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CORPORATE CRIMINAL LIABILITY UNDER THE EU DIRECTIVE ON THE PROTECTION OF THE ENVIRONMENT AND UKRAINIAN CRIMINAL LAW: A COMPARATIVE STUDY

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Abstract. This paper critically compares the current framework of criminal liability for organizations in Ukraine with the proposed EU legislative approach. The study examines the new model of corporate criminal liability for environmental offences under the EU Directive 2024/1203 on the protection of the environment through criminal law, and compares it to the established Ukrainian model. Drawing on the authors' research, the paper outlines ways to improve the existing corporate liability regime in Ukraine. The legal analysis focuses on the autonomous model of criminal liability for legal entities, while emphasizing the system of "effective, proportionate, and dissuasive" sanctions advocated by the EU Directive. Based on a comprehensive theoretical examination and case law research, the practical implications of prosecuting environmental crimes committed by organizations are explained. The authors conclude that the EU's flexible and autonomous model of corporate liability calls for broader environmental accountability and stronger preventive action. In contrast, Ukraine's subsidiary, individual-liability-centred approach leaves significant gaps when addressing corporate involvement in environmental wrongdoing. We argue that aligning Ukrainian law with the proposed EU standards, by extending the liability regime for major environmental offences to legal entities and introducing restorative and compliance-oriented measures, is both necessary and relevant in the context of closer European integration.

Keywords: Corporate Criminal Liability, Criminal Offence, Environment, Business Organization, Sanctions, Comparative Research.

Introduction

The issue of holding legal entities criminally liable for environmental offences is gaining traction amid global developments in environmental protection and institutional transformations in the criminal law systems of both EU member states and Ukraine. Historically, the harmonization of Ukrainian environmental legislation with relevant EU law began with the signing of the Partnership and Cooperation Agreement between Ukraine and the European Communities and their Member States (Council and Commission Decision, 1998). In particular, Article 51 of this document identified the improvement of domestic environmental legislation and its alignment with European standards as a key objective for Ukraine. Accordingly, Ukraine has committed to continually conforming its legislation to EU law, including in the field of environmental regulation.

Law enforcement realities demonstrate that traditional approaches that rely solely on administrative or civil law mechanisms are insufficient to prevent large-scale violations of environmental law (Danylevska et al., 2021). In contrast, contemporary European legislation, particularly Directive 2024/1203 of the European Parliament and Council on the protection of the environment through criminal law (replacing Directives 2008/99/EC and 2009/123/EC, and hereinafter referred to as the EU Directive), offers an updated model of criminal law regulation. It introduces a detailed framework for an autonomous (independent) regime of corporate liability for environmental crimes and diversified sanctions for their commission (Directive (EU), 2024).

Within this context, a critical examination of relevant European experiences in the criminal law regulation of environmental protection is both timely and important. It is equally important to establish how the Ukrainian model of criminal sanctions against organizations aligns with those new European standards, and whether it is conceptually capable of ensuring adequate protection of the environment from unlawful corporate misconduct.

Regarding the chosen research methods, this paper is primarily based on the comparative law method. Nowadays, comparative criminal jurisprudence, as a distinct area of legal science and a methodological component of criminal law research, is gaining prominence and traction across various jurisdictions, including European states. This methodological approach is justified by the forces of globalization and legal harmonization, which increasingly require national criminal law systems to respond to environmental harm in close coordination with international standards and foreign legal models. Thus, comparative research is essential when seeking effective regulatory and sanctioning mechanisms across different legal systems.

Besides the comparative analytical framework, the authors have widely used the method of statutory interpretation. This enabled the successful determination of the meaning, scope, and proper application of key

provisions of the EU Directive on the Protection of the Environment as well as the Criminal Code of Ukraine regarding corporate criminal liability.

Additionally, this research uses case law analysis to demonstrate how corporate environmental wrongdoing is investigated, prosecuted, and adjudicated. In particular, the "Dieselgate" case and several Ukrainian criminal cases will be discussed below, revealing both the advantages and shortcomings of holding organizations (and, for that matter, states) liable for various environmental offences.

AI-assisted technology (ChatGPT 5.2 AI model) was used to prepare two comparative tables on types of environmental offences and elements of corporate criminal liability, as prescribed by EU Directive 2024/1203 and the Criminal Code of Ukraine. After using this tool, the authors carefully reviewed and edited the content and accept full responsibility for the result, while declaring adherence to the highest standards of scientific integrity. The AI-powered software Grammarly was also used to assist with grammar correction, stylistic editing, and clarity.

Based on a comprehensive analysis of the EU Directive, European scholarship, and relevant case law, this paper argues that Ukraine should undertake substantial criminal law reforms to strengthen the protection of the environment and natural resources against corporate misconduct. The authors view the primary objective of the paper as twofold: 1) to compare corporate criminal liability mechanisms for environmental offences in the EU Directive and in the Criminal Code of Ukraine (hereinafter, the CCU); 2) based on the results of the legal analyses, to elaborate on the potential improvements to Ukrainian criminal law regulation of the environment by holding corporate wrongdoers liable.

Accordingly, this study is divided into three main parts: the first outlines historical background, contemporary trends, and key parameters regarding corporate criminal liability in Europe; the second identifies key features as well as shortcomings in the process of harmonization of EU and Ukrainian corporate criminal law in the area of environmental protection; and the third part compares and synthesizes meaningful analyses of sanctions for corporate environmental offences in the two jurisdictions. A comparative table on the key elements of corporate criminal liability in the EU Directive and the CCU summarizes the analytical framework of our research.

