

## CORPORATE CRIMINAL LIABILITY FOR ENVIRONMENTAL HARM

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### Abstract

Criminal responsibility on the environment by corporations has emerged as a matter of global concern to make firms liable to the environment. This paper discusses the way under which companies are now called upon to avoid and respond to environmental abuse by executing strong legal obligations, not only confronted with monetary fines imposed by regulations, but also with criminal act punishments in instances of abusive acts of severe misconduct. It discusses the dynamic nature of corporate responsibility, tightening of laws and enforcement systems (such as such a significant phenomenon as the expanded Environmental Crime Directive of the European Union) and incorporation of Environmental, Social, and Governance (ESG) aspects in corporate governance. A doctrinal approach is used and the literature analyzes legislation, judicial precedents, and academic sources to evaluate existing practices and issues in prosecuting corporations criminally who cause environmental degradation. The results indicate the tendency towards increased corporate responsibility: regulators and prosecutors around the globe are imposing the largest fines ever and criminalizing companies in cases of pollution, fraud, and ecological cataclysms, and investors and civil society demand more transparency and moral responsibility. Nevertheless, major loopholes persist, such as the lack of consistency in implementation, territorial challenges, and the necessity to introduce more explicit international guidelines. The article in turn provides recommendations on how companies can improve corporate environmental responsibility by improving legal systems and cross-border collaboration as well as entrenching strict ESG compliance programs into corporate systems. The conclusion also reinforces the point that corporate practices can and should be in line with environmental sustainability and the rule of law not only as a legal necessity but also as a crucial step toward gaining social trust and business resilience in the long-term.

**Keywords:** ESG, liability, corporate, environment, European Union

### Introduction

Corporate damage to the environment due to industrial contamination and oil spills as well as emissions fraud has raised concern over corporate behavior like never before in the past years. High-profile accidents like the Deepwater Horizon oil spill and Volkswagen “Dieselgate” emissions crisis have highlighted the catastrophic effect that corporate malfeasance may have on the ecosystem and the community, and must lead to public pressure on accountability. In fact, environmental crime in the world generates illegal profits to the tune of almost 280 billion yearly, which is more than the drug business, as global environmental crime (toxic dumping, illegal deforestation, and wildlife trafficking) is increasing by 5-7 per cent annually. These shocking statistics highlight the extent of corporate-related environmental crime and the necessity to deter it tightly. (Spence, D. B. 2011)

It is against this context that the legal systems of the world are looking at serious environmental degradation as both a criminal issue not just a civil penalty and administrative regulation. Corporate criminal liability the principle according to which a company may be criminally charged and convicted of offence has been transformed into a controversial notion into a common law

enforcement mechanism. Most jurisdictions have come to accept that corporations as legal persons may be criminally liable in the commission of acts intended to generate profit particularly where lax regulation or intentional negligence results in environmental harm. As an illustration, BP plc was found guilty of felony offenses (including manslaughter and environmental crimes) due to the 2010 Deepwater Horizon disaster in the United States and fined 4 billion dollars the biggest corporate criminal fine in United States history to date in addition to probation and compliance monitors to prevent future occurrences. Similarly, Volkswagen AG pleaded guilty to criminal counts of its emissions fraud conspiracy scheme and sentenced 2.8 billion in criminal fines, and an independent monitor was chosen to supervise compliance reforms (Ingersoll et al, 2012). These high profile cases are examples of the fact that criminal law is being used to not only punish offending companies financially but also operationally as a part of a larger change in treating criminal activities of corporations as a crime and not a regulatory violation. (Fitzgerald, A. J., & Spencer, D. 2020)

Meanwhile, the notion of corporate responsibility in terms of environmental stewardship has grown above the response to scandals and disbursing fines. During the times of the Environmental, Social, and Governance (ESG) awareness, companies are pressured by investors, consumers, regulators to actively control their impact on the environment and involve sustainability into their policy process. The regulations and standards related to ESG are on the rise e.g., the Corporate Sustainability Reporting Directive of the European Union now compels large corporations to report in more detail on their risks and performance, as related to the environment. Firms that do not comply with the laws of the environment or falsify their green images face the threat not only of legal punishment, but also reputational and market losses. Remarkably, authorities have started to crack down on so-called greenwashing (fraudulent environmental statements) by considering it a type of fraud: the U.S. Securities and Exchange Commission (SEC) established ESG task force to enforce fraud and misleading climate disclosures and the U.S. Department of Justice threatened to invoke criminal fraud and misrepresentation liability. In the United Kingdom, a new common law offense known as failure to prevent fraud expressly covers corporate greenwashing the offense will be used to prosecute companies when an associated person engages in an act of fraud (including false environmental statements) to the profit of the company and in the absence of reasonable prevention. This legislation reduces the corporate prosecution bar as the mitigation of proof that the top management ordered or was aware of the fraud no longer exists, and the corporate responsibility in case of ESG-related crimes is significantly increased. These trends represent a merger between the historical environmental law enforcement and the new ESG governance: adherence to environmental regulations is viewed as part of the primary corporate responsibility, part of the responsible management and sustainable business practice. (Yeoh, P. 2022)

