is gained by deceit or corruption, extortion or coercion.

This Council Directive (EU) 2024/1203 emphasizes that Member States shall take the necessary measures to ensure that effective and proportionate investigative tools are available for investigating or prosecuting environmental crimes. Where appropriate, those tools shall include special investigative tools, such as those used in combatting organized crime or in other serious cases of crime (Art. 13 Council Directive (EU) 2024/1203).⁴³ Furthermore, Art. 14 of the Council Directive (EU) 2024/1203 obliges Member States to protect persons who report criminal offences against the environment or assist in the investigation of these offences, in a way that, pursuant to national law, allows access to measures of support and help within the framework of criminal proceedings.

3. COUNCIL DIRECTIVE (EU) 2024/1203 INFLUENCE ON NORMATIVE REGULATION OF LEGAL ENTITY LIABILITY FOR ECOLOGICAL CRIME IN CROATIA

Normative regulation of legal entity criminal liability in Croatia has been contained for over 20 years in a special Law on Liability of Legal Persons for Criminal Offenses,⁴⁴ which expressly prescribes that to legal entities subsidiarily

⁴² Examples of such behavior are inspections within which a blind eye is turned to violating the law in the area of protection of the environment or people remain silent; intentionally leaving out inspections or checks, for example related to whether the permit holder respects permit conditions; supporting decisions or voting in favor of issuing illegal permits or issuing forged or inaccurate favorable reports.

⁴³ Such investigative tools include intercepting communication, hiding supervision, electronic supervision, checking deliveries, checking bank accounts and other tools of financial investigation.

⁴⁴ Law on Liability of Legal Persons for Criminal Offenses, Official Gazette, No. 151/2003, 110/2007, 45/2011, 143/2012, 114/2022, 114/2023 (hereinafter: LLPCO).

are also applicable provisions of Criminal Code,⁴⁵ Criminal Procedure Act,⁴⁶ and Law on Office for Combatting Corruption and Organized Crime.⁴⁷ Given that in Croatia there is no one special catalogue of criminal offences for which legal entities are liable, they can also answer for all criminal offences as natural persons. Therefore, this overview begins with Council Directive (EU) 2024/1203 demands in relation to the catalogue of ecological criminal offences.

3.1. Duties of incriminating certain unlawful acts

Normative extraction of criminal offences against the environment as a separate chapter of criminal offences was already done in CC in 1997 due to the fact that those offences correlate, on the one hand, with criminal offences against security in general, and on the other hand offences against people's health.⁴⁸ Also, the old judicature often mixed offences against the environment with acts that threaten safety in general of people and property by a dangerous act or substance.⁴⁹ Due to obligations arising from the Directive 2008/99/EC and 2009/123/EC chapter XX. of the current CC of 2013 has been widened with eight new criminal offences against the environment.⁵⁰ Does Republic of Croatia in relation to defining criminal offences against the environment and their qualified forms widen the current catalogue? A comparison of proscribed illegal behaviours and quantitative or qualitative threshold necessary for such behaviour pursuant to the Council Directive (EU) 2024/1203 to represent a criminal offence demonstrates that the Croatian criminal legislator must harmonize the current normative situation in the following way. Primarily, it is necessary to list new criminal offences:

a) the manufacture, use, storage, import or export of mercury, mercury compounds, mixtures of mercury, and mercury-added products where such conduct is not in compliance with the requirements set out in the European

⁴⁵ Criminal Code, Official Gazette, No. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024 (hereinafter: CC).

⁴⁶ Criminal Procedure Act, Official Gazette, No. 152/2008, 76/2009, 80/2011, 121/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017, 126/2019, 126/2019, 130/2020, 80/2022, 36/2024.

⁴⁷ Law on Office for Combatting Corruption and Organized Crime, Official Gazette, No. 76/2009, 116/2010, 145/2010, 57/2011, 136/2012, 148/2013, 70/2017.

⁴⁸ Thus Cvitanović, *op. cit.*, note 1, p. 26.

⁴⁹ *Loc. cit.*

⁵⁰ On the legal framework on protection of wildlife in Croatia see Vuletić, I., *Review of the Ecocentric Model of Environmental Protection in Croatian Criminal Law. Ten Years after EU Accession*, Journal of Legal Theory and Practice of The Bar Association of Vojvodina, Novi Sad, vol. XCV, 4/2023, pp. 1305- 1341; Sokanović, L., *Die strafrechtliche Verantwortlichkeit der juristischen Personen im lichte des neuen kroatischen umweltstrafrechts*, Zbornik radova Pravnog fakulteta u Splitu, Split, year 50, 4/2013, pp. 977-990.

