



## LEGAL ALERT

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### The new EU Directive on the protection of the environment through criminal law

On 15/12/2021, the European Commission adopted a new proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law.

Please note that measures to protect the environment more effectively through criminal law were established for the first time by the European Union under the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008. That Directive, which is still in force, classified a set of nine types of conduct as criminal offences when committed unlawfully and intentionally or, at least, with gross negligence.

This Directive was transposed into the Portuguese legal system through Law 56/2011, of 15 November, which, to date, remains unchanged. Law 56/2011, of 15 November, amended the wording of several punitive provisions that, at that time, were already provided for in the Penal Code, namely concerning the crimes of forest fire, damage against nature, and pollution crimes, and also instituted a new crime, relating to activities dangerous to the environment, provided for and punished by Article 279-A of the Criminal Code.

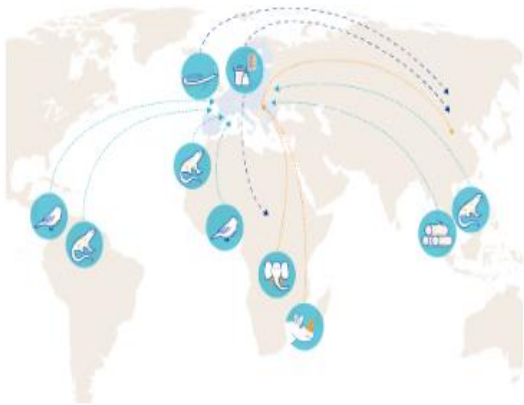
However, during the years 2019 and 2020, the European Commission evaluated the results provided by that Directive.

The Commission's findings were published in October 2020 and pointed to the inadequacy of the measures adopted under the 2008 Directive, given that there are still few cases that are successfully investigated and have resulted in a conviction. In addition, the European Commission emphasised that the sanction's measures currently in place had not proved sufficiently effective and dissuasive, as well as that cross-border cooperation has not taken place systematically between Member States. Indeed, environmental crimes generally affect more than one Member State, such as trafficking in fauna and flora and transboundary pollution.

Thus, following the results disclosed, the European Commission adopted, on 15/12/2021, a new proposal for a Directive on the protection of the environment through criminal law, which will replace Directive 2008/99/EC. The proposal presented by the European Commission is based on the following objectives:

- ✓ Improve the effectiveness of investigations and prosecution by updating the scope of the Directive;

- ✓ Improve the effectiveness of investigations and prosecutions by clarifying or eliminating vague terms used in definitions of environmental crime;
- ✓ Ensure effective, dissuasive and proportionate sanction types and levels for environmental crime;
- ✓ Promote cross-border investigation and prosecution;



- ✓ Improve informed decision-making on environmental crime through improved collection and dissemination of statistical data;
- ✓ Improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctions.

Among the main measures proposed by the European Commission, the increase in the number of criminal offences to sixteen stands out, compared to the 2008 Directive, which only foresaw nine offences. Following the submission of the proposal to the Council and the European Parliament, these Union bodies agreed to increase the number of criminal offences to eighteen.

New infringements include inter alia, illegal trade in timber, illegal ship recycling, illegal water abstraction, serious circumvention of requirements to do an environmental impact assessment, as well as serious breaches of EU chemicals legislation causing substantial damage to the environment or human health.

Furthermore, the proposal reflects an attempt to standardise the maximum penalty measures, which will have to be considered by the Member States when transposing the new Directive. By way of example, the penalties proposed by the Commission for conduct by natural persons are as follows:

- ✓ For offences committed intentionally which cause the death of a person or are likely to cause death or serious injury to persons, a maximum term of imprisonment of at least ten years;
- ✓ For certain offences, a maximum term of imprisonment of at least six or four years, as the case may be;

In the case of legal persons, the sanctions that were proposed are following:

- ✓ For the most serious infringements, a maximum financial penalty of at least 5 % of the total worldwide turnover of the legal person, or, alternatively, EUR 40 million;
- ✓ For all other infringements, a maximum penalty payment of at least 3 % of the total worldwide turnover of the legal person, or alternatively EUR 24 million.

In addition, Member States should provide specialised training for judges, prosecutors and police authorities carrying out their tasks in the field of environmental crime. Similarly, Member States should ensure that national authorities active in criminal proceedings and investigations have sufficient and adequate resources, including sufficient qualified staff and financial resources to carry out their tasks under the Directive.

At the moment, the agreement reached by the European Parliament and the Council on the Directive proposed by the European Commission is pending confirmation by each one of the institutions, after which it will be followed by the formal adoption procedure.

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