

THE INDICTMENT OF ACTS WHICH AFFECT THE ENVIRONMENT IN THE LEGISLATION OF THE EUROPEAN UNION AND IN THE LEGISLATION OF SOME EUROPEAN COUNTRIES

Ioniță Gheorghe-Iulian^{*)}
Ioniță-Burda Ștefania-Diana^{**)}

Abstract

In this article the authors make a thorough analysis and show not only the peculiarities of indictment in the legislation of some European countries, some of the most unlawful actions against the protection of the environment, but also how these indictments are aligned and meet the E.U directives and regulations.

Keywords: *protecția mediului, incriminare, substanțe periculoase, deșeuri, habitat protejat, substanțe care epuizează stratul de ozon.*

General considerations

The human actions that affect the environment as a whole or some of its places, as well as those human actions which violate the regulations concerning activities that involve great environmental danger, are quite numerous and varied.

We chose five of them the analysis herein, referring to the seriousness and incidence of such unlawful actions, and the relevant Community regulations, namely: a) unlawful significant deterioration of a protected habitat; b) unlawful trade in or use of Ozone Depleting Substances; c) unlawful discharge of hazardous substances into water; d) unlawful dumping of waste; e) illegal shipment of waste.

Among the regulations of the E.U member states that indict the human actions subject to our analysis, we mentioned the following: a) Romania; b) France; c) Italy; d) Germany; e) Finland; f) Sweden.

As known, the *primary law* of the European Union consists of the Treaty on the European Union and the Treaty on the operation of the European Union and includes the regulations representing the common law enforced in the Member States.

The *secondary law* of the European Union consists of the formal legislation, enacted by the European Union's bodies (in particular) as regulations, directives, decisions and framework-decisions.

Considering that the provisions regarding the environment protection included in the primary law of the European Union are general, we will put forward below the specific provisions included in the directives or regulations from the secondary law of the European Union.

^{*)} Lecturer, PhD, Department of Law, Romanian-American University of Bucharest; Attorney, „Ioniță Gheorghe-Iulian” Law Office, Bucharest Bar Association; e-mail: ionita.gheorghe.iulian@profesor.rau.ro

^{**)} Assistant, PhD, Department of Law, Romanian-American University, e-mail: ionitaburda.stefania.diana@profesor.rau.ro.

1. Unlawful significant deterioration of a protected habitat

1.1. Regulations in the secondary law of the European Union

A. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora¹

According to *Article 6*,

1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

According to *Article 12*,

1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

(c) deliberate destruction or taking of eggs from the wild;

(d) deterioration or destruction of breeding sites or resting places.

2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

3. The prohibition referred to in paragraph 1 (a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

4. Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.

According to *Article 13*,

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, available from internet: <http://eur-lex.europa.eu/Notice.do?val=186097:cs&lang=ro&list=186097:cs,186094:cs,&pos=1&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=#texte>.

1. Member States shall take the requisite measures to establish a system of strict protection for the plant species listed in Annex IV (b), prohibiting:

(a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild;

(b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before this Directive is implemented.

2. The prohibitions referred to in paragraph 1 (a) and (b) shall apply to all stages of the biological cycle of the plants to which this Article applies.

1.2. The indictment of this act in the Romanian legislation

According to **art 5, paragraph 1** of *G.E.O. no. 57/2007* on the regime of the protected natural areas, preservation of natural habitats, of wild flora and fauna ⁽²⁾,

(1) The perpetration of the following acts is considered infraction and is punished by prison from 3 months to 1 year or by criminal fine from Ron 30,000 – 60,000:

a) Temporary or definite removal of lands from the farming or forestry circuit on the protected natural area, except for those located in the areas for sustainable development, for other objectives than those indicated in art 27, paragraph 1⁽³⁾;

b) Temporary or definite removal of lands from the farming or forestry circuit on the protected natural area without the consent of the administrator or, as the case may be, of the custodian, issued as per the provisions of art 27, paragraph 2⁽⁴⁾;

c) Infringement of the provisions of art 28, paragraph 1 ⁽⁵⁾;

d) Infringement of the provisions of art 33, paragraphs 1⁽⁶⁾ and 2⁽⁷⁾;

e) Sale of bird species indicated in Annex no. 5C during breeding periods and rearing;

f) Hunt of migratory birds indicated in Annex no. 5C during breeding periods or during their return to the nesting areas;

² G.E.O. no. 57/2007 published in M. Of. no. 442/29.06.2007

³ According to art 27 paragraph 1 of G.E.O. no. 57/2007, temporary or definite removal of lands from the farming or forestry circuit of the natural area protected by national or international interests, except for those located in the areas for sustainable development, can be performed only for objectives concerning the assurance of national security, health of people and animals or for the objectives designed for scientific research and proper management of the protected natural area.

⁴ According to art 27 paragraph 2 of G.E.O. no. 57/2007, for any plan or project which needs the definitive or temporary removal from the farming or forestry circuit of lands from the protected natural area protected by community interest, which does not overlap with other classes of protected natural areas, it will be done as per the provisions of art 28.

⁵ According to art 28 paragraph 1 of G.E.O. no. 57/2007, there are forbidden the activities in the natural areas protected by community interest, which might generate the pollution or deterioration of habitats, as well as distortion of species for which the respective areas have been protected when such activities have significant impact, considering the objectives for the protection and preservation of species and habitats. To protect and preserve the species of wild birds, including the migrating birds, the activities, outside the protected natural areas, which might cause pollution or habitat deterioration, are forbidden.

⁶ According to art 33 paragraph 1 of G.E.O. no. 57/2007, as regards the species of terrestrial, aquatic and subterranean plants and wild animals, indicated in annexes no. 4A and 4B, except for the bird species and which live in the protected natural areas and outside them, the following are forbidden: a) any form of harvest, capture, killing, destruction or injury of the animals in their natural habitat, in any of their biological cycle; b) intentional disturbance during the periods of breeding, nesting/rearing, hibernation or migration; c) intentional deterioration, destruction and/or harvest of nests and/or eggs; d) deterioration and/or destruction of breeding or nesting areas; e) harvest of fruits and flowers, intentional collecting, cutting, uprooting or destruction of such plants in their natural habitats in any of their stages of biological cycle; f) possession, transport, sale or trade, for any purposes, and exchange or sale of species removed from nature, in any of the stages of their biological cycle;

⁷ According to art 33 paragraph 2 of G.E.O. no. 57/2007, Without affecting the provisions of art 33, paragraphs (3) and (4) and of art 38 of this Emergency Ordinance and the provisions of art 17, art 19, paragraph (5), art 20, 22, 24 and art 26, paragraphs (1) and (2) of the Law no. 407/2006 on hunting and on the protection of game, as further amended and supplemented, for the protection of all bird species, including migrating species, the following are forbidden: a) to kill or capture animals intentionally, irrespective of the measure used; b) to destroy, deteriorate and/or to harvest intentionally nests and/or eggs; c) to harvest the eggs and to keep them even if they are empty; d) to disturb intentionally and especially during breeding or growing periods if such disturbance is relevant for the objectives stipulated by this emergency ordinance; e) to possess animals from species that are forbidden to be hunted or captured; f) to sell, possess or transport for trade purposes or to sell them alive or dead or of any parts or products from them and which are easy to identify.

g) To capture or kill the wild fauna species indicated in annexes no. 5 A, 5 B, 5 C, 5 D and 5 E and in cases when exceptions are enforced as per the provisions of art 38, to take, capture or kill the species indicated in annexes 4A and 4B as per the means or methods stipulated un annex no. 6;

h) To capture or kill wild species using illegal means;

i) To build, invest outside the areas of sustainable development from the protected natural areas, except for those meant for the administration of the protected natural area, those meant to prevent natural disasters and those designed to ensure national security;

j) To carry out activities, inside the protected natural areas or in their vicinity, which might have a significantly negative impact on the wild species and their natural habitats, in the absence of the consents from the administrators/custodians of such protected natural areas.

1.3. The indictment of this act in the legislation of some European countries

A. France

According to **Article L. 415-3** of the *Environmental Code*⁸,

Is punished by one year's imprisonment and a fine of 15,000 euros:

1° Any act in violation of the prohibitions provided by the provisions of Article L. 411-1 and the regulations provided in Article L. 411-2:

a) Interference with the conservation of a non-domestic animal species, other than intentional disturbances;

b) Interference with the conservation of non-cultivated plant species;

c) Interference with the conservation of natural habitat;

d) Destruction, alteration or degradation of geological interest, including natural and artificial caverns, as well as destruction or degradation of fossils, minerals and concretions from these sites.

Attempted offences under a) to d) is punishable in the same.

2° Any act of wilful introduction into the natural environment, transport, peddling, use, putting up for sale, sale or purchase of an animal or plant species in violation of the provisions of Article L. 411-3 or the regulations for its application;

3° Any act of producing, holding, transferring, using, transporting, introducing, importing, exporting or re-exporting all or part of the animals or plants in violation of the provisions of Article L. 412-1 or the regulations for its application,

4° Any act of running of a business, premises or any other establishment breeding, selling, hiring or transporting non-domestic animal species, or a business, premises or any other establishment destined to present live specimens of local and foreign fauna to the public, without holding a certificate of competence as provided in Article L. 413-2,.

5° Any act of opening or operation of such an establishment in violation of the provisions of article L. 413-3 or the regulations for its application ...

The fine is doubled if the offense referred to in 1° and 2° are committed in the heart of a national park or nature reserve.

B. Italy

According to **Article 311** „**Action for damages in a specific form and equivalent assets**” of the *Environmental Code*⁹, ...

2. Any person who, in violation of the law, regulations or administrative provisions, through negligence, incompetence, negligence or breach of technical regulations, makes an illegal action ... harmful to the environment, by altering, damaging or destroying, in whole or in part, is obliged to rehabilitate the environment as in its initial, previous state, at his own expense, and if not, to adopt

⁸ Code de l'environnement, available from internet: http://www.legifrance.gouv.fr/affichCode.do;jsessionid=F9B53E60A826D7D62C2B6FFE6484E2F0.tpdjo13v_1?cidTexte=LEGITEXT000006074220&dateTexte=20120901.

⁹ Codice dell'ambiente. Decreto legislativo 03.04.2006 n° 152, G.U. 14.04.2006, available on <http://www.altalex.com/index.php?idstr=12&idnot=33891>.

complementary and compensatory remedial measures under the Directive 2004/35/EC of the European Parliament and the Council of 21 April 2004 ...

C. Germany

According to **Section 329 „Endangering protected areas”** of the *Criminal Code*¹⁰, ...

