

Research Article

STRENGTHENING ENVIRONMENTAL PROTECTION THROUGH CRIMINAL LAW IN EUROPE: NORMATIVE SHIFTS AND ENFORCEMENT IMPLICATIONS

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ABSTRACT

Background: *Environmental crime has increasingly emerged as a serious threat to ecosystems, public health and sustainable development, often characterised by significant economic incentives, complex organisational structures and cross-border dimensions. Traditionally, environmental protection in Europe relied primarily on administrative and regulatory mechanisms, with criminal law playing a subsidiary and largely symbolic role. In recent years, however, the limitations of this approach have become evident, prompting a reassessment of criminal law's role in addressing serious environmental harm. This shift has materialised in significant normative developments at the European level, most notably within the European Union and the Council of Europe.*

Method: *The article employs a doctrinal and analytical legal methodology, focusing on the interpretation of European legal instruments, policy documents and relevant academic literature. It examines recent developments in EU secondary*

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legislation and Council of Europe treaty law from a multi-level European perspective, without concentrating on specific national legal systems. The analysis adopts a horizontal approach aimed at identifying converging normative trends, structural innovations and enforcement-related implications for national legal orders and legislative approximation.

Results and Conclusions: *The analysis demonstrates that European environmental criminal law has entered a new phase characterised by a move from former criminalisation towards more enforcement-oriented and operationally meaningful frameworks. A new Directive (EU) 2024/1203 on the protection of the environment through criminal law represents a significant recalibration of the EU's approach by expanding the scope of criminal offences, strengthening sanctioning regimes for both natural and legal persons, and emphasising effective enforcement. In parallel, the Council of Europe's Convention on the Protection of the Environment through Criminal Law of 2025 establishes a standards-based framework grounded in human rights and the rule of law, introduces the concept of particularly serious environmental offences, and reinforces cooperation mechanisms. The parallel timing and substantive alignment of these instruments reveal an emerging convergence in European approaches to environmental criminal law, further underlined by the European Union's decision to sign the Council of Europe Convention. The article concludes that, while national criminal law frameworks addressing environmental harm already exist, recent European developments require States to move beyond formal compliance towards genuinely effective and coherent systems of environmental criminal justice capable of responding to contemporary environmental challenges.*

1 INTRODUCTION

The environment constitutes the essential foundation of sustainable development, human health, food security and economic stability. Ecosystems provide indispensable services such as clean water, clean air and fertile soil, while natural resources sustain livelihoods, generate public revenues and support long-term societal development. At the same time, the integrity of the environment has increasingly come under threat from activities that cause serious and often irreversible harm. Environmental crime has emerged as a growing phenomenon, frequently characterised by significant economic incentives, complex organisational structures and cross-border dimensions, which together challenge traditional regulatory and enforcement mechanisms.¹

Against this background, the role of criminal law in environmental protection has undergone a notable transformation in Europe. For a long time, environmental protection

1 Christian Nellemann and others (eds), *The Rise of Environmental Crime: A Growing Threat to Natural Resources, Peace, Development and Security* (UNEP 2016); Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi (eds), *Environmental Crime in Europe* (Modern Studies in European Law, Bloomsbury 2020).

relied predominantly on administrative and regulatory instruments, with criminal law perceived as a subsidiary and exceptional response. However, the scale and gravity of contemporary environmental harm, coupled with the limited deterrent effect of purely administrative sanctions, have prompted a gradual reconsideration of the function of criminal law. Environmental offences are increasingly understood not merely as regulatory breaches, but as conduct capable of undermining fundamental societal interests, including public health, ecological sustainability and intergenerational justice.

In recent years, this shift has been reflected in significant normative developments at the European level. Within the European Union, the adoption of *Directive (EU) 2024/1203 on the protection of the environment through criminal law* represents a decisive step towards strengthening the criminal law response to environmental harm.² The Directive replaces the earlier framework established by Directive 2008/99/EC and seeks to address its identified shortcomings by expanding the scope of criminalisation, clarifying offence definitions and introducing more structured and dissuasive sanctioning regimes.³ In parallel, the Council of Europe has adopted a new *Convention on the Protection of the Environment through Criminal Law*, opened for signature in December 2025, which establishes a standards-based treaty framework aimed at enhancing cooperation, harmonising core offence categories and embedding environmental criminal law within a broader human rights and rule-of-law context.⁴ These parallel developments point towards a convergence in European environmental criminal law. Although the European Union and the Council of Europe operate through distinct legal instruments and regulatory techniques, both frameworks reveal a shared commitment to moving beyond symbolic criminalisation and towards more effective, enforcement-oriented models of environmental protection. Notably, the European Union's decision to sign the Council of Europe Convention further underscores the interconnectedness of these initiatives and signals an intention to ensure coherence between Union law and pan-European normative standards.

The purpose of this article is to analyse these new normative trends in European environmental criminal law and to assess their implications for national legal orders. The article examines the evolution of criminal law protection of the environment in Europe, with particular attention to recent legislative developments within the European Union and the Council of Europe. It explores how these instruments redefine the scope and function of criminal law in environmental protection, the extent to which they promote legislative

2 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' [2024] OJ L 1203/1 <<https://eur-lex.europa.eu/eli/dir/2024/1203/oj/eng>> accessed 10 February 2026.

3 Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 'On the Protection of the Environment Through Criminal Law' [2008] OJ L 328/28 <<https://eur-lex.europa.eu/eli/dir/2008/99/oj/eng>> accessed 10 February 2026.

4 Convention on the Protection of the Environment through Criminal Law (3 December 2025) [2025] CETS 228 <<https://rm.coe.int/48801f9d20>> accessed 10 February 2026.

approximation, and the challenges they pose for effective enforcement. The analysis further considers the broader institutional and future-oriented implications of these developments, including emerging discussions on enhanced European-level coordination in the prosecution of environmental crime.