To this end, this paper will seek to give a detailed discussion of the corporate criminal liability in environmental pollution and how legal systems and enforcement patterns in the global arena are influencing the conduct of the companies. It will explore the processes of the company accountability to the environment, the role of criminal and regulatory penalties to punish and prevent damages, and the role of ESG regulations in enhancing proactive corporate responsibility. Through polling new laws and recent developments as well as international efforts and landmark cases that have been made in this field, the article illuminates both achievements and problems in this field. It employs the doctrinal research method, analyzing statutes, case law, and commentaries in order to extract some fundamental principles and lessons. The rest of the paper follows the following structure: Section 2 will be a literature review and theoretical background of corporate

environmental liability, Section 3 will describe the methodology, Section 4 will give the findings on the current legal frameworks and practice of enforcement, Section 5 will provide the recommendations to policy and practice and Session 6 will be the conclusions to the future. In this discussion, the article sheds light on the fact that corporate criminal liability supplemented by sound compliance schemes and commitments to ESG can be an important pillar in the process of environmental responsibility and sustainable growth. (Sulkowski, A., & Jebe, R. 2022)

### **Literature Review**

Corporations may learn to accept fines as a cost of doing business, more particularly when the fines are small as compared to the profits that are lost due to non-conformity. Consequently, criminal law scholars and policymakers have become increasingly lobbied towards imposing criminal law to gross environmental crimes and the notion that stigma of conviction as well as the prospect of enhancement penalties (in the form of fines and probation) form a greater deterrent effect. Numerous nations have reacted by creating legislation that not only criminalizes gross pollution and destruction of ecosystems, but also expressly permits prosecution of the companies (not just individuals). As an illustration, the initial Environmental Crime Directive (2008/99/EC) of the European Union obliged the Member States to criminalize some of the environmental offences. Nevertheless, research indicated that compliance during that regime was still half-hearted the European Commission discovered that few instances of environmental crime resulted in conviction and penalties were too lenient to work. This literature result justifies reform demands with a revised Environmental Crime Directive in acquired with more teeth, as will be discussed below in this review. (Faure, M. G. 2011)

**Criminal vs. Regulatory Sanctions:** The literature also explores the relationship between criminal and regulatory prosecution in the area of environmental governance. According to scholars, environmental offences are mostly administered by administrative regimes that are imposed by environmental bodies using fines, cleanup directions or permit withdrawals that are essential towards the normal compliance. Nevertheless, when it comes to infractions of the will or other especially damaging violations, the regulators can send issues to be considered by the criminal. Comparisons of studies indicate inter jurisdictional differences. In the United States, a mature system provides both civil penalties and criminal charges under such laws as Clean Air Act and Clean Water Act, U.S. prosecutors have not been afraid of seeking felony charges against companies (as in the case of the BP and Volkswagen cases) under the broad doctrine of vicarious corporate liability (where a company is criminally liable when the act is committed so long as it is within the scope of the employment relationship). Contrarily, not all civil law jurisdictions have ever had a notion of corporate criminal liability. In Germany, as an example, corporate offenders used to be dealt with through administrative fines under the law of Ordnungswidrigkeiten (regulatory offenses). The literature on German law has addressed how this method was perceived as inefficient in penalizing the grave misconduct and has led to the strain exerted by the EU and domestic reformists to bring in the actual corporate criminal liability in place. In fact, the Environmental Crime Directive of the EU forces all EU member states (including Germany implicitly) to make corporations liable and punishable in case of environmental crimes. Consequently, Germany is currently underway of executing laws to increase corporate responsibility as well as increase fines in environmental crimes marking a major change in doctrine. (Henning, P. J. 2009)