(3) Whoever contrary to an ordinance or an enforceable prohibition enacted to protect a nature conservation area, an area provisionally set aside as a nature conservation area, or a national park

1. mines or extracts mineral resources or other soil components;

2. makes excavations or creates mounds;

3. creates, alters or removes bodies of water;

4. drains moors, swamps, marshes or other wetlands;

5. clears woodland;

6. kills, catches, hunts, or in whole or in part destroys or removes the eggs of, animals of an especially protected species within the meaning of the Federal Nature Conservation Act;

7. damages or removes plants of a specially protected species within the meaning of the Federal Nature Conservation Act; or

8. erects a building,

and thereby interferes not merely insubstantially with the respective protected interest shall be liable to imprisonment not exceeding five years or a fine.

(4) If the offender acts negligently the penalty

1. in cases under subsections (1) and (2) above shall be imprisonment not exceeding two years or a fine;

2. in cases under subsection (3) above shall be imprisonment not exceeding three years or a fine.

D. Finland

According to **Chapter 48 „Environmental offence”** of the *Criminal Code*¹¹, ...

Section 5 „Nature conservation offence” (578/1995)

(1) A person who, intentionally or through gross negligence,

1. unlawfully destroys or impairs a natural area, an animal, a plant or another natural object protected by the Nature Conservation Act (1096/1996) or protected, restricted or placed under an injunction based thereon, or (1108/1996)

2. in violation of the Nature Conservation Act or of a provision or order based thereon, removes from its environment, imports or exports an object or transports an object through the territory of Finland, or sells, conveys, purchases or receives an object so removed, imported or exported, shall be sentenced for a nature conservation offence to a fine or to imprisonment for at most two years.

(2) Also a person who, intentionally or through gross negligence, uses a Finnish vessel in whaling or defies the import ban provided in section 2 or 2a of the Whale and Arctic Seal Protection Act or the protection provision or the acquisition ban in section 3 of the same Act, shall be sentenced for a nature conservation offence. (1108/1996)

(3) Also a person who, intentionally or through gross negligence, causes damage to organisms native to Antarctica, by violating a prohibition referred to in section 4, subsection 2 of the Act on the Conservation of Antarctic Nature (28/1998) or by acting without a permit or in violation of the conditions in a permit required in the Act, in a manner referred to in section 21, subsection 1, section 23, subsection 1 or section 25, subsection 1 of the Act, shall be sentenced for a nature conservation offence. (29/1998)

(4) However, an act of minor significance with regard to nature conservation is not deemed a nature conservation offence. (29/1998)

(5) An attempt of an intentional offence is punishable. (29/1998)

¹⁰ Strafgesetzbuch, available from internet: <http://www.gesetze-im-internet.de/stgb/>.

¹¹ The Criminal Code of Finland, available from internet: <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>.

E. Sweden

According to **Chapter 8 „Special provisions concerning the protection of animal and plant species”** of the *Environmental Code*¹²,

Section 1 Rules prohibiting the killing, injury or capture of wild animals or the taking of or causing of damage to the eggs, spawn, roe or nests of such animals in the country or any part of it may be issued by the Government or the authority appointed by the Government. Such rules may be issued where there is a risk of a wild animal species becoming extinct or being subjected to exploitation or where they are necessary for compliance with Sweden’s international undertakings with respect to the protection of such a species. Nevertheless, these prohibitions shall not apply in cases where such an animal must be killed, injured or captured in order to defend a person or valuable property against attack.

Special provisions shall apply to the killing or capture of wild animals of certain species where such an act takes place in connection with hunting or fishing.

Section 2 Rules prohibiting the removal of, the causing of damage to or the taking of seeds or other parts from wild plants in the country or any part of it may be issued by the Government or the authority appointed by the Government. Such rules may be issued where there is a risk of a wild plant species becoming extinct or being subjected to exploitation, or where it is necessary for compliance with Sweden’s international undertakings with respect to the protection of such a species.

According to **Chapter 29 „Penalty provisions and forfeiture”** of the same code,

Section 1 Any person who deliberately:

1. pollutes land, water or air in a manner which involves or is liable to involve risks for human health or detriment to flora and fauna that are not inconsiderable or other significant detriment to the environment;

2. stores waste or other matter in a manner which may give rise to health risks, damage or other detriment referred to in point 1 as a result of pollution; or

3. causes substantial detriment to the environment as a result of noise, vibration or radiation shall, unless a competent authority has permitted the practice or it is generally accepted, be liable to a fine or a term of imprisonment not exceeding two years for *environmental offence*.

If the offence is serious, the penalty shall be a term of imprisonment of not less than six months nor more than six years.

When the seriousness of the offence is considered, special attention shall be paid to whether it caused, or might have caused, lasting damage on a large scale or whether the act was otherwise of a particularly dangerous nature.

If the act may be deemed to be justifiable in view of the circumstances, no penalty shall be imposed pursuant to this section.

Section 2 Any person who commits an offence referred to in section 1 through negligence shall be liable to a fine or a term of imprisonment not exceeding two years for the offence of *causing environmental disturbance* ...

Section 8 Any person who infringes any of the following provisions, whether deliberately or through negligence, shall be liable to a fine or a term of imprisonment not exceeding two years: ...

3. the prohibition against pursuing activities or taking measures in a habitat protection area laid down in chapter 7, section 11;

4. rules that are necessary for special protection of flora or fauna pursuant to chapter 7, section 12;

5. a prohibition against erecting a new building or taking any other measure contrary to chapter 7, section 16 in a shore protection area;

6. rules concerning precautions in environmental protection zones issued pursuant to chapter 7, section 20;

7. rules imposing restrictions in water protection areas issued pursuant to chapter 7, section 22;

8. a temporary prohibition imposed pursuant to chapter 7, section 24 first paragraph;

9. rules imposing prohibitions for the protection of species of animals and plants issued pursuant to chapter 8, section 1 or 2;

¹² The Swedish Environmental Code, available from internet: <http://www.sweden.gov.se/content/1/c6/02/28/47/385ef12a.pdf>.

10. rules prohibiting or imposing special conditions for the release of animal or plant species issued pursuant to chapter 8, section 3;

11. rules issued pursuant to chapter 8, section 4 by having any dealing with animals, plants, eggs, spawn, roe, nests or products of animals or plants contrary to such a rule or a condition stipulated in a decision in an individual case ...

28. a provision or condition laid down in an individual decision taken pursuant to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as last amended by Council Regulation (EC) 938/97 of May 26 1997, relating to imports into Sweden, exports and re-exports from Sweden, trade in artificially propagated plants, transportation and transit or purchases, sales or other commercial transactions.

1.4. Particularities of indictment for the significant illegal deterioration of a protected habitat

a) In the internal regulations

In the *Ordinance on the regimes of the protected natural areas and preservation of natural habitats, of wild flora and fauna* (G.E.O. no. 57/2007), it is expressly stipulated as follows:

- in the preamble, the arguments entailing the need for enacting this regulation, respectively the need and the emergency for full harmonization of the domestic legislation with the European Union legislation in the field of nature protection and for the implementation in the domestic legislation (among others) of the provisions of Directive 92/43/EEC on the preservation of natural habitats and wild flora and fauna;

- In art 57, paragraph 2, letter (b), it implements (among others) the Council Directive 92/43/EEC of May 21, 1992 on the preservation of natural habitats and wild flora and fauna, published in the Official Gazette of the European Communities no L206 of July 22, 1992 (as amended until the enactment of the Romanian regulation).

In terms of the indictment's content, it can be noticed that this regulation fully implements the Directive's provisions and it can be said that it exceeds these provisions by means of a more successful particularization of the documents representing the constitutive content of such indictment.

b) In the regulations of the other European countries, subject to our analysis:

It can be noticed that most of them (save for the Italian Regulation for the enforcement of the directive) do not indicate expressly the need to implement the Council Directive 92/43/EEC of May 21, 1992 on the preservation of natural habitats and wild flora and fauna.

As regards the existence and content of such indictment, these regulations implement, more or less, the provisions of this Directive.

The *French Code of the Environment* includes the provisions of the Directive. As particularity, it stipulates the case of the breeding, sale, rental or transit unit for non-domestic animal species or of the unit designed to present to the public live species of the fauna.

The *Italian regulation for the enforcement of the Directive* (generally) stipulates that it is forbidden and that measures are taken, but it does not indicate the punishment for infringing these restrictions and the measures. In the *Italian Code of the Environment* the provisions are general and concern the obligation to restore to the initial condition (at their own expense) and (otherwise) to pursue additional and complementary remedy measures in the event of modification, destruction or deterioration.

The *German Criminal Code* includes some of the Directive's provisions; moreover, building in the nature preservation areas is indicted.

The *Finnish Criminal Code* indicts some acts which infringe the provisions of the Law on the preservation of nature and which also refers to the Directive. As particularity, this regulation expressly refers to the case of whales and arctic seals and, also, to the case of native organisms of Antarctica.

Also, the *Swedish Code of the Environment* stipulates some of the situations referred to in the Directive, with the particularities enforced by the (EC) Regulation no. 338/97 of 09.12.1996 on the protection of the flora and fauna species in terms of the regulation of their trade.

2. Unlawful trade in or use of Ozone Depleting Substances

2.1. Regulations in the secondary law of the European Union

*A. Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer*¹³

According to **Article 4 „Production of controlled substances”**, the production of controlled substances shall be prohibited.

According to **Article 5 „Placing on the market and use of controlled substances”**,

1. The placing on the market and the use of controlled substances shall be prohibited.
2. Controlled substances shall not be placed on the market in non-refillable containers, except for laboratory and analytical uses as referred to in Article 10 and Article 11(2).
3. This Article shall not apply to controlled substances in products and equipment.

According to **Article 6 „Placing on the market of products and equipment containing or relying on controlled substances”**,

1. The placing on the market of products and equipment containing or relying on controlled substances shall be prohibited, with the exception of products and equipment for which the use of the respective controlled substance is authorised in accordance with Article 10, Article 11(2) or Article 13 or has been authorised on the basis of Article 3(1) of Regulation (EC) No 2037/2000.

2. Except for uses referred to in Article 13(1), fire protection systems and fire extinguishers containing halons shall be prohibited and shall be decommissioned.

According to **Article 15 „Imports of controlled substances or of products and equipment containing or relying on controlled substances”**,

1. Imports of controlled substances or of products and equipment other than personal effects containing or relying on those substances, shall be prohibited.

2. The prohibition set out in paragraph 1 shall not apply to imports of:

(a) controlled substances to be used for laboratory and analytical uses referred to in Article 10 and Article 11(2);

(b) controlled substances to be used as feedstock;

(c) controlled substances to be used as process agents;

(d) controlled substances for destruction by technologies referred to in Article 22(2);

(e) until 31 December 2019, hydrochlorofluorocarbons to be repackaged and subsequently re-exported no later than 31 December of the following calendar year to a Party where the consumption or import of that hydrochlorofluorocarbon is not prohibited;

(f) methyl bromide for emergency uses referred to in Article 12(3) or, until 31 December 2014, for repackaging and subsequent re-export for quarantine and pre-shipment applications provided that the re-export takes place during the year of import;

(g) recovered, recycled or reclaimed halons, under the condition that they are only imported for critical uses referred to in Article 13(1), by undertakings authorised by the competent authority of the Member State concerned to store halons for critical uses;

(h) products and equipment containing or relying on controlled substances for destruction, where applicable by technologies referred to in Article 22(2);

(i) products and equipment containing or relying on controlled substances to satisfy laboratory and analytical uses referred to in Article 10 and Article 11(2);

(j) products and equipment containing or relying on halon to satisfy critical uses referred to in Article 13(1);

(k) products and equipment containing hydrochlorofluorocarbons for which the placing on the market has been authorised in accordance with Article 11(5).

