

# EUROPEAN PARLIAMENT

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*Committee on Legal Affairs*

**2007/0022(COD)**

6.2.2008

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on the protection of the environment through criminal law  
(COM(2007)0051 – C6-0063/2007 – 2007/0022(COD))

Committee on Legal Affairs

Rapporteur: Hartmut Nassauer

Draftsman (\*):

Dan Jørgensen, Committee on the Environment, Public Health and Food Safety

(\*) Procedure with associated committees – Rule 47 of the Rules of  
Procedure

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	27



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on protection of the environment through criminal law (COM(2007)0051 – C6-0063/2007 – 2007/0022(COD))

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0051),
  - having regard to Articles 251(2) and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0063/2007),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

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Amendments by Parliament

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Amendment 1  
Recital 11

***(11) Furthermore, the significant differences in the level of sanctions in the Member States make it necessary to foresee, under certain circumstances, an approximation of those levels corresponding to the seriousness of the offence.***

***deleted***

*Justification*

*Consequence of the ruling handed down by the Court of Justice on 23 October 2007 (C-440/05) to the effect that determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence (see paragraph 70).*

Amendment 2  
Recital 12

***(12) Such an approximation is particularly important where the offences have serious results or the offences are committed in the framework of criminal organisations which play a significant role in environmental crime.*** *deleted*

*Justification*

*Consequence of the ruling handed down by the Court of Justice on 23 October 2007 (C-440/05) to the effect that determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence (see paragraph 70).*

Amendment 3  
Recital 13

***(13) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent provisions regarding the effective criminal law protection of the environment.*** *deleted*

*Justification*

*Consequence of the ruling handed down by the Court of Justice on 23 October 2007 (C-440/05) to the effect that determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence (see paragraph 70).*

Amendment 4  
Article 2, point (a)

(a) “unlawful” means infringing Community **legislation** or a law, an administrative regulation or a decision taken by a competent authority in a Member State **aiming at the protection of the environment**.

(a) “unlawful” means infringing **a** Community **act listed in Annex a** or a law, an administrative regulation or a decision taken by a competent authority in a Member State intended to transpose Community legislation.

*Justification*

*To make for exactitude in the framing of criminal law, and establish the principle that persons can expect to be prosecuted if they behave in a manner making them liable to prosecution, it is necessary to specify the particular Community acts that are to give rise to criminal sanctions in the event of an infringement.*

Amendment 5  
Article 2, point a a (new)

**(aa) “protected wild fauna and flora species” means,**

**1) for the purposes of Article 3(g), the species listed in Annex IV of Council Directive 92/43/EE of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora<sup>1</sup>;**

**2) for the purposes of Article 3(g), the species listed in Annex A or B of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein<sup>2</sup>;**

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<sup>1</sup> OJ L 206, 22.7.1992, p. 7. Last amended by Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).

<sup>2</sup> OJ L 61, 3.3.1997, p. 1. Last amended by Commission Regulation (EC) No 1332/2005 (OJ L 215, 19.8.2005, p. 1).

*Justification*

*The scope of the directive is defined exactly in order to make for legal clarity as regards penal provisions.*

Amendment 6  
Article 2, point a b (new)

***(a b) “protected habitat” means any habitat or any species for which an area has been declared a special protection area within the meaning of Article 4(1) or (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds<sup>1</sup>, and any natural habitat or any species for which an area has been declared a special area of conservation within the meaning of Article 4(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.***

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<sup>1</sup> OJ L 103, 25.4.1979, p. 1. Last amended by Directive 2006/105/EC.

*Justification*

*Definition of the term ‘protected habitat’. See also Article 3(h).*

Amendment 7  
Article 2, point b

(b) “legal person” means any legal entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of their sovereign rights and for public international organisations.

*(Does not affect English version.)*

*Justification*

*(Does not affect English version.)*

Amendment 8  
Article 3, introduction



Member States shall ensure that the following conduct constitutes a criminal offence, when committed intentionally **or with at least serious negligence**:

Member States shall ensure that the following conduct constitutes a criminal offence, when **they are unlawful and** committed intentionally:

*Justification*

1. *Adjustment in line with the structure of Council Framework Decision 2005/667/JHA of 12 July 2005 as regards the distinction between acts committed intentionally and acts of negligence.*

2. *Conduct falling into the category of serious negligence is dealt with in a separate article (see new Article 3a).*

Amendment 9  
Article 3, point a

**(a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes death or serious injury to any person;** **deleted**

*Justification*

*Conduct should not be punishable in criminal law should unless it is unlawful. See also Article 3(b).*

Amendment 10  
Article 3, point b

(b) the **unlawful** discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants;

(b) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants;

*Justification*

*Unlawfulness as a defining element of an offence has already been included in the introductory part of Article 3 and need not, therefore, be mentioned in the individual lettered*

points.

