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Ethics in Progress (ISSN 2084-9257). Vol. 17 (2026). No. 1,
Art. #6, pp. 105-120. DOI:10.14746/eip.2026.1.6
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Preventing, Repairing, Punishing: The EU Environmental Crime Directive as a Hybrid Response to Environmental Harm

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Abstract: Starting from the principle of criminal legality – *nullum crimen, nulla poena sine lege* – and from selected environmental cases, this paper examines the difficulties of applying traditional criminal law categories to environmental offences. In environmental harm, causation, *mens rea*, individual responsibility, and even the identification of harm itself are often opaque. Given this complexity, the paper then addresses contemporary debates, focusing in particular on alternative ways of conceptualizing responsibility and punishment in cases of environmental offences. Finally, it analyses Directive (EU) 2024/1203, to be implemented by Member States by May 2027, arguing that it offers a hybrid model of responsibility, punishment and justice through a combination of individual, corporate and institutional responsibility, of retributive and consequentialist theories of punishment, as well as retributive, restorative, and transformative approaches to justice.

Keywords: Environmental harm; responsibility; punishment; Directive (EU) 2024/1203; retributive justice; restorative justice; transformative justice.

Conceptual Premises

In the context of increasingly widespread debates concerning the need to reconsider both the function of punishment within contemporary society and the category of responsibility itself (see Battistoni & Magni 2025), as well as the necessity of rethinking traditional legal categories in light of contemporary challenges, environmental offences represent a particularly urgent and complex case.[1] The EU Directive 2024/1203 "on the protection of the environment through criminal law" attempts to address this challenge from the perspective of criminal law. In doing so, it responds to longstanding debates concerning responsibility, punishment, and environmental harm. It is therefore worth examining the

1 This essay is part of the project *Collective Responsibility towards Nature and Future Generations (ReNa)*, that has received funding from the European Union's Horizon Europe Research and Innovation Programme under the Marie Skłodowska-Curie; grant agreement No. 101064728; funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Research Executive Agency (REA). Neither the European Union nor the granting authority can be held responsible for them.

issues at stake more closely.

First of all, the generally accepted principle of legality holds that *nullum crimen, nulla poena sine lege*, meaning that both the act constituting an offence and the penalty attached to it must be expressly provided by law.[2] Consequently, this principle implies, first, the existence of a law defining a particular wrongdoing as a crime; second, the clear determination of the corresponding penalty; and third, the possibility of identifying concrete cases falling under the relevant legal provisions.[3]

Moreover, criminal offences are traditionally understood as involving both an objective element (*actus reus*) and a subjective element (*mens rea*), although these categories are conceptualized differently across legal traditions. The *actus reus*[4] constitutes the external and objective element of the offence, while the *mens rea* refers to the psychological or subjective element of the crime, linked to the agent's intentions, knowledge, beliefs, or state of mind.[5] Together, the *actus reus* and *mens rea* reflect a particular, predominantly individual and retrospective conception of responsibility upon which traditional theories of punishment have largely rested. Depending on the legal framework, responsibility may be conceived either as subjective responsibility, which in criminal law takes into account the intentional and voluntary character of the action, or as objective responsibility, based primarily on the wrongfulness of the act itself, as is often the case in civil law contexts.

2 The principle is commonly traced back to the German jurist Paul Johann Anselm von Feuerbach, who, in his *Lehrbuch des gemeinen in Deutschland gültigen peinlichen Rechts*, wrote in § 20: "*Jede Zufügung einer Strafe setzt ein Strafgesetz voraus*. (Nulla poena sine lege)", namely that every infliction of punishment presupposes a penal law. He further stated that "*Die Zufügung einer Strafe ist bedingt durch das Daseyn der bedrohten Handlung*. (*Nulla poena sine crimine*)", that is, the infliction of punishment is conditioned by the existence of a prohibited act. Finally, he added that "Die gesetzlich bedrohte That (...) ist bedingt durch die gesetzliche Strafe. (Nullum crimen sine poena legali)", namely that the legally prohibited act is conditioned by the legal punishment itself, insofar as it is through the law that a violation of right is linked to its necessary legal consequence (Feuerbach 1832[11], § 20, 19).