2 METHODOLOGY AND ANALYTICAL FRAMEWORK

This article adopts a doctrinal and analytical legal methodology to examine recent normative developments in European criminal law, with a focus on environmental crime. The analysis is primarily based on the interpretation of European legal instruments, namely the secondary legislation of the European Union, Council of Europe conventions, and relevant documents and academic literature. The focus is placed on identifying structural changes, normative innovations and emerging trends.

The analytical framework is structured around a multi-level European perspective. The article examines developments within the European Union and the Council of Europe, addressed to European States, as distinct yet interconnected normative orders, each employing different regulatory techniques to influence national criminal law. This approach allows for an assessment of converging and complementary trends in criminal law, while avoiding a purely institutional or jurisdiction-specific analysis. Particular attention is paid to the interaction between these frameworks and to their combined implications for legislative approximation and enforcement at the national level.

Methodologically, the article relies on qualitative legal analysis, focusing on the content, objectives and systemic context of the examined instruments. Comparative references to earlier legal frameworks are used selectively to highlight normative shifts and assess the extent to which recent instruments address previously identified shortcomings. The analysis does not seek to provide a comprehensive comparison of national legal systems; instead, it adopts a horizontal perspective that emphasises common European standards, shared challenges and evolving expectations placed on domestic criminal law systems. The analytical framework further integrates insights from contemporary scholarly discourse and policy debates, particularly regarding enforcement challenges and institutional questions. This includes consideration of emerging discussions at the European level regarding environmental crime, insofar as they shed light on future trajectories of the environmental criminal law perspective. By combining doctrinal analysis with contextual and policy-oriented perspectives, the article aims to provide a coherent and critical account of the current state and future direction of criminal law protection of the environment in Europe.

3 EVOLUTION OF CRIMINAL LAW PROTECTION OF THE ENVIRONMENT IN EUROPE: A BRIEF OVERVIEW

The criminal law protection of the environment in Europe has developed from a marginal and subsidiary instrument into an increasingly autonomous area of criminal regulation.⁵ Initially, environmental protection was primarily addressed through administrative and regulatory mechanisms, with criminal law intervention seen as exceptional and largely symbolic. Environmental offences were typically treated as breaches of administrative obligations, resulting in fragmented enforcement and a limited deterrent effect. As noted by the European Commission, “[f]or instance, administrative or other financial sanctions may not be dissuasive in cases where the offenders are impecunious or, on the contrary, financially very strong.”⁶ This early model gradually proved inadequate in responding to large-scale environmental harm, particularly when it was economically motivated, organised, or cross-border, thereby prompting a reconsideration of the role of criminal law at the European level.

Within the legal framework of the European Union, the first decisive step towards criminal law engagement was the recognition that environmental protection could justify harmonisation measures in criminal law. This approach culminated in the adoption of *Directive 2008/99/EC on the protection of the environment through criminal law*, which obliged Member States to criminalise a defined set of environmentally harmful conduct, including illegal emissions, waste management offences and the destruction of protected habitats.⁷ Although the directive relied heavily on references to administrative law and minimum harmonisation, it marked a structural shift by formally embedding environmental protection within the EU criminal law framework.⁸ The European

5 Mar Campins Eritja (ed), *The European Union and Global Environmental Protection: Transforming Influence into Action* (Routledge Studies in Environmental Policy, Routledge 2020) doi:10.4324/9781003018513; Martin Heger, *Die Europäisierung des deutschen Umweltstrafrechts* (Tübinger Rechtswissenschaftliche Abhandlungen, Mohr Siebeck 2009) doi:10.1628/978-3-16-167161-6; Farmer, Faure and Vagliasindi (n 1); Jaroslav Ivor, Libor Klimek and Jozef Záhora, *Trestné právo Európskej Únie: A jeho vplyv na právny poriadok Slovenskej Republiky* (Eurokódex 2013); Gert Vermeulen and others, *The Protection of the Environment Through Criminal Law* (RIDP 87(1), Maklu 2016) <<https://www.maklu-online.eu/nl/tijdschrift/ridp/2016/protection-environment-through-criminal-law/>> accessed 10 February 2026.

6 European Commission, '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) [2001] OJ C 180E/238 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52001PC0139>> accessed 10 February 2026.

7 Directive 2008/99/EC (n 3). See also, European Union, 'European Union Law Against Environmental Crime: Summary of Directive 2008/99/EC – Protecting the Environment by Means of Criminal Law' (*EUR-Lex*, 14 February 2022) <<https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32008L0099>> accessed 10 February 2026.

8 Campins Eritja (n 5); Farmer, Faure and Vagliasindi (n 1); Libor Klimek, *Základy trestného práva Európskej Únie* (Wolters Kluwer 2017).

Commission's Evaluation of Directive 2008/99/EC assessed the effectiveness, relevance and added value of the Directive since its adoption in 2008.⁹ Overall, the evaluation concluded that while the directive established a basic EU framework for the criminalisation of serious environmental offences and ensured its transposition into national law across all Member States, its objectives were only partially achieved in practice. The evaluation identified several key challenges, including limited scope of application, unclear legal definitions, and varying levels of prosecution and sanctioning across Member States, which collectively undermined the directive's deterrent effect and the creation of a truly level playing field in enforcement. Moreover, the directive's reliance on a catalogue of annexed environmental legislation was seen as increasingly outdated in light of evolving environmental risks and the multiplicity of relevant EU instruments. Consequently, the evaluation acknowledged the continued relevance of the directive's objectives but emphasised the need to refine and strengthen the legal framework to improve deterrence and enforcement outcomes. The evolution of EU environmental criminal law has recently entered a new phase with the adoption of *Directive (EU) 2024/1203 on the protection of the environment through criminal law*, which repealed and replaced Directive 2008/99/EC.¹⁰

In parallel to EU developments, the Council of Europe has contributed to the evolution of environmental criminal law through the articulation of common normative standards rather than harmonisation. The *Convention on the Protection of the Environment through Criminal Law*¹¹ of 1998 represented one of the earliest international instruments explicitly addressing environmental harm through criminal law.¹² Although ratification remained limited, the convention established an important conceptual link between environmental protection and criminal responsibility, recognising that serious environmental damage may warrant penal sanctions. This normative engagement was further reinforced by the adoption of a modernised *Convention on the Protection of the Environment through Criminal Law* in 2025, which addresses contemporary forms of environmental harm and aligns criminal law protections with broader human rights and rule-of-law principles.¹³

9 European Commission, 'Commission Staff Working Document Evaluation of the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 'On the Protection of the Environment Through Criminal Law (Environmental Crime Directive)' (SWD (2020) 259 final) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020SC0259>> accessed 10 February 2026.

