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Development tendencies and latest results of the environmental criminal law of  
the European Union\*\*

*Abstract*

*This study aims to outline the development trends and latest results of the European Union Environmental Criminal Law. The EU legislator issued several criminal laws to criminalize and sanction behaviors that harm or endanger the environment and nature. Based on the strengthened criminal law competencies of the Treaty of Lisbon, the European Commission developed a directive proposal in 2021 to significantly broaden the range of punishable conduct and strengthen the range of applicable sanctions. This is expected to impose legislative duties on the Hungarian legislator.*

**Keywords:** environmental protection, environmental criminal law, environmental crimes, EU legislation, directive proposal

## 1. Introductory remarks

The intensive technical and economic development of the 20<sup>th</sup> century has both positive and negative consequences. The negative consequences include environmental damage, which indirectly affects people's health and wellbeing. Environmental preservation and protection are fundamental from the perspective of human health and quality of life. Therefore, environmentally disruptive acts and omissions must be dealt with strictly. In environmental protection, criminal instruments and administrative and civil law play important roles since criminal law provides sufficient deterrence or retention.<sup>1</sup>

One of the most important characteristics of criminal offenses against the environment is that their consequences do not stop at state borders – they affect other states. Therefore, international cooperation between states is essential to successfully fight cross-border crimes. The European Union (EU) (criminal) law has a great influence on the development of environmental criminal law. The EU quickly realized that the number of environment-related crimes is increasing – a common problem for the member states. Since these crimes are often cross-border in nature or have such effects,

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<sup>1</sup> See in details: Laczi 2004, 204.



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it is essential to create a coherent EU framework in this field. Therefore, the member states are required to act in a coordinated manner to protect the environment.

This study presents the current state and development of the EU Environmental Criminal Law and its latest results. However, a comprehensive analysis of environmental protection policies cannot be implemented within the framework of this study.<sup>2</sup> Hence, the study focuses exclusively on criminal law.

## 2. The directive proposal and the framework of environmental criminal law

In the fight against environmental criminal offenses in the EU prior to the Treaty of Lisbon, the EU only had explicit criminal law competencies under the so-called third pillar. It was highly questionable whether environmental protection could be regulated through criminal law in the first pillar. However, since the effectiveness of the third pillar was limited, the seriousness of the environmental crimes encouraged the suggestions that, within the common environmental protection policy framework, the first pillar's legal instruments could contain criminal law provisions.

As a result of the competency disputes between the two pillars, a dual legislative process began. In 2000, Denmark presented the third pillar instrument. It is a framework decision with the legal Articles 29, 31, and 34 of the Treaty on the EU, adopted in 2003.<sup>3</sup> Simultaneously, in 2001, the European Commission developed a directive proposal on environmental protection under the criminal law, which was based on Article 175 of the EC Treaty (currently Article 192 of the Treaty on the Functioning of European Union; TFEU).<sup>4</sup> However, the proposal is yet to be adopted.

The content of the directive proposal and the framework decision were similar. Both legal acts determined the list of punishable criminal behaviors. The 2012 Directive Proposal would have punished those who committed criminal conduct or breached environmental community laws adopted by the member states.<sup>5</sup> The annex to the directive proposal listed the legal acts, including prohibiting polluting activities, violation of which would be a basic condition for criminal responsibility. This means that the scope of the directive proposal does not include all types of prohibited behaviors; it only includes the most typical forms of pollution, which cause a serious environmental threat, deterioration, or damage. The criminal offenses listed in the directive proposal could be committed intentionally or due to serious negligence.<sup>6</sup> Regardless, they would be dealt with similarly.

Contrary to the directive proposal, the 2003 Framework Decision did not list the environmentally legal acts. Instead, it used a more common definition of unlawfulness: the infringement of a law, an administrative regulation, or a decision taken by a

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<sup>2</sup> See in details: Fodor 2009, 109–121; Görgényi 2018, 46–80; Görgényi & Udvarhelyi 2019, 510–514; Raisz & Szilágyi 2012, 107–148; Szilágyi 2010, 51–72.