3 The principle *nullum crimen sine lege* is also known through the broader notion of the "rule of law" and is generally regarded as one of the fundamental principles of criminal law in Europe (Ashworth & Horder 2009[6], 57). The formulation presented above can also be derived from Article 7 of the *European Convention on Human Rights*, adopted in 1950, which states in paragraph 1 that: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed." The first part of the provision clearly recalls the principle *nullum crimen sine lege*. However, Article 7 itself is entitled "No punishment without law," corresponding to *nulla poena sine lege*, thus suggesting that the two dimensions are strictly interconnected (Ashworth & Horder 2013[7], 63).

4 "The *actus reus* consists of the prohibited behaviour or conduct, including any specified consequences arising therefrom" (Ashworth & Horder 2013[7], 83).

5 "The *mens rea* is usually described as the mental element – the intention, knowledge, or recklessness of the defendant in relation to the proscribed conduct" (Ashworth & Horder 2013[7], 83). Aristotle's discussion of voluntary and involuntary action in Book III of the *Nicomachean Ethics* may be regarded as an important philosophical antecedent of later conceptions of subjective responsibility and *mens rea*. As Aristotle observed, when agents act under duress or in ignorance of the relevant circumstances, and therefore lack voluntariness, they cannot properly be blamed or praised for their actions, nor fully held accountable for them. Consequently, punishment itself appears to lose its justification (Aristotle 2012, Book 3).

From a temporal perspective, responsibility can be understood either retrospectively or prospectively. Retrospective responsibility is linked to the concept of imputation and is therefore backward-looking: something that an agent did in the past can be imputed, namely attributed to them as their responsibility, insofar as they caused it, at least indirectly, voluntarily, and with awareness of the relevant circumstances. If the act is legally recognized as wrongful, the agent may consequently be punished for it. Aristotle already articulated criteria underlying retrospective responsibility that still largely apply today (Aristotle 2012, Book 3; Werner 2016, 134). Prospective responsibility, by contrast, is future-oriented and arises when agents set normative expectations and obligations for themselves or for other actors (Werner 2016).

Against this background, grounding punishment and responsibility for environmental offences means addressing the nature of environmental harm itself, the kind of responsibility that may be attributed to the agents involved, and the legal frameworks defining both offences and penalties.[6] This paper seeks to engage with these questions by first highlighting the difficulties that environmental damage poses for traditional conceptions of responsibility and punishment (I.), and then by advancing possible solutions, at least at a theoretical level, through engagement with some of the most relevant positions in the contemporary debate (II.). Finally, the paper will examine Directive (EU) 2024/1203 on the protection of the environment through criminal law (III.). The hypothesis to be tested through references to the Directive itself is that it addresses several of the problematic issues previously identified (I.), incorporates some of the theoretical insights emerging from contemporary debates on environmental responsibility and punishment (II.), and advances a hybrid model both of punishment – combining retributive and consequentialist elements – and of responsibility and justice, integrating retributive, restorative, and transformative dimensions – that is, punishment proportionate to wrongdoing, the repair of harm and relationships, and the transformation of the social and institutional conditions underlying harm. In this sense, the Directive may represent a promising attempt to cope more effectively with environmental offences in the future.

I. Punishment and Responsibility for Environmental Harm: Difficulties and Challenges

First of all, in the environmental context, the definition of the *actus reus* becomes particularly problematic, since environmental damage may materialise long after the original act or omission. Here, human actions produce effects that unfold across complex

6 All these aspects fall within the broader field of environmental law. In this context, the importance of clearly defining legal prohibitions and establishing shared international rules has increasingly emerged as a necessary condition for grounding environmental responsibility. Indeed, it becomes difficult to determine whether a state, corporation, or individual has violated environmental obligations in the absence of sufficiently clear normative standards to which responsibility may be referred (see Louka 2006).

and often indeterminate temporal horizons, making both the anticipation and the precise delineation of environmental harm inherently difficult. Moreover, most polluters do not intentionally seek to cause irreversible environmental harm, but rather pursue economic or personal interests while underestimating or ignoring the possible consequences of their actions. As a consequence, the identification of the *mens rea* may also prove difficult, insofar as environmental harm is frequently not the direct object of intention. This makes it increasingly difficult to define environmental crime itself and to establish its relationship to individual agents. Precisely because of this temporal and causal complexity, human responsibility can no longer be limited to immediate causality, but must also take into account effects that are remote in time and structurally interconnected, thereby assuming a necessarily collective dimension.[7]