¹³ Regulamentul (CE) nr. 1005/2009 al Parlamentului European și al Consiliului din 16 septembrie 2009 privind substanțele care diminuează stratul de ozon, available from internet: <http://eur-lex.europa.eu/Notice.do?val=503269:cs&lang=ro&list=503269:cs,&pos=1&page=1&nbl=1&pgs=10&hwords=&checktexte=checkbox&visu=#texte>.

3. Imports referred to in paragraph 2, with the exception of imports for transit through the customs territory of the Community or imports under the temporary storage, customs warehousing or free zone procedure as referred to in Regulation (EC) No 450/2008, provided that they remain in the customs territory of the Community no longer than 45 days and that they are not subsequently presented for release for free circulation in the Community, destroyed or processed, shall be subject to the presentation of an import licence. Those licences shall be issued by the Commission after verification of compliance with Articles 16 and 20.

According to **Article 17 „Export of controlled substances or of products and equipment containing or relying on controlled substances”**,

1. Exports of controlled substances or of products and equipment other than personal effects containing or relying on those substances, shall be prohibited.

2. The prohibition set out in paragraph 1 shall not apply to exports of:

(a) controlled substances to be used for essential laboratory and analytical uses referred to in Article 10;

(b) controlled substances to be used as feedstock;

(c) controlled substances to be used as process agents;

(d) products and equipment containing or relying on controlled substances produced in accordance with Article 10(7) or imported under point (h) or (i) of Article 15(2);

(e) recovered, recycled or reclaimed halons stored for critical uses referred to in Article 13(1) by undertakings authorised by the competent authority of a Member State and products and equipment containing or relying on halon to satisfy critical uses;

(f) virgin or reclaimed hydrochlorofluorocarbons for uses other than destruction;

(g) until 31 December 2014, methyl bromide re-exported for quarantine and pre-shipment applications;

(h) metered dose inhalers manufactured with chlorofluorocarbon the use of which has been authorised on the basis of Article 3(1) of Regulation (EC) No 2037/2000.

3. By way of derogation from paragraph 1, the Commission may, following a request by a competent authority of a Member State and in accordance with the management procedure referred to in Article 25(2), authorise the export of products and equipment containing hydrochlorofluorocarbons where it is demonstrated that in view of the economic value and the expected remaining lifetime of the specific good, the prohibition of export would impose a disproportionate burden on the exporter. Such export requires prior notification by Commission to the importing country.

4. Exports referred to in paragraphs 2 and 3 shall be subject to licensing, with the exception of re-exports subsequent to transit through the customs territory of the Community, temporary storage, customs-warehousing or free zone procedure, as referred to in Regulation (EC) No 450/2008, provided that the re-export takes place not later than 45 days after the import. That export licence shall be issued by the Commission to undertakings after verification of compliance with Article 20.

According to **Article 29 „Penalties”**,

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 30 June 2011 at the latest and shall also notify it without delay of any subsequent amendment affecting them.

2.2. The indictment of this act in the Romanian legislation

According to **art 1, paragraph 1** of *G.O. no. 9/2011* on the assignation of measures for the implementation of the (EC) Regulation no. 1,005/2009 of the European Parliament and Council of September 16, 2009 on the substances which diminish the ozone layer and for the abrogation of the Government Ordinance no. 89/1999 on the commercial regime and the implementation of some restriction on the use of halogenated hydrocarbons, which destroy the ozone layer⁽¹⁴⁾.

This ordinance sets the institutional framework necessary for the direct enforcement of the (EC) Regulation no. 1,005/2009 of the European Parliament and Council of September 16, 2009 on the

¹⁴ G.O. no. 9/2011 published in M. Of. no. 78/31.01.2011

substances which diminish the ozone layer, published in the Official Gazette of the European Union series I no. 286 of October 31, 2009.

According to **art 1, paragraph 1** of *Law no. 101/2011* on the prevention and punishment of acts on the degradation of the environment ⁽¹⁵⁾.

The production, import, export, marketing or use of substances which diminish the ozone layer, infringing the legal provisions in this area is punished by prison from 6 months to 3 years.

As per **art 10, paragraph 1** of the same regulation,

The infractions indicated in art 8, committed in guilt, are punished by the sanction indicated in the article, whose limits are reduced by half.

2.3. The indictment of this act in the legislation of some European countries

A. France

According to **Article L. 521-21** of the *Environmental Code*,

I. Is punished by two year's imprisonment and a fine of 75,000 euros, the facts to:

1° Knowingly supplying incorrect information likely to bring about, for the substance under consideration or the preparations containing it, or for the manufactured products or the equipment containing it, prescriptions that are less restrictive than those to which they should have been subject; or concealing known information;

2° Not respecting the measures of prohibition or the instructions decreed in accordance with Article L. 521-6;

3° Not fulfilling within the specified time limit the obligations prescribed by the summons stipulated in Article L. 521-17.

4° Producing or importing without prior registration, as such or in a mixture, or is intended to be released from an article within the meaning of Regulation No 1907/2006 under normal or reasonably foreseeable conditions of use, subject to registration in breach of Title II of Regulation (EC) No 1907/2006;

5° to the manufacturer or importer, obtain or attempt to obtain the issuance of a registration number of substance by misrepresentation or any other fraudulent means;

6° Producing, importing, keeping for sale or free distribution, offering for sale, selling, distributing or using for free, without the corresponding authorization decision, a substance as such or in a mixture or article, in breach of Title VII of Regulation (EC) No 1907/2006;

7° Producing, importing, keeping for sale or free distribution, offering for sale, selling, distributing or using for free of substances, mixtures or articles, in breach of restriction imposed by Title VIII of Regulation (EC) No 1907/2006;

8° For a downstream user, not having communicated to the European Chemicals Agency the information specified in Article 38 of Regulation (EC) No 1907/2006 as provided in this article;

9° Failure to comply with the prohibitions or requirements laid down in Regulations (EC) No 1005/2009, (EC) No 689/2008, (EC) No 850/2004 and (EC) No 842/2006;

10°. Importing, keeping for sale or free distribution, offering for sale, selling, distributing for free, without the corresponding authorization decision, a substance or a mixture without prior classification, in accordance with the requirements of Article 4, paragraphs 1 and 3 Regulation (EC) No 1272/2008;

11°. Importing, keeping for sale or free distribution, offering for sale, selling, distributing for free, of a substance or a mixture classified as hazardous without prior labeling and packaging, in accordance with the requirements of Article 4, paragraphs 1 and 3 Regulation (EC) No 1272/2008.

II. Is punished by three months' imprisonment and a fine of 20,000 euros, the facts to:

1°. Do not provide the recipient of a substance or mixture of a data safety sheet and its annexes established and updated in accordance with the requirements laid down in Article 31 of Regulation (EC) No 1907/2006;

¹⁵ Law no. 211/2011 published in M. Of. no. 837/25.11.2011

2°. For the manufacturer or importer, not having communicated to the European Chemicals Agency the information specified in Article 40 of Regulation (EC) No 1272/2008 as provided in this article ...

B. Italy

According to *Article 3* of the *Law no. 549/1993* on measures to protect both the ozone stratum and the environment¹⁶,

1. The production, consumption, import, export, possession and sale of harmful, noxious substances listed in Table A annexed to this Law are governed by Regulation (EC) no. 3093/94 ...

6. Any person who violates the provisions of this Article shall be punished with imprisonment up to two years and must pay a fine up to three times the value of the noxious substances that were manufactured, imported or commercialised. In more serious cases, conviction requires the authorization or license revocation under which illegal activities were carried out.

C. Germany

According to *Section 325 „Air pollution”* of the *Criminal Code*,

(1) Whosoever, in the operation of a facility, especially a plant or machine, in violation of duties under administrative law, causes alterations of the air which are capable of harming the health of another, animals, plants or other property of significant value outside the area belonging to the facility shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.

(2) Whosoever, in the operation of a facility, especially a plant or machine, in gross violation of duties under administrative law, releases harmful substances in significant amounts into the air outside the grounds of the facility shall be liable to imprisonment not exceeding five years or a fine.

(3) If the offender acts negligently the penalty shall be imprisonment not exceeding three years or a fine.

(4) Harmful substances within the meaning of subsection (2) above are substances which are capable of

1. harming the health of another, animals, plants or other property of significant value; or

2. polluting or otherwise negatively and permanently altering a body of water, the air or the soil.

(5) Subsections (1) to (3) above shall not apply to motor-vehicles, rail vehicles, aircraft or watercraft.

D. Finland

According to *Chapter 48 „Environmental offence”* of the *Criminal Code*,
Section 1 „Impairment of the environment” (748/2007)

(1) A person who, intentionally or through gross negligence,

1. introduces, emits or disposes into the environment an object, a substance, radiation or something similar in violation of the law, a provision based on law, a general or a specific order, or without a permit required by law or in violation of permit conditions,

2. produces, conveys, transports, uses, handles or stores a substance, product or object, or operates a device in violation of the Chemical Act, the REACH Regulation or of a provision given on the basis of the Chemical Act, the REACH Regulation or the Environmental Protection Act (86/2000), or in violation of Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer, Regulation (EC) No 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases or permanent organic compounds or Regulation (EC) No 850/2004 of the European Parliament and of the Council amending Directive 79/117/EEC, or in violation of a provision referred to in section 60, subsection 1 of the Waste Act (1072/1993) or a

¹⁶ Legge 28 dicembre 1993, n. 549 - Misure a tutela dell'ozono stratosferico e dell'ambiente, available from internet: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1993-12-28;549> modificatã de Legge 16 giugno 1997, n. 179, available from internet: <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1997-06-24&atto.codiceRedazionale=097G0205&atto.articolo.numero=1>.

provision or a specific order or prohibition based on the Waste Act, or neglects his or her duty to organise waste management, as provided for in the Waste Act, or

3. imports or exports waste or transports waste through the territory of Finland in violation of the Waste Act or a provision or specific order based on the Waste Act or Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipment of wastes or imports or exports a substance, product or object in violation of a Decree issues on the basis of the Environmental Act or in violation of Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer, Regulation (EC) No 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases, Regulation (EC) 304/2003 of the European Parliament and of the Council concerning the export or import of dangerous chemicals or permanent organic compounds and Regulation (EC) No 850/2004 of the European Parliament and of the Council amending Directive 79/117/EEC, or exports genetically modified organisms or foodstuffs or feed contains such in violation of Regulation (EC) 1946/2003 of the European Parliament and the Council on transboundary movements of genetically modified organisms

so that the act is conducive to causing contamination of the environment, other corresponding environmental despoliation or littering or a health hazard, shall be sentenced for *impairment of the environment* to a fine or to imprisonment for at most two years. ...