10 Directive (EU) 2024/1203 (n 2). See also, European Union, 'Protecting the Environment Through Criminal Law: Summary of Directive (EU) 2024/1203 – on the Protection of the Environment Through Criminal Law' (*EUR-Lex*, 28 February 2025) <<https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32024L1203>> accessed 10 February 2026.

11 Convention on the Protection of the Environment through Criminal Law (4 November 1998) [1998] ETS 172 <<https://rm.coe.int/168007f3f4>> accessed 10 February 2026.

12 Heger (n 5).

13 Convention on the Protection of the Environment Through Criminal Law 2025 (n 4).

Taken together, the instruments adopted within the European Union and the Council of Europe reveal a converging trajectory towards the recognition of environmental protection as a legitimate and necessary object of criminal law. While EU law drives binding approximation and minimum harmonisation, Council of Europe instruments provide a complementary normative framework grounded in fundamental rights and rule-of-law principles.¹⁴ This dual evolution signifies an increasing expectation to integrate environmental protection into criminal justice systems in a manner that is both effective and rights-compliant, moving beyond symbolic criminalisation towards meaningful enforcement.

4 NEW NORMATIVE TRENDS IN EUROPEAN ENVIRONMENTAL CRIMINAL LAW

4.1. European Union: Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal Law as a Shift from "Minimum Criminalisation" to an Enforcement-Oriented Model

In the EU, *Directive (EU) 2024/1203 on the protection of the environment through criminal law* was adopted against the background of an explicit diagnosis that the earlier EU framework had produced only a limited practical impact.¹⁵ The European Commission's evaluation, focusing on Directive 2008/99/EC of 2000 and identified structural weaknesses that impeded deterrence and operational effectiveness, including uneven enforcement across Member States, definitional ambiguity, and the Directive's reliance on a catalogue-based approach that struggled to keep pace with the development of EU environmental legislation.¹⁶ On that basis, the Commission's 2021 proposal for a new legislation sought to recalibrate EU environmental criminal law from a largely symbolic approximation instrument to one more closely connected to effective investigation, prosecution, and sanctioning.¹⁷ The legislative rationale was not merely to expand criminalisation, but also to reduce interpretative divergence, enable cross-border operational cooperation, and strengthen the dissuasive character of penalties for conduct affecting the environment.

14 Council of Europe, 'Draft Explanatory Report to the Revised Convention on the Protection of the Environment through Criminal Law' (PC-ENV(2024)04 Rev2, 9 October 2024) <<https://rm.coe.int/pc-env-2024-04rev02-eng-draft-explanatory-report-convention-on-the-pro/1680b1efb2>> accessed 10 February 2026.

15 Directive (EU) 2024/1203 (n 2); European Union, 'Protecting the Environment Through Criminal Law' (n 10).

16 European Commission, 'Commission Staff Working Document Evaluation of the Directive 2008/99/EC' (n 9).

17 European Commission, 'Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment Through Criminal Law and Replacing Directive 2008/99/EC' (COM(2021) 851 final, 15 December 2021) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021PC0851>> accessed 10 February 2026.

Directive (EU) 2024/1203 establishes “*minimum rules with regard to the definition of criminal offences and penalties in order to protect the environment more effectively, as well as with regard to measures to prevent and combat environmental crime and to effectively enforce Union environmental law*” (Article 1 of the Directive). In terms of its regulatory technique, Directive (EU) 2024/1203 retains the core “unlawfulness” architecture of its predecessor but develops it in a more operationally robust manner. It establishes *minimum rules* on criminal offences and penalties and links “unlawful” conduct to breaches of EU environmental law (and implementing national measures), while also clarifying that conduct remains “unlawful” where an authorisation was obtained fraudulently or through corruption-related practices. This explicitly addresses a recurrent enforcement gap in which formally valid permits were used to shield environmentally harmful conduct from criminal qualification.

The most visible normative trend is the broadened and more granular offence catalogue. While Directive 2008/99/EC required criminalisation of selected categories of environmentally harmful conduct, the 2024 Directive expands the coverage and increases specificity, including by capturing modern patterns of environmental criminality that had previously been treated inconsistently (or primarily as administrative illegality). Even in the opening part of Article 3, the Directive frames criminalisation around environmental media and ecosystem harm (air, soil, water, and ecosystems), reflecting a move from sectoral compliance breaches to the protection of ecological interests as such.

A second core trend concerns the internal differentiation of *culpability* and *gravity*. The Directive does not rely solely on *intentionality*; it also requires criminalisation for certain conduct carried out with at least *serious negligence*, thereby reinforcing the message that large-scale environmental harm is not only a matter of deliberate wrongdoing but also of grossly deficient risk governance. This is normatively significant because it bridges the classical divide between administrative non-compliance and criminal responsibility, particularly in high-risk industrial settings and complex corporate structures.

