Protection of the environment through criminal law

2007/0022(COD) - 21/05/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution amending the proposal for a directive of the European Parliament and of the Council on the protection of the environment through criminal law. The report had been tabled for consideration in plenary by Hartmut **NASSAUER** (EPP-ED, DE) on behalf of the Committee on Legal Affairs.

The main amendments-adopted under the first reading of the codecision procedure-were the result of a compromise between the Parliament and the Council.

Compliance with the ECJ ruling: to recall, 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.

"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. Proscribed conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence.

Included among the unlawful acts regarding Community law, and which must be reclassified as crimes, are environmental damage caused by substantial damage to the quality of air, water and soil and poor management of waste or even the production, storage, export and disposal of nuclear materials or other radioactive substances.

Inciting, aiding and abetting: Member States must ensure that inciting, aiding and abetting the intentional conduct referred to in the text is punishable as a criminal offence.

Protected species: Parliament added definitions for "protected wild fauna and flora species" and "habitat within a protected site". It added to the scope of the Directive the trading in specimens of protected wild fauna and flora species or parts or derivatives thereof, 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. It also added production, importation, exportation, placing on the market or use of ozone-depleting substances to the scope.

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.

Entry into force: the Member States should comply with the Directive within two years after it enters into force.