E. Sweden

According to **Chapter 29 „Penalty provisions and forfeiture”** of the *Environmental Code*,

Section 1 Any person who deliberately:

1. pollutes land, water or air in a manner which involves or is liable to involve risks for human health or detriment to flora and fauna that are not inconsiderable or other significant detriment to the environment;

2. stores waste or other matter in a manner which may give rise to health risks, damage or other detriment referred to in point 1 as a result of pollution; or

3. causes substantial detriment to the environment as a result of noise, vibration or radiation shall, unless a competent authority has permitted the practice or it is generally accepted, be liable to a fine or a term of imprisonment not exceeding two years for *environmental offence*.

If the offence is serious, the penalty shall be a term of imprisonment of not less than six months nor more than six years.

When the seriousness of the offence is considered, special attention shall be paid to whether it caused, or might have caused, lasting damage on a large scale or whether the act was otherwise of a particularly dangerous nature.

If the act may be deemed to be justifiable in view of the circumstances, no penalty shall be imposed pursuant to this section.

Section 2 Any person who commits an offence referred to in section 1 through negligence shall be liable to a fine or a term of imprisonment not exceeding two years for the offence of *causing environmental disturbance* ...

Section 8 Any person who infringes any of the following provisions, whether deliberately or through negligence, shall be liable to a fine or a term of imprisonment not exceeding two years: ...

26. the prohibition against providing or the duty to provide information laid down in Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer ...

2.4. Particularities of the indictment of the illegal trade or the use of substances which diminish the ozone layer

a) In the domestic regulations

The ordinance for the enactment of the regulation (O.G. no. 9/2001) stipulates expressly that this regulation is set up within the institutional framework necessary for the direct enforcement of the (EC) Regulation no. 1005/2009 of the European Parliament and Council of September 16, 2009 on the substances diminishing the ozone layer.

The *Law on the prevention and sanction of acts concerning the environment deterioration* (Law no. 101/2001) expressly stipulates (Annex no. 1) among the laws which include provisions whose non-observance represents infringement of the legal provisions in this area as per art 2, letter (a) of the Law and which implement the legal documents stipulated in Annex A to the Directive 2008/99/EC of the European Parliament and Council of November 19, 2008 on the environment protection by means of the criminal law and the (EC) regulation no. 1000/2009 of the European Parliament and the Council of September 16, 2009 on the substances diminishing the ozone layer (published in the Official Gazette of the European Union no. L286 of October 31, 2009).

As the content of the indictment is concerned, the specific indictment from the *Law on the prevention and sanction of acts on environment degradation* has quite a general content, without detaining all the activities stipulated by the regulation and referring only to the production, import, export, trade or use of substances which diminish the ozone layer, infringing the legal provisions in this area; however, it should be considered the fact that the ordinance for the enforcement of the regulation stipulates expressly its direct enforcement.

b) In the regulations of the other European countries, subject to our analysis

It can be noticed that most such regulations (save for the German Criminal Code) expressly refer to one of the regulations on the substances which diminish the ozone layer, namely (EC) Regulation no. 1005/2009 (the French Environment Code), the (former) (EC) Regulation no. 2037/2000 (the Finnish Criminal Code), the (former) (EC) Regulation no. 3093/1994 (the Swedish Environment Code and the Italian Law no. 549/1993 on the protective measures of the ozone layer and the environment).

As regards the existence and content of the indictment, it can be noticed that these regulations, along with the specification of one of such regulations, there are also included additional stipulations, which are general in nature.

In the *French Environment Code*, although dangerous substances are referenced to, it is generally punished the infringement of restrictive measures or requirements issued for the enforcement of (EC) Regulation no. 1005/2009.

In the *German Criminal Code*, as well, the indictment provisions are general and concern the deterioration of the air's quality entailed by the operation of a facility.

The same situation is met in the *Swedish Environment Code* which generally punishes the pollution of environmental elements. It is of interest to know that, in particular, the sanction is indicated for the restriction to provide or the obligation to provide the information specified by the (former) (EC) Regulation no. 3093/94.

The *Italian Law on protective measures of the ozone layer and the environment* indicts (although not detailing) the production, consumption, import, export, possession and trade of noxious substances (listed in Table A to the law's annex), which are regulated by the provisions of the (former) (EC) Regulation no. 3093/94.

As exception, the *Finnish Criminal Code* singularizes the acts regarding the substances which diminish the ozone layer, even if it refers, along with the (former) (EC) Regulation no. 2037/2002, to other regulations of the European Union.

3. Unlawful discharge of hazardous substances into water

3.1. Regulations in the secondary law of the European Union

A. Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community¹⁷

¹⁷ Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, available from internet: <http://eur-lex.europa.eu/Notice.do?val=422973:cs&lang=ro&list=422973:cs,422972:cs,422092:cs,421075:cs,123132:cs,&pos=1&page=1&nbl=5&pgs=10&hwords=&checktexte=checkbox&visu=#texte>.

According to *Article 4*,

With regard to List I substances:

(a) all discharges into the waters referred to in Article 1 which are liable to contain any such substance, shall require prior authorisation by the competent authority of the Member State concerned;

(b) the authorisation shall lay down emission standards with regard to discharges of any such substance into the waters referred to in Article 1 and, where this is necessary for the implementation of this Directive, to discharges of any such substance into sewers;

(c) authorisations may be granted for a limited period only. They may be renewed, taking into account any changes in the emission limit values laid down by the Directives referred to in Annex IX to Directive 2000/60/EC.

B. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy¹⁸

According to *Article 11 „Programme of measure”*,

1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State. Where appropriate, a Member State may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.

2. Each programme of measures shall include the "basic" measures specified in paragraph 3 and, where necessary, "supplementary" measures.

3. "Basic measures" are the minimum requirements to be complied with and shall consist of:

(a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;

(b) measures deemed appropriate for the purposes of Article 9;

(c) measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the objectives specified in Article 4;

(d) measures to meet the requirements of Article 7, including measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water;

(e) controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated. Member States can exempt from these controls, abstractions or impoundments which have no significant impact on water status;

(f) controls, including a requirement for prior authorisation of artificial recharge or augmentation of groundwater bodies. The water used may be derived from any surface water or groundwater, provided that the use of the source does not compromise the achievement of the environmental objectives established for the source or the recharged or augmented body of groundwater. These controls shall be periodically reviewed and, where necessary, updated;

(g) for point source discharges liable to cause pollution, a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, or for prior authorisation, or registration based on general binding rules, laying down emission controls for the pollutants concerned, including controls in accordance with Articles 10 and 16. These controls shall be periodically reviewed and, where necessary, updated;

¹⁸ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, available from internet: <http://eur-lex.europa.eu/Notice.do?val=237000:cs&lang=ro&list=237000:cs,237058:cs,237057:cs,237056:cs,&pos=1&page=1&nbl=4&pgs=10&hwords=&checktexte=checkbox&visu=#texte>.

(h) for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants. Controls may take the form of a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. These controls shall be periodically reviewed and, where necessary, updated;

(i) for any other significant adverse impacts on the status of water identified under Article 5 and Annex II, in particular measures to ensure that the hydromorphological conditions of the bodies of water are consistent with the achievement of the required ecological status or good ecological potential for bodies of water designated as artificial or heavily modified. Controls for this purpose may take the form of a requirement for prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. Such controls shall be periodically reviewed and, where necessary, updated;

(j) a prohibition of direct discharges of pollutants into groundwater subject to the following provisions:

Member States may authorise reinjection into the same aquifer of water used for geothermal purposes.

They may also authorise, specifying the conditions for:

- injection of water containing substances resulting from the operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations from which hydrocarbons or other substances have been extracted or into geological formations which for natural reasons are permanently unsuitable for other purposes. Such injections shall not contain substances other than those resulting from the above operations,

- reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works,

- injection of natural gas or liquefied petroleum gas (LPG) for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes,

- injection of natural gas or liquefied petroleum gas (LPG) for storage purposes into other geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or future danger of deterioration in the quality of any receiving groundwater,

- construction, civil engineering and building works and similar activities on, or in the ground which come into contact with groundwater. For these purposes, Member States may determine that such activities are to be treated as having been authorised provided that they are conducted in accordance with general binding rules developed by the Member State in respect of such activities,

- discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of water bodies limited to the amount strictly necessary for the purposes concerned

provided such discharges do not compromise the achievement of the environmental objectives established for that body of groundwater;

(k) in accordance with action taken pursuant to Article 16, measures to eliminate pollution of surface waters by those substances specified in the list of priority substances agreed pursuant to Article 16(2) and to progressively reduce pollution by other substances which would otherwise prevent Member States from achieving the objectives for the bodies of surface waters as set out in Article 4;

(l) any measures required to prevent significant losses of pollutants from technical installations, and to prevent and/or to reduce the impact of accidental pollution incidents for example as a result of floods, including through systems to detect or give warning of such events including, in the case of accidents which could not reasonably have been foreseen, all appropriate measures to reduce the risk to aquatic ecosystems.

4. "Supplementary" measures are those measures designed and implemented in addition to the basic measures, with the aim of achieving the objectives established pursuant to Article 4. Part B of Annex VI contains a non-exclusive list of such measures.

Member States may also adopt further supplementary measures in order to provide for additional protection or improvement of the waters covered by this Directive, including in implementation of the relevant international agreements referred to in Article 1.

5. Where monitoring or other data indicate that the objectives set under Article 4 for the body of water are unlikely to be achieved, the Member State shall ensure that:

- the causes of the possible failure are investigated,
- relevant permits and authorisations are examined and reviewed as appropriate,
- the monitoring programmes are reviewed and adjusted as appropriate, and
- additional measures as may be necessary in order to achieve those objectives are established, including, as appropriate, the establishment of stricter environmental quality standards following the procedures laid down in Annex V.

Where those causes are the result of circumstances of natural cause or force majeure which are exceptional and could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, the Member State may determine that additional measures are not practicable, subject to Article 4(6).

6. In implementing measures pursuant to paragraph 3, Member States shall take all appropriate steps not to increase pollution of marine waters. Without prejudice to existing legislation, the application of measures taken pursuant to paragraph 3 may on no account lead, either directly or indirectly to increased pollution of surface waters. This requirement shall not apply where it would result in increased pollution of the environment as a whole.

7. The programmes of measures shall be established at the latest nine years after the date of entry into force of this Directive and all the measures shall be made operational at the latest 12 years after that date.