1. Evolution of the concept of corporate liability in the European Union and Ukraine: from rejection to gradual implementation

1.1. Introduction of the concept of corporate criminal liability in Europe: key points

The concept of corporate criminal liability, as we recognize it today, did not originate in Europe. Instead, it was introduced into European official and academic discourse primarily through the United States' federal law and practice. In America, corporate criminal liability became firmly established as an instrument of criminal law in response to the rapid increase in economic criminality at the beginning of the 20th century. In particular, the foundations for such liability were set by the precedential ruling of the US Supreme Court in the case of New York Central & Hudson River Railroad Company v. United States (1909), which recognized for the first time that a corporation could be prosecuted for committing a crime with intentional guilt (willfulness), as required by federal statutes (New York Central, 1909).

More recently, the European Parliament resolution of May 20, 2021, on the liability of companies for environmental damage (2020/2027(INI)), highlighted several critical issues related to such a liability framework. Among the relevant provisions in the document are: 1) the overall number of companies prosecuted for environmental offences remains low, despite the large scale of violations; 2) environmental harm must entail administrative, civil, and criminal liability for corporate offenders, without violating the core *ne bis in idem*

principle; 3) no unified EU framework currently allows for the prosecution of EU-based companies for environmental crimes committed abroad; 4) corporations convicted of environmental crimes should face bans on accessing EU transparency tools or registers, including the possibility of temporary exclusion from EU funding.

These important findings by the European legislator emphasize the need for national legislators across various EU jurisdictions to consider establishing corporate criminal liability in environmental matters – particularly in light of the shortcomings of limited enforcement and the shielding (or "corporate veil") effects of modern organizational structures (European Parliament, 2021). As we explain in the following part of the paper, this is not a binding obligation on Member States, but rather a new liability option for European national legislators to consider.

As for European scholarship, several research papers and analytical studies on corporate criminal liability frameworks in the European Union have been published recently. The authors of one comprehensive study, "European developments in corporate criminal liability" (Gobert & Pascal, 2011), explain that existing European systems of corporate criminal liability reflect differing answers to a significant question: how can a collective entity be held accountable within a criminal law framework traditionally built around individual guilt? In seeking answers to this complex question, several distinct yet partially overlapping models have emerged across European jurisdictions. Among them: the identification model, the attribution (or limited vicarious liability) model, the organizational (or corporate fault) model, and the model of statutory criminal liability. The latter regime will remain in the focus of our research.

Some European states have opted for administrative or hybrid administrative-criminal models rather than a complete corporate criminal liability model. This becomes especially evident in European environmental policy and regulation to date. In these legal systems, corporations are not (or not only) subjected to classical criminal prosecutions, but may face punitive administrative sanctions, such as substantial fines or confiscation measures. Such an approach is often justified by long-standing constitutional or doctrinal objections to attributing criminal liability to legal persons, while still ensuring effective enforcement of laws against corporate wrongdoing. Germany, in particular, and several Nordic states, exemplify such a hybrid model as a matter of regulatory compromise.

The current European approach to regulating environmental criminal liability standards for organizations is somewhat cautious and non-imperative. The explanatory memorandum of the proposal for the EU Directive only mentioned that Member States are required to ensure that legal persons may be held liable for environmental offences committed for their benefit (European Commission, 2021). Such liability may arise not only from direct involvement in criminal conduct but also from allowing such offences to occur through failures to exercise adequate supervision or control. At the same time, the proposal itself emphasized that the liability of legal persons should not preclude parallel criminal proceedings against individuals responsible for the same conduct.

Such a restrained formulation reflects the broader international and European legal context. While numerous international instruments, standards, and policy initiatives call for or recommend the imposition of liability on corporations, binding legal instruments have thus far refrained from prescribing the precise legal nature of this liability regime. Instead, they leave it for the States to decide whether corporate liability should take an administrative, civil, criminal, or some hybrid form. At the European level, while multiple instruments endorse the principle of direct liability of legal persons for serious environmental offences, none impose a binding obligation on Member States to recognize corporate criminal liability as such, thus effectively placing it within a "soft law" area.

1.2. Scholarly arguments for the introduction of corporate criminal liability into environmental regulation

Dutch scholar Michael Faure, who has dedicated a significant part of his scholarship to environmental crime in Europe, draws attention to a fundamental issue: today, legal entities shielded by limited liability have become the most significant polluters in Europe. If a corporation causes damage exceeding its available assets, its inability to compensate victims renders its civil liability ineffective. Faure further notes that traditional criminal law doctrines, as rooted in the established concept of individual guilt (*mens rea*), historically excluded corporate liability. However, many EU Member States have moved beyond this narrow approach by recognizing that corporations must also be held criminally liable, especially for crimes involving systemic and high-impact environmental damage (Faure, 2021).

Another European commentator, Nigel South, points out that corporate wrongdoers often exploit specific vulnerabilities in national environmental regulatory frameworks in order to generate additional profits. Such cases can be observed throughout Western Europe across various industries, including waste management, logging, fishing, mining, and other natural resource-based industries. He adds that companies operating in those sectors are often remunerated before providing services (South, 2011).

For a meaningful comparison, Ukrainian commentators argue that the national waste management system suffers from persistent structural deficiencies. Approximately 95 percent of waste is disposed of in landfills, while only a marginal share is recycled or incinerated. A substantial proportion of existing landfills fail to comply with statutory and sanitary standards, and the country lacks sufficient incineration capacity (Golovko, 2020). When taken together, the large volume of accumulated waste and the absence of effective prevention, recovery, and disposal measures continue to exacerbate Ukraine's environmental crisis, while also creating significant opportunities for illegal "waste management" business practices by various regional companies that conduct "for profit" recycling.