regulation of the environmental protection and causes or is likely to cause the death of, or serious injury to, any person, substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants;⁵¹

b) the unlawful and intentional production, placing on the market, import, export, use, or release of fluorinated greenhouse gases, whether alone or as mixtures, 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 equipment⁵² and c) the unlawful and intentional recycling of ships.⁵³

Therefore, the criminal offence of Environmental Pollution from art. 193 CC must be supplemented by bringing in the expressions „material“ and „energy“ and incriminating: (a) the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation, into air, soil or water which causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants; (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 and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants (provided that it is prohibited or restricted by European regulations).⁵⁴

Obligations arising from the criminal offence of Endangerment of the Ozone Layer from art. 195 CC is to include „emitting substances“ among acts and incriminating that the act also refers to „products and equipment, and parts thereof, containing ozone-depleting substances or whose functioning relies upon those substances.“⁵⁵ To the criminal offence of Endangerment of the Environment with Waste from art. 196 CC it is necessary to supplement commission of acts with „the collection, transport or treatment of waste, the supervision of such operations and the after-care of disposal sites, including action taken as a dealer or a broker, where such conduct concerns hazardous waste and it concerns a non-negligible quantity of such waste or concerns waste which is not hazardous but causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the

⁵¹ Art.3(2) point d) Council Directive (EU) 2024/1203.

⁵² Art.3(2) point t) Council Directive (EU) 2024/1203.

⁵³ Art.3(2) point h) Council Directive (EU) 2024/1203.

⁵⁴ Art.3(2) point a) and b) Council Directive (EU) 2024/1203.

⁵⁵ Art.3(2) point s) Council Directive (EU) 2024/1203.

quality of air, soil or water, or substantial damage to an ecosystem, animals or plants."⁵⁶

In the criminal offence from art. 197 CC of Environmental hazard caused by a plant, it is necessary to include a new form of act comprising „the construction, operation and dismantling of an installation, where such conduct and such an installation fall within the scope of the European directives, and such conduct causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants."⁵⁷

Obligations related to the existing criminal offence of Destruction of Protected Natural Values (art. 200), Destruction of Habitat (art. 201) and Trade in Protected Natural Values (art. 202) deal with entering the following characteristics into legal descriptions: „the killing, destruction, taking of, possession, sale or offering for sale of a specimen or specimens of a species of wild fauna or flora and of a specimen or specimens of the species, the trade of a specimen or specimens, or parts or derivatives thereof of a species of wild fauna or flora, and import of a specimen or specimens, or parts or derivatives thereof, of such species, except where such conduct concerns a negligible quantity of such specimens and any conduct which causes the deterioration of a habitat within a protected site, or the disturbance of animal species within a protected site, where such deterioration or disturbance is significant."⁵⁸

The legal description of the criminal offence of Unlawful Introduction of Wild Species or GMOs into the Environment from art. 203 should be widened into punishing „the bringing into the territory of the Union, placing on the market, keeping, breeding, transporting, using, exchanging, permitting to reproduce, growing or cultivating, releasing into the environment, or the spreading of invasive alien species of Union concern, where such conduct breaches restrictions set out in European legislature and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants“.⁵⁹

Making the legal description of the offence of Change in the Water Regime from art. 210 more precise is related to committing the offence of „the abstraction of surface water or groundwater within the meaning of Directive 2000/60/EC of the European Parliament and of the Council, where such conduct causes or is likely to

⁵⁶ Art.3(2) points f) and g) Council Directive (EU) 2024/1203.

⁵⁷ Art.3(2) points j) and k) Council Directive (EU) 2024/1203.

⁵⁸ Art.3(2) points n), o) and q) Council Directive (EU) 2024/1203.

⁵⁹ Art.3(2) point r) Council Directive (EU) 2024/1203.

cause substantial damage to the ecological status or ecological potential of surface water bodies or to the quantitative status of groundwater bodies".⁶⁰

It is also necessary to supplement commission of the act necessary for the criminal offence of Devastation of Forests from art. 209 with the act of „the placing or making available on the Union market or the export from the Union market of relevant commodities or relevant products, in breach of the prohibition set out in Article 3 of Regulation (EU) 2023/1115, except where such conduct concerns a negligible quantity".⁶¹

For in practice the common offence of Unlawful construction from art. 212 CC, it is significant that the Council Directive (EU) 2024/1203 prescribes punishment for the execution of projects within the meaning of Art. 3 paragraph 2 point (a) of the Council Directive (EU) 2024/1203 where such conduct is carried out without a development consent and causes or is likely to cause substantial damage to the quality of air or soil, or the quality or status of water, or substantial damage to an ecosystem, animals or plants.⁶²

More serious forms of criminal offences against the environment from art. 214 CC must be linked to all in CC prescribed criminal offences against the environment on condition that they caused consequences from art. 3 paragraph 3 of the Council Directive (EU) 2024/1203. In Croatian criminal law for almost all ecological offences negligent commission of acts is also punishable.⁶³ It would be necessary to enter corrections into CC regarding punishability for attempted criminal offences against the environment because the Council Directive (EU) 2024/1203 also demands punishment for attempting the fundamental forms of the offence of Discharge of Polluting Substances from a Vessel (art. 194), Endangerment of the Environment with Waste, Destruction of Protected Natural Values, Destruction of Habitat and Devastation of Forests.