8. The programmes of measures shall be reviewed, and if necessary updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter. Any new or revised measures established under an updated programme shall be made operational within three years of their establishment.

3.2. The indictment of this act in the Romanian legislation

According to **art 92** of *Law no. 107/1996* – the Law of waters ⁽¹⁹⁾,

(1) The evacuation, disposal or injection in the surface and subterranean waters, in inferior maritime waters or in the territorial sea waters of wastewaters, residues or products whatsoever, which contain substances, bacteria or germs in a quantity or concentration which might change the water's characteristics, endangering the life, health or safety of people, animals, environment, farming crops or industrial production or the fish stock, represents infraction and is punished by prison from 1 year to 5 years.

(2) The punishment stipulated in paragraph (1) is enforced for the following acts:

a) Pollution whatsoever of water resources even if it is systematic and harms the water users downstream;

d) Storage in the major riverbeds of nuclear fuel or waste from its use;

e) Endangering of reservoir dams by means of operation of mineral machineries from the major riverbeds or terraces;

(3) The storage or use of chemical fertilizers, pesticides or other dangerous toxic substances in the areas of water protection represents infraction and is punished with imprisonment from one year to 3 years or with fine from RON 40,000 to RON 70,000.

(4) Guilty perpetration of the acts indicated in paragraphs (1) and (2) is punished with imprisonment from one year to 3 years or with fine from RON 40,000 to RON 70,000 and of the acts indicated in paragraph (3), with imprisonment from 6 months to one year or with fine from RON 20,000 to RON 35,000.

(5) If the acts indicated in paragraphs (1)-(3) result into the severe physical injury of a person or have endangered the health or safety of a large number of people or have caused a significant material loss, the punishment is imprisonment from 5 to 10 years and the interdiction of several rights.

(6) If the acts indicated in paragraphs (1) – (3) result into the death of one or several persons, the mass intoxication of population, plagues or a massive loss of the national economy, the punishment is imprisonment from 15-20 years and the interdiction of several rights.

¹⁹ Law no. 107/1996 published in M. Of. no. 244/08.10.1996

(7) The attempt to carry out the acts indicated in paragraphs (1) – (3) is also punished.

According to **art 93** of the same law,

(1) The fulfillment, change or further development of works, constructions or installation in waters or which are connected to waters, without legal approval or without notification in this respect and the start-up of facilities without concomitant start-up of sewer networks, of wastewater treatment plants, according to the permit for water management, represents infraction and is punished with imprisonment from one to three years or with fine from RON 40,000 to RON 70,000.

(2) The punishment from paragraph (1) is enforced to the following acts:

a) Use of waters resources for different purposes, without the approval for water management or without notification in this respect;

(b) Exploitation or maintenance of works built in waters or connected to waters, operation of activities for lime, hemp, linen or other textile plants melting, leather tanning and extraction of minerals, without approval of water management;

(c) Exploitation of minerals in the areas of water sanitary protection, in the area of riverbed protection, bank projection, hydro-technical constructions, hydrometric constructions and installations or of installations for the automated measurement of water quality;

(d) Use of minor riverbeds without the approval for water management and of the sea beach or shoreline for other purposes than bathing or esplanade;

(e) Continuation of activity after the loss of the rights achieved according to the law.

(3) The acts stipulated in paragraphs (1) and (2), perpetrated in guilt, are punished with imprisonment from 6 months to one year or with fine from RON 25,000 to RON 45,000.

According to **art 94** of the law,

The limitation on the use of drinkable water for the population for the benefit of other activities or the over-consumption of water, if it is systematic in nature or has caused malfunctions in the activity of a social protection facility or has caused shortages in the water supply to the population represents infraction and is punished with imprisonment from one year to three years or with fine from RON 35,000 to RON 60,000.

According to **art 95** of the law,

(1) The destruction, deterioration or operation by unauthorized persons of the dams, grills, tanks, barriers or other hydro-technical facilities or installations, the circulation of vehicles on dams and embankments which are not designed in this respect, deforestation of dams and reservoirs, blockage of dam drainage are punished with fine from one year to three years or with fine from RON 35,000 to RON 60,000.

(2) The same punishment is enforced for excavation, pits or ditches in dams, embankments or in the protection areas of these works and the excavation of soil or removal of materials from the defensive works without approval for water management or its non-observance.

(3) Guilty perpetration of the acts indicated in paragraphs (1) and (2) is punished with imprisonment from 6 months to one year or with fine from RON 15,000 to RON 25,000.

(4) The attempt to carry out the acts indicated in paragraphs (1)-(2) is also punished.

3.3. The indictment of this act in the legislation of some European countries

A. France

According to **Article L. 216-6** of the **Environmental Code**,

The act of disposing of, discharging or letting flow into surface, underground or seawater within the limits of territorial boundaries, directly or indirectly, one or more substances of any kind whose actions or reactions cause, even if only temporarily, harmful effects on health, fauna and flora, with the exception of damage referred to in Articles 218-73 and L. 432-2, or significant modifications to the normal regimen of water supply or limitations in the use of bathing waters, is punishable by two years of imprisonment and a fine of 75 000 euros. When the discharge is authorised by decree, the provisions of this paragraph are applicable only if the prescriptions of the aforementioned decree are not respected.

The court may also oblige the convicted person to restore the aquatic environment in accordance with the procedure set out in Article L. 216-9.

These same penalties and measures are applicable in the event of discharge or abandonment of waste in large quantities in surface or underground waters or in seawater within the boundaries of territorial limits, on beaches or in coastal areas. These provisions are not applied to discharges from ships at sea.

B. Italy

According to **Article 192 „Prohibition of abandonment”** of the *Environmental Code* ...

2. It is also prohibited throwing any kind of waste in solid or liquid state into the surface waters or into ground waters.

3. Without prejudice to the penalties provided by the art. 255 and 256, any person who violates the provisions in the 1st and the 2nd paragraph, must remove, clean, collect or throw the waste, and also to rehabilitate the area, jointly with the owners and the holders of real and personal rights, whose violation is attributable to willful breach or negligence, based on investigations of the staff involved in the investigation, in contradiction with the involved parties ...

4. If the liability for the wrongful act is attributable to administrators or legal representatives of a legal body, according to the 3rd paragraph they are jointly and severally held liable, both the legal body and persons that took over the rights of that person, in accordance with the Decree Law no. 231 of 08.06.2001.

According to **Article 255 „Abandonment of waste”** of the same code,

1. Without prejudice to art. 256, the 2nd paragraph, any person who violates the provisions of the art. 192, the 1st and the 2nd paragraph, the art. 226, the 2nd paragraph and the art. 231, the 1st and the 2nd paragraph, abandons or stores waste or throws it into the surface waters or into ground waters, shall be punished with the payment of a fine from 300 to 3000 euros. If the abandonment involves dangerous, noxious waste, the fine is increased to twice the above mentioned one.

2. The owner of the collection center, distributor or owner of the manufacturer's branch who violates the provisions of the Art. 231, the 5th paragraph, shall be punished with the payment of a fine from 260 to 1550 euros.

3. Any person disobeying the order of the Mayor provided by the art. 192, the 3rd paragraph, or fails to fulfil its obligation under the Art. 187, the 3rd paragraph, shall be punished with imprisonment up to one year ... the conditional suspended sentence is accepted when the order provided by the art. 192, the 3rd paragraph is obeyed or if the person meets the requirements provided by the Art. 183, the 3rd paragraph.

According to **Article 137 „Penalties”** of the code,

1. Any person who collects industrial waste or by any means, throws new industrial waste, without a permit, or continues to make or deposit industrial waste, after the permit has been suspended or revoked, shall be punished with imprisonment from two months to two years or must pay a fine from 1,500 to 10,000 euros.

2. When the behavior described in the first paragraph refers to industrial waste containing dangerous substances from families and groups listed in Tables 5 and 3 / A of this Decree, the punishment shall be imprisonment from three months to three years.

3. Any person, except the cases provided by the 5th paragraph, who makes industrial waste containing very noxious substances from families and groups listed in Tables 5 and 3 / A of this decree, without meeting licensing requirements or other requirements of the competent authority, in accordance with art. 107, the 1st paragraph and art. 108, the 4th paragraph, shall be punished with imprisonment of up to two years.

4. Any person who violates the requirements for the installation and operation controls automatically or the obligation to keep their results referred to in the art. 131, shall be punished according to the 3rd paragraph.

C. Germany

According to **Section 324 „Water pollution”** of the *Criminal Code*,

(1) Whoever unlawfully pollutes a body of water or otherwise alters its qualities in a negative manner shall be liable to imprisonment not exceeding five years or a fine.

- (2) The attempt shall be punishable.
- (3) If the offender acts negligently the penalty shall be imprisonment not exceeding three years or a fine.

According to **Section 330 „Aggravated cases of environmental offences”** of the same code,

(1) In especially serious cases of an intentional offence under sections 324 to 329 the penalty shall be imprisonment from six months to ten years. An especially serious case typically occurs if the offender

1. damages a body of water, the soil or a conservation area within the meaning of section 329(3) in such a manner that the damage cannot be eliminated or only at extraordinary expense or after a lengthy period of time;

2. endangers the public water supply;

3. permanently damages an existing population of animals or plants of species under threat of extinction;

4. acts out of profit-seeking.

(2) Whosoever by an intentional offence under sections 324 to 329

1. places another person in danger of death or serious injury or a large number of people in danger of injury; or

2. causes the death of another person,

shall in cases under No 1 above be liable to imprisonment from one to ten years, in cases under No 2 above to imprisonment of not less than three years unless the act is punishable under section 330a(1) to (3).

(3) In less serious cases under subsection (2) No 1 above the penalty shall be imprisonment from six months to five years, in less serious cases under subsection (2) No 2 above imprisonment from one to ten years.

D. Finland

According to **Chapter 48 „Environmental offence”** of the **Criminal Code**,

Section 1 „Impairment of the environment” (748/2007)

(1) A person who, intentionally or through gross negligence,

1. introduces, emits or disposes into the environment an object, a substance, radiation or something similar in violation of the law, a provision based on law, a general or a specific order, or without a permit required by law or in violation of permit conditions ...

so that the act is conducive to causing contamination of the environment, other corresponding environmental despoliation or littering or a health hazard, shall be sentenced for *impairment of the environment* to a fine or to imprisonment for at most two years.

Section 2 „Aggravated impairment of the environment” (578/1995)

(1) If, in the impairment of the environment,

- (1) the damage or danger of damage caused to the environment or health is especially serious, with regard to the long duration, wide effect and other circumstances of the realised or imminent damage, or

- (2) the offence is committed in violation of an order or a prohibition of an authority, as issued because of conduct referred to in section 1 and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated impairment of the environment to imprisonment for at least four months and at most six years.

(2) The provision on attempt in section 1 applies correspondingly.