It is important to add that, as Ukrainian researcher Zoya Zahynei-Zabolotenko points out, provisions governing the application of criminal law measures to legal entities in Ukraine establish a new, and previously unknown, complex body of law. This body consists of two interrelated organs: one of a substantive criminal law character, and the other of a criminal procedural nature. A specific subject matter characterizes it: adjudication of cases where an authorized person of a legal entity commits a criminal offence in the interests of that legal entity. However, in judicial practice, serious errors may occur in the application of criminal law measures to legal entities within the relevant regulatory framework. This is mainly due to the absence of a coherent structural section in the Criminal Procedure Code that consolidates both substantive and procedural norms governing the application of such measures (Zahynei-Zabolotenko, 2024). We will argue here that the unsatisfactory law-enforcement situation in this area of criminal law regulation is due to the lack of a unified understanding among investigators, prosecutors, judges, and defence attorneys regarding how the whole mechanism for applying criminal law measures to legal entities – both substantive and procedural – should operate in Ukraine. In other words, there is still a long road ahead for this new legal approach – both in terms of understanding corporate liability mechanisms and also in applying them in criminal prosecutions, including for environmental offences.

Thus, we can state that illegal waste disposal, as well as other forms of environmental crime, are committed regularly in both Ukraine and EU member states. The key question, however, remains: what is the best option for dealing with such large-scale, often high-profile, criminality? Should it be corporate criminal liability regime, hybrid administrative-criminal liability framework, or some other form of legal remedy?

Based on our analyses, we believe that the criminal liability regime should not become the only avenue for holding corporate wrongdoers liable for large-scale environmental transgressions. This can be illustrated, among

other factors, by the significant number of regulatory and law enforcement agencies that investigate and prosecute such violations on a global scale (Figure 1).

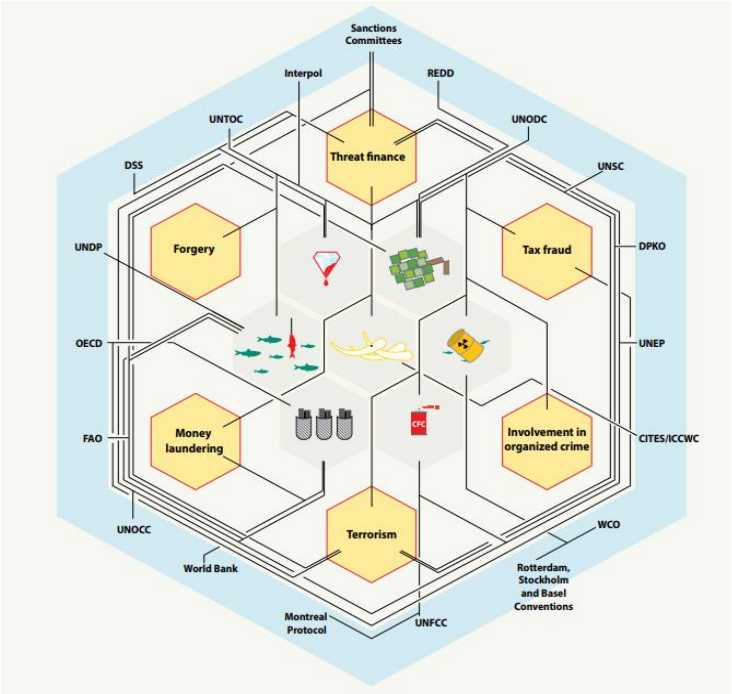

Figure 1. A global network of international organizations authorized (among other tasks) to combat environmental offences (Nellemann et al., 2016)

1.3. The "Dieselgate" scandal and Ukrainian case law as additional arguments for introducing environmental corporate liability

Two major cases which have contributed to large-scale public and expert debates in Europe on holding business organizations liable for environmental offences are worth reviewing within our analytical framework.

A recent example from European (specifically, German) law enforcement practice illustrates both the pragmatism and the effectiveness of criminal prosecution of large corporations for violations of environmental laws and regulations. It also reveals that prosecutors and courts can conduct simultaneous criminal proceedings against both corporate offenders and natural persons, such as high-ranking executives of these organizations.

The criminal prosecution of Volkswagen in 2015, known as "Dieselgate," was triggered by an investigation by the U.S. Environmental Protection Agency (EPA). Federal agents discovered that Volkswagen had deliberately and systematically installed sophisticated software in its diesel vehicles that manipulated official emissions test results. In early 2017, Volkswagen (VW) reached a plea agreement with the U.S. Department of Justice. The company admitted to conspiring to defraud the U.S. government and consumers, as well as violating the federal Clean Air Act, by submitting false information and misleading both the EPA and customers about the compliance with the U.S. emission standards of several Volkswagen, Audi, and Porsche diesel models (U.S. Department of Justice, 2017). The EPA investigation led not only to further criminal proceedings against VW in the U.S., but also triggered a broader inquiry into the company's conduct in Europe, especially in Germany. Subsequently, German prosecutors also initiated criminal investigations into the company's conduct.

In May 2025, the Regional Court of Braunschweig convicted four former VW senior managers of "particularly serious" fraud, linked to the concealment of software that artificially reduced emissions during testing (Connor, 2025). In Germany, unlike in the United States, the United Kingdom, and some other jurisdictions, VW was not criminally prosecuted as a legal entity, since the German Criminal Code does not currently provide for corporate criminal liability. However, under §30 of the German Administrative Offences Act (Gesetz über Ordnungswidrigkeiten (OWiG)), administrative liability measures can be imposed on companies. In 2018, VW, as a legal entity, admitted to supervisory failures and paid a record €1 billion in administrative fines – the largest in German history to date (Cremer & Schwartz, 2018). Altogether, the German car manufacturer has paid over €33 billion in civil settlements, administrative fines, and criminal penalties in the U.S. and EU countries over several years.

The "Dieselgate" scandal evidently contributed to the ongoing public and professional debate about the need to introduce corporate criminal liability. Responding to intense public and expert debates, the German government drafted the *Verbandssanktionengesetz* (VerSanG or Corporate Sanctions Act) in the 2020s, aiming to create a legal framework for holding legal entities criminally accountable for serious offences, including environmental crimes (Allahverdiyev & Othman, 2022). The core idea behind this draft Act was to establish, for the first time in German legal history, a comprehensive system for punishing legal entities (corporations, companies, and associations) for "organizational" crimes.