Criminal offences against the environment can be carried out by commission, negligence or omission,⁶⁴ and most acts are blanket legal descriptions because in

⁶⁰ Art.3(2) point m) Council Directive (EU) 2024/1203.

⁶¹ Art.3(2) point p) Council Directive (EU) 2024/1203.

⁶² Art.3(2) point e) Council Directive (EU) 2024/1203.

⁶³ Member State shall ensure that the conduct listed in paragraph 2, points (a) to (d), points (f) and (g), points (i) to (q), point (r)ii., and points (s) and (t), constitutes a criminal offence where that conduct is unlawful and carried out with at least serious negligence (Art. 3(4)).

⁶⁴ Widening punish ability is ensured by the general institute of criminal law so-called warranty liability, which states that whoever fails to avert the consequence which is an element of a criminal offense described under the law shall be liable for omission if he or she is legally bound to avert such a consequence (art. 20 paragraph 2 CC). Sokanović, L.; Mladinić, N.; Kurtović Mišić, A., *The Protection of Marine Waters and Organisms through*

order to be applied they point to the norms of administrative law and a large number of ecological legal and sublegal regulations.⁶⁵ The consequence of most acts is abstract endangerment i.e. removing the danger to protected good, whereas for punishment in principle behaving negligently is enough for punishment.⁶⁶

3.2. Conditions of legal entity liability

The circle of legal entities that can be punished for ecological criminal offences in Croatia matches the entities that pursuant to the Council Directive (EU) 2024/1203 have legal entity status, apart from in art. 6 of LLPCO, it would be necessary to also include public international organizations.⁶⁷ It would be necessary to consider whether in art. 3 and 4 of LLPCO to expressly state that a legal entity is liable for criminal offences by the responsible person who acted either independently or as a member of a body of that legal entity. The accepted normative model of derived or indirect legal entity liability with the model of identification or alter ego, also suits Council Directive (EU) 2024/1203 demands as well as delegation where liability is also widened to persons to whom powers of managing are transferred. Namely, legal entity liability also exists where commission of the criminal offence came about due to lapses in supervision or checks on the part of responsible persons who manage legal entities' business dealings on the person to whom management of business dealings is assigned.⁶⁸ However, the Council Directive (EU) 2024/1203 demands that ecological criminal offences are committed for the benefit of that legal entity. According to the accepted model of borrowed guilt in Croatia, the responsible person's guilt is accounted to the legal entity.⁶⁹ In such a parallel or shared criminal liability of the natural person and the legal entity in which the institutes of criminal material and procedural law are applied,⁷⁰ an

Criminal Law in the Legislation and Practice of the Republic of Croatia, Journal of Legal Theory and Practice of The Bar Association of Vojvodina, Novi Sad, 2/2024, p. 587.

⁶⁵ The most important laws are Environmental Protection Act, Nature Protection Act, Animal Protection Act, Act on Cross-Border Traffic and Wildlife Trade, Sustainable Waste Management Act and etc.

⁶⁶ Börner, R., *Umweltstrafrecht*. Springer, Berlin, 2019, pp. 31-58.

⁶⁷ LLPCO absolutely excludes the states' responsibility and limits county and town and municipality responsibility, because they cannot be punished for crimes committed in company business dealings and other activities not the prerogative of state government (*iure gestionis*). Member States can bring in stricter rules including rules on criminal liability of criminal liability of public bodies.

⁶⁸ Art. 3 paragraph 2 LLPCO.

⁶⁹ Art. 5 paragraph 1 LLPCO. All apologetic or mitigating circumstances impacting on guilt are transferrable to the legal entity.