<sup>3</sup> Council Framework Decision 2003/80/JHA of January 27, 2003, on environment protection through criminal law [OJ L 29, 05.02.2003, pp. 55–58]

<sup>4</sup> Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law [COM (2001) 139 final, 15.03.2001]

<sup>5</sup> Article 3 of Directive Proposal COM (2001) 139 final

<sup>6</sup> Laczi 2004, 579.

competent authority, including those giving effect to the binding provisions of the community law aiming at environmental protection.<sup>7</sup> The framework decision listed the intentional and the negligent offenses in separate articles;<sup>8</sup> however, the punishable conducts were similar. Member states are required to punish criminal conducts, irrespective of whether they were committed intentionally or due to mild or serious negligence.<sup>9</sup>

In addition, the directive proposal and framework decision determined the applicable sanctions. The directive proposal would punish both natural and legal persons and would require the member states to prescribe effective, proportionate and dissuasive sanctions involving deprivation of liberty in serious cases involving natural persons. However, the member states could provide other sanctions, such as fines, exclusion from entitlement to public benefits or aid, temporary or permanent disqualification in commercial activities, and judicial supervision or winding-up.<sup>10</sup>

The framework decision also prescribed the requirement of effective, proportionate, and dissuasive sanctions. The member states were obliged to determine, at least in serious cases involving natural persons, the penalties involving deprivation of liberty, which can give rise to extradition. The criminal penalties could be accompanied by other penalties or measures, such as the disqualification of a natural person from engaging in an activity requiring official authorization or approval or founding, managing, or directing a company or a foundation where the facts leading to their conviction show an obvious risk that the same type of criminal activity may be pursued.<sup>11</sup> The conditions of the liability of legal persons in the framework decision was more detail than the directive proposal. Accordingly, a legal person could be held liable if the criminal offense was committed for personal benefit, acting either individually or as a part of an organ, where the legal person held a leading position, had the power of representation of a legal person, had an authority to take decisions on behalf of a legal person, or had an authority to exercise control with the legal person. In addition, the legal person could be held liable when the lack of supervision or control by a person in a leading position under their authority made possible the commission of a criminal offense for the benefit of the legal person. The sanctions against legal persons include criminal or non-criminal fines and other sanctions, such as exclusion from entitlement to public benefits or aid, temporary or permanent disqualification in industrial or commercial activities, judicial supervision or winding-up, or the obligation to adopt specific measures to avoid the consequences of conduct, such as that on which the criminal liability was founded.<sup>12</sup>

Following the principle of subsidiarity and proportionality, the directive proposal did not contain any provisions concerning criminal procedural issues. On the contrary, the framework decision adopted within the framework of the criminal law cooperation of the third pillar regulated issues on jurisdiction, extradition, and criminal procedure.<sup>13</sup>

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<sup>7</sup> Point a) of Article 1 of Framework Decision 2003/80/JHA

<sup>8</sup> Articles 2–3 of Framework Decision 2003/80/JHA

<sup>9</sup> Görgényi 2011, 99.

<sup>10</sup> Article 4 of Directive Proposal COM (2001) 139 final

<sup>11</sup> Article 5 of Framework Decision 2003/80/JHA

<sup>12</sup> Articles 6–7 of Framework Decision 2003/80/JHA

<sup>13</sup> Articles 8–9 of Framework Decision 2003/80/JHA. See: Laczi 2004, 582.