The Directive’s sanctioning model is the most distinctly “new” element when compared to Directive 2008/99/EC. Rather than merely requiring that penalties be *effective, proportionate and dissuasive*, the Directive (EU) 2024/1203 introduces a more structured approach, including differentiated seriousness thresholds for custodial penalties for natural persons and a markedly strengthened regime for legal persons. In public reporting of the legislative process, the “most serious” offences are associated with imprisonment ceilings of at least ten years where the conduct causes a person’s death, and a graded approach applies to other offence categories.¹⁸

18 Michael Nicholson, *The EU Environmental Crime Directive: A Diverging Approach with the UK?* (Briefing paper, IEEP UK 2024). ‘EU Lawmakers Approve Tougher Bloc-Wide Penalties for Environmental Crime’ (*Reuters*, 27 February 2024) <<https://www.reuters.com/world/europe/eu-lawmakers-approve-tougher-bloc-wide-penalties-environmental-crime-2024-02-27/>> accessed 10 February 2026.

For legal persons, the Directive's trend is equally clear: it seeks to overcome the chronic problem that corporate fines were often economically absorbable and thus weakly dissuasive. The European Parliament's legislative train materials describe the adoption of turnover-linked maximum fine thresholds for the most serious offences (a maximum fine of at least 5% of worldwide turnover or, alternatively, EUR 40 million), with lower thresholds for other offences (a maximum fine of at least 3% or, alternatively, EUR 24 million).¹⁹ This design signals a deliberate shift towards sanctioning logic capable of addressing large undertakings and preventing "compliance through paying".

Moreover, Directive (EU) 2024/1203 reflects a broader European tendency to connect repression with restoration. Beyond punitive sanctions, the post-2008 approach increasingly treats remediation and compensation as integral to the criminal law response. In discussions surrounding the Directive and its proposal,²⁰ the "polluter pays" logic is explicitly framed not only as a matter of administrative liability but also as a consequence that may be enforced through criminal proceedings, including obligations to restore environmental damage and to compensate. This hybridisation of punitive and restorative objectives is likely to influence national legislative approximation and prosecutorial practice in the coming years.

The academic response to Directive (EU) 2024/1203 signals a broad recognition within expert circles that the new environmental crime framework represents a substantive response to the deficiencies of Directive 2008/99/EC. Scholars have emphasised that the earlier Directive was adopted in an era when environmental criminal law was a peripheral aspect of EU policy, and it was subsequently criticised for its limited practical impact, lack of detailed penalty regimes, and insufficient mechanisms for transnational cooperation.²¹ The Directive (EU) 2024/1203 was therefore welcomed by many legal commentators as a necessary recalibration of the EU's criminal law engagement with environmental protection, grounded in the Commission's own evaluative findings that the number of successfully investigated and prosecuted environmental crime cases remained low and that sanctions were often insufficiently dissuasive. From an expert standpoint, the Directive's comprehensive expansion of criminal offences and the introduction of specified penalty structures mark a significant advance toward a more effective legal regime. The legal analysis highlights that, unlike the Directive 2008/99/EC, the Directive (EU) 2024/1203 not only updates the offence catalogue to reflect contemporary environmental policy concerns but

19 Nicholson (n 18) 13.

20 *ibid*

21 Radion Cojocaru, 'Prevention of Environmental Crimes According to Directive (EU) 2024/1203 on the Protection of the Environment Through Criminal law' (2025) (spec) *Legea și Viața* 194; Patient Mpunga-Biayi, 'The European Union Environmental Crime Directive 2024: The Construction of an Autonomous Legal Framework for the Repression of Environmental Crimes Within the European Union' (2025) 27(2) *Environmental Law Review* 135, doi:10.1177/14614529251344643; Elżbieta Zębek and Denis Solodov, 'The EU Environmental Crime Directive 2024/1203: Legal Solutions and Perspectives' (2025) 89 *Journal for Nature Conservation* 127093, doi:10.1016/j.jnc.2025.127093.

also incorporates new categories of offences such as illegal surface water abstraction, unlawful ship recycling and certain invasions of natural habitats. Such extensions respond directly to empirical critiques that the previous Directive failed to keep pace with the broader environmental law landscape, leaving coverage gaps.

The introduction of clearer rules on penalties – including differentiated imprisonment terms for individuals and structured regimes for legal persons – reflects a normative shift within EU criminal law discourse toward enhanced deterrence, proportionality and harmonisation of sanctions across Member States.

From a conceptual perspective, Directive (EU) 2024/1203 cannot be understood merely as a procedural or technical update of the existing framework. While the Directive certainly introduces important procedural and operational improvements, its primary significance lies in a substantive reconfiguration of environmental criminal liability at the EU level. In particular, the shift from a model of “minimum criminalisation” towards an enforcement-oriented and operational framework reflects a deeper transformation in the function of criminal law, which is no longer conceived as a subsidiary or symbolic instrument, but as an integral component of environmental governance. This is evidenced by the expanded and more precise offence catalogue, the structured sanctioning regime, and the explicit recognition of serious environmental harm – including conduct committed with at least serious negligence – as a matter of criminal responsibility. Accordingly, the Directive represents a qualitative normative shift in the conceptualisation of environmental criminal liability within EU law, albeit complemented by significant procedural modernisation aimed at ensuring its practical effectiveness.

4.2. Council of Europe: Convention on the Protection of the Environment Through Criminal Law as a Standards-Based Framework with “Ecological Seriousness” and Procedural-Modernisation

The Council of Europe’s *Convention on the Protection of the Environment through Criminal Law* of 2025, opened for signature in Strasbourg on 3 December 2025, expresses a distinct normative ambition: to establish *minimum rules* to guide States’ domestic legislation, promote cooperation, and enhance environmental protection through criminal law, while situating these measures within human rights and rule-of-law coordinates.²² The purposes of this Convention are to: “a) effectively prevent and combat environmental crime; b) promote and enhance national and international co-operation against environmental crime; c) establish minimum rules to guide States in their national legislation; and thereby promote and enhance the protection of the environment” (Article 1 of the Convention). The preamble of the Convention explicitly anchors the instrument in the “triple planetary crisis of pollution, climate change and loss of biodiversity for human rights” framing and references

22 Convention on the Protection of the Environment Through Criminal Law 2025 (n 4).

relevant Strasbourg *acquis*, including the European Convention on Human Rights and the case-law of the European Court of Human Rights.