To illustrate these challenges and understand them more concretely, let us consider a couple of examples among the many cases raising questions of environmental justice and ethics. First, we shall refer to a case decided by the Supreme Court of Sweden.[8] The case concerned the sale of twelve coyote skins marketed as “wolfskins” during a medieval-themed market. Although wolves were protected under the CITES Regulation[9] while coyotes were not, the seller argued that he had used the label “wolfskin” merely for historical and thematic reasons, *without intending* to market specimens belonging to a protected species. The legal problem arose from the wording of the European regulation itself. In the English version, the definition of “specimen” also included goods that “appear” to belong to protected species, whereas the Swedish version lacked this expression. As a consequence, it was not sufficiently clear, in the Swedish wording of the provision, that the conduct in question constituted a criminal offence.

The Swedish Supreme Court therefore acquitted the seller, holding that a conviction would have violated the principle of legality, since the provision did not define the punishable conduct with sufficient clarity. The case illustrates how environmental criminal law may become problematic when the legal provision does not clearly define the environmental offence and when the agent lacks the direct intention to harm a protected environmental interest. In this sense, it raises difficulties concerning both the *actus reus* – the precise identification of the prohibited conduct – and the *mens rea* – the subjective connection between the agent and the environmental wrong.

A further example of the difficulties surrounding responsibility and punishment in the environmental context can be found in the *Sharma v. Minister for the Environment* case in Australia.[10] In 2020, eight teenagers, represented by a nun, filed a class action

7 These issues have been addressed by Serena Vantin through the notion of the necessary “metamorphoses of responsibility” (Vantin 2024).

8 This case is discussed by Olsen Lundh 2024, 3–4 and was published in the legal periodical *Nytt Juridiskt Arkiv (NJA)* 2016, 680 (Olsen Lundh 2024, n. 33).

9 *Convention on International Trade in Endangered Species of Wild Fauna and Flora* 1973, available at: https://cites.org/eng/disc/text.php.

10 At the following link it is possible to access all the documents relating to the Sharma v. Minister

lawsuit before the Australian Federal Court seeking to prevent the approval of a coal mine extension project, arguing that the Minister for the Environment owed a duty of care to young people. According to the plaintiffs, approving the project would have aggravated climate change and caused serious harm to future generations. Under the *Environment Protection and Biodiversity Conservation Act*,[11] they therefore sought an injunction preventing the Minister from authorizing the project.

Although, since 2021, a duty of care aimed at preventing personal harm to children had been recognized under the *Negligence Act*, the Federal Court ultimately refused to grant the injunction. After several judicial developments, the project was approved and no effective duty of care towards the youth was recognized on the part of the Minister. The reasons provided were the following: first, the absence of sufficient proximity between the Minister and the children – a point that can more generally be understood as the *lack of proximity* between present generations and future ones; second, the *indeterminacy of the duty of care* itself; and third, the *unpredictability* of the consequences deriving from the approval of the project, namely the lack of certainty that the coal mine extension would actually cause personal harm to children. These arguments reveal the inadequacy of traditional conceptions of causal, retrospective responsibility and punishment when confronted with the long-term and indirect consequences of human actions on the environment and future generations. More broadly, the case highlights a normative, legal, and socio-political vacuum in environmental matters, linked to the lack of adequate conceptual and legal frameworks capable of grounding justice in this field.

While the Swedish case reveals the tensions between environmental law and the principle of legality – particularly when the environmental offence is not clearly defined and difficulties arise concerning both *actus reus* and *mens rea* – the Sharma v. Minister for the Environment case exposes a different but complementary set of problems concerning proximity, foreseeability, and responsibility for long-term environmental harm affecting future generations.[12]

for the Environment case: Federal Court Online File. I first addressed this case in Battistoni 2023.

11 *Environment Protection and Biodiversity Conservation Act* 1999 (Cth), available at: Federal Register of Legislation.

