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**TAILORING THE FUTURE FOR THE ENVIRONMENT,
HEALTH AND SECURITY THROUGH MEANS OF CRIMINAL
LAW***

DISEÑANDO EL FUTURO PARA EL MEDIO AMBIENTE, LA SALUD
Y LA SEGURIDAD A TRAVÉS DEL DERECHO PENAL

ADAPTAREA VIITORULUI PENTRU MEDIU, SĂNĂTATE ȘI
SECURITATE PRIN INTERMEDIUL DREPTULUI PENAL

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Abstract:

Criminal law intervenes as a last resort to protect social values. Although standards may differ from one society to another, there are also many common benchmarks. Thus, at the global level, states must cooperate to protect both the natural and anthropogenic environment, which is essential for ensuring the life and health of humans and other living beings, but also for maintaining public and personal security. There is a trend at European level to strengthen the legal framework by updating the normative acts in the above-mentioned field. We

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are considering the entry into force of the 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, which must be transposed into the legislation of Member States by 21 May 2026. There are several new elements in this directive, but the focus of this paper will be on analysing the criminalization of the placing or making available on the Union market or the export from the Union market of relevant commodities or relevant products, in breach of the prohibition set out in Article 3 of Regulation (EU) 2023/1115, except where such conduct concerns a negligible quantity. We consider the analysis of this criminalisation to be all the more important given that the imbalance of the ecosystem, from the perspective of deforestation and forest degradation, also affects global health and security. The European Union is an area of freedom, security and justice that has the legal instruments to protect its important values.

Resumen:

El derecho penal interviene como último recurso para proteger los valores sociales. Aunque las normas pueden diferir de una sociedad a otra, también hay muchos puntos de referencia comunes. Por lo tanto, a nivel mundial, los Estados deben cooperar para proteger el medio ambiente natural como el antropogénico, o cual es esencial para garantizar la vida y la salud de los seres humanos y otros seres vivos, pero también para mantener la seguridad pública y personal. A nivel europeo, existe una tendencia a reforzar el marco jurídico mediante la actualización de los actos normativos en este ámbito mencionado. Estamos considerando la entrada en vigor de la Directiva (UE) 2024/1203 del Parlamento Europeo y del Consejo, de 11 de abril de 2024, relativa a la protección del medio ambiente mediante el Derecho penal y que sustituye a las Directivas 2008/99/CE y 2009/123/CE, que debe transponerse a la legislación de los Estados miembros antes del 21 de mayo de 2026. Esta Directiva contiene varios elementos nuevos, pero el presente documento se centrará en analizar la tipificación como delito de la introducción o comercialización en el mercado de la Unión o la exportación desde él de materias primas o productos pertinentes, incumpliendo la prohibición establecida en el artículo 3 del Reglamento (UE) 2023/1115, excepto en los casos en que dicha conducta afecte a una cantidad insignificante. Consideramos que el análisis del contenido de esta criminalización es aún más importante, si se tiene en cuenta que el desequilibrio del ecosistema, desde el punto de vista de la deforestación y la degradación forestal, también afecta a la salud y la seguridad mundiales. La Unión Europea es un espacio de libertad, seguridad y justicia que cuenta con los instrumentos jurídicos necesarios para proteger sus importantes valores.

Rezumat:

Dreptul penal intervine în ultimă instanță pentru a proteja valorile sociale. Deși standardele pot diferi de la o societate la alta, sunt și foarte multe reșere comune. Astfel, la nivel global, statele trebuie să coopereze pentru protejarea mediului înconjurător atât natural, cât și antropic, fiind esențial pentru asigurarea vieții și a sănătății oamenilor și a celorlalte viețuitoare, dar și pentru menținerea securității publice și personale. Se observă tendința la nivel european de întărire a cadrului legal prin actualizarea actelor normative în domeniul amintit mai sus. Avem în vedere intrarea în vigoare a Directivei (UE) 2024/1203 a Parlamentului European și a Consiliului din 11 aprilie 2024 privind protecția mediului prin intermediul dreptului penal și de înlocuire a Directivelor 2008/99/CE și 2009/123/CE, care trebuie transpusă în legislațiile statelor membre până în data de 21 mai 2026. Sunt mai multe elemente de noutate în cadrul acestei directive dar accentul va fi pus, în cadrul lucrării, pe analiza incriminării privind introducerea sau punerea la dispoziție pe piața Uniunii sau exportul de pe piața Uniunii a materiilor prime sau a altor produse relevante asociate cu defrișările și degradarea pădurilor, încălcând interdicția prevăzută la articolul 3 din Regulamentul (UE) 2023/1115, cu excepția cazului în care fapta se referă la o cantitate neglijabilă. Considerăm analiza conținutului acestei incriminări cu atât mai importantă cu cât dezechilibrul ecosistemului, din perspectiva defrișărilor și degradării pădurilor afectează și sănătatea și securitatea la nivel mondial. Uniunea Europeană este un spațiu de libertate, securitate și justiție care are instrumentele legale pentru protejarea valorilor sale importante.