Section 3 „Environmental infraction” (578/1995)

(1) If the impairment of the environment, when assessed as a whole, with due consideration to the insignificance of the danger or damage caused to the environment or health or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for an environmental infraction to a fine or to imprisonment for at most six months.

(2) Also a person who, intentionally or through gross negligence, violates orders based on section 64 of the Environmental Protection Act, shall be sentenced for an environmental infraction. (112/2000)

(3) Also a person who neglects the duty to apply for an environmental permit, as referred to in sections 28 and 29 of the Environmental Protection Act, shall be sentenced for an environmental infraction, unless the act is punishable as impairment of the environment. (112/2000)

(4) Also a person who intentionally or through gross negligence violates section 5 of the Waterway Traffic Act or the prohibitions and restrictions issued on the basis of section 15 or 16 of the Waterway Traffic Act, so that the act is conducive to causing danger to the environment, shall be sentenced for an environmental infraction. (545/1999).

Section 4 „Negligent impairment of the environment” (112/2000)

A person who, through negligence not to be deemed gross,

(1) affects the environment in a manner referred to in section 1, subsection 1(1) or subsection 3, or

(2) violates the Waste Act or the Environmental Protection Act or provisions or orders based thereon in a manner referred to in section 1, subsection 1(2) or 1(3)

so that the damage or danger of damage caused to the environment or health is especially serious, with due consideration to the long duration, wide effect and other circumstances of the realised or imminent damage, shall be sentenced for negligent impairment of the environment to a fine or to imprisonment for at most one year.

E. Sweden

According to **Chapter 29 „Penalty provisions and forfeiture”** of the *Environmental Code*,
Section 1 Any person who deliberately:

1. pollutes land, water or air in a manner which involves or is liable to involve risks for human health or detriment to flora and fauna that are not inconsiderable or other significant detriment to the environment;

2. stores waste or other matter in a manner which may give rise to health risks, damage or other detriment referred to in point 1 as a result of pollution; or

shall, unless a competent authority has permitted the practice or it is generally accepted, be liable to a fine or a term of imprisonment not exceeding two years for *environmental offence*.

If the offence is serious, the penalty shall be a term of imprisonment of not less than six months nor more than six years.

When the seriousness of the offence is considered, special attention shall be paid to whether it caused, or might have caused, lasting damage on a large scale or whether the act was otherwise of a particularly dangerous nature.

If the act may be deemed to be justifiable in view of the circumstances, no penalty shall be imposed pursuant to this section.

Section 2 Any person who commits an offence referred to in section 1 through negligence shall be liable to a fine or a term of imprisonment not exceeding two years for the offence of *causing environmental disturbance* ...

Section 8 Any person who infringes any of the following provisions, whether deliberately or through negligence, shall be liable to a fine or a term of imprisonment not exceeding two years: ...

12. rules or decisions prohibiting discharges of wastewater etc. issued pursuant to chapter 9, section 4;

13. rules concerning precautions in connection with environmentally hazardous activities issued pursuant to chapter 9, section 5;

14. restrictions, conditions or a notification requirement relating to an environmental hazard zone laid down pursuant to chapter 10, section 12;

15. the obligation to maintain a water structure pursuant to chapter 11, section 17 first paragraph or section 20 first paragraph or 21 first paragraph ...

Section 12 ... Means of transport and other means used for the purposes of or involved in an offence referred to in sections 1 to 4, 8, 9 or 10 may be declared forfeited if this is necessary in order to prevent crime or otherwise in special circumstances. Instead of the means itself, its value, or part thereof, may be declared forfeited.

3.4. Particularities of the indictment for illegal discharge of dangerous substances in water

a) In the domestic regulations

The Law of waters (Law no. 107/1006) expressly stipulates, in art 112, paragraph (2), that this regulation implements Directive 2000/60/E of the European Parliament and the Council of October 23, 2000 for the enactment of a Community policy on the water area, published in the Official Gazette of the European Communities (JOCE) series L no. 327 of December 22, 2000.

As regards the indictment's contents, this regulation exceeds the provisions of the Directive it implements and succeeds in listing exhaustively the acts which represent the content of this indictment, some of them not being included in the Directive.

b) In the regulations of the other European countries, subject to analysis

It can be noticed that none of these regulations mention expressly the need to implement Directive 2006/11/EC or Directive 2000/60/EC.

As regards the existence and content of the indictment and, at this moment, it can be noticed that these regulations implement quite completely (save for the Finnish Criminal Code and the Swedish Environment Code) the provisions of this Directive.

In the *French Environment Code*, the lawmaker manages to bring together, in a single paragraph, the essence of the provisions from the two Directives.

Also, in the *German Criminal Code*, the indictment provisions are focused, but comprehensive; in case of severe gravity, the action for profit can be noticed.

In the *Italian Environment Code*, the indictment is well structured, pretty clear and comprehensive; we should underline the provision concerning the obligation, of the person infringing the restriction to discharge waste in the surface or subterranean waters, to remove, recover or eliminate the waste and to restore the area, together with the owner and the holders of personal or movable rights, to whom the infringement is charged by negligence or ill will.

The *Finish Criminal Code* generally punishes the occurrence of environmental deterioration (mild, severe or aggravated); however, it refers (in particular) to the Law on the traffic on navigable routes, namely to the infringement of interdictions or restrictions which lead to dangers for the environment.

The *Finnish Environment Code* generally incriminates the pollution of the environment. This regulation indicts the infringement of rules or decisions which forbid the evacuation of wastewaters and the obligation to preserve the water structure.

4. Unlawful dumping of waste

4.1. Regulations in the secondary law of the European Union

A. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives²⁰

According to **Article 36 „Enforcement and penalties”**,

1. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste.

2. Members States shall lay down provisions on the penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive.

4.2. The indictment of this act in the Romanian legislation

According to **art 63** of *Law no. 211/2011* on the waste regime (²¹),

²⁰ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, available from internet: <http://eur-lex.europa.eu/Notice.do?val=483340:cs&lang=ro&list=483340:cs,&pos=1&page=1&nbl=1&pgs=10&hwords=&checktexte=checkbox&visu=#texte>.

²¹ Law no. 211/2011 published in M. Of. no. 837/25.11.2011

(1) The following acts are infractions and are punished with imprisonment from 6 months to 5 years:

- a) The import of machineries, plants, equipment, installations, substances and products used and worn from the class of waste forbidden to import;
 - b) The trade, abandonment and/or failure to ensure waste loads during the transit on Romanian territory;
 - c) The refusal to return to the country of origin of waste brought to the country and for which the competent authority has ruled to be returned;
 - d) The introduction in the country of waste for elimination and/or their non-employment for their purpose.
 - e) The acceptance by storage/incinerator operators or by any legal or natural person of waste brought to the country illegally for elimination purposes and/or of waste introduced into the country for other purposes, but elimination and which are not used for their purpose.
- (2) The attempt is punished.

4.3. The indictment of this act in the legislation of some European countries

A. France

According to **Article L. 541-46** of the ***Environmental Code***,

I. Is punished by two year's imprisonment and a fine of 75,000 euros, the fact of ...

4° Abandoning, depositing or having deposited, under conditions contrary to the provisions of this Chapter, waste;

II. In case of conviction for the offences described in 4 ... of I, the court may order, under penalty, the rehabilitation of the places damaged by the waste which have not been treated under the conditions provided by the law.

According to **Article L. 541-47** of the same code,

I. Legal entities can be declared criminally responsible under the conditions set out in Article 121-2 of the Criminal Code for the offences defined in Article L. 541-46 ...

B. Italy

According to **Article 192** „**Prohibition of abandonment**” of the ***Environmental Code***,

1. Abandoning and throwing the waste on the soil are prohibited.

2. It is also prohibited throwing any kind of waste in solid or liquid state into the surface waters or into ground waters.

3. Without prejudice to the penalties provided by the art. 255 and 256, any person who violates the provisions in the 1st and the 2nd paragraph, must remove, clean, collect or throw the waste, and also to rehabilitate the area, jointly with the owners and the holders of real and personal rights, whose violation is attributable to willful breach or negligence, based on investigations of the staff involved in the investigation, in contradiction with the involved parties ...

4. If the liability for the wrongful act is attributable to administrators or legal representatives of a legal body, according to the 3rd paragraph they are jointly and severally held liable, both the legal body and persons that took over the rights of that person, in accordance with the Decree Law no. 231 of 08.06.2001.

According to **Article 255** „**Abandonment of waste**” of the same code,

1. Without prejudice to art. 256, the 2nd paragraph, any person who violates the provisions of the art. 192, the 1st and the 2nd paragraph, the art. 226, the 2nd paragraph and the art. 231, the 1st and the 2nd paragraph, abandons or stores waste or throws it into the surface waters or into ground waters, shall be punished with the payment of a fine from 300 to 3000 euros. If the abandonment involves dangerous, noxious waste, the fine is increased to twice the above mentioned one.

2. The owner of the collection center, distributor or owner of the manufacturer's branch who violates the provisions of the Art. 231, the 5th paragraph, shall be punished with the payment of a fine from 260 to 1550 euros.

3. Any person disobeying the order of the Mayor provided by the art. 192, the 3rd paragraph, or fails to fulfil its obligation under the Art. 187, the 3rd paragraph, shall be punished with imprisonment up to one year ... the conditional suspended sentence is accepted when the order provided by the art. 192, the 3rd paragraph is obeyed or if the person meets the requirements provided by the Art. 183, the 3rd paragraph.

C. Germany

According to **Section 326 „Unlawful disposal of dangerous waste”** of the *Criminal Code*,

(1) Whosoever unlawfully, outside the facility authorised therefor or in substantial deviation from the proscribed or authorised procedure, treats, stores, dumps, discharges or otherwise disposes of waste which

1. contains or can generate poisons or carriers of diseases which are dangerous to the public and are communicable to persons or animals;

2. is carcinogenic in humans, harmful to the foetus or can cause alterations in the genetic make-up;

3. is prone to explode, spontaneously combustible, or of more than merely minor radioactive quality; or

4. because of its nature, composition or quantity is capable of:

(a) polluting or otherwise negatively and permanently altering a body of water, the air or the soil or

(b) endangering an existing population of animals or plants

shall be liable to imprisonment not exceeding five years or a fine ...

(4) In cases under subsections (1) ... above the attempt shall be punishable.

(5) If the offender acts negligently the penalty

1. in cases under subsections (1) ... above shall be imprisonment not exceeding three years or a fine ...

(6) The offence shall not be punishable if harmful effects on the environment, especially on persons, bodies of water, the air, the soil, useful animals or useful plants, are obviously excluded due to the small quantity of waste.

D. Finland

According to **Chapter 48 „Environmental offence”** of the *Criminal Code*,

Section 1 „Impairment of the environment” (748/2007)

(1) A person who, intentionally or through gross negligence, ...