12 For the first time, human beings are called to answer for their actions not only before other human beings, but also before nature and future generations, which are themselves unable to directly assert rights against present agents. The question of responsibility towards nature has been widely discussed within environmental ethics (see at least Passmore 1974). Even if nature and non-human animals may not be considered "moral subjects" in a Kantian sense, this does not exclude them from becoming objects of ethical inquiry and, as such, at least "moral objects" toward which human agents may bear duties of care and responsibility. This position has been developed by some revisionist approaches to discourse ethics, which attempt to extend ethical consideration beyond the community of rational and linguistically competent subjects. The idea is that nature and future generations are not excluded from becoming objects of ethical reflection, nor are their interests prevented from being represented within the community of presently existing subjects engaged in discourse (on this debate, see at least Eckersley 2007, 24–49 and Morar 2008, 129–158). The reference to future generations (Nolt 2015) also points to the broader debate on intergenerational justice, which in recent years has become the object of an increasing number of studies, volumes, and book symposia. See at least the entry "Intergenerational Justice" in the *Stanford Encyclopedia of Philosophy*, which addresses, among other issues, Derek Parfit's non-

Against this background, several attempts have been made to rethink responsibility and punishment in the field of environmental offences. Without any claim to completeness, the following discussion will touch upon some of these approaches, which will later prove useful for the analysis of the European Directive.

II. Rethinking Punishment and Responsibility for Environmental Offences

In light of the difficulties outlined above, it is useful to consider some of the theoretical responses emerging from contemporary debates on responsibility, punishment, and environmental justice. The aim is not to offer definitive solutions, but rather to explore conceptual resources capable of addressing the challenges that environmental offences pose to conventional legal and moral categories.

The cases examined above highlight three interrelated challenges: 1. the indeterminacy of environmental harm, as evidenced by the Swedish case; 2. the inadequacy of existing legal and normative structures, exemplified by the contested notion of *duty of care* in Sharma; and 3. the resulting uncertainty surrounding responsibility, including the attribution of conduct and the justification of punishment. These challenges prompt the following reflections.

(1) First of all, the need to define environmental harm as clearly and precisely as possible emerges with particular force in order to satisfy the principle of legality embodied in the maxim *nullum crimen sine lege.*[13] Accordingly, the *actus reus* must be clearly identifiable and legally defined as constituting a criminal offence.

(2) Second, institutions bear what has been described as a responsibility to take responsibility (Shockley 2020), namely the duty to establish adequate legal frameworks, mechanisms of accountability, and systems of punishment capable of preventing environmental offences and responding effectively to environmental harm (Werner

identity problem and the debate concerning the rights of future generations (see also Parfit 1984). On the question of intergenerational justice, see also the contributions collected in Gosseries & Meyer 2009; Cordonier Segger, Szabó, & Harrington 2021. As is well known, Hans Jonas was among the first thinkers to recognize with remarkable foresight the necessity of rethinking responsibility in light of nature, technological power, and future generations (Jonas 1984).

13 This requirement has led, for example, to increasingly precise legal definitions of environmental damage. At the Italian national level, for example, environmental damage is defined by Legislative Decree No. 152/2006 as "any significant and measurable direct or indirect deterioration of a natural resource or of the utility ensured by it." The definition refers, among other things, to damages affecting protected species and natural habitats, inland and marine waters, coastal areas, land contamination creating significant risks for human health, as well as forms of air pollution regulated under national legislation. Traditionally, environmental offences in many legal systems mainly concerned unauthorized emissions or violations of administrative licenses and therefore largely belonged to the sphere of administrative law (Faure & Visser 1995). However, the growing recognition of environmental harm as a matter requiring criminal protection led, also under the influence of Directive 2008/99/EC, to the progressive introduction of environmental crimes into national criminal systems. In Italy, Directive 2008/99/EC was first implemented through Legislative Decree No. 121/2011, while Law No. 68/2015 subsequently introduced a specific title devoted to environmental crimes into the Italian Criminal Code.

2016). The Sharma case illustrates the importance of this meta-responsibility: where the relevant normative framework remains uncertain or underdeveloped, the attribution of responsibility and the justification of punishment become equally problematic. Meta-responsibility therefore concerns the capacity of institutions to create the normative conditions under which responsibility can be recognised and enforced in practice. In this sense, it points towards a transformative conception of justice, understood as an approach that seeks not merely to sanction past wrongdoing but to reshape legal and institutional arrangements so as to prevent future environmental harm.

(3) Third, these considerations call for a rethinking of both the concept of responsibility (3.1.) and its normative foundations, as well as of the foundations and functions of punishment in the context of environmental harm (3.2).