The best combination of enforcement instruments is a controversial issue in literature. Certain authors say that criminal enforcement must only be employed against the most severe offender's

cases of intentional or careless pollution, cover-ups, or a recurrent violation of the law as criminal cases are resource intensive and demand high standard of evidence. Others have argued that in the absence of criminal penalties, big businesses are not necessarily going to take compliance with the environment seriously and therefore prosecutors should be given the mandate to sue corporations more often so as to send a strong message that polluter pays not only money but also with a possibility of criminal prosecution. Empirical studies contribute to the validity of the deterrence argument: one study reported that corporate environmental performance is significantly positively improved in the jurisdiction where environmental crime is actively pursued (as has been the case in China in recent years). As an example, the vigorous implementation of the revised Environmental Protection Law (since 2015) by China that provided daily fines, and closing facilities, and even detention in the event of violations has already caused hundreds of thousands of enforcement measures and billions of fines, and, according to the authorities, the level of compliance awareness of corporations employees has significantly risen. This implies that, the plausible threat of punishment, and in this case, criminal punishment, is able to change corporate behavior, which is frequently emphasized in the literature in environmental criminology. (Zhang et al, 2016)

**ESG and Corporate Governance:** Parallel to the legal scholarship on the enforcement, a body of literature on the importance of corporate governance and ESG issues in ensuring that environmental harm is avoided has grown. ESG acronym of the performance of a company based on environmental, social, and governance requirements has shifted its status in the fringes to the centre stage of corporate accountability debate. Investigators have observed that investors are becoming more sensitive to environmental risks when making their investment choices, and poor environmental performance may result in more expensive capital or divestiture by the firm. This dynamism pits a market incentive on firms to increase their compliance and transparency. It, however, also increases the chances of the greenwashing phenomenon when companies may exaggerate their environmental promises. (Laufer, W. S. 2006)

The internal component of accountability that is emphasized in corporate governance literature is that of directors and officers to monitor environmental compliance as an element of risk management. This is taking the form of hard law in certain jurisdictions. Indeed, the recent changes in corporate law in the UK and other countries specifically mention environmental sustainability as one of the factors that directors should take into account. Shareholders have even attempted suing directors over failure to address the risk of climate-change related risks (on the basis of lack of diligence towards the company). One prominent example of beneficiaries of the UK pension funds suing the directors of their funds on the grounds of their further intensive investment in fossil fuels despite the fund having declared climate commitments involves the respondents objecting to the ongoing investment in fossil fuels by the fund. Although the specific assertion was disallowed, the court did not rule out any parallel claims that are supported by evidence of financial damage, which meant that the failure of boards to take environmental issues into account might become subject to litigation in the future. According to the academic commentary surrounding this case and others, the new frontier of accountability is characterized by a situation where shareholders and other stakeholders in addition to the regulators are making use of legal avenues to demand corporate environmental responsibility. (Pieth, M., & Ivory, R. 2011)

To conclude, the literature shows that there has been a multi-faceted development towards corporate environmental accountability. Criminal law is also regarded as an optional supplement to administrative punishment, particularly of serious offenses, and jurisdictions throughout the

world are tightening the knot of their statutes and punishments. Meanwhile, soft law and market-based ESG programs are affecting corporate conduct, and scholars believe that legally binding standards and implementation are necessary to avoid lip service. The article expands upon such insights and looks at how these trends are reflected in the existing law and practice, and which gaps must be sealed so that companies are held fully responsible in the environmental harms that they commit.

### **Methodology**

The methodology used in this research is a doctrinal legal approach as it involved the examination of laws, regulations and case precedents that apply to corporate liability in relation to environmental damages. This method is similar to the multifaceted literature review of the legal literature: it includes an analysis of the statutory provisions (e.g., the environmental protection laws and the corporate crime law), the policy documents and international instruments (e.g., the EU directives and the resolutions of the UN), and the review of judicial rulings and enforcement practices in major jurisdictions. Through these primary sources, the article reveals the trends of legal standards and enforcement through the prism of secondary commentary (academic articles, reports, and expert analyses).

The doctrinal approach is especially suitable to the topic, as it allows synthesizing the conceptualization of the corporate environmental responsibility and sanctions of different legal systems. This paper is therefore a comparison of the developments of various jurisdictions, such as common law systems and civil law systems, in order to get an international outlook. It also incorporates the insights of the interdisciplinary materials (including the ESG reports and criminology studies) when appropriate since corporate environmental accountability is the subject matter that is at the cross of law, business, and policy. The research does not give any empirical fieldwork (interviews or statistical analysis of enforcement data) but bases its arguments on documented cases and authoritative sources.

Through a doctrinal research, the article provides a rigorous interpretation of law on the books i.e., what the statutes prescribe and what the courts decided whereas also giving consideration to law in action, as evidenced by enforcement pattern and actual corporate reactions. The results therefore do not only mirror theoretical legal doctrine but also practical application as can be identified through case studies and enforcement databases. The approach will give a thorough insight into the duties and obligations that companies have towards the environmental damages, providing a strong basis when it comes to the further analysis of the researches and the creation of recommendations.

