

Protection of the environment through criminal law

2007/0022(COD) - 08/04/2008

The Committee on Legal Affairs adopted, under the 1st reading of the codecision procedure and by a slim majority (15 votes in favour, 11 against and 2 abstentions), the report by Hartmut **NASSAUER** (EPP-ED, DE), adopting the proposal for a directive of the European Parliament and of the Council on the protection of the environment through criminal law.

Overall, MEPs sought to reintegrate the measure into the exclusive field of Community law by limiting the impact of the directive to violations of Community environmental protection law. Member States therefore will retain the power to determine which sanctions to apply to violations of said Community law. In so doing, MEPs align themselves with the European Court of Justice (ECJ) ruling of 23 October 2007 on this matter (C-440/05).

The main amendments can be summarised as follows:

Compliance with the ECJ ruling: as a reminder, the ECJ ruling of October 2007 on this proposal stated that the EU has competence to adopt criminal measures only where there is a "justifiable need", i.e., in the area of the common transport and environment policies. Therefore, the EU may not specify the type and level of criminal sanctions (which are applicable in the Member States) to be established. MEPs therefore decided to specify that the directive obliges Member States to include in their national legislation criminal sanctions for serious violations of Community environmental protection law, without creating obligations with regard to the implementation of such sanctions or of other available legal instruments in individual cases. They also deleted from the Commission's text an article providing for the duration and extension of the proposed sanctions.

Liability: MEPs state that the Directive concerns criminal liability only and is without prejudice to Community or national law, and to any rules derived therefrom, with respect to civil liability for environmental harm.

"Unlawful acts": in accordance with the principle held by the ECJ, MEPs state that only acts **in violation of EU environmental protection law, as listed in the annex (Annex A and B) of the Directive**, shall be considered unlawful. Among the illegal offences under Community law that should be reclassified as crimes, MEPs include environmental damage caused by the discharge, emission or introduction of a quantity of materials or ionising radiation on to the Earth's surface, (including bedrock), soil or water (including rocks), the emission of radiation onto the earth's surface (including bedrock) and rocks, the disposal of waste (collection, transport, recovery and disposal of waste), and the manufacture and storage of nuclear materials (MEPs state, however, that only the Euratom Treaty - and the secondary legislation enacted pursuant thereto - regulates environmental protection with regard to nuclear activity; as a result, the unlawfulness of actions which affect the environment as a result of nuclear activities can be defined only by reference to the Euratom Treaty).

Protected species: MEPs add more details to the meaning of "protected wild fauna and flora species" and "habitat within a protected site". MEPs also backed the inclusion within the directive's scope of the possession, killing or trading of protected fauna and flora species, the deterioration of a habitat of a protected site (except in cases where the conduct concerns a negligible quantity of those specimens and has a negligible impact on the conservation status of the species), and the manufacture and distribution of ozone-depleting substances.

“Intentional acts” – “acts of negligence”: MEPs consider that intentional acts and acts of serious negligence should be treated separately. This is consistent with the structure of Council Framework Decision 2003/667/JHA of 12 July 2003. The question whether or not the perpetrator of the damage acted intentionally or negligently should be determined by reference to the time when the perpetrator became aware, or should have been aware, of the facts constituting the offence (and not to the time when the perpetrator commenced the activity). Furthermore, they state that the prior grant of an authorisation, licence or concession should not constitute a defence in such circumstances.

Reports: MEPs consider that the reporting obligations that the Commission is proposing to impose on the Member States are bureaucratic and superfluous. They therefore delete the reporting obligations of Member States within the context of this proposal.

Updating legislation: lastly, MEPs state that whenever subsequent legislation on environmental matters is adopted, it shall be specified whether it falls within the scope of this directive.