

LEGAL ALERT

PUBLIC CONSULTATION ON THE NEW EUROPEAN DIRECTIVE ON PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

In line with the ongoing expansion of criminal law, on 2 February 2021, the European Commission began the [public consultation period on the new environmental crime Directive](#), scheduled to be released in the last quarter of this year. The public consultation period will run until 3 May.

The need to approve a new Directive on the subject was established following an assessment carried out during in 2019-2020 that found several flaws and shortcomings in the environmental Directive still in force, the European Parliament and Council [Directive 2008/99/EC of 19 November 2008](#) (“2008 Directive”). The [expert study commissioned by the European Commission to assess the success of the implementation of Directive 2008/99/EC](#) highlighted that several Member States had failed to fully transpose the Directive. Also, some cases were found where the legal sanctions applicable at the national level shown to be disproportionate or inappropriate. At the same time, it was also been noted that, despite the reinforced enforcement that underpinned the 2008 Directive, the implementation of its provisions did not result in an increase in the number of convictions for environmental offences. Finally, it was also noticed there is still an unclear and scattered legal framework regarding transnational cooperation in environmental matters that can too be seen as a cause for the shortcomings of the Directive’s aims.

The mentioned Directive 2008/99/EC had a significant impact on the [Portuguese Criminal Code](#). Among others, it was responsible for changes being introduced to the criminal offences regarding forest fire, damage against nature, pollution and pollution with common danger, specifically extending the punishable conducts and increasing the applicable penalties. The Directive was also the reason for the creation of a new criminal offense, laid down in Article 279-A of the Portuguese

Criminal Code, concerning “dangerous activities to the environment”, introducing a criminal framework for conducts related to the illegal transfer of waste and to the misuse of harmful substances to the ozone layer.

Given the shortcomings of the 2008 Directive, it is expected that the new Directive, to be approved later this year, will strengthen the criminal legislation on environmental matters, with a foreseeable impact not only on the Portuguese Criminal Code, but also in a possible requalification of some conducts currently under the scope of administrative law into criminal offences.

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