It must be noted that the directive proposal would have created a narrow scope, which would be limited to the criminal law protection of the community's administrative norms. In contrast, the Council's framework decision created a broader environmental criminal law, which served to enforce administrative standards and criminalized certain behaviors that harm the environment.<sup>14</sup>

However, the framework decision was only short-lived because the European Commission challenged its legal basis before the European Court of Justice and requested its annulment. The so-called 'battle of pillars' was, therefore, finally ended by the European Court of Justice, which agreed with the European Commission and annulled the framework decision. The court stated that as a general rule, neither criminal law nor the rules of criminal procedure fall within the community's competence. However, the last finding does not prevent the community legislature from taking measures when the application of effective, proportionate, and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offenses. This relates to member states' criminal law, which considers that the rules on environmental protection are fully effective.<sup>15</sup> This ruling also opened the way for the EU to adopt criminal law measures with respect to the first pillar.<sup>16</sup>

### 3. Directive 2008/99/EC on environment protection through criminal law

Since the annulment of the Council's framework decision, the EU has been unable to adopt a new legal act on the criminal protection of the environment for several years. However, since the European Court of Justice annulled the framework decision due to its form and legal basis, it is obvious that the establishment of EU regulations for the criminal protection of the environment is necessary.<sup>17</sup> Therefore, the European Commission developed a new directive proposal instead of the 2001 proposal.<sup>18</sup> The new directive proposal of the European Commission was modified during the negotiation process and was finally adopted by the European Parliament and the Council on November 19, 2008.<sup>19</sup> Directive 2008/99/EC on the protection of the environment through criminal law was primarily based on the regulation of the annulled framework decision; however, it adopted several provisions from the previous directive proposal.

Similar to the previous EU legal acts, the directive prescribes punishable conducts. According to the directive, the member states shall ensure that the following conduct constitutes a criminal offense: (a) Discharge, emission, or introduction of materials or

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<sup>14</sup> Ligeti 2008, 626–627.

<sup>15</sup> Judgment of the Court (Grand Chamber) of September 13, 2005, in Case C-176/03 *Commission v Council* [2005, I-7879], points 47–48.

<sup>16</sup> See in details: Farkas 2007, 494–497; Görgényi 2005, 107–111; Karsai 2006, 4–6; Laczi 2004, 577–589; Rétházi 2006, 67–71.

<sup>17</sup> See: Görgényi 2011, 96.

<sup>18</sup> Proposal for a Directive of the European Parliament and of the Council on environment protection through criminal law [COM (2007) 51 final, 09.02.2007]

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

ionizing radiation into air, soil, or water, which causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (b) Supervision, collection, transport, recovery, disposal, and after-care of waste by dealers or brokers (waste management), which causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (c) Shipment of waste within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of June 14, 2006<sup>20</sup>, undertaken in a non-negligible quantity, whether executed in single or several shipments. (d) Dangerous activities in plant operation, including irresponsible use and preparation and storage of dangerous substances, which causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (e) The production, processing, handling, use, holding, storage, transport, import, export, or disposal of nuclear materials or other hazardous, radioactive substances which cause, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (f) The killing, destruction, possession, or taking of specimens of protected wild fauna or flora species, except for cases concerning a negligible quantity of such specimens and a negligible impact on the conservation status of the species. (g) Trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases concerning a negligible quantity of such specimens and a negligible impact on the conservation status of the species. (h) Any conduct which causes the significant deterioration of habitat within a protected site. (i) The production, importation, exportation, placing on the market, or use of ozone-depleting substances.<sup>21</sup>

The criminal conducts in the directive proposal were mostly adapted, with small modifications, from the framework decision. Only the significant deterioration of habitat within a protected site in point (h) could be found in the 2001 Directive Proposal. The shipment of the non-negligible quantity of waste in point (c), which directly refers to an administrative regulation, was a completely new proposition.