The Convention represents a significant normative step towards strengthening the role of criminal law in addressing serious environmental harm at the pan-European level. The Convention seeks to overcome the limitations of earlier instruments by establishing a coherent set of criminal offences covering unlawful pollution, waste-related conduct and damage to protected natural sites, while simultaneously reinforcing cooperation and monitoring mechanisms. Particular scholarly attention has been drawn to the introduction of the concept of “particularly serious offences”, which reflects an emerging European understanding that certain forms of environmental damage require a qualitatively distinct criminal law response.²³ At the same time, the Convention explicitly situates environmental criminal law within a broader framework of human rights and the rule of law, thereby promoting consistent standards of accountability while respecting fundamental procedural guarantees.

Compared with the 1998 Convention, the 2025 Convention modernises both substance and structure. The earlier instrument contained an important “hard core” of offences and required sanctions including imprisonment and pecuniary measures, but its practical influence was limited, not least due to low ratification and a comparatively sparse operational framework. By contrast, the 2025 Convention is drafted as an implementation-oriented instrument, including a specific monitoring mechanism and a broader set of procedural and cooperation provisions that aim to reduce the gap between formal criminalisation and effective application. Substantively, the 2025 Convention adopts a notably expanded and thematically structured offence catalogue. The draft history shows that the new instrument was designed to replace and supersede the 1998 Convention and to respond to contemporary forms of environmental harm, including technologically and economically complex activities.²⁴ The offences cover, *inter alia*, illegal pollution-type conduct, unlawful waste operations and shipments, unlawful operation or closure of dangerous installations, ship-source discharges, unlawful water abstraction, trade in unlawfully harvested timber, unlawful mining, and biodiversity-related offences (including deterioration of habitats within protected sites and conduct concerning invasive alien species).

As seen, a key normative innovation is the explicit concept of a “*particularly serious offence*”. The Convention requires Parties to establish as particularly serious any offence under the Convention when committed intentionally and causing destruction, or

23 Patient Mpunga-Biayi, ‘The Council of Europe Convention on the Protection of the Environment Through Criminal Law: A Normative Turning Point in European Environmental Governance’ (2025) 27(4) *Environmental Law Review* 279, doi:10.1177/14614529251397623.

24 Council of Europe, ‘Explanatory Report to the Convention on the Protection of the Environment Through Criminal Law’ (3 December 2025) [2025] CETS 228 <<https://rm.coe.int/48801f9d22>> accessed 10 February 2026.

irreversible, widespread and substantial damage, or long-lasting, widespread and substantial damage to an ecosystem of considerable size or environmental value (or to protected habitats or environmental media). This provision crystallises a European trend towards recognising a category of environmental criminality that is qualitatively different from routine regulatory offending and warrants distinct criminal-law treatment, even if domestic systems differ in doctrinal classifications.

On sanctions for natural persons, the Convention retains the classical continental principle that penalties must be effective, proportionate and dissuasive, while ensuring that imprisonment is available. For legal persons, it strengthens the modern “compliance and governance” approach: Parties must ensure that legal persons can be held liable for offences committed for their benefit by persons in leading positions, as well as where lack of supervision or control enabled the offence. The Convention then requires monetary sanctions and contemplates a set of additional measures with clear preventive and compliance-oriented functions, including withdrawal of permits, exclusion from public funding, judicial supervision, winding-up, publication of judicial decisions in the public interest, and even an obligation to establish due diligence schemes to enhance compliance with environmental standards.

Procedurally and institutionally, the Convention’s trend is to treat enforcement capacity and participation rights as integral to environmental criminal law. It contemplates specialised coordination and monitoring bodies at the national level, protection for persons who report offences or cooperate with authorities, and it invites Parties to consider granting NGOs and persons with sufficient interest the right to participate in criminal proceedings concerning environmental offences. This reflects a broader European movement to integrate access-to-justice logics into criminal enforcement models, while operating within the constraints of domestic criminal procedure.

It should be noted that, in a further sign of the growing normative integration of environmental criminal law across Europe, the European Union itself moved to sign the Council of Europe Convention on the Protection of the Environment through Criminal Law on behalf of the Union. This step was authorised by Decision (EU) 2025/2493, adopted on 1 December 2025,²⁵ which explicitly recognises that the Convention aligns with the Union’s environmental objectives under Article 191 of the Treaty on the Functioning of the European Union and complements the EU’s own Directive (EU) 2024/1203 on the protection of the environment through criminal law. The Decision reflects a strategic choice by the Union to ensure uniform application and compatibility between EU criminal law standards and the emerging pan-European treaty framework, and to participate, alongside Member States, as a Party in a binding instrument that establishes common definitions, criminal offences, liability regimes, and cooperation mechanisms for environmental crime.

25 Council Decision (EU) 2025/2493 of 1 December 2025 on the Signing, on Behalf of the European Union, of the Council of Europe Convention on the Protection of the Environment Through Criminal Law [2025] OJ L 2493/1 <<https://eur-lex.europa.eu/eli/dec/2025/2493/oj/eng>> accessed 10 February 2026.

4.3. Converging Normative Trajectories: Coordinated Advancement of Environmental Criminal Law in Europe

Taken together, the recent developments within the European Union and the Council of Europe reveal a clear convergence in normative direction and timing in the field of environmental criminal law. Both frameworks responded to comparable diagnoses of insufficiency in earlier legal instruments and to a shared perception that existing administrative and criminal responses were no longer adequate to address the scale, complexity and cross-border nature of contemporary environmental harm. Significantly, the legislative and policy debates within the European Union leading to the adoption of Directive (EU) 2024/1203 unfolded in parallel with the negotiations and drafting process of the Council of Europe Convention on the Protection of the Environment through Criminal Law, indicating a broader European consensus on the need to modernise and strengthen criminal law responses to environmental crime.