### **Findings**

#### **1. Strengthening Legal Frameworks for Corporate Accountability**

Development of Environmental Criminal Law: A definite conclusion is that legal systems all over the world are shifting towards more serious and broader definitions of environmental crimes, which specifically include company participants. The new directive replaces the one of 2008 and is characterized by the step-change in the EU environmental law. It is an expansion of the environmental crime list of 9 to 20 specified offenses that include such crimes as illegal timber trade, illegal ship-breaking, serious breaches of chemical laws and other new issues. Importantly, it not only asks the Member States to criminalize them but also makes the legal entities (companies) liable. The order prescribes fines that are much higher on corporate offenders up to 5% of the annual turnover of the company worldwide on the most serious offences. Such a turnover-based penalty is meant to consume the budget of large multinationals and defeat the

impotence of nominal fines. Also, the directive encourages the countries to set up special enforcement bodies, as well as enhance cross-border collaboration in the detection of environmental crimes. The most conspicuous, perhaps, is when the directive, at the bequest of the European Parliament, points at the notion of ecocide, although it does not name it as such, it demands that those acts that cause a widespread, lasting and irreversible harm to the environment should be criminalized, language that is reminiscent of ecocide definitions. It is the initial attempt at the inclusion of the ecocide concept within European legislation, meaning that this trend is in line with the increasingly widespread international movement to acknowledge the major destruction of the environment as a crime of the utmost category. (Stoitchkova, D. E. 2010)

On the national level, most nations have been revising their laws to bring them to matching these developments. An example is France, which expected the EU directive, in its Environmental Code in 2021 (maximum fine applies to intentional serious pollution) proposed the crime of ecocide and increased the maximum corporate fine to 4.5 million Euro. Environmental penalties have also been stiffened in Australia and Canada and there is talks going on in Latin America to harmonize laws to better address deforestation and pollution by cross border companies. As stated in the literature review Enforcement of a strict Environmental Protection Law (amended in 2015) has resulted in thousands of cases in China where companies were penalized by not only imposing administrative fines but also by criminal charges in case of severe violations indicating that environmental criminal law is not a phenomenon of the West. Indeed, Chinese officials stated that in the period between 2015 and 2022, they dealt with more than 190,000 cases that were met by punitive practices (including detention as criminals of those who violated it most of all) and this led to a clear reduction in violations. Such examples are representative of a global trend: corporate environmental misconduct is becoming more and more a criminal offense, and legislation is being raised to make sure that whether big or small corporations, including multinationals, are appropriately punished. (Zhang et al, 2016)

**Corporate Criminal Liability as Standard Practice:** The other discovery is that the principle of charging corporations (rather than individuals directors or employees) with criminal liability has become widespread and is strengthened in new laws. Even formerly resistant jurisdictions are being modified (as a result of the legal traditions that only individuals are criminals). The EU directive clearly stipulates that the member states should make liability of legal persons against environmental offences in their favour. This will see nations such as Germany, introduce corporate liability of a more direct manner come the years as observed in a Hogan Lovells analysis. The future law in Germany under the directive is likely to increase corporate liability, and the fines are likely to pay more and new sanctions may be introduced such as the exclusion of the convicted polluters of the public contracts. Likewise Japan that historically did not criminalize companies except with administrative fines has been considering reforms to permit criminal sanctions of the environmental damages by corporations particularly following high-profile incidents of industrial contamination. (Kraakman, R. H., & Armour, J. 2017)

A distinctive feature of the statutes regarding corporate liability is that compliance incentives or defenses are included. The current legislations tend to motivate businesses to adopt environmental compliance programs with the notion that it is a factor to reduce or even a defense. As an illustration, the new failure to prevent offense of fraud (to which environmental claims fraud may be added) can be used in the UK, which provides an exception in case the company can demonstrate that there were reasonably preventive procedures. Such a move, which reflects the anti-bribery legislation, is basically an act of pushing companies to police themselves or criminal

backlash. The U.S. Sentencing Guidelines also reward to a firm that had effective compliance program by imposing less fines. We find that such preventative measures are being highlighted by regulators all over the world. The EU directive, though providing no explicit compliance defense, encourages countries to make their companies actively make efforts to prevent crime and the new Convention on the Protection of the Environment through Criminal Law as provided by the Council of Europe also emphasizes preventive cooperation and even restorative justice (such as an environmental remediation order) in sentencing. The legal system in a nutshell is not just broadening the liability but also bringing about a culture of compliance: the companies should have internal checks to ensure that they do no harm to the environment, otherwise, they will be held liable to the law.