3. imports or exports waste or transports waste through the territory of Finland in violation of the Waste Act or a provision or specific order based on the Waste Act or Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipment of wastes or imports or exports a substance, product or object in violation of a Decree issues on the basis of the Environmental Act or in violation of Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer, Regulation (EC) No 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases, Regulation (EC) 304/2003 of the European Parliament and of the Council concerning the export or import of dangerous chemicals or permanent organic compounds and Regulation (EC) No 850/2004 of the European Parliament and of the Council amending Directive 79/117/EEC, or exports genetically modified organisms or foodstuffs or feed contains such in violation of Regulation (EC) 1946/2003 of the European Parliament and the Council on transboundary movements of genetically modified organisms

so that the act is conducive to causing contamination of the environment, other corresponding environmental despoliation or littering or a health hazard, shall be sentenced for impairment of the environment to a fine or to imprisonment for at most two years.

Section 2 „Aggravated impairment of the environment” (578/1995)

(1) If, in the impairment of the environment,

(1) the damage or danger of damage caused to the environment or health is especially serious, with regard to the long duration, wide effect and other circumstances of the realised or imminent damage, or

(2) the offence is committed in violation of an order or a prohibition of an authority, as issued because of conduct referred to in section 1 and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated impairment of the environment to imprisonment for at least four months and at most six years.

(2) The provision on attempt in section 1 applies correspondingly.

Section 3 „Environmental infraction” (578/1995)

(1) If the impairment of the environment, when assessed as a whole, with due consideration to the insignificance of the danger or damage caused to the environment or health or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for an environmental infraction to a fine or to imprisonment for at most six months.

(2) Also a person who, intentionally or through gross negligence, violates orders based on section 64 of the Environmental Protection Act, shall be sentenced for an environmental infraction. (112/2000)

(3) Also a person who neglects the duty to apply for an environmental permit, as referred to in sections 28 and 29 of the Environmental Protection Act, shall be sentenced for an environmental infraction, unless the act is punishable as impairment of the environment. (112/2000)

(4) Also a person who intentionally or through gross negligence violates section 5 of the Waterway Traffic Act or the prohibitions and restrictions issued on the basis of section 15 or 16 of the Waterway Traffic Act, so that the act is conducive to causing danger to the environment, shall be sentenced for an environmental infraction. (545/1999)

Section 4 „Negligent impairment of the environment” (112/2000)

A person who, through negligence not to be deemed gross,

(1) affects the environment in a manner referred to in section 1, subsection 1(1) or subsection 3, or

(2) violates the Waste Act or the Environmental Protection Act or provisions or orders based thereon in a manner referred to in section 1, subsection 1(2) or 1(3) so that the damage or danger of damage caused to the environment or health is especially serious, with due consideration to the long duration, wide effect and other circumstances of the realised or imminent damage, shall be sentenced for negligent impairment of the environment to a fine or to imprisonment for at most one year.

E. Sweden

According to **Chapter 15 „Waste and producer responsibility”** of the *Environmental Code*, **Section 31** Waste, whether in the form of solid matter, liquids or gas, must not be dumped in Sweden’s territorial waters or economic zone. Waste must not be dumped from Swedish vessels or aircraft in the open sea. Waste intended for dumping in the open sea must not be taken out of the country or Sweden’s economic zone.

The provisions relating to dumping shall also be applicable to the incineration of waste.

According to **Chapter 29 „Penalty provisions and forfeiture”** of the same code,

Section 1 Any person who deliberately:

1. pollutes land, water or air in a manner which involves or is liable to involve risks for human health or detriment to flora and fauna that are not inconsiderable or other significant detriment to the environment;

2. stores waste or other matter in a manner which may give rise to health risks, damage or other detriment referred to in point 1 as a result of pollution; or

3. causes substantial detriment to the environment as a result of noise, vibration or radiation shall, unless a competent authority has permitted the practice or it is generally accepted, be liable to a fine or a term of imprisonment not exceeding two years for *environmental offence*.

If the offence is serious, the penalty shall be a term of imprisonment of not less than six months nor more than six years.

When the seriousness of the offence is considered, special attention shall be paid to whether it caused, or might have caused, lasting damage on a large scale or whether the act was otherwise of a particularly dangerous nature.

If the act may be deemed to be justifiable in view of the circumstances, no penalty shall be imposed pursuant to this section.

Section 2 Any person who commits an offence referred to in section 1 through negligence shall be liable to a fine or a term of imprisonment not exceeding two years for the offence of *causing environmental disturbance* ...

Section 8 Any person who infringes any of the following provisions, whether deliberately or through negligence, shall be liable to a fine or a term of imprisonment not exceeding two years: ...

24. the prohibition against the dumping or incineration of waste laid down in chapter 15, section 31 ...

4.4. Particularities of the indictment on the illegal abandonment of waste

a) In the domestic regulations

The Law on waste regime (Law no. 211/2011) expressly stipulates, in the end, that this regulation implements, in the domestic legislation, Directive 2008/98/EC of the European Parliament and the Council of November 19, 2008 on waste and for the abrogation of certain directives, published in the Official Gazette of the European Union (JOUE) series L no, 312 of November 22, 2008.

In terms of the content of the indictment, certain remarks need to be pointed out. Thus, additionally to the acts that are considered misdemeanor and sanctioned by art 61, paragraph (1) of the Law, art 63 incriminates several acts which, in our opinion, depict the (EC) Regulation no. 1013/2006 of the European Parliament and the Council of June 14, 2006 on waste transfer (detailed under the following point) only because they concern the import, introduction into the country and waste transit.

b) In the regulations of other Europeans countries, subject to our analysis

It can be noticed that none of these regulations mention expressly the need to implement Directive 2008/98/EC of the European Parliament and the Council of November 19, 2008.

As regards the existence and content of the indictment and, at this moment, it can be noticed that these regulations implement quite completely (save for the Finnish Criminal Code and the Swedish Environment Code) the provisions of this Directive.

In the *French Environment Code*, the lawmaker manages, again, to bring together, in a single paragraph, the essence of the provisions from this Directive.

We should also notice the indictment provisions stipulated by the *Italian Environment Code*, the *Swedish Environment Code* and the *German Criminal Code* which manage to include, with the particularity of each individual regulation, multiple matters concerning waste abandonment.

We have listed below some of the specific matters of these regulations:

- The person, who breaks the said restrictions, is compelled to restore, recover or eliminate the waste and to restore the premises, together with the owner and the holders of the movable or personal rights, who can be charged with the infringement based in negligence or ill will (the Italian Environment Code);

- It is forbidden to remove from the country or from the economic area of Sweden the waste designed to be discarded in the open sea (the Swedish Environment Code);

- To state the type and effects of waste and a special cause of non-indictment, respectively if the noxious effects on the environment and, especially, on people, water, air, soil, animals and useful plants are obviously excluded due to the small quantity of such waste (the Criminal German Code).

Unfortunately, the indictment from the *Finnish Criminal Code* encounters some shortcoming similar to the Romanian regulation as it concerns, in particular, the waste import, export and transit; however, general provisions are included, which concern the environment's deterioration, respectively the infringements of the Law on waste, the Law on environment protection or the provisions and orders issued according to the said laws.

5. Illegal shipment of waste

5.1. Regulations in the secondary law of the European Union

*A. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste*²²

According to *Article 50 „Enforcement in Member States”*,

1. Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of their national legislation relating to prevention and detection of illegal shipments and penalties for such shipments.

2. Member States shall, by way of measures for the enforcement of this Regulation, provide, inter alia, for inspections of establishments and undertakings in accordance with Article 13 of Directive 2006/12/EC, and for spot checks on shipments of waste or on the related recovery or disposal.

3. Checks on shipments may take place in particular:

- (a) at the point of origin, carried out with the producer, holder or notifier;
- (b) at the destination, carried out with the consignee or the facility;
- (c) at the frontiers of the Community; and/or
- (d) during the shipment within the Community.

4. Checks on shipments shall include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste.

5. Member States shall cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments.

6. Member States shall identify those members of their permanent staff responsible for the cooperation referred to in paragraph 5 and identify the focal point(s) for the physical checks referred to in paragraph 4. The information shall be sent to the Commission which shall distribute a compiled list to the correspondents referred to in Article 54.

7. At the request of another Member State, a Member State may take enforcement action against persons suspected of being engaged in the illegal shipment of waste who are present in that Member State.

5.2. The indictment of this act in the Romanian legislation

According to *art 1* of *G.D. no. 788/2007* on measures for the enforcement of the Regulation of the European Parliament and the (EC) Council no. 1,013/2006 regarding waste transfer⁽²³⁾,

(1) This decision sets up the institutional framework for the direct enforcement of the Regulation of the European Parliament and the (EC) Council no. 1,013/2006 of June 14, 2006 concerning waste transfer, published in the Official Gazette of the European Union no. L190 of July 12, 2006

According to *art 63* of *Law no. 211/2011* on waste regime⁽²⁴⁾,

(1) The following acts are infractions and are punished with imprisonment from 6 months to 5 years:

- a) The import of machines, plants, equipment, facilities, substances and products used and worn from the class of waste forbidden to import;
- b) The trade, abandonment and/or failure to ensure the waste loads during the transit on Romanian territory;

²² Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, available from internet: <http://eur-lex.europa.eu/Notice.do?val=429771:cs&lang=ro&list=429771:cs,429527:cs,429413:cs,427926:cs,427925:cs,427923:cs,427896:cs,427895:cs,427894:cs,427892:cs,&pos=1&page=1&nbl=14&pgs=10&hwords=&checktexte=checkbox&visu=#texte>.

²³ G.D. no. 788/2007 published in M. Of. no. 522/02.08.2007

²⁴ Law no. 211/2011 published in M. Of. no. 837/25.11.2011

c) The refusal to return to the country of origin of waste brought into the country and for which the competent authority has ruled to be returned;

d) The introduction into the country of waste for elimination and/or their non-employment for their purpose.

e) The acceptance by storage/incinerator operators or by any legal or natural person of waste brought to the country illegally for elimination purposes and/or of waste introduced into the country for other purposes, but elimination and which are not used for their purpose.

(2) The attempt is punished.

According to **art 302²** of the *Criminal Code* ⁽²⁵⁾

The import of any waste or residue whatsoever or of other goods dangerous for the population's health and for the environment and the introduction of waste into the country or their transit on the Romanian territory, without observing the legal provisions is punished with imprisonment from 2 to 7 years.

If the acts stipulated in the paragraph above have endangered the health or safety of a large number of people or have caused any of the consequences indicated in art 182 or a significant material loss, the punishment is imprisonment from 3 to 10 years and the interdiction of several rights and, if they result into the death of one or several persons or into a massive loss of the national economy, the punishment is imprisonment from 7 to 20 years and the interdiction of several rights

The attempt is punished.

5.3. The indictment of this act in the legislation of some European countries

A. France

According to **Article L. 541-40** of the *Environmental Code*,

I. - The import, export and transit of waste are subject to the provisions of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.