While the EU and the Council of Europe employ different regulatory techniques, their recent instruments pursue complementary objectives. The EU has opted for a binding approximation model with detailed offence definitions and structured sanctioning requirements, whereas the Council of Europe has developed a standards-based treaty framework grounded in minimum rules, cooperation mechanisms and human rights safeguards. Both approaches nevertheless reflect a shared commitment to moving beyond symbolic criminalisation towards enforcement-oriented and operationally meaningful legal regimes capable of addressing serious environmental harm.

The European Union's decision to sign the Council of Europe Convention on the Protection of the Environment through Criminal Law further underscores this convergence. By acceding to the Convention, the Union explicitly acknowledged the compatibility and mutual reinforcement of the two normative frameworks and signalled its intention to participate actively in a pan-European system of environmental criminal law governance. This step confirms that recent EU and Council of Europe initiatives should not be viewed as isolated or competing projects, but rather as interconnected elements of a broader European effort to ensure that environmental criminal law keeps pace with evolving environmental risks and societal expectations.

5 IMPLICATIONS FOR NATIONAL LEGAL ORDERS AND LEGISLATIVE APPROXIMATION

The recent normative developments at the European Union and the Council of Europe have significant implications for national legal orders and the ongoing process of legislative approximation in the field of environmental criminal law. While it can no longer be maintained that environmental protection through criminal law is absent or

underdeveloped at the domestic level, the adoption of Directive (EU) 2024/1203 and the Council of Europe Convention on the Protection of the Environment through Criminal Law of 2025 clearly demonstrates that the existing legal frameworks are no longer sufficient in light of contemporary environmental risks. The current state of national criminal law across Europe may therefore be characterised as formally established, yet substantively incomplete.

From a legislative perspective, Member States of the European Union and Parties are required to move beyond mere transposition or formal compliance. The new European instruments demand a qualitative adjustment of domestic criminal law, including the expansion and clarification of offence definitions, the recalibration of sanctioning regimes, and the introduction of liability models capable of addressing complex organisational and corporate structures. In particular, the reinforced emphasis on serious and particularly serious environmental offences requires national legislators to reassess traditional distinctions between administrative and criminal liability and to ensure that criminal law intervention is not confined to residual or symbolic functions.

Legislative approximation in this context does not imply full harmonisation of national criminal law systems. Rather, it requires the alignment of core normative elements, such as the protection of ecological interests, the recognition of serious environmental harm as a distinct category of criminal wrongdoing, and the establishment of effective, proportionate and dissuasive sanctions for both natural and legal persons. This process necessarily interacts with deeply rooted principles of national criminal law, including legality, culpability and proportionality, and therefore calls for careful legislative design that respects constitutional traditions while fulfilling European obligations.

Beyond substantive criminal law, the implications extend to procedural and institutional dimensions. Both the EU Directive and the Council of Europe Convention implicitly challenge States to strengthen enforcement capacities, improve coordination among competent authorities, and ensure that environmental criminal law is supported by adequate investigative tools and expertise. The mere existence of criminal offences is insufficient if they are not accompanied by effective mechanisms for detection, prosecution and adjudication. In this respect, the European normative shift underscores the need to integrate environmental criminal law into broader criminal justice policy and environmental governance strategies.

At the same time, the evolving European framework signals a gradual reconfiguration of the relationship between environmental protection and criminal law. Criminal law is no longer conceived solely as an *ultima ratio* in the narrow sense, but increasingly as a complementary instrument that operates alongside administrative and civil mechanisms to ensure comprehensive environmental protection. This does not negate the principle of subsidiarity; rather, it reflects a recognition that certain forms of environmental harm, due to their scale, irreversibility or societal impact, require a distinctly criminal law response.

Ultimately, the implications for national legal orders lie not only in legislative change but also in a broader transformation of legal and institutional practice. The convergence of EU and Council of Europe initiatives indicates that European States are expected to move from formally existing frameworks towards genuinely effective systems of environmental criminal law. Legislative approximation thus becomes a dynamic, ongoing process, that requires continuous adaptation, evaluation, and refinement to ensure that criminal law keeps pace with evolving environmental challenges and societal expectations.

Notwithstanding the significant normative strengthening introduced by recent European instruments, certain structural challenges remain. The effectiveness of environmental criminal law ultimately depends not only on the existence of harmonised offence definitions and sanctioning regimes, but also on the practical capacity of national authorities to investigate and prosecute complex environmental offences. In several European States, enforcement of environmental criminal law has historically been constrained by limited specialised expertise, fragmented institutional competences and difficulties in detecting environmentally harmful conduct, particularly where such activities involve corporate actors or cross-border operations. Moreover, the increasing reliance on criminal law as a regulatory tool may raise doctrinal questions within some national systems concerning the traditional principle of *ultima ratio* in criminal law. These factors suggest that the success of the new European framework will depend not only on legislative approximation but also on sustained investment in enforcement capacity and national-level institutional coordination.

Practical experience across several European jurisdictions illustrates the challenges of effectively enforcing environmental criminal law. Despite the formal criminalisation of a range of environmentally harmful activities, prosecution rates for environmental offences have traditionally remained relatively low in many Member States, and cases are frequently addressed through administrative or regulatory sanctions rather than criminal proceedings. This tendency has been observed particularly in situations involving complex corporate structures or technically demanding environmental violations, where investigative authorities may face difficulties in establishing criminal liability. Such examples illustrate the enforcement gap that has repeatedly been identified in policy reports and academic literature, and which partly motivated the strengthening of the European legal framework through Directive (EU) 2024/1203 and the recent Council of Europe Convention.

Notwithstanding the normative convergence achieved at the European level, the harmonisation and effective implementation of the new instruments are likely to encounter a number of structural, doctrinal, and practical challenges across diverse national legal systems. From a doctrinal perspective, significant differences persist in the core concepts of criminal law, including culpability (Slovak: *zavinenie*), the scope of negligence (Slovak: *nedbanlivosť*), and the conditions of criminal liability of legal persons. These divergences may affect the uniform interpretation of offence definitions and the calibration of sanctions, particularly in legal systems where environmental offences have traditionally been treated as administrative rather than criminal matters.