⁷⁰ Legal entity liability is not necessary to be especially proven, because it is automatically presumed by established (*praesumptio iuris et de iure*) when the liability of the responsible natural person is established. Vuletić, I., *Corporate Criminal Liability: An Overview of the*

exception is autonomous criminal liability of the legal entity where the responsible person is unknown or inaccessible in which case his/her guilt is presumed.⁷¹

3.3. Duties in type of sanctions and measures for legal entities

The biggest challenge for the Croatian criminal legislator is implementation of Council Directive (EU) 2024/1203 demands in the area of sanctions and measures for legal entities. The Croatian system of criminal law sanctions for legal entities contains only two types of sanctions: punishments and security measures. The Council Directive (EU) 2024/1203 stipulates considerably higher amounts of monetary fines⁷² in the fixed amount of or in the percentage of world profits of the legal entity.⁷³ Given that the Council Directive (EU) 2024/1203 in art. 5 prescribes the lowest levels of maximum duration of prison sentence for natural persons, LLPCO will have to harmonize fines linked to prescribed punishments for criminal offences against the environment.⁷⁴

The measure of court order for liquidation in Croatian criminal law called the punishment of terminating the legal entity i.e. losing legal personality which is implemented by striking from the company register.⁷⁵ Croatia must normatively enable supplementary measures so that the liable legal entity must renew the environment within a certain deadline if the damage is reversible or pay damages if caused damage to the environment is irreversible or if the offender is not able to carry out such renewal.⁷⁶ Also, the measure of determining court supervision over

Croatian Model after 20 Years of Practice. Laws 12/2023, p. 27, <https://www.mdpi.com/journal/laws>, 27 February, 2025.

⁷¹ Art. 5 paragraph 2 LLPCO.

⁷² Depending on the severity of the criminal offence a fine spanning from 5.000,00 euro to 25.000.000,00 euro can be issued.

⁷³ Pursuant to art. 10 paragraph 5 of LLPCO if the aim of punishment is not achieved by issuing a fine in the stated span, the legal entity can be punished with a fine of up to do 10 % of the total profits of the legal entity earned in the financial year preceding the year the judgement is passed. The Council Directive (EU) 2024/1203 demands that Member States undertake the necessary measures in order to ensure that legal entities for qualified forms of criminal offences against the environment can be punished with strict criminal or non-criminal sanctions or measures than those prescribed for basic offences.

⁷⁴ Art. 10 of LLPCO prescribes the amount of fine for legal entities.

⁷⁵ This punishment pursuant to art. 12 paragraph 1 of LLPCO can only be issued if the legal entity with cause commits criminal offences or has mainly used their position to commit criminal offences and cannot be issued to public bodies, political parties and unions.

⁷⁶ On the contrary CC in art. 213 stipulates for legal entities application of provisions of effective remorse by court permission that five criminal offences against the environment (Pollution of the Environment, Emitting polluted substances from vessels, Endangering the Environment with Waste, Endangering the Environment by Plants and Endangering by radioactive substances) can exempt the perpetrator from punishment on condition that before harm came into effect they voluntarily removed the danger or state caused.

the legal entity must be introduced.⁷⁷ Most sanctions and measures for legal entities are provided in LLPCO as security measures for prohibiting carrying out certain activities or jobs, forbidding doing business with users of state and local budgets and prohibiting acquisition of licenses, authorizations, concessions or subsidies. However, it would be necessary to introduce new and harmonize existing with formulations from the Council Directive (EU) 2024/1203: cancelling rights to public funds and assistance; exclude from being able to access government financing, exclusions from public imposition procedures, non-refundable monies, concessions and permits; temporary or permanent ban on carrying out business activities and revocation of licenses and approvals to carry out activity leading to the relevant criminal offence and closing down premises used for commission of the criminal offence. In particular, it will be necessary to formulate normative regulation of the duty to establish a program of duty of care to improve harmonization with environmental protection standards.⁷⁸

An additional measure for making public the overall court judgement, or part thereof, which is related to the committed criminal offence and expressed sanction or measure, not bringing into question the rules on privacy and protection of personal data, in Croatian criminal law, the measure of publicizing the judgement on the costs of the convicted legal entity is ensured.⁷⁹

Changes relating to aggravated circumstances upon issuing punishments are also related to the existence of amassing criminal offences against the environment and other acts. For example, an aggravating circumstance from art. 8 c) of the Council Directive (EU) 2024/1203 is that criminal offences against the environment included the use of false or forged documents on the part of offenders in Croatian criminal law will represent the acquisition of criminal offences against the environment and the criminal offence of forging documents from art. 278 of CC. Regarding mitigating circumstances, LLPCO also prescribes the possibility of exemption from punishment for the legal entity that reports the criminal offence of the responsible person before it is uncovered or before knowing that the offence has been uncovered (art. 12a).

⁷⁷ By example of art. 131-39 of the French Penal Code: „3° *Le placement, pour une durée de cinq ans au plus, sous surveillance judiciaire,*“ https://www.legifrance.gouv.fr/codes/texte_lc/ 1 March, 2025.

⁷⁸ This deals with the duty companies to introduce programs of duty of care to improve harmonization with standards of environmental protection and to encourage economic subjects to have officials whose duty is to harmonize with Union law where the environment is concerned.