From the Ukrainian side of our comparison, a researcher's dive into national case law reveals that while in most cases individual offenders are held criminally liable for committing various environmental offences, in many of those cases, these individuals held high managerial positions or had ownership interests in various business organizations, and thus operated in the best, albeit illegal, interests of those companies. The following case exemplifies this pattern.

In one criminal case (of many) related to the illegal extraction of minerals of local significance in the Sumy region of Ukraine, the court found that an individual offender knowingly engaged in unauthorized sand mining without a subsoil-use permit. To facilitate the offence, he entered into lease and service agreements with a local company, "Bakhmachgazbudservice, LLC" (LLC), which operated an asphalt production plant. Under these agreements, the company provided heavy machinery, transport vehicles, and some of its industrial premises for storing illegally extracted sand. Using the LLC's truck and front loader, the offender extracted and removed more than 89 tons of sand from an unauthorized quarry, causing significant environmental harm (Verdict, 2022).

Although the company's employees remained formally unaware of the illegal purpose, the LLC's assets and infrastructure were directly instrumental to the commission of the offence, thus demonstrating the company's factual involvement and functional complicity in unlawful sand mining operations. Even in the absence of proven intent on the part of individual employees or the business entity as a whole, this criminal case reveals how a legal person may become factually complicit through enabling conduct, consistent with the Directive's approach to liability of legal persons for environmental crimes committed for their benefit, albeit indirectly, or through their assets and various other operational resources.

To briefly summarize the case analyses above, both "Dieselgate" and other criminal cases in EU member states and Ukraine have exposed the vast inadequacies of corporate accountability in Europe and have also acted as a major driver of both legal and institutional reforms. They have directly influenced the EU's revised Environmental Crime Directive and have led several Member States to rethink national approaches to corporate criminal liability. Such cases, which often involve considerable environmental damage and resulting in public outcry, have helped shift environmental protection from primarily administrative mechanisms to criminal law regulation, especially when corporate behaviour is deceptive, large-scale, and intentional.

2. Harmonization of EU and Ukrainian corporate criminal law in the environmental protection area: emerging trends and challenges

Since officially attaining EU candidate status in 2022, Ukraine has expressed a strong commitment to harmonize its national criminal law with the EU acquis. The Union, as a supranational, multi-jurisdictional body, has the authority to set binding minimum criminal law standards for its Member States. Against this important political and legal backdrop, analyses of the recently adopted Directive 2024/1203 becomes both timely and practically relevant.

The Directive significantly modifies the regulatory approach to prosecuting environmental crimes by introducing a much broader scope of criminalized behaviour, and also mandating the imposition of proportionate, effective, and dissuasive penalties. As a potent legal instrument of secondary EU law, the EU Directive requires Member States to establish minimum levels of criminal enforcement, while allowing them to introduce stricter national provisions in accordance with the principle of subsidiarity.

Careful examination of some of the Directive's key innovations reveals that it establishes a relatively progressive and unified model of environmental criminal protection. However, while this model ensures effective sanctioning mechanisms, it also faces understandable resistance from some national legislatures. One reason is that criminal law, as a vital element of state sovereignty, is traditionally conservative. Similar internal tensions are expected to pose challenges for Ukraine as it modernizes its national criminal law system toward the proposed EU standards.

Notably, the Directive's most innovative aspects address corporate liability. In practice, many of the economic activities of companies are already regulated by administrative compliance requirements under existing EU environmental law. However, the EU Directive marks a significant shift towards recognizing "autonomous" environmental criminal statutes for organizations, thus necessitating a distinct legal approach to their investigation and prosecution.

Article 6 "Liability of legal persons" of the EU Directive requires Member States to ensure, within their national statutes, that legal persons can be held liable for criminal offences, as outlined in Articles 3 and 4 of the Directive, when such criminal wrongdoing has benefited them. However, the somewhat "soft" wording of the provision – "legal persons can be held liable for criminal offences" – indicates an alternative rather than a mandatory requirement for corporate environmental criminalization. Indeed, systemic analyses of the whole Directive text suggests that the EU legislator does not require the establishment of a single mandatory model of liability.

For a meaningful analysis, the following table compares the main types of environmental offences under the EU Directive (Article 3) and the CCU (Chapter VIII of the Special Part), which, in practice, can be committed by organizations primarily for profit. Indeed, the wording "placing on the market", "illegal manufacture", "export", "execution of projects", "illegal shipment", "disposal of hazardous waste" etc., as used in the Directive's text, points at the potential economic, albeit illegal, activity by specific business organizations, which may directly or indirectly harm some aspects of the environment. We will also add that, in the case of Ukraine, only individuals can be criminally liable for such offences at this time.