From a practical perspective, the effectiveness of the new framework will depend on national authorities' capacity to investigate and prosecute complex environmental offences. This includes challenges related to specialised expertise, evidentiary complexity, cross-border cooperation and the involvement of corporate actors. In addition, differences in institutional structures, prosecutorial priorities and resource allocation may lead to uneven enforcement across Member States, thereby undermining the objective of creating a level playing field. These factors suggest that harmonisation in environmental criminal law remains a gradual and dynamic process, requiring not only legislative approximation but also sustained institutional adaptation and investment in enforcement capacity.

6 FUTURE PERSPECTIVES AND INSTITUTIONAL REFLECTIONS ON ENVIRONMENTAL CRIMINAL LAW IN EUROPE

The recent normative developments at the European Union and the Council of Europe indicate that European environmental criminal law has entered a phase of consolidation, combined with cautious expansion. While the adoption of Directive (EU) 2024/1203 and the Council of Europe Convention on the Protection of the Environment through Criminal Law has substantially strengthened the legal framework, these instruments should not be regarded as an endpoint. Rather, they form part of an evolving process in which environmental criminal law is increasingly expected to respond to complex, transnational and economically driven forms of environmental harm.

One of the most significant future challenges lies in ensuring that the newly established normative standards translate into *effective enforcement*. As environmental crime often involves cross-border activities, complex corporate structures and significant financial incentives, purely national enforcement strategies may prove insufficient. This opens discussions within European legal and policy discourse about the adequacy of existing institutional arrangements and the potential need for enhanced coordination at the European level. In this context, attention has increasingly turned to the possible role of the *European Public Prosecutor's Office* (EPPO).²⁶

At present, the mandate of the EPPO is limited to *criminal offences affecting the financial interests of the European Union*. Environmental crime, as such, falls outside its material

26 Council Regulation (EU) 2017/1939 of 12 October 2017 'Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office' ('the EPPO') [2017] OJ L 283/1 <<https://eur-lex.europa.eu/eli/reg/2017/1939/oj/eng>> accessed 10 February 2026. See also: European Union, 'The Establishment of the European Public Prosecutor's Office: Summary of Regulation (EU) 2017/1939 – Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office (the EPPO)' (*EUR-Lex*, 9 September 2024) <<https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32017R1939>> accessed 10 February 2026.

competence. Nevertheless, debates²⁷ have begun to explore whether certain categories of environmental offences, particularly those with a clear cross-border dimension or those closely linked to economic and financial crime, might warrant consideration in discussions on a possible future extension of the EPPO's remit. These debates do not reflect an agreed policy direction, but rather signal an emerging awareness that environmental crime poses enforcement challenges comparable to those that initially justified the EPPO's creation.

Importantly, any discussion of extending the EPPO's competence to environmental crime must be approached with caution. Such a development would raise complex legal and constitutional questions, including issues of subsidiarity, proportionality and the relationship between national prosecutorial autonomy and supranational enforcement mechanisms. Moreover, the diversity of national criminal law systems and enforcement capacities suggests that institutional innovation cannot substitute for effective domestic implementation of existing obligations. The primary responsibility for investigating and prosecuting environmental crime will therefore continue to rest with national authorities.

Beyond the question of institutional competence, future perspectives of "European environmental criminal law" also involve a gradual refinement of substantive concepts. The increasing emphasis on serious and particularly serious environmental offences suggests a trend towards recognising environmental harm as a core protected legal interest deserving of autonomous criminal law protection. This development may, over time, influence domestic doctrines concerning the culpability and liability of legal persons, as well as the relationship between criminal, administrative, and civil enforcement mechanisms.

Taken together, the future of environmental criminal law in Europe appears to be characterised by incremental development rather than radical transformation. The current European framework provides a solid foundation, but its effectiveness will depend on sustained political commitment, continued legislative adaptation and the willingness of States to invest in enforcement capacity. The parallel evolution of EU and Council of Europe instruments, combined with emerging institutional debates at the European level, demonstrates a shared understanding that environmental criminal law must remain responsive to evolving environmental risks. In this sense, the future trajectory of European environmental criminal law is likely to be shaped less by the creation of entirely new structures than by the progressive strengthening, coordination and practical application of those that already exist.

27 See, for example: Irene Chiochetti, *Can the New EU Directive Boost the Fight Against Environmental Crime?* (Institute for European Environmental Policy, 28 November 2022) <<https://ieep.eu/publications/can-the-new-eu-directive-boost-the-fight-against-environmental-crime>> accessed 10 February 2026; Mar Jimeno Bulnes, 'The European Public Prosecutor's Office and Environmental Crime: Further Competence in the Near Future?' (2024) 19(2) *Eu crim* 146, doi:10.30709/eu crim-2024-010.

At the same time, it should be recognised that the strengthening of the European normative framework does not automatically guarantee effective enforcement in practice. Environmental crime often involves technically complex activities, transnational corporate structures and forms of conduct that are difficult to detect through traditional investigative methods. In several European jurisdictions, enforcement of environmental criminal law has historically been constrained by limited specialised expertise, fragmented institutional competences and insufficient investigative resources. These structural factors may continue to influence the practical application of the newly adopted European instruments. Consequently, the effectiveness of the evolving European framework will depend not only on legislative approximation and the adoption of new offence definitions, but also on the capacity of national authorities to develop specialised knowledge, improve inter-institutional coordination and ensure consistent investigative and prosecutorial practice in environmental crime cases.

7 CONCLUSIONS

This article examines the recent evolution of criminal law protection of the environment in Europe, focusing on emerging normative trends within the European Union and the Council of Europe. The analysis demonstrates that environmental criminal law has moved beyond its traditional role as a subsidiary and largely symbolic instrument and has increasingly become an integral component of European environmental governance.