⁷⁹ The Court can always determine this when, given the meaning of the criminal offence, establish that justifiable reasons exist for the public to be informed of the enforceable court judgement (art. 21 paragraph 1 of LLPCO).

Given the fundamental criminal law that no one can keep property benefit acquired by committing a criminal offence, LLPCO also prescribes the measure of taking away such acquired benefit.⁸⁰ Given that the Council Directive (EU) 2024/1203 suggests undertaking measures which would enable the seized financial benefit to be used to finance renewing the environment or fixing damage caused or for damages for the environment, it would be necessary to consider such a possibility in national environmental protection law.⁸¹

It will certainly be necessary to harmonize deadlines of statute of limitations for criminal prosecution against legal entities and implementation of given sanctions, given the fact that statute of limitations deadlines are calculated according to the prescribed punishment for the committed criminal offence.⁸² Statute of limitations commences on the day when the offence was committed and exceptionally if the consequence characterizing the criminal offence occurs later, statute of limitations commences from that moment.⁸³ Implementing given monetary fines for legal entities are subject to statute of limitations after six years has passed of the fine being given⁸⁴ whereas implementing the punishment of cancelling the legal entity is not subject to statute of limitations.⁸⁵

3.4. Mechanisms of processing corporative ecological organized crime

Instrumentalities for combatting organized crime in Croatia is the consequence of the UN Convention on transnational organized crime⁸⁶ and for the participation of organized criminal groups in the commission of criminal offences against the environment the provisions of CC and Law on Office for Combatting Corruption and Organized Crime can be applied. It is particularly significant for the prosecution of organized criminal groups active in the area of across border ecological crime.⁸⁷ With articles 328 and 329 of CC, there is provision for liability

⁸⁰ Art. 19 of LLPCO. Establishing damage to the environment is problematic in the amount of reparation costs e. g. in the case of illegal waste disposal sites or in cases of sea pollution, coastlines, land, and total cost to the ecosystem. The report by the main State Attorney of the Republic of Croatia on the work of state attorneys in 2023 pp. 230-236, <https://dorh.hr/sites/default/files/dokumenti/2024-04/>, 2 March, 2025.

⁸¹ Recital (49) Council Directive (EU) 2024/1203.

⁸² Art. 21a paragraph 1 LLPCO.

⁸³ Art. 82 CC.

⁸⁴ Art. 21a paragraph 2 LLPCO.

⁸⁵ Art 21a paragraph 3 LLPCO.

⁸⁶ United Nations Convention against Transnational Organized Crime, Official Gazette, International treaties, No. 14/2002.

⁸⁷ More Pleić, *op.cit.*, note 3, p. 612. About organized corporate crime and American conspiracy theory Babin, A., *Corporate criminal liability*, American Criminal Law Review, 58 (3 Annual Survey of White Collar Crime), 2021, p. 682.

for organizing or leading or committing criminal offences within a system of criminal association. Criminal association comprises at least three persons who have banded with the common aim of one or more criminal offences for which a prison sentence of three or more years can be given and which does not include association of persons coincidentally for directly committing a criminal offence.⁸⁸ Within the authority of the Croatian Office for Combatting Corruption and Organized Crime (hereinafter: Office), criminal offences are prosecuted related to corruption, influence trading, money laundering, coercion, extortion and blackmail, for the criminal offence of revealing the identity of vulnerable persons or protected witnesses related to the commission of a crime falling into the authority of the Office and for offences committed related to group activity or criminal organizations for which a prison sentence of more than three years is prescribed and the offence is committed within two or more countries or a significant part of its preparation or planning is executed in another country.⁸⁹ Given that ecological crime in the across border context demands strict standards of proving guilt,⁹⁰ instrumentalities for processing organized legal entity crime are normative solutions of Office on undertaking special evidential and particularly speedy actions in cases of money laundering and corruption stipulated in art. 17 paragraph 3 of Law on Office for Combatting Corruption and Organized Crime.⁹¹ Also, given that the Council Directive (EU) 2024/1203 demands effective investigatory tools, it would be a good idea to consider the need for improving procedural provisions aimed at processing corporative ecological crime.⁹²

⁸⁸ Art. 328 paragraph 4 CC. Art. 329 paragraph 1 of CC prescribe heftier punishment for the person who knows the aim of the criminal organization or its criminal activity and commits a criminal offence within such an association or encourages others to commit such a crime within such as association.

⁸⁹ Art. 21.

⁹⁰ Nomani, M.Z.M. *et al.*, *Prevention of Transnational Environmental Crime Under Convention on Protection of Environment Through Criminal Law: Agenda and Implementation*, International Journal of Advanced Science and Technology, vol. 29, No. 5s, 2020, pp. 606-612

⁹¹ On the significance of persecution of across border forms of endangering the ecosystem is the Department for International Cooperation and Investigation of Office or common investigative teams. Pleić, *op. cit.*, note 3, p. 606.