According to **Article L. 541-46** of the same code,

I. Is punished by two year's imprisonment and a fine of 75,000 euros, the fact of ...

11° a) to proceed or make to proceed to transfer waste without having notified the transfer to the French authorities or foreign without the prior consent of those authorities when such notification and consent are required;

b) to proceed or make to proceed to a waste transfer while the consent of the competent authorities concerned has been obtained by fraud;

c) to proceed or make to proceed a waste transfer while the transfer is not accompanied by the movement document provided for in Article 4 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste;

d) to proceed or make to proceed to a shipment of waste for which the producer, the consignee or the facility of destination of the waste are not those mentioned in the notification document or motion under Article 4 of Regulation mentioned above;

e) to proceed or make to proceed to transfer to a waste of a different nature from that indicated in the notification document and movement under Article 4 of the Regulation mentioned above, or with a significantly higher amount of waste ;

f) to proceed or make to proceed to transfer waste including recovery or disposal is carried out in breach of Community law or international law;

g) to export of waste in breach of Articles 34,36,39 and 40 of the Regulation mentioned above;

h) to import of waste in breach of Articles 41 and 43 of the Regulation mentioned above;

i) to make a mixture of waste during transfer in breach of Article 19 of the Regulation mentioned above.

According to **Article L. 541-47** of the same code,

I. Legal entities can be declared criminally responsible under the conditions set out in Article 121-2 of the Criminal Code for the offences defined in Article L. 541-46 ...

²⁵ Law no. 15/1968 – the Criminal Code of Romania published in M. Of. no. 65/16.04.1997

B. Italy

According to **Article 192 „Transboundary shipment”** of the *Environmental Code*,

1. Transboundary shipments of waste are regulated by the the Community regulations on bilateral agreements referred to in art. 41 and 43 of Regulation (EC) no. 1013/2006 and Decree in section 4 ...

According to **Article 259 „Illegal waste trafficking”** of the same code,

1. Any person dispatching a shipment of waste which is considered as an illegal trafficking according to the Art. 2 of Regulation (EEC), no. 259 of 01.02.1993, and dispatching a shipment of waste listed in Annex II of the Regulation, in violation of the Art. 1, the 3rd paragraph, letter a-d thereof, shall be punished with a fine of 1550 to 26000 euros and imprisonment of up to two years. The penalty is more severe if the shipment contains noxious waste.

2. ...obligatory confiscation of the means of transport.

According to **Article 260 „Organized activities for the illegal trafficking of waste”** of the code,

1. Any person who in order to obtain an unfair financial advantage, through several operations and through the preparation of means and continuous organized activities, offers, receives, transports, exports, imports or improperly manages large amounts of waste, shall be punished with imprisonment from one to six years.

2. If the waste is highly radioactive, the punishment shall be imprisonment from three to eight years ...

4. The court ... obliges that the environment must be rehabilitated or it grants a conditional suspended sentence if the environmental damage or environmental danger is eliminated.

C. Germany

According to **Section 326 „Unlawful disposal of dangerous waste”** of the *Criminal Code*,

(2) Whosoever contrary to a prohibition or without the required permit moves waste within the meaning of subsection (1) above into, out of or through the Federal Republic of Germany shall incur the same penalty ...

(4) In cases under subsections ... (2) above the attempt shall be punishable.

(5) If the offender acts negligently the penalty

1. in cases under subsections ... (2) above shall be imprisonment not exceeding three years or a fine ...

(6) The offence shall not be punishable if harmful effects on the environment, especially on persons, bodies of water, the air, the soil, useful animals or useful plants, are obviously excluded due to the small quantity of waste.

D. Finland

According to **Chapter 48 „Environmental offence”** of the *Criminal Code*,

Section 1 „Impairment of the environment” (748/2007)

(1) A person who, intentionally or through gross negligence,

1. introduces, emits or disposes into the environment an object, a substance, radiation or something similar in violence of the law, a provision based on law, a general or a specific order, or without a permit required by law or in violation of permit conditions ...

3. imports or exports waste or transports waste through the territory of Finland in violation of the Waste Act or a provision or specific order based on the Waste Act or Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipment of wastes ...

Section 2 „Aggravated impairment of the environment” (578/1995)

(1) If, in the impairment of the environment,

(1) the damage or danger of damage caused to the environment or health is especially serious, with regard to the long duration, wide effect and other circumstances of the realised or imminent damage, or

(2) the offence is committed in violation of an order or a prohibition of an authority, as issued because of conduct referred to in section 1 and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated impairment of the environment to imprisonment for at least four months and at most six years.

(2) The provision on attempt in section 1 applies correspondingly.

Section 3 „Environmental infraction” (578/1995)

(1) If the impairment of the environment, when assessed as a whole, with due consideration to the insignificance of the danger or damage caused to the environment or health or to the other circumstances connected with the offence, is to be deemed petty, the offender shall be sentenced for an environmental infraction to a fine or to imprisonment for at most six months.

(2) Also a person who, intentionally or through gross negligence, violates orders based on section 64 of the Environmental Protection Act, shall be sentenced for an environmental infraction. (112/2000)

(3) Also a person who neglects the duty to apply for an environmental permit, as referred to in sections 28 and 29 of the Environmental Protection Act, shall be sentenced for an environmental infraction, unless the act is punishable as impairment of the environment. (112/2000)

(4) Also a person who intentionally or through gross negligence violates section 5 of the Waterway Traffic Act or the prohibitions and restrictions issued on the basis of section 15 or 16 of the Waterway Traffic Act, so that the act is conducive to causing danger to the environment, shall be sentenced for an environmental infraction. (545/1999)

Section 4 „Negligent impairment of the environment” (112/2000)

A person who, through negligence not to be deemed gross,

(1) affects the environment in a manner referred to in section 1, subsection 1(1) or subsection 3, or

(2) violates the Waste Act or the Environmental Protection Act or provisions or orders based thereon in a manner referred to in section 1, subsection 1(2) or 1(3) so that the damage or danger of damage caused to the environment or health is especially serious, with due consideration to the long duration, wide effect and other circumstances of the realised or imminent damage, shall be sentenced for negligent impairment of the environment to a fine or to imprisonment for at most one year.

E. Sweden

According to **Chapter 14 „Chemical products and biotechnical organisms”** of the **Environmental Code**,

Section 1 The provisions of this chapter shall be applicable to chemical products and biotechnical organisms.

The Government or the authority appointed by the Government may provide that the provisions of this Code that relate to chemical products shall be applicable to products that contain or are treated with a chemical product if there is a risk that such products may, on account of their characteristics, be prejudicial to human health or the environment or to other interests that are protected by this Code.

According to **Chapter 15 „Waste and producer responsibility”** of the same code,

Section 10 Where it is necessary for reasons of human health or the environment, the Government may with respect to waste other than household waste generated in the municipality issue rules requiring:

1. the municipality to arrange for removal of the waste;
2. the municipality to ensure that the waste is recycled or disposed of.

The above provisions shall not apply in cases where rules concerning producer responsibility are issued pursuant to section 6.

The Government may delegate the issuance of rules referred to in the first and the second paragraph to municipalities.

According to **Chapter 29 „Penalty provisions and forfeiture”** of the code,

Section 8 Any person who infringes any of the following provisions, whether deliberately or through negligence, shall be liable to a fine or a term of imprisonment not exceeding two years: ...

27. provisions relating to transport by transporting waste contrary to Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and

out of the European Community, as last amended by Council Regulation (EC) 120/97 of January 20 1997 ...

5.4. Particularities of the indictment of illegal transportation of waste

a) In the domestic regulations

The decision for the enactment of the regulation (H.G. no. 788/2007) stipulates expressly that this regulation sets up the institutional framework necessary for the direct enforcement of the (EC) Regulation no. 1,013/2006 of the European Parliament and Council of June 14, 2006 on the transfer of waste, published in the Official Gazette of the European Union no. L190 of July 12, 2006.

In terms of the content of the indictment, as indicated above, the *Law on waste regime* (Law no. 211/2011) implements in the domestic legislation Directive 2008/98/EC of the European Parliament and the Council (dated November 19, 2008) on waste. (In art 63), it incriminates several acts which, in our opinion, depict the content of this regulation as they concern the waste import, introduction into the country and their transit on Romanian territory.

The infraction indicated in art 302² of the Criminal Code is more general in nature, but it covers the operations of waste import, waste introduction into the country and waste transit. The punishment stipulated is more severe (from 2 to 7 years compared to the punishment from 6 months to 5 years stipulated by the special regulation on waste regime). It also indicts the attempt and stipulates the following situations as aggravated circumstances:

- They have endangered the health and safety of a large number of people;
- They result into the consequences indicated in art 182;
- They have caused significant material loss;
- They have caused the death of one or more persons;
- They have caused significant loss to the national economy.

b) In the regulations of other Europeans countries, subject to our analysis

It can be noticed that most of these regulations (save for the German Criminal Code) mention expressly one of the regulations regarding waste transfer respectively: the (current) (EC) Regulation no. 1013/2006 (the French Environment Code and the Finnish Criminal Code); the (former) (EEC) Regulation no. 259/1993 (the Italian Environment Code and the Swedish Environment Code).

As regards the existence and content of the indictment and, at this moment, it can be noticed that these regulations, along with the indication of one of these regulations, stipulate other acts related to the waste introduction into the country, waste import or export.

The indictment from the *French Environment Code* has a special wording, namely “to proceed to or to cause an action which proceeds to” the transfer of waste.

The lawmaker, in the *Italian Environment Code*, considers a specific situation, respectively obtaining an unlawful material benefit by means of several operations and by means of constant organized activities and instruments.

The *German Criminal Code* refers only to the transportation of waste in or outside Germany, by infringing a restriction or without necessary permits, but without specifying other details.

In the *Finnish Criminal Code* the indictment concerns the waste import or export or the waste transport on Finland’s territory, but it stipulates the infringement of the Law on waste or of some specific provision or order, issued according to the law or as per the (EC) Regulation no. 1013/2006.

The same notion is encountered in the *Swedish Environment Code*, which incriminates the infringement of the provisions concerning the transport of waste against the provisions of the former (EEC) Regulation no. 259/93/01.02.1993 concerning the surveillance and control of waste transportation inside and outside of the European Community.

Conclusions

As per the aforementioned, one way or the other, in the Criminal Code or in the Environment Code or in other special laws, the regulations of the European Union legislation are included in the domestic legislation of the Member States.

Naturally, each national system has certain specific particularities: in some of them, the lawmaker implements faithfully the provisions of the European Union's secondary law while in others the lawmaker considers they already exist in the domestic regulations.

However, considering that these peculiarities, pointed out in our research, and taking into account the fact that they concern offences to the environment protection or to the safe performance of activities with potential impact on the environment, we deem that a more faithful implementation is required as the regulations from the European Union's secondary law are concerned.