(3.1.) With regard to the concept of responsibility, environmental harm makes it necessary to move beyond purely individual and retrospective models towards a broader, collective, and proactive conception, capable of grounding preventive legal frameworks and adequate forms of punishment for both individuals and corporations involved in environmental offences.[14] To this end, environmental theorists have proposed contributory, collective, and differentiated accounts of responsibility for environmental harm. According to this perspective, every human being bears at least a responsibility not to contribute to environmental damage and to help reduce the conditions that generate it (Shockley 2017). As is evident, this is no longer a purely retrospective and guilt-based form of responsibility grounded exclusively on past actions and their imputability, but rather a proactive and prospective conception of responsibility oriented toward the future. Individual responsibility still plays an important role insofar as each person may contribute, directly or indirectly, either to the mitigation of harmful environmental conditions or to their worsening. In this sense, each individual may be regarded at least as an *indirect cause* in the development of better or worse environmental conditions. Environmental responsibility is also *differentiated*, insofar as it recognizes that some states, communities, corporations, or social actors bear a greater degree of responsibility than others for causing environmental damage. In this sense, environmental responsibility has been said to be both *common but differentiated* (Rodeiro 2022): common, because all human beings participate, at least indirectly, in environmental processes affecting the planet; differentiated, because responsibility exists in different degrees, depending on the concrete contribution to environmental harm.[15]

14 The urgency of strengthening national and international legislation in this direction has therefore increasingly emerged, possibly also through more uniform forms of regulation, for instance within the European context, where significant differences between legal systems still persist (Olsen Lundh 2024).

15 In this sense, reference has also been made to a "historical responsibility" approach, according to which responsibility for environmental harm should be assessed not only on the basis of present conduct, but also in light of the cumulative and long-term contribution that particular states, corporations, or communities have made to environmental degradation over time. This also constitutes the basis for forms of compensation and reparation for environmental harm through the payment of an "ecological debt", thereby entering into a broader logic of restorative justice (see

(3.2.) The way in which the legal framework and the concept of responsibility are conceived has significant implications for the justification, functions, and forms of punishment. For example, the "polluter pays principle" has been recognized as an important starting point for grounding environmental accountability. At the same time, however, its application requires significant modifications and adaptations in light of concrete circumstances and presents several practical difficulties closely related to the attribution of responsibility. In many cases, pollution results from the cumulative contribution of multiple actors, making it difficult to identify who exactly the "polluter" is. Moreover, questions arise as to when, according to which criteria, and to whom compensation should be paid, as well as what should count as compensable damage. Consequently, the "polluter pays principle" cannot operate in isolation but must be complemented by the principle of common but differentiated responsibilities (see Bugge 2009).

Moreover, given that environmental offences are often not directly intended by the agents involved – as illustrated by the Swedish case discussed above – establishing *mens rea* may become particularly difficult. This raises the question of the proper basis of punishment. The main positions oscillate between strict liability, which dispenses with proof of a culpable mental state and attaches responsibility to the occurrence of harm itself, and negligence-based models centred on breaches of duties of care and due diligence.

Strict liability does not require proof of guilt, intention, or negligence, but grounds responsibility primarily on the commission of the prohibited act itself. From this perspective, what matters is that a prohibited harmful activity has been carried out in violation of legal provisions, permits, or licensing requirements. Several studies have emphasized the preventive and deterrent function of this model, arguing that punishment based on strict liability may encourage greater attention and caution with regard to environmentally risky activities. In this sense, it has been proposed that environmental punishment should partially shift from a purely guilt-based model toward a more preventive logic linked to the broader need for environmental protection (see Ali, Permana et al. 2022).[16]

By contrast, another line of thought rejects the exclusive reliance on strict liability and instead grounds environmental responsibility and the justification of punishment in duties of care and standards of due diligence, thus framing environmental offences primarily in terms of negligence. Under this approach, liability arises not merely from the occurrence of harm but from the failure to exercise the level of care reasonably required to prevent environmental damage. In this regard, one particularly interesting aspect of the Sharma case is precisely the role attributed to the *duty of care*. The duty of care generally

Schlosberg & Collins 2014).