The majority of criminal offenses are punishable, regardless of whether the conduct caused or could have caused serious damage to other persons or the environment.<sup>22</sup> However, there are several conducts that can only be punished if they caused or are likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. The directive proposal obliges the member states to criminalize the aforementioned conducts if they are unlawful and are committed intentionally or due to serious negligence.<sup>23</sup> It integrates the solutions in the framework decision and the previous directive proposals and lists the legal acts in its Annex; violations can be considered unlawful. It generally describes as unlawful any behavior that violates a law, an administrative regulation of a member state, or a decision

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<sup>20</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste [OJ L 190, 12.07.2006, p. 1–98]

<sup>21</sup> Article 3 of Directive 2008/99/EC

<sup>22</sup> Kóhalmi 2009, 56.

<sup>23</sup> Article 3 of Directive 2008/99/EC

taken by a competent authority of a member state that gives effect to the community legislation.<sup>24</sup>

The member states must take the necessary measures to ensure that the offenses are punishable by effective, proportionate, and dissuasive criminal penalties. According to the directive proposal, natural and legal persons can be held liable, the conditions of which are regulated in the same manner as the framework decision. However, unlike the previous legal acts, the directive proposal does not define the possible types of sanctions. It only refers to the requirement of effectiveness, proportionality, and dissuasive nature, leaving the determination of the specific type and extent of the sanction to the member state.<sup>25</sup> It can be traced back to the fact that the European Court of Justice, in a later decision, ruled that the community legislature may require the member states to introduce effective, proportionate, and dissuasive criminal penalties for combating serious environmental offenses; however, the determination of the type and level of the criminal penalties to be applied does not fall within the community's sphere of competence.<sup>26</sup>

It is worth highlighting that the preamble of the directive proposal declares that the document only establishes minimum rules,<sup>27</sup> which means that the member states are entitled to introduce or maintain stricter rules. Nevertheless, according to many, the adopted directive proposal is a watered-down version of the 2003 Framework Decision.<sup>28</sup>

#### 4. Proposal for a 2021 Directive Proposal on environmental criminal law

The Treaty of Lisbon was a fundamental milestone in criminal law within the EU framework since it strengthened the EU's criminal law legislative competencies and raised the principles elaborated in the above-mentioned rulings of the European Court of Justice as a primary source of law. Article 83(2) of the TFEU states that if the approximation of criminal laws and regulations of the member states proves essential to ensure the effective implementation of EU's policy subject to harmonization measures, directive proposals may establish minimum rules with regard to the definition of criminal offenses and sanctions in the area concerned.<sup>29</sup> Since criminal offenses against the environment meet these conditions, the European Commission issued a new draft directive in 2021 based on this legal competence.<sup>30</sup>

In the explanatory memorandum of the directive proposal, the European Commission stated that the currently approved directive proposal had not reached its aim. Over the past years, the number of environmental crimes successfully investigated and sentenced remained low. Moreover, the sanction levels imposed were too low to be

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<sup>24</sup> Point a) of Article 2 of Directive 2008/99/EC. See: Görgényi 2011, 101.

<sup>25</sup> Articles 5–7 of Directive 2008/99/EC

<sup>26</sup> Judgment of the Court (Grand Chamber) of October 23, 2007, in Case C-440/05 *Commission v Council* [2007, I-9097], points 66–70.

<sup>27</sup> Preamble (12) of Directive 2008/99/EC

<sup>28</sup> Kóhalmi 2009, 60.

<sup>29</sup> See in details: Jacsó 2017, 64–74; Udvarhelyi 2016, 137–140; Udvarhelyi 2019, 128–133.

