

Protection of the environment through criminal law

2007/0022(COD) - 09/02/2007 - Legislative proposal

PURPOSE : to ensure criminal sanctions for certain conduct related to protection of the environment.

PROPOSED ACT : Directive of the European Parliament and of the Council

CONTENT : This proposal replaces the proposal for a directive on the protection of the environment through criminal law (please refer to [COD/2001/0076](#) and its accompanying fact sheet). This proposal comes about as a result of the findings of the European Court of Justice in its judgment of 13 September 2005 (C- 176/03, Commission v Council) which annulled the Framework Decision 2003/80/JHA on the protection of the environment through criminal law.

According to the judgment, the Community may take measures relating to the criminal law of the Member States which it considers necessary in order to ensure that the rules it lays down on environmental protection are fully effective. Studies have shown that the sanctions currently in place in the Member States are not always sufficient to implement effectively the Community's policy on environmental protection. Criminal sanctions are not in force in all Member States for all serious environmental offences, even though only criminal penalties will have a sufficiently dissuasive effect. Apart from the fact that the types of sanctions applicable differ from Member State to Member State, there are also significant differences regarding the levels of sanctions that are applied to similar or identical offences. The impact of environmental crime often crosses borders. Offenders are therefore currently in a position to exploit the existing differences between Member States' legislation to their advantage. The problem needs to be addressed through action at Community level.

Main elements of the proposal: the proposed directive establishes a minimum set of serious environmental offences that should be considered criminal throughout the Community when committed intentionally or with at least serious negligence. Participation in and instigation of such activities should equally be considered a criminal offence. The scope of liability of legal persons is defined in detail. The offences should be punishable by effective, proportionate and dissuasive criminal sanctions for natural persons, whereas criminal or non-criminal sanctions shall be applied to legal persons.

For offences committed under certain aggravating circumstances, such as having caused a particularly serious result or the involvement of a criminal organisation, the minimum level of maximum sanctions for natural and legal persons is subject to approximation, too.

Definition of offences: this corresponds largely to the definitions set out in the Framework Decision 2003/80/JHA (see [CNS/2000/0801](#)) while taking into consideration some amendments of the European Parliament made to the original directive proposal and accepted by the Commission after the first reading. All offences but one require their "unlawful" commission, "unlawful" being defined as infringing Community or Member States legislation, administrative regulations or decisions by a competent authority aiming at the protection of the environment. Offences include the illegal shipment of waste as defined in Regulation 1013/2006/EC for profit and in a non-negligible quantity, and the discharge, emission or introduction of a quantity of materials into air, soil or water, which causes death or serious injury to any person. They also include the unlawful significant deterioration of a protected habitat.

Liability of legal persons: Member States should ensure that legal persons can be held liable for offences where such offences have been committed for their benefit by any person, acting either individually or as

part of an organ of the legal person, who has a leading position within the legal person. A legal person can also be held liable where the lack of supervision or control has made possible the commission of an offence for the benefit of that legal person by a person under its authority. Liability of a legal person must not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offences referred to.

Sanctions: Member States must ensure that the commission of the offences is punishable by effective, proportionate and dissuasive criminal sanctions. Where certain offences are committed with serious negligence and cause substantial damage to air, soil, water, animals or plants, they must be punishable by a maximum of at least between one and three years imprisonment. This increases by a length of at least between two and five years imprisonment, and between five and ten years imprisonment depending on the severity of the offence and the mental element i.e. whether offences were intentionally committed.

For legal persons, these must be effective, proportionate and dissuasive, and must include criminal or non-criminal fines. For legal persons, there are three levels of fines: between EUR 300 000 and EUR 500 000; and between EUR 500 000 and EUR 750 000; and between EUR 750 000 and EUR 1 500 000 in cases where the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, or any other prescribed offence intentionally causes death or serious injury to any person.

Alternative sanctions are suggested for both natural and legal persons. Such sanctions may be more effective than imprisonment or fines in many cases and include the obligation to reinstate the environment, the placing under judicial supervision, the ban on engaging in commercial activities or the publication of judicial decisions. Even though in many cases confiscation of crime-related objects will be an essential tool, the inclusion of a specific provision has not been considered necessary, as most of the serious environmental offences will be covered by the scope of Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.