16 These would therefore be cases involving offences grounded in the violation of permits, authorizations, or regulatory requirements, namely prohibited forms of conduct resulting from the absence or breach of administrative norms.

requires that, whenever a person knows – or could reasonably be expected to know – that their actions may harm the environment, they must take all the measures that can reasonably be demanded in order to *prevent* the danger or limit its consequences. Failure to comply with such duties may give rise to forms of liability grounded in negligence. It is precisely within the law of negligence that the notion of duty of care has its roots in the common law tradition. Indeed, liability for negligence presupposes, first of all, the existence of a duty of care owed by the agent:

> Once a duty is established, the two additional elements to be satisfied before establishing liability in negligence are (1) that there was a failure to observe the standard of care required, and (2) that that failure has caused harm which was reasonably foreseeable. Simply put, the three essential elements of negligence are: (1) a duty to take care; (2) a failure to take care; and (3) harm resulting from that failure to take care (Greiner 2013, 529–530).[17]

By further developing legal standards concerning negligence, states may strengthen the recognition of duties of care owed to the environment. The advantage of this approach lies in the introduction of standards of due diligence that individuals, corporations, and institutions are required to follow, together with the possibility of applying forms of liability in cases of negligent failure to comply with them. From this perspective, liability may arise whenever the agent was aware – or reasonably should have been aware – of a significant risk that the unlawful conduct or harmful consequence could occur, and nevertheless failed to exercise the required standard of care to prevent it (see Cohen 1068). Also, this approach would produce a shift from a retrospective and largely reactive approach to a proactive and preventative one involving a positive environmental duty (Gunningham 2017, 202), thereby taking the survival of both future generations and the environment into account in a preventive way. In this way, responsibility would shift from a model grounded primarily on causal connection to one increasingly based on normative relations and expectations that the agent must be able to understand and comply with (see Werner 2016).[18]

Consequently, two broad approaches have emerged in contemporary debates on environmental responsibility and punishment. On the one hand, some scholars have defended forms of strict liability grounded primarily in the commission of the prohibited act itself. On the other hand, others have sought to ground environmental responsibility and punishment in duties of care and standards of due diligence, thereby linking liability to negligence rather than intentional wrongdoing (see Egteren & Smith 2002). This latter approach has increasingly supported a shift from predominantly administrative responses towards the genuine criminalization of environmental harm and more preventive forms of

17 As also stated in *Newhall Land & Farming Co. v. Superior Court*, actionable negligence presupposes "a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury" (as quoted in Kay 2006, 170).

18 The bridge connecting prospective and retrospective responsibility is therefore constituted by the normative expectations underlying both forms of responsibility (Werner 2016, 132).

responsibility. It is precisely this shift that Directive (EU) 2024/1203 appears to embrace. The Directive will now be examined in order to assess how it addresses the three issues identified above and whether its response can ultimately be regarded as convincing.

III. Directive (EU) 2024/1203 as a Hybrid Model of Justice, Responsibility and Punishment

Following an evaluation of the 2008 European Directive on the protection of the environment through criminal law, the European Commission concluded that that Directive had produced only limited practical effects and that too few environmental cases had been successfully investigated and prosecuted (see Lundh 2024). This led to its revision and replacement by Directive (EU) 2024/1203, which introduces several new elements and features deserving closer attention as possible responses to the problems previously discussed concerning environmental harm.

First of all, as a response to the need to define environmental harms as clearly and precisely as possible in order to ensure the applicability of the principle of legality expressed by the maxim *nullum crimen sine lege* (1.), Article 3 of Directive (EU) 2024/1203 provides a detailed list of twenty *criminal offences* – compared to the nine *offences* contained in the previous 2008 Directive. While this one mainly focused on more traditional forms of environmental harm – such as pollution, waste management, protected species, and habitats – the new Directive adopts a broader and more systematic understanding of environmental harm by extending and further detailing environmental protection in relation to a wider range of ecological risks and regulated activities, including water extraction, ship recycling, invasive alien species, greenhouse gases, and deforestation-related products. The offences are now defined through more precise references to specific European regulations and legal obligations, thereby strengthening legal certainty and reinforcing the applicability of the principle *nullum crimen sine lege*. At the same time, the Directive clearly reflects a broader shift from a predominantly administrative approach toward the genuine criminalization of environmental harm, while also moving from a merely retrospective model of punishment toward a more preventive and proactive conception grounded in due diligence, duties of care, and environmental protection.

