

FDR-lite? – Von Der Leyen and the EU Green Deal Legislative Agenda



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The EU has been particularly active in passing significant legislation addressing the environment in recent years. This blog post will address some of the most important introductions and seek to compare them with current UK legislation in order to identify any potential areas for reform.

This ambitious agenda has largely been driven by Ursula Von der Leyen's presidency of the EU Commission. She became EU Commission president on 1 December 2019, shortly before the introduction of the European Green Deal, and was recently re-elected on 18 July 2024.

The European Green Deal

The Green Deal is important context for understanding the recent swathe of legislation. It was first presented on 11 December 2019, with the stated policy objective of the EU to make Europe the [first climate-neutral continent](#).

It aims to transform the EU into a modern, resource-efficient and competitive economy, ensuring:

- a. no net emissions of greenhouse gases by 2050;
- b. economic growth decoupled from resource use; and
- c. 3 billion additional trees to be planted in the EU by 2030.

The EU Climate Law

[The EU Climate Law](#) is a Regulation adopted by the EU in April 2021. It represents the first milestone piece of EU legislation following the adoption of EU Green Deal.

The Regulation enshrines in law the goals for the EU to become climate neutral by 2050 and reduced its GHG emissions by at least 55% from 1990 levels by 2030.

The EU Commission has since recommended, in February 2024, an additional [intermediate target](#) of a

90% reduction in emissions by 2040.

EU Carbon Border Adjustment Mechanism (CBAM)

Geo-political law making?

The CBAM is a legislative tool that aims to equalize the price of carbon in imported goods with the price of carbon in domestically produced goods.

The CBAM aims to prevent carbon leakage, which is when industry relocates due to differences in carbon pricing policies. It also aims to encourage cleaner production in non-EU countries. It has proved highly controversial amongst [developing countries](#).

The CBAM is being phased in gradually, with a transitional phase from 2023 to 2025 and a definitive regime starting in 2026.

A question still remains as to whether the CBAM is WTO law compliant. This further raises the broader question of whether WTO law can properly regulate trade in age of climate crisis/transition. I am seeking to answer those questions in another blog series, the first instalment of which can be found [here](#).

The UK equivalent

The UK Government ran a consultation on their own CBAM, which closed on 13 June 2024. A [response](#) to that consultation was issued in October 2024.

Similarly to the EU equivalent, the stated aim of the UK CBAM is to [reduce carbon leakage](#). It is due to be implemented by 2027.

The EU's Environmental Crime Directive

"Ecocide" in all but name?

[The Environmental Crime Directive](#) replaces the former Environmental Crime Directive 2008 (2008/99/EC). It entered into force on 20 May 2024 and must be implemented by Member States within two years (Article 28).

The Directive aims to establish minimum rules on the definition of criminal offences and penalties in order to improve the protection of the environment.

While an offence titled "ecocide" was not introduced by the Environmental Crime Directive, the accompanying recitals refer to "cases comparable to ecocide", which indicates the EU intends to tackle "ecocide-level crimes" (see recital 21).

The Directive introduces so-called qualified offences (Article 3(3)), namely, offences causing the destruction of, or widespread and substantial damage to, an ecosystem or a habitat within a protected site, or widespread and substantial damage to air, soil, or water quality. This seemingly would include offences comparable to ecocide with catastrophic results, such as widespread pollution or large-scale forest fires.

Further, Member States are required to ensure that a legal person (for example, a company) and individuals (for example, a company director or sole trader) can be prosecuted (Articles 5 and 6).

Article 6(1) states that legal persons can be held liable under the Directive if the offence was committed by a person who "has a leading position" within that legal person, namely a person with any of the

following:

- a. The power to represent the legal person.
- b. The authority to take decisions on behalf of the legal person.
- c. The authority to exercise control within the legal person.

A legal person may also be held liable if the offence arose from a lack of supervision or control Article 6(2).

Influence of Belgium and France

Both Belgium and France have been influential in moving the dial forward in respect of ambitious, EU-wide, legislation.

On 22 February 2024, Belgium became the first European country to legally recognise ecocide as a national and international crime. It adopted a new Belgian Criminal Code (which will enter into force in two years, in 2026), specifically addressing significant environmental damage and listing ecocide as a new crime.

In 2021, France introduced the Climate Resilience Act which lays down criminal offences for causing “serious and lasting damage to health, flora, fauna or the quality of the air, soil or water”.

Equivalent progress in the UK

In November 2023, Baroness Boycott proposed a new private member’s Bill (“the Ecocide Bill”) to the UK House of Lords, just weeks after Scottish Labour and Co-op MSP, Monica Lennon, introduced a similar private member’s Bill (“the Ecocide Prevention Bill”) in the Scottish Parliament.

Both Bills sought to deter mass environmental damage and destruction and aim to protect all natural resources such as air, water, soil, habitats, and wild flora and fauna.

However, neither Bill was carried over to the current Parliament following July’s general election. Given that it does appear in the Government’s current legislative agenda, the likelihood of the government introducing such a Bill in the near future appear slim.

Steps towards a crime of ecocide in international law are considered further in this [blog](#).

EU Nature Restoration Law

[The Nature Restoration Law](#) is a Regulation adopted on 24 June 2024. It lays down rules to contribute to the sustained recovery of biodiverse and resilient ecosystems across the Member States’ land and sea areas through the restoration of degraded ecosystems.

Member States must put in place restoration measures to restore 30% of specified habitats to good condition by 2030 (Article 4(1)(a)). That target rises to 60% by 2040 and 90% by 2050 (Article 4(1)(b)) and those same targets apply in respect of Marine Ecosystems (see Article 6).

EU countries are expected to submit National Restoration Plans to the Commission within two years of the Regulation coming into force (so by mid 2026), showing how they will deliver on the targets. They are also required to monitor and report on their progress.

Further, the European Environment Agency will draw up regular technical reports on progress towards the targets. The Commission, in turn, will report to the European Parliament and to the Council on the

implementation of the Nature Restoration Law.

The Regulation is a key part of its Biodiversity Strategy and meeting the EU's international commitments, in particular the UN Kunming–Montreal global biodiversity framework agreed at the 2022 UN biodiversity conference (COP15), discussed in this blog.

Honourable Mentions

Regulation (EU) 2023/1115 on deforestation-free products

Any operator or trader who places specified commodities on the EU market, or exports from it, must be able to prove that the products meet the following conditions:

- a. are deforestation-free;
- b. have been produced in accordance with the relevant legislation of the country of production;
- and
- c. are covered by a due diligence statement (Article 3).

Corporate Sustainability Reporting Directive

This Directive entered into force on 5 January 2023. It requires large companies and listed companies to publish regular reports on the social and environmental risks they face, and on how their activities impact people and the environment

Concluding Remarks

A divergence in approaches to environmental law is now becoming clear between EU and UK. This will only continue given EU Commission's ambitious mandate.

The current Government's ambition with regards to green growth and cutting carbon emissions is well known. Similarly, the Environment Act 2021 arguably provides similar measures to the Nature Restoration Law.

However, it is less clear what their ambition is in areas such as environmental crime. Environmental criminal law in England is often criticised for being largely fragmentary, narrow in reach and [enforcement notoriously low](#). For example, see the [Environment Agency's](#) record of prosecuting water companies (though this is arguably a result of underfunded regulators).

The Water (Special Measures) Bill, currently at the second reading in the House of Commons, may provide some solutions. However, its scope is relatively limited and only applies in the context of water companies. It therefore does not apply in the context of other widespread environmental harm.

In an era of largescale pollution and environmental damage, a new legislative regime for criminal activity harming the environment appears to be a potential area for reform.

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