<sup>30</sup> Proposal for a Directive of the European Parliament and of the Council on environment protection through criminal law and replacing Directive 2008/99/EC [COM (2021) 851 final, 15.12.2021]

dissuasive and cross-border cooperation did not systematically take place. In addition, upon evaluation of the directive proposal, considerable enforcement gaps were found in all the member states and at all levels of the enforcement chain (police, prosecution, and criminal courts). There were no overarching national strategies to combat environmental crime involving all levels of the enforcement chain, and a lack of multi-disciplinary approach was lacking. Furthermore, it was noted that the lack of reliable, accurate, and complete statistical data on environmental crime proceedings in the member states prevents national policymakers and practitioners from monitoring the effectiveness of their measures. To address these problems, the directive proposal formulated the following objectives: (a) Improve the effectiveness of the investigations and prosecution by updating the scope of the directive proposal. (b) Improve the effectiveness of the investigations and prosecution by clarifying or eliminating vague terms used in the definitions of environmental crime. (c) Ensure effective, dissuasive, and proportionate sanction types and levels for environmental crime. (d) Foster cross-border investigation and prosecution. (e) Improve informed decision-making on environmental crime through improved collection and dissemination of statistical data. (f) Improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions, and sanctioning.<sup>31</sup>

To reach these objectives, the directive proposal aims to establish minimum rules concerning the definition of criminal offenses and sanctions to protect the environment more effectively.<sup>32</sup>

The directive proposal would determine a significantly wider range of punishable conduct compared to the current directive. Accordingly, the member states would require to criminalize the following unlawful<sup>33</sup> conducts: (a) Improper discharge, emission, or introduction of materials or substances or ionizing radiation into the air, soil, or water, which causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (b) Placing a product on the market which is in breach of a prohibition or other requirement and causes, or is likely to cause, death or serious injury to any person or substantial damage to air, water, or soil quality, or animals or plants as a result of the product's large-scale usage. (c) Manufacture, placing on the market, or use (whether on their own, in mixtures, or articles) of products or substances that violate the EU norms listed in the directive and causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (d) Execution of projects without development consent or an assessment concerning their environmental effects, which causes, or is likely to cause, substantial damage to certain factors. (e) Improper

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<sup>31</sup> See in details: Explanatory Memorandum of Directive Proposal COM (2021) 851 final

<sup>32</sup> Article 1 of Directive Proposal COM (2021) 851 final

<sup>33</sup> Under Point 2 of the directive proposal, unlawful means a conduct infringing Union legislation, which, irrespective of its legal basis, contributes to the pursuit of the objectives of Union policy of protecting the environment, as set out in the TFEU; or a law, an administrative regulation of a member state, or a decision taken by a competent authority of a member state that gives effect to the Union legislation. The conduct shall be deemed unlawful even if carried out under an authorization by a competent authority in a member state when the authorization was obtained fraudulently or by corruption, extortion, or coercion.

supervision, collection, transport, recovery, disposal, or after-care of waste by dealers or brokers (waste management) involving hazardous waste and undertaken in a non-negligible quantity, which causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (f) Shipment of a non-negligible quantity of waste, whether executed in single or several shipments which appear to be linked. (g) Recycling of ships without complying with the requirements. (h) Ship-source discharges of polluting substances. (i) Installation, operation, or dismantling of an installation in which a dangerous activity is carried out or in which dangerous substances, preparations, or pollutants are stored or used, which causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (j) Manufacture, production, processing, handling, use, holding, storage, transport, import, export, or disposal of radioactive material, which causes, or is likely to cause, death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (k) The abstraction of surface water or groundwater, which causes, or is likely to cause, substantial damage to the ecological status or potential of surface water bodies or the quantitative status of groundwater bodies. (l) The killing, destruction, taking, possession, sale, or offering for sale of a specimen or specimens of wild fauna or flora species, except for cases concerning a negligible quantity of such specimens. (m) Trading in specimens of wild fauna or flora species or parts or derivatives thereof, except for cases concerning a negligible quantity of such specimens. (n) The placing or making available on the Union market illegally harvested timber or of timber products that were made of illegally harvested wood, except for cases concerning a negligible quantity. (o) Any conduct which causes significant deterioration of habitat within a protected site. (p) The introduction or spread of invasive alien species of Union concern involving breaches of certain restrictions or permit conditions, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, or water, or animals or plants. (q) Production, placing on the market, import, export, use, emission, or release of ozone-depleting substances or products and equipment containing or relying on such substances. (r) Production, placing on the market, import, export, use, emission, or release of fluorinated greenhouse gases or products and equipment containing or relying on such gases.<sup>34</sup>

The directive proposal defines most of the above-mentioned criminal behaviors by referring to the relevant EU legal sources; hence, the prohibition of criminal law specifies several EU administrative standards.