This preventive logic emerges particularly clearly in provisions such as Article 3(e), which criminalizes the carrying out of projects without the required environmental authorization, thereby linking criminal liability to the violation of preventive procedures designed to assess and avoid environmental risks in advance. A similarly preventive rationale emerges from Article 3(r), concerning invasive alien species, where criminal liability arises in connection with activities capable of generating systemic ecological harm even before such harm has fully materialized. The provision therefore reflects an anticipatory form of environmental protection aimed at preventing systemic harm to ecosystems and biodiversity.

As regards the conception of responsibility underpinning environmental punishment (3.), the new Directive exhibits both important elements of continuity and significant developments in comparison with its predecessor. On the one hand, Article 6 on the liability of legal persons remains substantially unchanged. The Directive thus confirms a conception of environmental responsibility that extends beyond individual conduct. On the other hand, it continues to attach considerable importance to the personal culpability of natural persons, thereby preserving a central role for individual fault within the attribution of environmental criminal responsibility.

Article 3 provides, as a general rule, that the listed conducts constitute criminal offences when they are unlawful and committed *intentionally*. For several particularly serious environmental offences, however, criminal liability may also arise where the conduct is carried out with at least *serious negligence*. Unlawful conduct may therefore constitute a criminal offence even in the absence of direct intent. The Directive does not, however, adopt a model of pure strict liability. Rather, it progressively broadens the scope of environmental responsibility beyond intentional wrongdoing to include forms of negligence, duties of due diligence, and preventive obligations.

Beyond the corporate dimension of environmental liability, the new Directive further develops institutional and shared forms of environmental responsibility that were less explicit in the previous Directive. This emerges, first of all, from Recital 12, according to which Member States remain free to adopt more stringent rules, including provisions concerning the criminal liability of public institutions. Responsibility for environmental harm is thus no longer conceived exclusively at the level of private actors, but may also extend to public and institutional structures. A similar logic underlies Article 21, absent from the 2008 Directive, which requires Member States to establish national strategies for combating environmental crime by 21 May 2027. These strategies must define the roles and responsibilities of all competent authorities involved in combating environmental offences, including forms of coordination and cooperation between national authorities, Union bodies, and European networks dealing with environmental crimes, particularly in cross-border cases. Environmental responsibility therefore increasingly acquires a coordinated, transnational, and shared dimension.

But one of the most significant innovations introduced by Directive (EU) 2024/1203 concerns precisely the definition of more precise and articulated sanctions, something that was largely absent from the 2008 Directive. This absence probably contributed to the limited practical effectiveness of the previous framework: as already observed, the principle *nulla poena sine lege* requires not only the clear definition of criminal offences, but also sufficiently determinate sanctions. In this regard, Article 5 now provides that *penalties for natural persons* must be effective, proportionate, and dissuasive, thereby explicitly emphasizing the deterrent function of punishment. At the same time, the Directive introduces different levels of imprisonment depending on the gravity of the offence and the consequences produced. In this respect, the Directive clearly preserves an important retributive and proportional dimension of punishment, since sanctions are calibrated according to the seriousness of the offence and the magnitude of the resulting harm.

At the same time, however, the Directive does not rely exclusively on retributive punishment, but also introduces restorative measures, that is, measures primarily concerned with repairing environmental harm and restoring damaged ecosystems and affected communities rather than merely imposing sanctions. For example, Articles 5 and 7, concerning sanctions applicable respectively to natural and legal persons, introduce a wide range of accessory criminal and non-criminal penalties that reveal a restorative understanding of environmental justice. Particularly significant are the obligations to restore the environment where the damage is reversible, or to compensate for environmental damage where restoration is impossible. These measures move beyond a purely punitive logic and clearly open toward forms of restorative justice centered on reparation, remediation, and environmental recovery. Other sanctions – such as the withdrawal of permits and authorizations, exclusion from public funding, judicial supervision, closure of establishments, and publication of judicial decisions – may in some cases exert an even more effective deterrent and preventive impact than imprisonment itself.

Especially relevant, in light of the previous theoretical discussion, is Article 7(i), which allows legal persons to be required to establish due diligence systems aimed at strengthening compliance with environmental law. In this respect, the Directive appears to take a clear position in favor of a model grounded not on pure strict liability, but rather on due diligence, preventive responsibility, and the management of environmental risks. Punishment is therefore no longer conceived solely as retrospective retribution for past harm, but increasingly also as a means of preventing future environmental damage and transforming organizational practices and institutional behavior.