⁹² So, Member States should consider that cases related to the environment are given to specialized investigative units, prosecutors and specialized judicial councils that would have technical professional knowledge at their disposal (Recital (61) Council Directive (EU) 2024/1203).

3.5. Need for precise limitation of applying administrative and criminal law in environmental protection

The Croatian system of environmental protection is a combination of administrative and criminal instrumentalities in which the environment nevertheless primarily is protected by non- criminal administrative instrumentalities whereas criminal legal protection is accessory and *ultima ratio societatis*.⁹³ Due to this, defining the area of application of administrative and criminal law in relation to punishable offences against the environment while strictly respecting the principle of *non bis in idem* and *res judicata* will be a demanding and complex task given the existence of a huge number of regulations containing a range of sanctions and measures for misdemeanours. For limitation in this area of the law an important Council Directive (EU) 2024/1203 provision is the fact that an official authorization does not preclude criminal liability if it is obviously and materially unlawful means that this accessoriness under administrative law is broken and companies have no or only very limited protection of legitimate expectations in this respect.⁹⁴

4. CONCLUSION

Given that in the EU the trend is a constant increase in ecological crime, in particular transnational and organized, often remaining uncovered, the Council Directive (EU) 2024/1203 certainly as its main aim has improving the role of criminal law in environmental protection and equalizing the system of criminal law protection of the environment at Member State level. The duty imposed by normative harmonization of member state national regulation, in particular those relating to legal entities and organized ecological crime, will also make a contribution to establishing adequate protection of the environment. Reality shows that punishing legal entities is key to effective protection of the environment, so

⁹³ Sokanović, L.; Boko M., *Maritime Pollution in Croatia – Old Questions and New Developments*, Proceedings Book of the 3rd International Scientific Conference on Maritime Law –ISCML, Split, 2021, p. 296.

⁹⁴ In the German criminal law system criminal liability depends, among other things, on the administrative act and action in principle is not punishable if it is given with adequate authorization, because different forms of official authority are considered as reasons for justification. Cappel, A., Naujack, C., *The new EU Directive 2024/1203: Extending environmental protection under criminal law in the European Union and its impact on Germany*, Norton Rose Fulbright, 2024, <https://www.nortonrosefulbright.com/en/knowledge/publications/1ad9c021/the-new-eu-directive-2024>, 5 March, 2025.

the Council Directive (EU) 2024/1203 represents an important step towards a stronger framework at EU level.

Duties ordered by the Council Directive (EU) 2024/1203 will have special significance in those Member States where there is a certain gap between legislation and court practice, wherein Croatia also finds itself. Although Croatia even from 2013 widened its catalogue of acts against the environment, by which it implemented high European standards, processing legal entities for those acts is negligible. Data from the State Department of Statistics show that criminal law protection of the environment from unlawful acts by legal entities in Croatia are ineffective because there are less and less reported, accused and convicted legal entities. Due to covering up crimes by legal entities, and non-acceptance of legal possibilities of their autonomous criminal liability of legal entities, in practice exclusively natural persons are more often reported as individual offenders. Given that such a state of inadequate protection is present in all EU Member States, the new Council Directive (EU) 2024/1203 orders harmonization of national regulations so Croatia will have to amend not only CC but also LLPCO as well as other relevant regulations in order to ensure its effective application. In the first place it will, apart from the duty to widen existing and incriminating new legal descriptions of ecological acts, certainly be obligated to harmonize the system of sanctions for legal entities, especially prescribing additional sanctions or measures which are considered for legal entities more effective than financial sanctions. Also, it will be necessary to change procedural laws, in particular in relation to organized corporate crime and contemplate the possibility that enable the interested public to act on behalf of the environment as a public good, and all this in the aim of effective criminal prosecution. In conclusion, it is expected that the new national normative framework for punishing legal entities raises consciousness among them of the dangers to the environment and people's health and their responsibility towards a sustainable environment.

REFERENCES

BOOKS AND ARTICLES

1. Alberro, H.; Daniele, L., *Ecocide: why establishing a new international crime would be a step towards interspecies justice*, 2021, The Conversation, <https://theconversation.com/ecocide-why-establishing-a-new-international-crime-would-be-a-step-towardsinterspecies-justice->, 10 February 2025.
2. Babin, A., *Corporate criminal liability*, American Criminal Law Review, 58 (3 Annual Survey of White Collar Crime), 2021, pp. 671-710.