Article 3 clause, EU Directive	EU offence category (short description)	Corresponding provision of the Criminal Code of Ukraine
(a)	Discharge or emission of substances, energy, or radiation causing or likely to cause death, injury or serious environmental damage	Art. 236 (Violation of environmental safety rules); Art. 241 (Air pollution); Art. 242 (Violation of rules related to water protection); Art. 243 (Marine pollution); Art. 239 (Contamination or deterioration of land)
(b)	Placing on the market prohibited or non-compliant products leading to pollution and serious environmental harm	Art. 236 (Violation of environmental safety rules); Art. 253 (Designing or operating constructions without systems of environmental protection)
(c)	Manufacture, placing on the market, export or use of hazardous or restricted chemical substances causing serious harm	Art. 239 (Contamination or deterioration of land); Art. 236 (Violation of environmental safety rules)
(d)	Illegal manufacture, use, storage or trade in mercury and mercury-containing products causing harm	Art. 239 (Contamination or deterioration of land); Art. 236 (Violation of environmental safety rules)
(e)	Execution of projects without development consent causing substantial environmental damage	Art. 236 (Violation of environmental safety rules); Art. 253 (Designing or operating constructions without systems of environmental protection)
(f)	Illegal collection, transport, treatment or disposal of waste, including hazardous waste	Art. 239 (Contamination or deterioration of land); Art. 236 (Violation of environmental safety rules)
(g)	Illegal shipment of waste in significant quantities	Art. 239 (Contamination or deterioration of land); Art. 236 (Violation of environmental safety rules)
(h)	Non-compliant recycling of ships	Art. 243 (Marine pollution)
(i)	Ship-source discharge of polluting substances damaging the marine environment	Art. 243 (Marine pollution)
(j)	Operation or closure of dangerous industrial installations causing death, injury or environmental damage	Art. 236 (Violation of environmental safety rules); Art. 253 (Designing or operating constructions without systems of environmental protection)
(k)	Construction, operation or dismantling of offshore installations causing serious environmental damage	Art. 236 (Violation of environmental safety rules); Art. 244 (Violation of law on the continental shelf of Ukraine)
(l)	Illegal handling, transport or disposal of radioactive materials causing serious harm	Art. 237 (Failure to eliminate consequences of environmental pollution); Art. 236 (Violation of environmental safety rules)
(m)	Illegal abstraction of surface water or groundwater causing ecological damage	Art. 242 (Violation of rules related to water protection)
(p)	Placing on the market or exporting commodities linked to deforestation	Art. 246 (Illegal logging or illegal transportation, storage, and sale of timber); Art. 245 (Destruction or impairment of flora)
(s)	Production, use, import or export of ozone-depleting substances	Art. 236 (Violation of environmental safety rules)
(t)	Production, use, import or export of fluorinated greenhouse gases	Art. 236 (Violation of environmental safety rules)

Table 1: Main Environmental crimes under Article 3 of the EU Directive and Section VIII of the Criminal Code of Ukraine (Source: AI-generated structure, based on the authors' research)

We will add here that the Ukrainian criminal statutes, as provided in the Table above, also possess a strong potential to be enforced against organizational offenders. However, this potential has not yet been realized due to various legislative shortcomings in regulating "personal v. corporate" liability regimes under the CCU.

The EU Directive does not require corporate liability to be criminal in nature – the only requirement is that such liability is directly connected to a specific environmental offence, i.e., an appropriate nexus element is required. To the contrary, it provides for an option to choose the most effective combination of criminal and/or non-criminal measures (administrative, regulatory, financial, tax, etc.), based on the Member State's own legislative discretion, with the purpose of not just punishing corporate misconduct but also correcting it and preventing it from being repeated in the future. Indeed, as both the title and the contents of Article 7, "Penalties for legal persons," of the EU document suggest, Member States are required to ensure that a violating organization is punished "by effective, proportionate and dissuasive *criminal or non-criminal* penalties or measures" (italics added). Thus, a broad latitude is wisely granted to national legislators in tailoring the most appropriate organizational liability regime to fight environmental criminality.

As we will further explain, Ukraine has already established its own model of corporate criminal liability, which remains subsidiary to individual criminal liability and is based on special measures imposed on corporate wrongdoers. However, at this point, the Ukrainian model completely ignores the need to prosecute corporate environmental crime, since it excludes environmental crime statutes from the list of grounds for imposing corporate liability measures.

The comprehensive study "Environmental liability of companies", commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs in 2020 (Faure, 2020), provides a thorough analysis of the environmental corporate liability framework in the EU, which may also serve as thoughtful, well-balanced guidance for Ukrainian legislative proposals in this vital area of public regulation. To ensure that corporate wrongdoers fully comprehend the social costs of causing environmental harm, the study emphasizes strengthening the corporate enforcement framework by balancing civil, administrative, and criminal liability, with greater reliance on administrative fines and government oversight. The study contains fifteen significant recommendations to improve the standards of corporate (not only criminal) liability in environmental regulation. We believe such expert advice to be especially valuable for Ukraine, since both corporate liability frameworks and the record of legal regulation of environmental policy and its key components remain largely *terra incognita*.

Thus, the introduction of the flexible, or "hybrid," model of liability of legal entities for environmental crimes in the EU Directive demonstrates an innovative regulatory approach to combating harmful environmental activities.

Additionally, based on our reading of Articles 6 and 7, as well as other related provisions of the EU Directive, we will argue that this regulation also allows for the imposition of non-punitive measures on corporate wrongdoers. The Directive's primary goals appear to be the effectiveness of environmental regulation, proactive deterrence, and the obligation to eliminate the ecological harm caused by an offence while restoring the necessary environmental balance. Mere punishment and retribution are not enough. We view this as a wise, pragmatic approach, since most businesses (the most common offenders) are primarily motivated by profit-making. Once again, the key message for national legislators here should be: do not simply impose severe criminal punishment; instead, choose the appropriate legal remedy for the specific corporate wrongdoer, and ensure that environmental damage is eliminated while the risks of repeated violations are reduced.

In Ukraine, however, the model of criminal law measures against legal entities remains subsidiary – dependent on personal criminal liability. As a matter of law, Article 96-3 of the Criminal Code of Ukraine establishes the

grounds for applying criminal law measures against legal entities. Such measures may be imposed when an authorised person, acting on behalf of and in the best interests of a legal entity, commits offences in specific categories, including corruption-related crimes, terrorism-related offences, offences against national security and public order, and also some crimes against children. Liability may also arise when an organization fails to implement legally required anti-corruption measures, thereby enabling the commission of the corresponding offences. An offence is considered to have been committed for the benefit of a legal entity when it results in an unlawful advantage, creates conditions for obtaining such an advantage, or is aimed at evading legal responsibility.