The adoption of Directive (EU) 2024/1203 represents a significant recalibration of the European Union's approach to environmental crime. By expanding and clarifying the catalogue of criminal offences, strengthening sanctioning regimes for both natural and legal persons, and emphasising enforcement-oriented mechanisms, the Directive seeks to remedy the structural deficiencies of its predecessor. In doing so, it reinforces the role of criminal law as a tool that can meaningfully contribute to environmental protection, particularly in cases involving serious, economically motivated, or cross-border conduct. At the same time, the Council of Europe's Convention on the Protection of the Environment through Criminal Law illustrates a complementary normative trajectory. Through its standards-based approach, emphasis on "particularly serious offences" and integration of human rights and rule-of-law considerations, the Convention provides a pan-European framework that both guides national legislation and promotes cooperation beyond the confines of Union law. The parallel timing and substantive alignment of these two instruments indicate an emerging convergence in European thinking on the role of criminal law in addressing environmental harm. The European Union's decision to sign the Convention further underscores the interconnectedness of these normative developments and highlights a shared commitment to coherence and mutual reinforcement between the two legal frameworks.

The implications for national legal orders are considerable. Although many European States already possess criminal law provisions addressing environmental harm, the new European

instruments require more than formal transposition or minimal compliance. They call for a qualitative reassessment of domestic criminal law frameworks, including the delineation of serious environmental offences, recalibration of sanctioning systems, and strengthening of enforcement capacities. Legislative approximation in this field thus emerges as an ongoing and dynamic process, shaped by evolving environmental risks and by the need to balance effectiveness with fundamental criminal law principles.

From a scholarly perspective, this article contributes to the ongoing legal discourse by providing a structured analysis of the emerging convergence between the European Union and the Council of Europe in environmental criminal law. By examining the parallel development of Directive (EU) 2024/1203 and the Council of Europe Convention on the Protection of the Environment through Criminal Law, the article highlights how European environmental criminal law is evolving from a model primarily focused on formal criminalisation towards a more enforcement-oriented and operational framework. In doing so, the analysis offers a conceptual perspective on the transformation of criminal law into an increasingly central instrument of European environmental governance.

Looking ahead, the future of European environmental criminal law is likely to be characterised by gradual consolidation rather than radical transformation. The current normative framework provides a solid foundation, but its success will depend on sustained political commitment, effective national implementation and continued coordination at the European level. Emerging institutional debates, including discussions on enhanced cooperation in the prosecution of environmental crime, reflect an awareness that enforcement challenges increasingly transcend national borders. Whether and to what extent such debates will lead to further institutional innovation remains uncertain. What is clear, however, is that environmental criminal law in Europe is no longer a marginal field. It has become a dynamic and evolving area of law, expected to adapt continuously in order to keep pace with contemporary environmental challenges and societal expectations.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ПОСИЛЕННЯ ЗАХИСТУ ДОВКІЛЛЯ ЗА ДОПОМОГОЮ КРИМІНАЛЬНОГО ПРАВА В ЄВРОПІ: НОРМАТИВНІ ЗМІНИ ТА НАСЛІДКИ ДЛЯ ПРАВОЗАСТОСУВАННЯ

Лібор Клімек

АНОТАЦІЯ

Вступ. Екологічні злочини дедалі частіше стають серйозною загрозою для екосистем, громадського здоров'я та сталого розвитку, часто характеризуючись значними економічними стимулами, складними організаційними структурами та транскордонними вимірами. Традиційно охорона довкілля в Європі спиралася переважно на адміністративні та регуляторні механізми, а кримінальне право відіграло допоміжну та здебільшого символічну роль. Однак останнім часом обмеженість такого підходу стала очевидною, що зумовило переоцінку функції кримінального права щодо вирішення проблеми екологічної шкоди. Ця зміна матеріалізувалась у значних нормативних розробках на європейському рівні, зокрема в межах Європейського Союзу та Ради Європи.

Методи. У статті використовується доктринальна та аналітична правова методологія, що зосереджується на тлумаченні європейських правових інструментів, політичних документів та відповідної наукової літератури. У ній розглядаються останні зміни у вторинному праві ЄС та договірному праві Ради Європи з багаторівневої європейської перспективи без зосередження на конкретних національних правових системах. Аналіз застосовує горизонтальний підхід, спрямований на виявлення конвергентних нормативних тенденцій, структурних інновацій та наслідків, пов'язаних із правозастосуванням, для національних правопорядків та процесах законодавчої гармонізації.

Результати та висновки. Аналіз демонструє, що європейське кримінальне право у сфері довкілля вступило в нову фазу, яка характеризується переходом від формальної криміналізації до більш орієнтованих на ефективність і практичне застосування механізмів. Нова Директива (ЄС) 2024/1203 про захист довкілля за допомогою кримінального права є суттєвим переосмисленням підходу ЄС: вона розширює перелік кримінальних правопорушень, посилює санкційні режими як для фізичних, так і для юридичних осіб, а також наголошує на необхідності ефективного правозастосування. Паралельно Конвенція Ради Європи про захист довкілля засобами кримінального права 2025 року встановлює стандартну систему, що ґрунтується на правах людини та верховенстві права, запроваджуючи концепцію особливо серйозних екологічних правопорушень та посилюючи механізми співпраці. Синхронність ухвалення та

змістовна узгодженість цих інструментів свідчать про нову конвергенцію в європейських підходах до кримінального права у сфері довкілля, що ще більше підкреслюється рішенням Європейського Союзу підписати Конвенцію Ради Європи. У статті було зроблено висновок, що, хоча національні кримінально-правові механізми захисту довкілля вже існують, нові європейські ініціативи вимагають від держав переходу від формального дотримання норм до створення справді ефективних і узгоджених систем захисту довкілля, здатних адекватно реагувати на сучасні екологічні виклики.

Ключові слова. Екологічні злочини; гармонізація законодавства; механізми правозастосування; Директива (ЄС) 2024/1203 про захист довкілля за допомогою кримінального права; Конвенція про захист довкілля засобами кримінального права.