**Remarkable Enforcement Cases:** The results would be incomplete without mentioning the process of how these laws have been put in action by means of enforcement activities. A number of landmark cases evidences the possibilities and the drawbacks of corporate criminal responsibility: **Oil and Chemical Spills:** In other regions of the world, criminal prosecution of corporate polluters has been more recent years than the Deepwater Horizon case of BP in the U.S. (2010). In Brazil, the mining company Vale S.A. and its partner auditor TUV SUD were prosecuted by the government in 2020 on charges of environmental crimes and even homicide (270 counts of aggravated homicide of those who died after the dams burst). It was one of the first occasions when a corporate in Brazil was charged with a homicide-related incident in connection with an ecological catastrophe, and this was a sign of a fearless application of criminal law to deal with negligence of corporations whose actions led to fatalities. The trial is still going through the Brazilian federal courts, which has seen the case cited as facing numerous technical evidence twists and strong defence by the corporations but the very presence of the case has given a loud message in the mining sector in Latin America regarding accountability. (Adami, 2019)

**Emissions/ Air Quality Violation:** The Volkswagen emissions scandal (2015) was felt worldwide. Our work observed how the U.S. prosecutions were also accompanied by the criminal prosecution by countries such as Canada of Volkswagen AG on the grounds of importing vehicles which did not meet the pollution standards and a fine of CAD 196.5 million was imposed on Volkswagen AG in 2020; the largest environmental fine in Canadian history. These instances represent cross-jurisdictional enforcement: environmental criminal activities tend to be transnational (vehicles sold internationally, pollution spread on transnational level), and the collaboration among the authorities is becoming better. This has been applied to international waste trafficking rings with the use of the Europol and Eurojust investigation teams. The results imply that, more and more, corporate environmental crime is perceived as not local infraction but as a severe crime, which might be coordinated by the law enforcement of the countries (similar to anti-drug or anti-trafficking operation). (Jung, J. C., & Sharon, E. 2019)

**Greenwashing and Fraud Cases:** A more recent type of enforcement is associated with fraudulent assertions of environmental practices. With sustainability reporting being mandatory in other regions such as the EU, deception with regard to sustainability can lead to prosecution. In 2022, the U.S. Department of Justice extended a compliance monitorship of Deutsche Bank over unrelated misconduct, in which they were ordered to report any evidence of fraud. When it did not ensure that the prosecutors were immediately reported about the claims that its asset-managing subsidiary lied about its ESG qualifications (a greenwashing case), DOJ considered it to be a DPA-violation, penalizing it and imposing long-term supervision. As stated, the new fraud crime in the UK explicitly names environmental misrepresentations as one of the victims. There might be a

few other instances of this as our findings present cases of consumer protection bodies in Europe fining companies who make deceptive and false claims that their products are eco-friendly and the U.S. Federal Trade Commission revised its Green Guides to fight false environmental marketing. Although they frequently lead to civil penalties, the tendency is to more drastic outcomes in case of willful and massive deception. Criminally prosecuting greenwashing the threshold is very high (typically it needs to be demonstrated that there was intent to defraud), however, with more clear rules as to that which needs to be disclosed, the threshold is getting less challenging to cross. (Kurpierz, J. R., & Smith, K. 2020)

Although we have these advances, there are challenges too that are found. Law enforcers have been facing the challenge of low resources and skills to probe sophisticated crimes in the environment. The evidence of such cases may be very technical (scientific data, corporate structures hiding the responsibility, etc.). In France, even official documents have sounded the alarm that there is need to have more training and special staff when dealing with environmental crime cases. France reacted with the formation of special environmental prosecution offices and special environmental police units and this is producing fruits in handling cases better. Other states are not lagging behind (such as the U.S. Environmental Protection Agency has its Criminal Investigation Division that has sworn agents). The new Council of Europe convention seeks to improve cross-border distribution of evidence and coordination of environmental crimes globally. Therefore, the trend is neither toward weaker and less professional environmental prosecutions as historically the case was, but towards stronger and more coherent actions taken.