In our opinion, this legislative approach requires reform (adjustment) to develop mechanisms similar to those in Europe for the independent criminal prosecution of organizations for environmental (and other) offences, primarily by amending Article 96-3 of the CCU. Current restrictions, in particular those related to the narrow list of criminal offences for which such liability may be applied, as well as certain shortcomings in legal and procedural regulation, significantly reduce the effectiveness of combating environmental offences in Ukraine's corporate sector.

While Ukrainian law recognizes both administrative (Chapter 7 "Administrative Offences in the Field of Nature Protection, Use of Natural Resources, Protection of Cultural Heritage" of the Code of Ukraine on Administrative Offences) and criminal (Chapter VIII "Criminal Offences Against the Environment" of the CCU) liability for a wide range of environmental offences, those provisions are designed primarily to target individual offenders rather than corporate ones. Furthermore, the previously mentioned Chapter XIV-1 "Criminal Measures Against Legal Entities" of the national Criminal Code does not refer to any "environmental" statutes of the Code, thus neglecting, either deliberately or due to a legislative oversight, corporate environmental criminality in its various forms. As we will argue in the next section, such a legislative gap has to be eliminated.

Overall, despite the current realities of law enforcement and adjudication in Ukraine, which indicate the *de facto* involvement of legal entities in the commission of environmental offences, the national Parliament has yet to recognize the need to introduce both administrative and criminal liability models for organizations as significant statutory amendments to existing law. Before drastic measures are taken, as the EU Directive reasonably recommends, large-scale corporate criminality related to natural resources and environmental protection will continue to allow significant profits to be made at the cost of societal well-being and government reputation. The greedy approach, akin to "nothing personal – just business," remains an option here.

3. Sanctions for committing corporate environmental offences: the Ukrainian model through comparative analyses of the EU Directive

Due to their novelty and large-scale impact on business and society, numerous debates have been sparked in both legislative and enforcement communities in Europe regarding the scope and specific mechanisms for sanctioning corporate offenders, in general, and for environmental crimes in particular.

Key provisions of the EU Directive demonstrate the European legislator's desire to ensure a flexible yet effective arsenal of criminal and related sanctions against corporate offenders, capable of deterring unlawful behaviour. The application of various sanctions, including the liquidation of the enterprise, the revocation of licenses, and the closure of access to state funding, creates a mechanism for conditionally differentiated criminal law enforcement against corporate offenders, depending on the circumstances of a particular criminal case.

Article 7 of the Directive provides for a detailed list of criminal sanctions that can be applied to legal persons found guilty of committing criminal environmental offences. Additionally, it specifies some key parameters for their application. In particular, this provision stipulates that Member States shall take the necessary measures to

ensure that legal persons held liable under Article 6 are subjected to effective, proportionate, and dissuasive criminal or non-criminal sanctions or measures.

Professor Faure labels this approach "the toolbox approach". He explains that although the EU Directive emphasizes the role of criminal law in environmental protection, it also clearly accommodates administrative remedies as an alternative liability regime. Article 3(1) significantly expands the scope of criminalized conduct and introduces liability for serious negligence in some instances. At the same time, the Recitals and substantive provisions underline that such criminal sanctions are not exclusive. On the one hand, as Faure points out, the Directive expressly preserves civil liability and requires the availability of administrative penalties. However, Recital (45) clarifies that the requirement to establish criminal penalties does not relieve Member States of their duty to establish and impose administrative sanctions and other measures for violations of EU environmental law. More broadly, Recital (47) emphasizes that national judicial and administrative authorities should have access to a diversified set of criminal and non-criminal measures, including preventive measures, in order to effectively respond to environmental offences in a proportionate, effective, and preventive manner (Faure, 2024). This approach is further embodied in Articles 5 and 7, which provide for a wide range of sanctions.

The key principle of "effective, proportionate and dissuasive" penalties ensures that EU Member States implement sanctions that actually enforce EU law, match the gravity of the offence, and deter future violations. In practice, fines remain the most commonly imposed sanction for environmental offences, whereas imprisonment is used only sporadically. The level and severity of sanctions for particular offences differ significantly across Member States. Consequently, differences in national legal frameworks may incentivize offenders to carry out their activities in jurisdictions with less stringent regulations and lower penalties.

The aforementioned principle includes three elements: 1) effectiveness – sanctions must achieve the desired outcome and ensure the *effet utile* (or practical effect) of EU law, often requiring swift, simple, and sustained enforcement mechanisms; 2) proportionality – penalties must adequately reflect the severity, nature, and extent of the harm caused, maintaining a balance between the crime and the punishment; 3) dissuasiveness – sanctions must be strict enough in order to deter future offences, acting as a strict warning to potential offenders within the EU (Cohen, 2004). This tripartite regulatory requirement is frequently used in EU directives, such as those combating environmental crime, economic crime, and various regulatory offences, to harmonize sanction levels across Member States, which often differ significantly. The principle effectively ensures that criminals (including corporate wrongdoers) will simply be denied the opportunity to operate in jurisdictions with the most favourable laws and regulations (Academy of European Law).

Overall, the principle of "effective, proportionate and dissuasive" penalties, which is frequently discussed in the context of the European Convention on Human Rights, the jurisprudence of the European Court of Human Rights (*Georgouleas and Nestoras v. Greece,* para 26), and EU legislation, is traditionally interpreted to mean that sanctions for violations of laws or regulations must be sufficiently compelling to prevent future offences, fair in relation to the wrongdoing, and practically enforceable.

Unfortunately, the CCU does not provide any similar guidelines for imposing criminal law measures against corporations, which, in our opinion, creates a serious regulatory gap. The purpose of punishment is formulated only in terms of offences committed by individuals: the punishment shall be aimed not only at penalising but also at the reformation of sentenced persons and the prevention of further offences by both the sentenced and other persons (Article 50(2) of the Code). We believe that Ukrainian legislators should adopt language similar to the EU guidelines that explains the nature and purpose of criminal sanctions against legal entities – such an explanation of the purposes served by corporate sanctions is highly warranted.