Keywords: Environment. Health. Security. Criminal law. Protection. Deforestation.

Palabras clave: Medio ambiente. Salud. Seguridad. Derecho penal. Protección. Deforestación.

Cuvinte-cheie: Mediu. Sănătate. Securitate. Lege penală. Protecție. Defrișări.

Index:

1. Introduction
2. New Elements in the Content of Directive (EU) 2024/1203
3. Analysis of the Legal Content of the Offence Described in Article 3 Point (2) Letter p) of Directive (EU) 2024/1203
4. Conclusion

5. References

Índice:

1. Introducción
2. Nuevos elementos en el contenido de la Directiva (UE) 2024/1203
3. Análisis del contenido jurídico del delito descrito en el artículo 3, apartado 2. letra p), de la Directiva (UE) 2024/1203
4. Conclusión
5. Referencias

Index:

1. Introducere
2. Elemente de noutate în conținutul Directivei (UE) 2024/1203
3. Analiza conținutului legal al infracțiunii descrise în art. 3 pct. 2 lit. p) din Directiva (UE) 2024/1203
4. Concluzii
5. Referințe

1. INTRODUCTION

The indissoluble link and interdependence between the environment, health and security is undeniable. This aspect is also highlighted in normative acts at the European level, for example, and not only, by referring equally to all these three essential landmarks for our evolution as people, as a civilization, emphasizing the need for concrete actions in order to ensure their protection. Along with the economic and social measures that can be taken at national and international levels, to protect the environment, health and security, we believe that the basis for all of this is an adequate legal framework, adapted to the evolution of society in general. From the perspective of the legal framework, the rules established by law to describe the manner in which each activity must be carried out, so that the proposed objectives can be achieved, must also be accompanied by provisions criminalizing certain acts, behaviours that violate these rules. In this component of the legal framework, the description of prohibited acts and behaviours is naturally followed by the establishment of criminal sanctions that apply in case of violation of the respective norms. Criminal law intervenes when the application of sanctions corresponding to the civil, disciplinary or contraventional liability of individuals has not had a deterrent effect. We consider that moral responsibility is as important as legal liability, understanding here the obligation of the present generation to take all measures at its disposal to ensure the possibility of the existence of future generations. In point 23 of the preamble to 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) the European legislator recalls the importance of

"fairness between generations".

The importance given by the European Union to environmental protection is enshrined in Article 3(3) of the Treaty on European Union (2012), with emphasis on

"improving the quality of the environment",

but also in Article 191 of the Treaty on the Functioning of the European Union (2012), also highlighting among the objectives of environmental policy that of

"protecting human health".

2. NEW ELEMENTS IN THE CONTENT OF DIRECTIVE (EU) 2024/1203

From the perspective of the legal framework, it must be constantly updated in order to adequately respond to the need for protection. In this context, the aforementioned Directive (EU) 2024/1203 is relevant, having the role of strengthening the tools useful in protecting the environment and health and in maintaining security by introducing new elements, including in the criminalization part. In point 4 of the preamble to this directive, the need to increase the number of criminal sanctions is provided for, depending on the seriousness of the crimes committed in the reference area, with the idea of having a greater deterrent effect.

From the very title of Directive (EU) 2024/1203 we note that it replaces two previous directives, namely: 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) and Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (2009).