This preventive and transformative orientation emerges even more clearly in Article 16, explicitly entitled "Prevention," which requires Member States to adopt appropriate preventive measures, including information and awareness-raising campaigns directed at both public and private stakeholders, as well as research and educational programs aimed at reducing environmental offences and the risk of environmental crime.

Other highly significant innovations suggest that the Directive also moves in the direction of a transformative understanding of environmental justice, by introducing elements aimed at modifying the structural conditions underlying environmental harm. Article 14, for instance, requires Member States to adopt measures protecting persons who report environmental offences, thereby recognizing the importance of participation, transparency, and access to justice in environmental matters. Equally significant are the provisions concerning information and education. Article 15 refers to the publication of information in the public interest, while Article 18 explicitly requires specialized training for judges, prosecutors, police officers, judicial staff, and competent authorities involved in environmental proceedings. The Directive thus shows a clear awareness that knowledge and information are essential instruments for combating environmental crime: the public has a right to be informed, while judicial and administrative authorities have a corresponding duty to acquire the expertise necessary to act effectively.[19] Similarly, Article 19 further emphasizes the importance of coordination among competent national authorities, while Article 22 requires Member States to collect registration and statistical data concerning environmental offences in order to monitor the phenomenon more effectively. Taken together, these provisions suggest a conception of environmental justice that is not limited to punishment after the fact, but seeks to transform the social, institutional, cultural, and informational conditions that allow environmental harm to emerge and persist. At the same time, they reflect an awareness of the meta-responsibility of institutions to establish clear normative frameworks and conditions of accountability within the environmental field (2.).

A final noteworthy aspect is that the Directive explicitly refers to ecocide, thereby showing sensitivity to the ongoing debate concerning the possible inclusion of ecocide within the Rome Statute of the International Criminal Court (see Nowak 2022). In particular, the Directive refers to conduct "comparable to ecocide," thus acknowledging the growing international discussion surrounding the criminalization of severe and widespread environmental destruction.[20]

IV. Concluding Remarks

This article has shown how the context of the contemporary environmental crisis profoundly challenges several traditional categories of legal and moral philosophy, especially those concerning responsibility and punishment. Classical guilt-based, retrospective, and individual models of responsibility appear increasingly insufficient when confronted with environmental harms that are often collective, systemic, transnational, and projected toward the future. Environmental harm forces legal and philosophical reflection to rethink responsibility beyond narrow causal and individualistic paradigms, while at the same time preserving the relevance of personal culpability, due process, and the principle of legality. Likewise, punishment itself can no longer be understood exclusively either in retributive terms or according to a purely utilitarian and deterrent rationale.

The article has therefore reconstructed some of the main theoretical difficulties and proposals emerging within contemporary debates, including discussions surrounding

19 For an interesting reflection on the necessary cooperation between science and legal judgment – in a way that still allows judges to preserve their critical autonomy while addressing contemporary challenges, including environmental ones – see Farano (Farano 2024).

20 On the connection between ecocide and structural injustice, and on the argument that it is the behaviours producing ecocide that must be changed, together with the need for coordinated public action aimed at prevention, see Rodeiro (Rodeiro 2022).

strict liability, negligence, duties of care, collective and corporate responsibility, restorative justice, and transformative approaches to environmental harm. Against this background, the analysis of Directive (EU) 2024/1203 has shown how the new European framework appears to incorporate several of these developments and tensions within a single legal instrument that Member States will be required to implement in the coming years.

The Directive emerges, first of all, as the expression of a mixed conception of punishment. On the one hand, it preserves important retributive and proportional elements, particularly through the differentiation of sanctions according to the gravity of offences and the harm caused. On the other hand, it explicitly emphasizes deterrence and prevention by requiring sanctions to be dissuasive. At the same time, the Directive adopts a similarly hybrid conception of responsibility: while continuing to recognize the personal culpability of natural persons, it also extends responsibility to legal persons and increasingly to institutional and collective dimensions of environmental governance. Moreover, through the precise definition of environmental criminal offences and sanctions, the Directive strengthens the applicability of the principles *nullum crimen sine lege* and *nulla poena sine lege*, thereby addressing some of the major weaknesses of the previous framework.

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