Turning back to the analysis of Article 7 of the EU Directive, paragraph 2 provides that Member States shall take the necessary measures to ensure that criminal or non-criminal fines are included in the sanctions or measures applied to legal persons held liable under paragraph 1 or 2 of Article 6 for the criminal offences described in Articles 3 and 4, and other criminal or non-criminal sanctions or measures may also be included. Such sanctions (or measures) are quite diverse, and include, *inter alia*: (a) obligations to: (i) restore the environment within a set timeframe, if the damage is remediable; or (ii) compensate for environmental damage if it cannot be remediated or if the offender is unable to restore it; (b) exclusion from entitlement to public benefits or aid; (c) exclusion from access to public funding, including tender procedures, grants, concessions, and licenses; [...] (f) placing under judicial supervision; […] (i) an obligation to establish due diligence schemes for enhancing compliance with environmental standards.

As one can observe, the list of legal penalties for organizations is extensive and includes both criminal law sanctions and other measures that appear to be administrative penalties. For example, compliance procedures are not inherently criminal sanctions, but they are widely and effectively imposed on corporate wrongdoers globally, as we have previously written (Kamensky et al., 2025). Thus, we believe that providing for criminal or non-criminal fines, as well as other criminal or non-criminal sanctions and measures, reveals that the national legislators of EU Member States are given significant flexibility and choice in formulating the specific types and scope of criminal sanctions for legal persons. They can choose the most appropriate sanction based on the nature and degree of the environmental crime's public cost, or combine it with various non-criminal measures.

For pragmatic binary comparison, it is relevant to mention several provisions of the CCU on corporate criminal liability. At the outset, it should be noted that Ukrainian criminal law does not provide for a comparably extensive list of sanctions and special measures, especially ones that are tailored to punish environmental offences.

Article 96-6 of the Ukrainian Code defines specific types of criminal law measures that may be imposed on legal persons involved in criminal offences. It provides for criminal fines and the liquidation of entities as primary measures, confiscation of property as an ancillary measure, and a set of additional non-financial measures, including temporary restrictions on activities or access to certain rights and benefits. The statute also requires full restitution, obliging legal persons to compensate for all damage and to disgorge any unlawfully obtained or expected benefit. Overall, the provision establishes a flexible framework that combines punitive, restorative, and preventive responses to corporate criminality.

Furthermore, Article 96-10-1 of the CCU lists additional (non-financial) criminal-law measures. A *temporary restriction of a legal person's activities,* means a court-ordered prohibition from conducting certain types of business or other official activity for a defined period. Among such measures are: 1) prohibition from participating in public and defence procurement; 2) suspension of licenses (complete or partial); 3) prohibition from obtaining or extending permits for subsoil use (including suspension of such permits); 3) prohibition from purchasing Ukrainian government bonds; 4) prohibition from engaging in public-private partnerships; 5) prohibition from participating in joint ventures.

Additionally, a *temporary restriction on receiving rights and/or benefits,* means a ban on obtaining certain rights or benefits provided by Ukrainian law for a defined period of time. Such measures include, *inter alia*: 1) receiving any public benefits or assets from state or local communities; 2) attracting, using, or spending funds from international technical projects or financial operations; 3) receiving state aid to businesses; 4) receiving state or other financial support for export activities.

To summarize, the list of measures under Ukrainian criminal law, much like those prescribed in the EU Directive, is quite extensive. On the one hand, the listed additional (non-financial) criminal law measures

applied to legal persons in Ukraine somewhat resemble those provided by the EU Directive, such as exclusion from public benefits or aid, exclusion from public funding, or revocation of permits and licenses for activities related to the offence. Punitive measures against corporate wrongdoers, designed to penalize them by denying or reducing public funding, are fairly similar in nature. The key point here is to officially impose financial liability for environmental (and related economic) damage caused by the organization, a somewhat *quid pro quo* approach on the part of the government.

However, on the other hand, and as we have previously mentioned, such additional (non-financial) measures in Ukraine can only be applied to legal persons if a natural person named in the law is found guilty of committing a socially dangerous act that is described in one of three criminal statutes (namely, Articles 209 (money laundering), 369 (proposing a bribe to an official), and 369-2 (trading in influence) of the CCU) on behalf of and/or in the interest of the legal entity. This reveals the *attribution* or *limited vicarious liability model* of corporate criminal law in Ukraine. In addition, the above-mentioned criminal provisions only cover illegal conduct such as money laundering, public corruption, and certain crimes against national security – not environmental offences. This is an obvious flaw of legislative regulation. Based on the legislative intent behind amending Article 96-3 (introduction of paragraph 2) and the addition of Article 96-10-1 to the CCU, as was outlined in the explanatory note to the bill, the Ukrainian legislator aims to introduce an autonomous, albeit guilt-based, model of criminal liability for legal persons in cases involving bribery of foreign officials. In other words, such measures target only a few types of corruption and national security-related criminal offences committed by organizations. At the same time, the potential for the application of such effective mechanisms to other types of corporate criminality, namely environmental delicts, has been ignored. We consider such a fragmented, blinkered approach to be a deficiency in national criminal law regulation that ignores the EU Directive's explicit recommendations.

Thus, the apparent discrepancy in regulatory and sanctioning approaches toward organizations once again raises the serious question of whether Ukraine should consider expanding the scope of additional (non-financial) criminal law measures to include liability of legal persons for environmental offences.

If we place reform proposals within the framework of the current model for criminal protection of the environment as set out in Chapter VIII of the Special Part of the CCU (a chapter whose legal content is far from perfect but remains beyond the scope of this research), then such measures should be applied to, and serve as a foundation for, legal responses to offences related to environmental safety (Articles 236–238, 253 of the CCU), as well as to polluting specific elements of the environment (e.g., Articles 239, 241, 242, 243, 246), which are typically committed by legal persons in the course of their activities. As we have argued in a previous publication, the range of criminal activities by organizations across various components of environmental regulation (such as soil pollution) is quite extensive (Movchan & Kamensky, 2024). Accordingly, they require adequate responses by both national legislators and law enforcement agencies.