3. Börner, R., *Umweltstrafrecht*. Springer, Berlin, 2019, pp. 31-58.
4. Bugarski, T. D., *Challenges of organized environmental crime*, Zbornik Radova Pravnog fakulteta u Novom Sadu, Novi Sad, 49, 3/2015, pp. 1097-1108.
5. Cappel, A.; Naujack, C., *The new EU Directive 2024/1203: Extending environmental protection under criminal law in the European Union and its impact on Germany*, Norton Rose Fulbright, 2024, <https://www.nortonrosefulbright.com/en/knowledge/publications/1ad9c021/the-new-eu-directive-2024>, 5 March, 2025.
6. Colantoni, L.; Sarno, G. S.; Bianchi, M., *Fighting Environmental Crime in Europe. An Assessment of Trends, Players and Action*, Rome, IAI and AMBITUS, May 2022.
7. Cvitanović, L., *Napomene uz kaznenopravnu zaštitu okoliša*, Kaznenopravna zaštita okoliša, Zagreb, HAZU, 2017, pp. 21-29.
8. Derenčinović D., *Zakon o odgovornosti pravnih osoba za kaznena djela, s uvodnim napomenama, komentatorskim bilješkama, pojmovnim kazalom i prilogima*, Zagreb, Nocchi d.o.o. 2003, p. 207.
9. Faure, M., *The Development of Environmental Criminal Law in the EU and its Member States*, RECIEL 26, 2/2017, pp. 139-146.
10. Fronza, E., *Towards a new crime of ecocide: the moving frontiers of international criminal law*, *Strafrecht und Systemunrecht Festschrift für Gerhard Werle zum 70. Geburtstags*, 2022, pp. 93-104, <https://www.mohrsiebeck.com/buch/strafrecht-und-systemunrecht-9783161588624/>, 20 February, 2025.
11. Hansen, O. T., *Accountability for Environmental Crimes in Conflict Zones: Why Expanding the International Criminal Court's Jurisdiction Is Not the Best Solution*, *New York University Journal of International Law and Politics* 56, 3/2024, pp. 879-923.
12. Higgins, P.; Short, D.; South, N., *Protecting the planet: a proposal for a law of ecocide*, *Crime Law Soc Change*, Springer, 2013, <https://www.researchgate.net/profile/Damien-Short/publication/257552825>, 10 February, 2025.
13. Kuznetsova, N.; Urda, M., *Back to the problem of criminal liability of legal entities: two views on the problem (using the example of environmental crimes)*, *Russian Journal of Criminology*, vol. 17, 6/2023, pp. 567-576.
14. Nomani, M.Z.M. et al., *Prevention of Transnational Environmental Crime Under Convention on Protection of Environment Through Criminal Law: Agenda and Implementation*, *International Journal of Advanced Science and Technology*, vol. 29, 5/2020, pp. 606-612.
15. Olsen Lundh, C., *The Revised EU Environmental Crime Directive Changes and Challenges in EU Environmental Criminal Law with Examples from*

- Sweden, Eucrim, 2/2024, pp. 164- 172, <https://eucrim.eu/articles/>, 20 February, 2025.
16. Pavlović, Š., *Kazneni zakon. Zakonski tekst, komentari, sudska praksa*. Rijeka, Libertin naklada, 2015, p. 1502.
 17. Pereira, R., *A Critical Evaluation of the New EU Environmental Crime Directive 2024/1203*, Eucrim, 2/2024, pp. 158-163, <https://eucrim.eu/articles/>, 25 February, 2025.
 18. Pingel, A.; Wahl, T. *New EU Rules on Protection of the Environment through Criminal Law*, Eucrim, 1/2024, pp. 32-33, <https://eucrim.eu/news/>, 26 February, 2025.
 19. Pleić, M., *Kazneni progon i istraživanje kaznenih djela protiv okoliša*. Zbornik radova Pravnog fakulteta u Splitu, Split, year 53, 2/2016, pp. 601-622.
 20. Rizzo, A., "Criminalizing" environmental wrongdoings under European Union law: a proposal from the European Commission in the light of old and new challenges, *Rivista.eurojus.it*, 1/2022, pp. 69-91, <https://rivista.eurojus.it/wp-content/uploads/pdf/Here5.pdf>, 15 February, 2025.
 21. Rizzo, A., *In Search of Ecocide Under EU Law. The International Context and EU Law Perspectives* Freedom, Security & Justice: European Legal Studies, 3/2021, pp. 163-196.
 22. Sarliève, M., *Ecocide: Past, Present, and Future Challenges*, in book: *Life on Land 2021*, pp. 233-243 <https://www.researchgate.net/publication/347137341>, 10 February 2025.
 23. Sokanović, L., *Die strafrechtliche Verantwortlichkeit der juristischen Personen im lichte des neuen kroatischen umweltstrafrechts*, Zbornik radova Pravnog fakulteta u Splitu, Split, year, 50, 4/2013, pp. 977-990.
 24. Sokanović, L.; Boko M., *Maritime Pollution in Croatia – Old Questions and New Developments*, Proceedings Book of the 3rd International Scientific Conference on Maritime Law–ISCML, Split, 2021, pp. 295-310.
 25. Sokanović, L., Mladinić, N., Kurtović Mišić, A., *The Protection of Marine Waters and Organisms through Criminal Law in the Legislation and Practice of the Republic of Croatia*, Journal of Legal Theory and Practice of The Bar Association of Vojvodina, Novi Sad, 2/2024, pp. 576-600.
 26. Stefes, Ch., *Environmental crime and the EU : Synthesis of the research project 'European Union Action to Fight Environmental Crime' (EFFACE)*, 2016, 46 p, http://efface.eu/sites/default/files/publications/EFFACE_synthesis_report_final_online/pdf, 27 February, 2025.
 27. Stock, C., *A Fifth core crime: Crime of ecocide as a new puzzle of the international criminal law*, Yearbook of International & European Criminal and Procedural Law, vol.1, 1/2022, pp. 248-284.