## **2. The Role of ESG and Voluntary Standards in Compliance**

The other significant outcome of this study is the significant role that considerations of the ESG and voluntary systems are assuming in corporate environmental responsibility usually in addition to legal mandates. Most companies (largely, multinationals) have developed internal policies and codes of conduct that promise to be sustainable, in part a response to the pressure of their stakeholders. However, these commitments are voluntary and can provide a legal hook: when a company publicly promises to meet some environmental norms (as, net-zero carbon emissions or deforestation-free supply chain), but does not follow any of these promises, it can be sued on misleading statements or even sued by investors on mismanagement. (Pollman, E. 2019)

We discovered that there is a growing trend wherein the ESG reporting is legally mandated where the distinction between voluntary reporting and law enforcement is obliterated. The Corporate Sustainability Reporting Directive (CSRD) of the EU, will make approximately 50,000 businesses (including the EU subsidiaries of the non-EU businesses) report on an extensive list of environmental indicators, such as carbon emission, water usage, and biodiversity footprint. It implies that businesses must put in place mechanisms of collecting plausible information lapse in which would result in false reports, which would subsequently translate to a liability. The U.S SEC has also proposed climate disclosure regulations which would require companies to disclose climate-related risks and emissions of greenhouse gasses, otherwise they risk the enforcement of perjury clauses against them. Even the stock exchanges in Asia and Latin America are adding rules of ESG disclosure as a listing requirement. (Baumüller, J., & Grbenic, S. O. 2021)

ESG governance aspect is also legally important. ESG risks are supposed to be managed by directors and executives. This expectation is written in certain jurisdictions: e.g. the Indian Companies Act was amended to require large companies to expend on Corporate Social Responsibility (which may include projects aimed at environmental protection and conservation), and a failure to do so may attract penalties. Although it is not a crime on its own, it is a

manifestation of regulatory pressure on governance. In addition, a number of nations (such as France with its 2017 Duty of Vigilance law, and a future EU Corporate Sustainability Due Diligence Directive) are imposing obligations on businesses to undertake environmental and human rights due diligence in their business operations and supply chains. Failure to discharge these duties may lead to civil liability and in extreme circumstances, may lead to criminal negligence proceedings in case the harm happened to be foreseeable and preventable.

Our results indicate that companies are reacting to this ESG variant by strengthening compliance initiatives. One of the positive tendencies is the adoption of environmental management systems and certification schemes (such as ISO 14001), as the norm, which, when applied correctly, will minimize the threat of legal violations. Certain jurisdictions expressly reward such attempts: in Italy, under the legal framework, the legal system of the country, a company may reduce or escape liability in the criminal acts of the company provided it had an efficient organizational model to prevent the crime (in its Legislation Decree 231/2001 on corporate liability). Therefore, ESG-based actions may both be a defense and an offense a defense against liability when performed in good faith, and a sword when companies only pay lip service.

Along with the formal legal penalties, the study notes that the business community is becoming heavily punitive to businesses involved in the destruction of the environment. Companies that have suffered massive scandals tend to either have their stock prices decline, suffer consumer boycotts, or have trouble raising funds. As an example, after an environmental disaster or allegations, lenders may restrict credit or insurers increase the premiums to the firm. This pressure of quasi-regulation adds to the necessity of corporates to have high-quality ESG profiles. It is also interesting to note that credit rating agencies and institutional investors are currently considering ESG risks that a company might face criminal charges related to environmental issues might be downgraded or removed off sustainability-related investment indices. This is indirect and, yet, so powerful, as a motivator to adhere to environmental norms, which is more than the law demands.

Nevertheless, we also understand a certain level of scepticism in our analysis: not every ESG commitment has as a result of actual change, and not every jurisdiction implements regulations connected with ESG strongly. There exists a debate, including within the literature, concerning whether the emergence of ESG can indeed be a real replacement of hard law. Most probably, the answer is that it cannot; instead, ESG initiatives would be effective in combination with effective legal accountability. Indicatively, voluntary net-zero commitments by companies are of little use when the firms are not even subject to carbon actions or the companies are not monitored to help them to become business as usual. Positively some governments are currently engaging in the process of making some of their so-called voluntary standards obligatory. It is turning into compulsory reporting in certain jurisdictions such as the UK and New Zealand, as the Task Force on Climate-related Financial Disclosures (TCFD) recommendations are once voluntary. As noted in the EU, disclosure is obligatory and external assurance of reports. (Eccles, R. G., & Krzus, M. P. 2019)

To summarize this section, it is important to note that ESG considerations have become a part of the approach that companies take towards environmental compliance. They serve as one of the prevention aspects of corporate responsibility which in a perfect scenario would prevent damage to the environment before it occurs through developing a culture of risk management and sustainability. However, in the worst instances of environmental breach, ESG solutions are not the panacea and this is why the reactive aspect in the form of criminal and regulatory penalties is essential. The following part will provide recommendations based on these findings, which will

specify how to strengthen the preventative mechanisms as well as the reactive mechanisms to have more successful corporate environmental accountability.

