

Protection of the environment through criminal law

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The Council took note of a Presidency report on the state of play of the proposal for a Directive on the protection of the environment through criminal law.

The Presidency took up the proposal for a Directive at the earliest opportunity and arranged for its timely discussion in the Working Party on Substantive Criminal Law. Three working party meetings have taken place to date, all of which were marked by constructive cooperation between the Member States and the Commission. Discussions are currently focusing on drawing up the criminal offences (Article 3 in conjunction with Article 2(a)). Here there are some fundamental issues to be clarified, on the basis of the European Court of Justice's judgment of 13 September 2005. It has to be decided, for example, whether the Community legislator should confine itself to ensuring, by criminal law means, the enforcement of Community law or of such national law that transposes Community law, or whether the Directive should also apply to purely national environmental law. The clear attitude is emerging among the Member States that only violations of Community environmental legislation should be covered by the Directive.

Discussions on the rules on sanctions (Articles 5 and 7) should, in the unanimous view of the Member States, be postponed until the European Court of Justice has ruled on the Commission's action for annulment of the Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution. That Framework Decision contains detailed rules on sanctions that are comparable to those in the proposal for a Directive. The Court of Justice is expected to give its ruling towards the end of 2007.

Further discussions on the matter will take place under the Portuguese Presidency.