

Protection of the environment through criminal law

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The Commission presented to the Council information concerning the recent Commission proposal for a Directive which would oblige Member States to treat serious offences against the environment as criminal acts and would ensure that they are effectively sanctioned. The proposal also sets minimum sanctions for environmental crimes across the Member States.

To recall, in September 2005, the European Court of Justice confirmed that the Community had the competence to oblige Member States to adopt criminal law measures for the protection of the environment if necessary to ensure the efficient implementation of its environmental policy. For this reason it annulled the Framework Decision on environmental crime adopted in 2003 by the Council on the basis of a Member State initiative based on the provisions for judicial cooperation in criminal matters contained in the EU Treaty (Title VI, so called 3rd pillar).

The Commission's new proposal therefore is designed to replace both the Council's Framework Decision of 2003 and a proposal for a directive already presented by the Commission in 2001, which the Council rejected when adopting the 2003 Framework Decision.

Member States would be required to ensure that a range of activities (e.g. illegal shipment of waste and unlawful trade in endangered species or in ozone-depleting substances) already prohibited by EU or national legislation are considered criminal offences, when committed intentionally or with serious negligence. Member states would have to ensure that particularly serious environmental crimes are punishable by a maximum of at least 5 years imprisonment and fines for companies of at least EUR 750 000. These cases would include crimes that have resulted in death or serious injury of a person or substantial damage to air, soil, water, animals or plants, or when the offence has been committed by a criminal organisation.

In addition, the proposed directive provides for supplementary or alternative sanctions, such as the obligation to clean up/reinstate the environment or the possibility of stopping businesses from operating.

Lastly, the proposed measures will ensure that criminals cannot exploit the significant differences which currently exist between the Member States. Loopholes in the action against environmental crime should therefore no longer exist within the European Union.