### **Recommendations**

Based on the discussion above, this section provides important recommendations to improve corporate criminal liability on the environmental damage and improve overall environmental responsibility of the companies. The following recommendations are meant to be used by policymakers, regulators, and corporate leaders:

- **Empower and Synchronize Legal Systems:** Governments must go on to reinforce environmental crime legislation and make corporate criminal responsibility a reality. This involves embracing effective definitions of environmental crimes (where feasible, in line with international standards to make them enforceable across borders) and establishment of deterrent-level fines. Since the EU has already done the same through its directive (fines of up to 5% of global turnover), other jurisdictions need to reform the old penalty frameworks that could have minor events of pollution as light fines. Also, the laws in countries ought to be harmonised by signing international treaties such as by signing the new Council of Europe Convention on Environmental Crime, and, eventually, a wider international treaty on corporate environmental responsibility, as legal scholars propose. Harmonization would also ensure that companies do not use the lax laws in some countries and would promote even playing field in the form of environmental standards.
- **Increase Enforcement Capacity and Coordination:** It is not sufficient to have laws on the books, and the agencies that enforce them need the means and mechanisms to implement the law. It is suggested to set up specific environmental crime departments in police and prosecution departments (or enhance the existing ones), provide specific training to investigators, prosecutors, and judges on environmental science and methods of corporate investigations. Governments ought to equip these units well because they need to understand that some offences such as illegal dumping or emission frauds could be as complicated as financial offences. Enforcement mechanisms such as Interpol Environmental Crime programs, joint investigation teams to transnational cases should be fully utilized internationally by enforcement bodies. Better intelligence-sharing of corporate offenders (e.g. information regarding companies fined or found guilty in one country can be shared with the regulators in other countries) will allow rogue actors not to simply transfer operations to avoid regulation any further. More than that the nations may look at pacts to identify and impose each other significant judgments concerning the environment (similar to extradition of criminal offenders or global collection of fines), such that corporations fines can be enforced regardless of a company functioning across the globe.
- **Reward Corporate Compliance and ESG Integration:** The regulation should take a carrot and a stick strategy; in addition to the stick (penalties) there should be the carrot (rewards) of good compliance programs. The first one is to include formal defenses of compliance defense in environmental laws, in which an employee commits a crime, but an organization can escape the liability in case it can show that it took careful preventive actions (as in the case of anti-bribery in the UK and currently anti-fraud). This business model encourages the businesses to invest in environmental management systems, periodic audits and training. There may be best-practice guidelines on corporate environmental compliance (including risk assessment, emergency response plans etc.), which governments and industry bodies may develop, perhaps based on such a framework as ISO 14001 or the six principles referred to in the UK guidance on fraud prevention (e.g., top-level commitment, due diligence, monitoring). Also, the ESG disclosure regulations must be reinforced and harmonized in such a way that the companies are aware of what is required

and can be liable in case of false reporting. Regulating bodies (e.g. securities authorities or consumer protection bodies) must have the express power to penalize greenwashing, with the option of a criminal prosecutor in situations of deliberate misrepresentation or fraud.

- Increase Director and Executive Accountability: To make the issue of environmental compliance a boardroom priority, legal systems are suggested to be strengthened to encourage the responsibilities of directors and senior officers concerning the environment. It might involve revising corporate governance codes and legislation to state clearly that boards should manage sustainability and climate risks. The directors should be punished in case they overlook a red flag of a high degree of environmental risk (ex: ignoring the reports of unsafe working conditions which are followed by a catastrophe). Jurisdictions could follow the examples of the duty of vigilance (as in France) or consider creating the gross negligence in oversight of environmental damage as a source of personal liability. Although it is crucial and is indeed occurring to criminalize individuals (such as CEOs) belonging to the corporate environmental crime group, a larger accountability ring should be cast, such as when an executive is being charged together with the company. To illustrate, a corporation can be ordered to change management or prohibit some directors as part of resolution even in a situation where it has already entered into a plea deal. It is also a good idea to promote more shareholder activism in this field: should it be exercised by means of a resolution or derivative litigation against directors when they fail to manage the environmental risks (as seen in the case in the UK discussed above), it puts some more pressure on the management to conduct due diligence. Essentially, the corporate governance form of companies must be adjusted in a way that prevention of environmental harm lies within the fiduciary duty.

- Enhance Remediation and Victim Compensation Systems: Once environmental harm has taken place, one thing to do is to hold a corporation criminally accountable, but the other is to ensure remediation and compensation of the victims. It is suggested that the elements of restorative justice should be integrated in the environmental cases in the legal systems. The case in point is, according to the BP plea agreement, some of the fines were designated to balance the habitat restoration in the Gulf of Mexico. The laws may come up in future to force a percentage of any fine to be donated to environmental restoration funds. Also, as sentencing, courts might impose the mandatory direct cleanup, habitat restoration, or fund community health programs in impacted communities by companies. Establishing national or regional environmental damage insurance or trust funds (through levies on industry) might also, in case the corporate resources are inadequate or blocked in lawsuits, be a source of money to meet urgent cleanup and victim demands. These actions support the fact that corporate accountability is not only corrective but also punitive.