Taking as a starting point the provisions of these last two directives in question, the European legislator included in the content of the new directive the amendments to the legal provisions, regarding the rules of criminalisation, taking into account the updated legislation, when referring to other normative

acts where provisions concerning environmental protection are found. Moreover, in addition to these amendments, the Directive (EU) also introduces new elements, both in terms of the existence of new criminal offences and in terms of the need to establish qualified variants of the criminal offences, as well as aggravating or mitigating circumstances. Thus, criminal offences relating to: products, mercury, illegal execution of projects, illegal recycling of ships, illegal construction, operation and dismantling of an offshore installation, illegal water abstraction, invasive species and fluorinated gases were introduced.

Also, as another new element, aggravated, qualified variants were created for each of the offences described in the analysed directive, when the acts committed cause irreversible or long-term damage to an ecosystem of considerable size or substantially harm the quality of air, soil or water.

Another relevant aspect is that the scope of aggravating circumstances also includes the extent of the damage, involvement in organized crime and previous convictions of the persons committing such acts.

In contrast, mitigating circumstances are also provided for, represented by efforts to restore the environment and cooperation with judicial authorities.

The (EU) Directive requires cooperation between Member States and authorities at European Union level with competence in the fight against environmental crimes, such as the European Union Agency for Criminal Justice (Eurojust) and the European Public Prosecutor's Office. This aspect also requires the existence of adapted working tools to ensure the success of the collaboration. Among these working tools, we also highlight the human factor, which must be prepared to face the challenges, following a specialized training session.

The effectiveness of the measures taken by all those competent in this field, in the fight against environmental crimes, can be assessed by analysing reports at European Union level regarding this category of crime.

3. ANALYSIS OF THE LEGAL CONTENT OF THE OFFENCE DESCRIBED IN ARTICLE 3 POINT (2) LETTER P) OF DIRECTIVE (EU) 2024/1203

In Article 3 point (2) letter p) of Directive (EU) 2024/1203 it is described the act of

"placing or making available on the Union market or the export from the Union market of relevant commodities or relevant products, in breach of the prohibition set out in Article 3 of Regulation (EU) 2023/1115, except where such conduct concerns a negligible quantity"

The offence is committed intentionally, in this version of the incrimination, as expressly provided for in the content of Article 3 point (2) of Directive (EU) 2024/1203.

In Article 3 point (3) of Directive (EU) 2024/1203 we find the aggravated, qualified version of the offence described above, when the act causes:

„(a) the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to an ecosystem of considerable size or environmental value or a habitat within a protected site, or (b) widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water”.

In Article 3 point (4) of Directive (EU) 2024/1203 we find the mitigated version of the offence described above, namely when

„the conduct is unlawful and carried out with at least serious negligence”.

Since the directive refers to the provisions of Article 3 of Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No. 995/2010 (2023), we believe that the content of the offence under analysis cannot be understood without knowing the provisions of Article 3 of the aforementioned regulation. Thus, in Article 3 of Regulation (EU) 2023/1115 it is expressly prohibited for the relevant commodities and relevant products to be placed, made available on the market or exported without the cumulative fulfilment of the following conditions:

„a) not involving deforestation; b) being obtained in accordance with the relevant legislation of the country of production and c) being the subject of a due diligence declaration”.

One should bare in mind that the Regulation (EU) 2023/1115 is applicable from December 30, 2025 for large operators and traders and will be applicable starting June 30, 2026 for small enterprises, as set out the Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024 amending Regulation (EU) 2023/1111 as regards provisions relating to the date of application (2024).

A first aspect to be analysed is that related to the social value that is affected by the commission of the offence in question, regardless of the criminalisation option. We consider that this social value is represented by the set of social relations that arise and develop with regard to the protection of the environment. Moreover, we also have to take into account that the social relations concerning the protection of human health and safety are also protected, considering the undeniable link between these elements and because the act itself affects forests from the perspective of degradation and deforestation, which has a direct negative effect on health and human security.

The offence affects an object in all variants of incrimination, namely relevant commodities and relevant products associated with deforestation and forest degradation. In order to understand the scope of the offence in question, we must refer to the legal definitions for the terms used. Thus, for the purposes of the incrimination rule, by

„relevant commodities”

we understand, according to Article 2 para. (1) of Regulation (EU) 2023/1115,

„cattle, cocoa, coffee, oil palm, rubber, soya and wood”.

By „relevant products”

we understand, in accordance with the provisions of Article 2 para. (2) of Regulation (EU) 2023/1115,

„products listed in [Annex I](#) that contain, have been fed with or have been made using relevant commodities”.

