Basic information

2007/0022(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Protection of the environment through criminal law Repealed by 2021/0422(COD) **Subject** 3.70.16 Law and environment, liability	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	NASSAUER Hartmut (PPE-DE)	10/04/2007

Committee for opinion	Rapporteur for opinion	Appointed
ENVI Environment, Public Health and Food Safety (Associated committee)	JØRGENSEN Dan (PSE)	24/05/2007
LIBE Civil Liberties, Justice and Home Affairs	HERRERO-TEJEDOR Luis (PPE-DE)	20/03/2007

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2807	2007-06-12
Justice and Home Affairs (JHA)	2899	2008-10-24
Justice and Home Affairs (JHA)	2781	2007-02-15
Justice and Home Affairs (JHA)	2783	2008-06-05
Environment	2784	2008-06-05
Environment	2842	2007-12-20

European Commission

Commission DG	Commissioner
Environment	DIMAS Stavros

Key events

Date	Event	Reference	Summary
09/02/2007	Legislative proposal published	COM(2007)0051	Summary
15/02/2007	Debate in Council		Summary
15/03/2007	Committee referral announced in Parliament, 1st reading		
12/06/2007	Debate in Council		Summary
12/07/2007	Referral to associated committees announced in Parliament		
20/12/2007	Debate in Council		Summary
08/04/2008	Vote in committee, 1st reading		Summary
15/04/2008	Committee report tabled for plenary, 1st reading	A6-0154/2008	
19/05/2008	Debate in Parliament		
21/05/2008	Decision by Parliament, 1st reading	T6-0215/2008	Summary
21/05/2008	Results of vote in Parliament		
05/06/2008	Debate in Council		
24/10/2008	Act adopted by Council after Parliament's 1st reading		
19/11/2008	Final act signed		
19/11/2008	End of procedure in Parliament		
06/12/2008	Final act published in Official Journal		

Technical information

Procedure reference	2007/0022(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2021/0422(COD)
Legal basis	EC Treaty (after Amsterdam) EC 175-p1
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/47117

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE400.698	06/02/2008	
Committee opinion	ENVI	PE400.272	27/02/2008	
Amendments tabled in committee		PE404.474	14/03/2008	
Committee opinion	LIBE	PE398.484	27/03/2008	

Amendments tabled in committee		PE404.583	31/03/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0154/2008	15/04/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0215/2008	21/05/2008	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03639/2008/LEX	19/11/2008	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2007)0051	09/02/2007	Summary
Document attached to the procedure	SEC(2007)0160	09/02/2007	
Document attached to the procedure	SEC(2007)0161	09/02/2007	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1248/2007	26/09/2007	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2008/0099
OJ L 328 06.12.2008, p. 0028 Summary

Protection of the environment through criminal law

2007/0022(COD) - 20/12/2007

On 20 December 2007, the delegations became aware of a document for information issued by the Presidency (within the framework of “other points” of the Environment Council) on the proposal for a Directive of the European Parliament and of the Council on environmental protection through criminal law.

In this context, the Council recalls that, on 9 February 2007, the Commission submitted a proposal for a Directive on environmental protection through criminal law, which is of particular importance for the Member States of the European Union.

They consider that a uniform level of protection throughout Europe in the field of environmental criminal law is both necessary and appropriate. The Member States had already made this clear by agreeing on the Framework Decision on the protection of the environment through criminal law (see CNS/2000/0801), which was annulled on grounds of lack of competence by the European Court of Justice in its judgment of 13 September 2005 (on this point, refer to the file synopsis on “Environmental protection: combating crime, criminal offences and penalties”). The proposal for a Directive is intended to replace the annulled Framework Decision and thus fill a gap in the area of environmental protection through criminal law.

The Presidency continued the work initiated by the German Presidency, regarding this proposal as fundamental for the development of the protection of the environment. Six working party meetings have taken place to date, all of which were marked by constructive cooperation among the Member States and the Commission.

General consensus was reached among Member States on the inclusion of an Annex with the list of Community legislation, infringement of which results in unlawful conduct pursuant to Article 2(a) of the proposed Directive.

Following the decision taken by the Court of Justice on 23 October in Case C-440/05 pertaining to enforcement of the law against ship-source pollution, and the political framework set out by the Ministers of Justice at the lunch on 9 November, the working party reached broad agreement on the majority of the directive’s articles. Broad consensus was reached in the discussion on Articles 1, 2(a), 2(b), 2(d), 4, 5, 6, 7, 8, 9, 10 and 11 of the Proposal, with only a very limited number of scrutiny reservations remaining, lodged by some Member States and by the Commission.

Notwithstanding the above, outstanding issues remain, in particular regarding Article 2, subparagraph c), and Article 3, subparagraphs a), b), f), e) and h), which essentially concern criminal policy decisions.

Contacts took place with the European Parliament with a view to facilitating a first reading agreement in the first half of 2008. The Presidency met the rapporteurs of the two committees involved in the co-decision procedure and took note of the European Parliament's high level of ambition.

Given the considerable progress made regarding this directive and the generally favourable view of the aims of the instrument and the contributions made by the

Member States, the Presidency believes that additional steps can be taken to further consolidate the agreement reached.

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 shownthat 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/ECfor 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 Statesmustensure 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 beeffective, 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.

Protection of the environment through criminal law

2007/0022(COD) - 15/02/2007

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.

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.

Protection of the environment through criminal law

2007/0022(COD) - 19/11/2008 - Final act

PURPOSE: to establish measures on the protection of the environment through criminal law.

LEGISLATIVE ACT: Directive 2008/99/EC of the European Parliament and of the Council on the protection of the environment through criminal law.

CONTENT: the Council adopted a Directive on the protection of the environment through criminal law after reaching agreement with the European Parliament at first reading.

The new legislative act obliges Member States to provide for effective, proportionate and dissuasive criminal penalties in their national legislation for serious infringements of provisions of Community law on the protection of the environment. These infringements include, for example:

- the emission of materials or ionising radiation into air, soil or water;
- the collection, transport, recovery or disposal of waste, including the shipment of waste;
- the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used;
- the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances;
- the killing, destruction, possession or taking of specimens of protected wild fauna or flora species;
- the placing on the market or use of ozone-depleting substances.

Member States shall ensure that **inciting, aiding and abetting** the intentional conduct referred to above is punishable as a criminal offence.

Legal persons can be held liable for offences where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person.

ENTRY INTO FORCE: 26/12/2008.

TRANSPOSITION: 26/12/2010.

Protection of the environment through criminal law

2007/0022(COD) - 12/06/2007

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.