- Support International Initiatives (Ecocide and Beyond): Last, the international community should seek radical measures to raise environmental protection in law. This entails further research on the definition of ecocide as an international crime. Through this, it would be satisfying a gap in international law, which would mean that colossal environmental destruction is equal to the war crimes or crimes against humanity in severity. Although there are challenges related to politics, there is increasing support to such initiatives in the United Nations or the ICC. Countries may also revise their domestic legislation to reflect an ecocide concept as some have started to do. The other suggestion is to enhance transnational litigation channels: e.g. allowing foreign litigants to initiate a lawsuit against parent companies because of environmental damage abroad at the hands of their subsidiaries (which has been allowed in some cases by the courts in the UK and the Netherlands). This brings responsibilities to multinational enterprises not only to the local branches. Overall, it can be concluded that to address fully the issue of corporate environmental malfeasance, a multi-

layered solution of domestic law reform, regional cooperation, and international criminal law development is recommended.

By acting on all these recommendations, the corporate world would be pushed to a desirable direction of environmental practices and those who continue to break the rules will be dealt with accordingly and in a manner that is meaningful and timely. Corporate executives need to be aware that a strong environmental compliance and an honest ESG involvement is not only an ethical decision but an imperative strategy to prevent liability in criminal acts but also be guaranteed of a license to do business in a society where an emphasis on sustainability and the rule of law is increasingly becoming significant.

### Conclusion

Corporate environmental responsibility has never been more of an imperative. As explained in this paper, the environment of corporate criminal liability over environmental degradation is changing at a very high rate, both in terms of the legal reforms, as well as the societal demands. Lawmakers around the world are arming prosecutors and regulators with finer instruments with which to castigate corporate polluters with multi-billion dollar fines and criminal convictions to probation orders that subject future behavior of a corporation to scrutiny. The environmental crimes, which, in previous times, could be discounted as regulation violations, are now stigmatized as crimes as a result of a radical change in the way we view a damage to our planet. Criminal law, which has long been reluctant to recognize environmental harm as anything other than the collateral consequence of industrial action, is increasingly being asked to become a means of deterrence, of justice and redress. It may be the high profile case of a multinational charged with an oil spill, or the background investigation of a factory dumpster, but the message is being heard: corporate organizations will be answerable when they put the environment and the health of the people on the line.

At the same time, the emergence of ESG principles implies that corporate responsibility is not limited to the possibility of not going to court or paying fines. It involves a positive responsibility to be sustainable and open. Markets and stakeholders are rewarding companies that are ahead of others in environmental stewardship and penalizing the laggards not only through legal threats but also through business dangers to their reputations and through divestment by ESG funds. This combination of personal duty and statutory responsibility produces an effective change motivation. It posits that the best way of company environmental responsibility is a comprehensive approach: strong legislation and enforcement of the worst practices, combined with governance change and involvement of stakeholders to establish a culture of compliance and concern with the planet.

Nevertheless, there are still challenges even though there is a great progress. This enforcement may lack consistency as there are jurisdictions that are still in progress to address complex corporate crimes. In addition, environmental damages tend to transcend national boundaries and generational periods and, therefore, challenge the boundaries of the existing legal frameworks. Nevertheless, the tide is obviously to seal those gaps. Opening the borders of movement, new treaties, new theories of law such as ecocide that aim to reflect the totality of ecological destruction are the current.

To sum up, corporate criminal responsibility in the environmental damage has become an essential element of the international environmental regulation set. It strengthens the idea that we cannot have any actor, regardless of its economic strength, who can be above the law with regard to the preservation of our common environment. The results of this study underscore the fact that the accountability of companies works: it intimidates the potential offenders, compels the industry to

alter its practices, and gives the victims of the problem and the ecosystem some sense of justice. The suggestions provided in this paper can serve as the way to go to strengthen this structure of accountability. We can achieve this by making sure that corporate donations to environmental damage are reduced to the utmost and where it does happen, the culprits are punished accordingly and in proportion to the damage they cause. This kind of alignment of legal, economic, and ethical requirements will be essential in the quest to address the environmental crisis of the 21st century, whether it is climate change or the loss of biodiversity. After all, environmental protection is the duty of everyone and the corporate citizens, who are under the supervision of the law and the society, should contribute to their part in ensuring that the future becomes sustainable to everyone.

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