According to the directive proposal, the member states are expected to punish the criminal conduct committed intentionally. However, except for the crimes listed in points (g), (l), (o), and partially, (p) the member states must criminalize the described conducts due to serious negligence.<sup>35</sup> Similar to other EU criminal law directives, the proposal requires the criminalization of inciting, aiding, abetting, and, with some exceptions, the attempt to commit crimes.<sup>36</sup>

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<sup>34</sup> Article 3(1) of Directive Proposal COM (2021) 851 final

<sup>35</sup> Article 3(1)–(2) of Directive Proposal COM (2021) 851 final

<sup>36</sup> Article 4 of Directive Proposal COM (2021) 851 final



The European Commission's directive proposal can be considered a significant step forward compared to the current directive as it would regulate in detail the type and level of sanctions to be imposed by the member states. In addition to the general requirement for determining effective, proportionate, and dissuasive criminal penalties, the directive proposal would prescribe the minimum level of the upper limit of the sanctions for the member states. According to the proposal, the maximum term of imprisonment must be four years for less serious offenses and six years for more serious crimes. Furthermore, if the criminal offense causes, or is likely to cause, death or serious injury to any person, the national legislators are required to ensure that it is punishable by a maximum term of imprisonment of at least ten years. The directive proposal would oblige the member states to prescribe other additional sanctions or measures as well, such as the obligation to reinstate the environment within a given period, fines, temporary or permanent exclusions from access to public funding (including tender procedures, grants, and concessions), disqualification from directing establishments of the type used for committing the offense, withdrawal of permits and authorizations to pursue activities (which have resulted in the offense), temporary bans on running for elected or public office, and national or union-wide publication of the judicial decision relating to the conviction or any sanctions or measures applied.<sup>37</sup>

The directive proposal would regulate the conditions for the responsibility of legal persons following the current directive. It would list in detail the types of sanctions which can be imposed on them. According to the directive proposal, effective, proportionate, and dissuasive sanctions or measures include criminal or non-criminal fines, the obligation to reinstate the environment within a given period, the exclusion from entitlement to public benefits or aid, the temporary exclusion from access to public funding (e.g., tender procedures, grants, and concessions), temporary or permanent disqualification in business activities, withdrawal of permits and authorizations to pursue activities (which have resulted in the offense), judicial supervision or winding-up, temporary or permanent closure of establishments used for committing the offense, due-diligence schemes for enhancing environmental standards compliance, and publication of the judicial decision relating to the conviction or any sanctions or measures applied. One of the important innovations of the directive proposal, which has not been included in any other EU criminal law directive, is that it would determine the upper limit of fines, which cannot be less than 3–5% of the total worldwide turnover of the legal person in the business year preceding the fining decision.<sup>38</sup>

In addition, the directive proposal would establish the circumstances that the member states could take into account as aggravating or mitigating circumstances. An aggravating circumstance occurs if an offense caused the death of or serious injury to a person; caused destruction, irreversible, or long-lasting substantial damage to an ecosystem; committed in the framework of a criminal<sup>39</sup> organization; involved the use of false or forged documents; was committed by a public official when performing their duties; was committed by a repeat offender of similar previous infringements of

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<sup>37</sup> Article 5 of Directive Proposal COM (2021) 851 final