Based on the results of our comparative analyses, the table below briefly summarizes some key corporate criminal liability features under the EU Directive and the CCU, as well as penalties (and other measures) for such offences:

Liability element	EU Directive	Criminal Code of Ukraine
Recognition of corporate liability	Legal persons *can* be held liable for environmental offences committed for their benefit (Art. 6)	No classical "criminal liability" of legal persons; instead, courts may apply *criminal law measures* to legal entities (i.e., the subsidiary model of corporate liability)

Liability element	EU Directive	Criminal Code of Ukraine
Scope of offences triggering corporate liability	Applies specifically to environmental offences as listed in Articles 3–4 of the Directive	Applies only to a limited list of offences (corruption, terrorism, national security crimes, etc.). Environmental crimes are NOT included in this list
Corporate benefit requirement	Liability arises when offences are committed *for the benefit* of a legal person	Similarly, liability arises when an authorised person acts *on behalf of and for the benefit of the legal entity*, resulting in unlawful advantage or conditions for such advantage
Official representative of corporate offender (attribution model)	Any person who holds a leading position within the legal person concerned, acting either individually or as part of an organ of that legal person, based on: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; or (c) an authority to exercise control within the legal person (Art. 6(1))	Similarly, "authorised persons acting on behalf of a legal entity", which means officials of a legal entity, as well as other persons who, under the law, the constituent documents of a legal entity, or an agreement, are entitled to act on behalf of a legal entity (Note 1, Art. 96-3)
Parallel individual liability	Corporate liability does not exclude criminal prosecution of natural persons (Art. 6(3))	Same approach: natural persons remain fully criminally liable for the underlying offence (principle of personal guilt)
Entities covered	All legal persons (both public and private), subject to national implementation	Coverage varies by category of offence. In some cases, liability covers public and private entities, both residents and non-residents. In other cases, state and municipal agencies, as well as state enterprises, can be held liable – a distinct approach from the EU Directive
Principles of sanctioning	The key principle of "effective, proportionate and dissuasive" penalties	No principles for corporate sanctions are outlined
Primary sanctions	Mandatory: fines (both criminal and non-criminal)	Fine, forfeiture of property, liquidation
Additional sanctions	A broad range of criminal or non-criminal penalties and measures as prescribed in Art. 7(2)	A broad list of additional (non-financial) measures of a criminal law nature, as prescribed in Article 96-10-1. The open list of such measures partially coincides with those named in the EU Directive
Compliance obligations	Courts may impose an obligation on the organization to establish due diligence/compliance systems	Preventive and post-criminal compliance are considered only as a mitigating factor when courts determine a verdict
Environmental restoration requirement	Directly required: restoration of the environment or compensation for damage	No specific restoration obligations under corporate liability provisions
Differentiation of liability based on offence severity	Higher penalties are required for aggravated types of environmental offences	Sanctions depend primarily on the gravity of the offence as committed by an authorised person – a corporate representative
Statute of limitations	Not specified in the provided provisions; governed by the national laws of the Member States	Detailed limitation periods (3–15 years depending on the gravity of the offence)

Table 2: Elements of corporate criminal liability, as prescribed by the EU Directive 2024/1203 and the Criminal Code of Ukraine (Source: AI-generated structure, based on the authors' research)

Conclusions

A central conclusion of our comparative review in this paper is that the EU and Ukrainian approaches to corporate liability differ not only in scope and specific elements but also in their underlying regulatory philosophy. The EU Directive is based on a distinct and functional, yet flexible model of liability, which allows legal persons to be held directly accountable for environmental offences committed for their benefit. Such liability can be criminal, administrative, civil, or hybrid, at the discretion of the national regulator. By contrast, the Ukrainian system relies on a subsidiary, attribution-based model of liability tied to the guilt of individual offenders. Such a structural difference significantly constrains the capacity of Ukrainian law to effectively respond to corporate wrongdoing.

Another important finding is the existence of a serious legislative gap in Ukrainian criminal law regulation. Although mechanisms for applying criminal law measures to legal entities are already established, they do not cover environmental offences. Thus, a paradoxical situation emerges wherein environmental crimes are prosecuted, but only individual offenders are punished. At the same time, organizations that benefit from such unlawful conduct often remain largely outside the scope of national criminal law. Such a gap significantly weakens the overall effectiveness of environmental protection in Ukraine and undermines the principle of accountability for corporate wrongdoing. Relevant case law further demonstrates the limitations of an individual-based prosecution model. Environmental offences are frequently committed within corporate operational structures, where managers and employees pursue their companies' economic interests, while corporate assets or infrastructure facilitate the commission of illegal acts. Under such circumstances, focusing exclusively on individual criminal responsibility tends to an underestimation of the systemic nature of environmental wrongdoing and fails to address the real beneficiaries of the committed offence.

Based on the results of our comparative analysis, the most rational legislative direction would include extending the scope of Article 96-3 "Grounds for applying criminal law measures to legal entities" of the CCU to include major environmental crimes (as described in Table 1), gradually introducing a more self-sufficient model of liability for legal persons, incorporating both punitive and restorative sanctions (as described in Table 2), and strengthening preventive compliance mechanisms. We believe such measures will effectively align Ukrainian criminal and environmental law with the latest EU standards and will enhance the overall effectiveness of environmental protection.

As a final remark, Ukraine's ongoing integration into the EU legal frameworks provides an additional driver for corporate liability reform. The country's commitment to harmonizing its legislation with EU standards is driving efforts to modernize corporate liability rules, expand the list of predicate ecological offences, and align enforcement mechanisms with flexible European approaches. In this context, reform becomes not only doctrinally justified but also politically and institutionally desirable.

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