The perpetrator of this crime can be, in any of the incrimination variants, any person who meets the general conditions of criminal liability because the legislator does not require that he/she have a certain quality. The perpetrator of the crime can also be a legal person if the act is committed in the pursuit of its object of activity or in its interest or on behalf of the legal person. This crime may be committed by several persons as co-perpetrators, instigators or accomplices, as set out in Article 4 point (1) of the Directive (EU) 2024/1203. The victim is represented, in all variants of incrimination, mainly by the European Union, in consideration of the Union market, which is affected by the commission of the crime. Moreover, we can consider as victims also, citizens of the Member States of the European Union that are harmed because their health and safety are endangered by the commission of the act.

From the perspective of the *actus reus* of the offence, the material element is represented by alternative actions, in any of the variants of incrimination, namely: the placing or making available on the Union market or the export from the Union market of relevant commodities or relevant products. For the act to constitute an offence, the condition of infringing Article 3 of Regulation (EU) 2023/1115 must be fulfilled. The term

"placing on the market means the first making available of a relevant commodity or relevant product on the Union market",

as set out in Article 2 para. (16) of the Regulation (EU) 2023/1115. One should bare in mind that the definition refers to each individual commodity or product, as set out in the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products.

The term

"making available on the market means any supply of a relevant product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge,"

according to Article 2 para. (18) of the Regulation (EU) 2023/1115. As it has been set out in the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products, one can consider that the above-mentioned definition covers two moments in the activity of the trader, as follows: one moment concerning the part regarding the distribution, the consumption and the use of relevant products and the other one concerning the course of its commercial activity.

There is an exception to the situation mentioned above. The act does not constitute a crime, regardless of the way in which it is committed, if it concerns a negligible quantity. This latter phrase does not have a legal definition. Considering the common meaning of the terms used, we consider that by

"negligible quantity"

one should understand a volume that is insignificant, more precisely, that does not influence either deforestation or other negative effects on the environment or on the health and safety of citizens of the Member States of the European Union. The assessment of whether that quantity is negligible will be made in each specific case. The elements that Member States must take into account in order to assess whether a quantity of products is or is not negligible are found in Article 3 point (8) of Directive (EU) 2024/1203, namely:

„(a) the number of items concerned; (b) the extent to which a regulatory threshold, value or another mandatory parameter set out in Union or national law referred to in paragraph (1), second subparagraph, points (a) and (b), is exceeded; (c) the conservation status of the fauna or flora species concerned; (d) the cost of restoration of the environment, where it is feasible to assess that cost”.

The immediate consequence is represented, in the basic and in the attenuated version, by the creation of a state of abstract danger towards the protected social value, namely the environment, health and security of people. In the qualified version, the immediate consequence is one of result, consisting either in the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to an ecosystem of considerable size or environmental value or a habitat within a protected site, or the widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water.

From the perspective of the *mens rea*, in the basic version of incrimination, as well as in the aggravated version, the form of guilt with which the act is committed is intention. In the attenuated version, the form of guilt is serious negligence.

The motive or purpose are not elements on which the legal classification of the act depends, but, if it is found that they existed, they will be taken into account when the judicial individualization of the punishment is determined.

According to the provision of Article 4 point (2) of Directive (EU) 2024/1203,

„the attempt to commit the criminal offence mentioned above is punishable as a criminal offence”.

The penalty provided for the commission of the offence by a natural person is imprisonment with a maximum of at least 5 years, according to Article 5 point (2) letter d) of Directive (EU) 2024/1203. When a legal person commits the act, the penalty provided is a fine, according to Article 7 point (2) of Directive (EU) 2024/1203.

4. CONCLUSIONS

Environmental protection is extremely important in the context of protecting human health and safety. The inventiveness of the perpetrators determines the reconfiguration of the criminalization norms, in the sense that it is necessary to modify and supplement the legal provisions to respond to the need to protect important values in society. The emphasis is also placed on close cooperation

between the Member States and the competent authorities at the European Union level to ensure the criminal liability of those who commit environmental crimes but also for correct and complete information on the extent of the criminal phenomenon, which will lead to the orientation of policies to prevent such behaviours.

5. REFERENCES

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