<sup>38</sup> Articles 6–7 of Directive Proposal COM (2021) 851 final

<sup>39</sup> See: Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime [O] L 300, 11.11.2008, p. 42–45]

environmental law; was directly or indirectly generated or expected to generate substantial financial benefits or avoid substantial expenses; created liability for environmental damage which the offender did not take remedial action,<sup>40</sup> the offender does not provide assistance to inspection and other enforcement authorities when legally required, or they actively obstruct inspection, custom controls or investigation activities, or intimidates or interferes with witnesses or complainants. A mitigating circumstance occurs if the offender restores nature to its previous condition or he/she provides the administrative or judicial authorities information, which they would not otherwise be able to obtain, helping them to identify or bring to justice the other offenders or find related evidence.<sup>41</sup>

The directive proposal would also provide for the limitation period for criminal offenses against the environment, which adds to its importance since only the directive on the fight against fraud in the Union's financial interests<sup>42</sup> contains such provisions among the EU criminal law directives. As a general rule, the member states are required to take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial, and judicial adjudication of the criminal offenses for a sufficient period after the commission of those crimes for those criminal offenses to be tackled effectively. The minimum limitation period for the investigation, prosecution, trial, and judicial decision would be adjusted to the upper limit of the penalty. In the case of a four-year upper limit, the limitation period is at least four years; in the case of a six-year upper limit, the limitation period is at least six years; and in the case of a ten-year upper limit, the limitation period is at least ten years. However, the member states could establish a limitation period of four to ten years, provided that the period may be interrupted or suspended in the event of the specified acts.<sup>43</sup>

A member state would be obliged to establish its jurisdiction over the criminal offenses falling within the scope of the directive proposal if the offense was committed in whole or in part on its territory; on board a ship or a registered aircraft flying its flag; or by an offender who is a national or habitual resident. Furthermore, a member state could extend its jurisdiction to offenses committed for the benefit of a legal person on its territory, against one of its nationals or its habitual residents, or has created a severe risk for the environment in its territory.<sup>44</sup>

An effective fight against environmental crimes requires early detection. Therefore, the people reporting breaches of Union environmental law are key in exposing and preventing such breaches and, thus, safeguarding the welfare of society. However, these persons are often discouraged from reporting their concerns or suspicions for fear of retaliation.<sup>45</sup> For the protection of the so-called 'whistleblowers', the EU has adopted

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<sup>40</sup> See: Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage [OJ L 143, 30.04.2004, p. 56–75]

<sup>41</sup> Articles 8-9 of Directive Proposal COM (2021) 851 final

<sup>42</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of July 5, 2017, on the fight against fraud to the Union's financial interests by means of criminal law [OJ L 198, 28.7.2017, pp. 29–41]

<sup>43</sup> Article 11 of Directive Proposal COM (2021) 851 final

<sup>44</sup> Article 12 of Directive Proposal COM (2021) 851 final

<sup>45</sup> Preamble (24) of Directive Proposal COM (2021) 851 final

a directive<sup>46</sup> proposal. The European Commission's environmental directive proposal states that the protection regarding whistleblowing in the directive proposal applies to persons reporting environmental criminal offenses.<sup>47</sup>

## 5. Closing thoughts

The EU Environmental Criminal Law is characterized by an increasing trend of repression. This can be seen in European Commission's 2021 Directive Proposal, which contains a more detailed regulation and a wider scope of criminal conducts and sanctions than the current directive.

The development of the EU Environmental Criminal Law naturally affects the national legislation since the member states are obliged to implement the EU directives into their criminal law system. Although the Hungarian criminal law has requirements consistent with the new EU Directive Proposal, certain punishable conducts of the new EU legal act are not *expressis verbis* included in the Criminal Code. Furthermore, the level of sanctions of the Hungarian Criminal Code does not meet the requirements of the directive proposal everywhere. Therefore, it is expected that the adoption of the new directive proposal would impose a legislative obligation on the domestic legislator as well.

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<sup>46</sup> See: Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law [OJ L 305, 26.11.2019, p. 17–56]

<sup>47</sup> Article 13 of Directive Proposal COM (2021) 851 final

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