

A new Environmental Crime Directive coming soon

A provisional agreement has been reached between the European Parliament and the Council on the protection of the environment through criminal law^[1].

This agreement relates to a proposal for a Directive, the aim of which is to improve the effective enforcement of criminal law and to combat the most serious environmental offenses which can have devastating effects on both the environment and human health.

Environmental crime is one of the world's most profitable organized criminal activities and has a major impact not only on the environment but also on human health^[2].

This form of crime can cover a wide variety of actions/conducts: the improper collection, transport, recovery or disposal of waste, the illegal emission or discharge of substances into the atmosphere, water or soil, or the killing, destruction, possession of or trade in protected wild animal or plant species.

The aim of the future Directive is to update the European Union's rules in this respect and the associated sanctions/penalties.

A first EU Directive on the protection of the environment through criminal law had indeed been adopted in 2008^[3].

However, following an evaluation in 2019-2020, the European Commission concluded that the effect of the 2008 Directive had been limited as the number of cases successfully investigated and resulting in a sentence remained low. Moreover, the sanction levels imposed were too low to be dissuasive and cross-border cooperation was not taking place systematically. According to the United Nations Environment Programme (UNEP) and Interpol estimates, annual losses caused by environmental crime ranged from 91 to 258 billion dollars in 2016.^[4]

Therefore, on December 15, 2021, the European Commission presented a proposal to improve the

effectiveness of the 2008 Directive^[5].

It is this proposal for a Directive that has been the subject of a provisional agreement between the European Parliament and the Council.

New offenses

The future Directive will provide an updated list of acts related to the environment that qualify as criminal offences at the EU level.

As such, the number of offenses that currently exist under EU criminal law should increase from nine to 18.

The list will include, among other offenses, the import and use of mercury and fluorinated greenhouse gases, the import of invasive species, the illegal depletion of water resources, pollution caused by ships, timber trafficking, the illegal recycling of polluting components of ships and serious breaches of the legislation on chemicals.

For the rest, existing offenses will be clarified.

The list will not, however, cover GMO legislation or illegal fishing.

Qualified offenses

The notion of “qualified offenses” should be introduced.

Offenses referred to in the Directive, and which are committed intentionally, shall be considered as qualified offenses if they cause destruction, irreversible, widespread and substantial damage, or long-lasting, widespread and substantial damage to an ecosystem of considerable size or high environmental value, or to a natural habitat within a protected site, or to the quality of air, soil or water.

Penalties / Sanctions

One of the new features is that similar types and levels of sanctions/penalties for natural and legal persons should apply across the EU.

For example, the illegal collection, transport and treatment of waste or the placing on the market of illegally harvested timber or of timber products made of illegally harvested wood will be punishable by a maximum term of imprisonment of at least five years in Member States.

The following penalties shall apply to natural persons who commit one of the offenses covered by the Directive:

- for intentional offenses causing death to any person, a maximum prison term of at least ten years;

- for qualified offenses causing catastrophic repercussions, a maximum prison term of at least eight years;
- for offenses committed with at least serious negligence causing death to any person, a maximum prison term of at least five years;
- for other intentional offenses included in the legislation, a maximum prison term of either at least five years or at least three years.

As regard legal entities, the following penalties shall apply:

- for the most serious offenses, a maximum fine of at least 5% of the legal entity's total worldwide turnover, or alternatively 40 million euros;
- for all other offenses, a maximum fine of at least 3% of the legal entity's total worldwide turnover, or alternatively 24 million euros.

Additional measures may also be taken, including obliging the offender to reinstate the environment or compensate for the damage, excluding them from access to public funding or withdrawing their permits or authorizations.

Causing particularly serious damage to the environment will have to be treated as an aggravated offense, with higher sanctions/penalties.

In addition, there should be specific aggravating circumstances and accessory sanctions and measures (in addition to financial penalties) to allow for a tailored response to specific crimes.

Lastly, persons who report environmental offenses and cooperate with enforcement authorities should benefit from supporting measures in the context of the criminal proceedings.

Next steps

The agreement still needs to be confirmed by both institutions before going through the formal adoption procedure.

It is now for the European Parliament and the Council to formally adopt the political agreement.

The Directive will enter into force on the twentieth day after its publication in the Official Journal of the European Union.

Once the new directive has entered into force, Member States will have to incorporate the aforementioned rules into their national criminal law.

[1] Press released of the European Commission, November 16, 2023, available here: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5817. Press released of the European Parliament, November 16, 2023. Available here: <https://www.europarl.europa.eu/news/en/press-room/20230929IPR06108/environmental-crimes-deal-on-new-of-fences-and-reinforced-sanctions>

[2] Infographic of the European Council, updated on August 11, 2023. Available here: <https://www.consilium.europa.eu/en/infographics/eu-fight-environmental-crime-2022/>

[3] Directive 2008/99/EC of the European Parliament and of the Council of November 19, 2008 on the protection of the environment through criminal law. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0099>

[4] United Nations Environment Programme and Interpol (2016). *Strategic Report: Environment, Peace and Security: A Convergence of Threats*. <https://wedocs.unep.org/20.500.11822/17008>

[5] Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0851>

Soulie Avocats is an independent full-service law firm that offers key players in the economic, industrial and financial world comprehensive legal services.

We advise and defend our French and foreign clients on any and all legal and tax issues that may arise in connection with their day-to-day operations, specific transactions and strategic decisions.

Our clients, whatever their size, nationality and business sector, benefit from customized services that are tailored to their specific needs.

For more information, please visit us at www.soulie-avocats.com.

This material has been prepared for informational purposes only and is not intended to be, and should not be construed as, legal advice. The addressee is solely liable for any use of the information contained herein.