28. Sziebig, O. J., *The Crime of Ecocide through Human Rights Approach The "Universal" Right to a Healthy Environment as a Driving Force Calling for Ecocide Legislation*, ACTA HUMANA, 2/2024, pp.75–89.
29. Šikman, M., *Corporate Crime - New Approaches and Future Challenges*. Ed. Čaleta, D., Vršec, M., Management of Corporate Security – New Approaches and Future Challenges. Ljubljana: Institut of Corporate Security, 2013, pp. 103-114.
30. Uhm, D. P.; Nijman, R. C. C., *The convergence of environmental crime with other serious crimes: Subtypes within the environmental crime continuum*, EUROPEAN JOURNAL OF CRIMINOLOGY, 19, 4/2022, pp. 542-561.
31. Vagliasindi, G. M., *Environmental crime and the EU*, 2015, 48 p., <http://efface.eu>, 25 February, 2025.
32. Vuletić, I., *Corporate Criminal Liability: An Overview of the Croatian Model after 20 Years of Practice*. Laws 12/2023, <https://www.mdpi.com/journal/laws>, 27 February, 2025.
33. Vuletić, I., *Review of the Ecocentric Model of Environmental Protection in Croatian Criminal Law. Ten Years after EU Accession*, Journal of Legal Theory and Practice of The Bar Association of Vojvodina, Novi Sad, vol. XCV, 4/2023, pp. 1305- 1341.
34. Wang, S.; Tian, Z., *New challenges in financial supervision: environmental crime terrorism financing*. Trends Organ Crim 27, 2/2023, pp. 212–228.

LEGAL ACTS

1. Council Directive (EU) 2008/99/EC (with 2009/123/EC on ship-source pollution), of 19 November 2008 on the protection of the environment by criminal law, OJ L 328/28, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2008:328:FULL>, 10 January, 2025.
2. Criminal Code, Official Gazette, No. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024.
3. Criminal Procedure Act, Official Gazette, No. 152/2008, 76/2009, 80/2011, 121/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017, 126/2019, 126/2019, 130/2020, 80/2022, 36/2024.
4. 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, Official Journal of the European Union, 30. 4. 2024, <https://eur-lex.europa.eu/legal-content/HR/TXT/>, 10 January, 2025.
5. Law on Liability of Legal Persons for Criminal Offenses, Official Gazette, No. 151/2003, 110/2007, 45/2011, 143/2012, 114/2022, 114/2023.

6. Law on Office for Combatting Corruption and Organized Crime, Official Gazette, No. 76/2009, 116/2010, 145/2010, 57/2011, 136/2012, 148/2013, 70/2017.
7. United Nations Convention against Transnational Organized Crime, Official Gazette, No. IT, 14/2002.

NETWORK RESOURCES

1. Code pénal, <https://www.legifrance.gouv.fr/codes/>, 1 March, 2025.
2. Eurojust, Press release, 29 October 2019, <http://www.eurojust.europa.eu/press/Press>, 10 January, 2025.
3. Eurojust, <https://www.europol.europa.eu/crime-areas/environmental-crime>, 10 January, 2025.
4. Government Department of statistics, <https://podaci.dzs.hr/>, 28 February, 2025.
5. Izvješće Glavnoga državnog odvjetnika Republike Hrvatske o radu državnih odvjetništava u 2023. godini, pp. 230-236, <https://dorh.hr/sites/default/files/dokumenti/2024-04/>, 28 February, 2025.
6. Study on the implementation of this Directive in Member States of EU (Council of The European Union: Report of the Strategic Meeting towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust, 8101/14, Brussels, 24 March 2014.