Amendment 11  
Article 3, point c

(c) the **unlawful treatment, including disposal and storage, transport, export or import of waste, including hazardous waste**, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants;

(c) the **collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker (waste management)**, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, **or water or to** animals or plants;

*Justification*

1. *Unlawfulness as a defining element of an offence has already been included in the introductory part of Article 3 and need not, therefore, be mentioned in the individual lettered points.*

2. *Legal definition of the term ‘waste management’, including a reference to ‘supervision’, as set out in the future directive [.../.../EC] of the European Parliament and of the Council on waste (COD/2005/0281).*

Amendment 12  
Article 3, point d

(d) the **unlawful** operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants;

(d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, **or water or to** animals or plants;

*Justification*

*Unlawfulness as a defining element of an offence has already been included in the introductory part of Article 3 and need not, therefore, be mentioned in the individual lettered points.*

Amendment 13  
Article 3, point e

(e) the **illegal** shipment of waste **as defined in** Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and Council for profit and in a non-negligible quantity, **whether the shipment is executed in a single operation or in several operations which appear to be linked**;

(e) the shipment of waste, **where this activity falls under** Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and *of the* Council for profit and in a non-negligible quantity;

*Justification*

1. *Unlawfulness as a defining element of an offence has already been included in the introductory part of Article 3 and need not, therefore, be mentioned in the individual lettered points.*

2. *(Does not affect English version.)*

3. *The deleted clause does not contain anything new or relevant from the regulatory point of view and is therefore unnecessary.*

Amendment 14  
Article 3, point f

(f) the **unlawful** manufacture, treatment, storage, use, transport, export or import of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants;

(f) the manufacture, treatment, storage, use, transport, export or import of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, **or water or to** animals or plants;

*Justification*

1. *Unlawfulness as a defining element of an offence has already been included in the introductory part of Article 3 and need not, therefore, be mentioned in the individual lettered points.*

2. *Drafting change.*

Amendment 15  
Article 3, point g

(g) the ***unlawful*** possession, taking, ***damaging, killing or trading of or in specimens of protected wild fauna and flora species or parts or derivatives thereof***;

(g) the possession ***or taking of specimens of protected wild fauna and flora species or parts or derivatives thereof and the killing or destruction of such specimens, where the person responsible has acted for gain or committed such acts habitually***;

*Justification*

*Narrows the definition of the offence so as to exclude insignificant cases.*

Amendment 16  
Article 3, point g a (new)

***(ga) trading in specimens of protected wild fauna and flora species or parts or derivatives thereof, where the person responsible has acted for gain or committed such acts habitually***;

*Justification*

*Trading in protected species, as defined in the new Article 2(aa)(2), is added to the list of punishable offences.*

Amendment 17  
Article 3, point h

(h) the ***unlawful significant deterioration*** of a protected habitat;

(h) the ***exploitation or extraction of soil components, digging or filling operations, the creation, alteration, or elimination of a waterbody, the draining of a wetland, the erection of a building, or the clearing of woodland, in such a way as to severely undermine the conservation purpose*** of a protected habitat;

*Justification*

*Punishable encroachment on a protected habitat is defined more precisely, in keeping with the requirement for criminal law to be couched in exact terms.*

Amendment 18  
Article 3, point i

(i) **the unlawful** trade in or use of ozone-depleting substances.

(i) trade in, or **the manufacture, sale or** use of, ozone-depleting substances.

*Justification*

*Unlawfulness as a defining element of an offence has already been included in the introductory part of Article 3 and need not, therefore, be mentioned in the individual lettered points. The scope is widened to encompass similarly dangerous actions that should, therefore, likewise constitute punishable offences.*

Amendment 19  
Article 3 a (new)

**Article 3a**

**Offences committed with serious negligence**

**Member States shall ensure that the forms of conduct listed in points (a) to (f) and points (h) and (i) of Article 3 constitute criminal offences, when committed with serious negligence.**

*Justification*

*Acts committed intentionally and acts of negligence are separated, following the structure of Framework Decision 2005/667/JHA of 12 July 2005. Acts of serious negligence should be punishable only when they constitute significant infringements, taking into account the requirement of necessity referred to in the Court ruling of 23 October 2007 (C-440/05).*

Amendment 20  
Article 4

**Participation and instigation**

Member States shall ensure that **participation in** or instigation of the conduct referred to in Article 3 **constitutes a criminal offence.**

**Instigation and aiding and abetting**

Member States shall ensure that instigation of, **and aiding and abetting**, the **intentional** conduct referred to in Article 3 **are made punishable offences.**

*Justification*

1. *Instigation and aiding and abetting apply only when acts are committed intentionally.*
2. *Drafting change.*

Amendment 21  
Article 5

1. *Member States* shall ensure that the commission of the offences referred to in Articles 3 *and* 4 is punishable by effective, proportionate and dissuasive criminal sanctions.

2. *Member States shall ensure that the commission of the offences referred to in Article 3(b) to (h) is punishable by a maximum of at least between one and three years imprisonment where the offence is committed with serious negligence and causes substantial damage to air, soil, water, animals or plants.*

3. *Member States shall ensure that the commission of the following offences is punishable by a maximum of at least between two and five years imprisonment:*

*(a) the offence referred to in Article 3(a), where the offence is committed with serious negligence;*

*(b) the offences referred to in Article 3(b) to (f), where the offence is committed with serious negligence and causes the death of or serious injury to a person;*

*(c) the offences referred to in Article 3(b) to (h) where the offence is committed intentionally and causes substantial damage to air, soil, water, animals or plants;*

*(d) the offences referred to in Article 3, where the offence is committed in the framework of a criminal organisation within the meaning of Framework Decision [... on the fight against*

1. *Each Member State shall take the steps required to* ensure that the commission of the offences referred to in Articles 3 *to* 4 is punishable by effective, proportionate and dissuasive criminal sanctions.

*organised crime].*

**4. Member States shall ensure that the commission of the following offences is punishable by a maximum of at least between five and ten years imprisonment:**

**(a) the offence referred to in Article 3(a), where the offence is committed intentionally;**

**(b) the offences referred to in Article 3(b) to (f) where the offence is committed intentionally and causes the death of or serious injury to a person.**

**5. The criminal sanctions provided for in this article may be accompanied by other sanctions or measures, in particular:**

**(a) the disqualification of a natural person from engaging in an activity requiring official authorization or approval, or founding, managing or directing a company or a foundation, where the facts having led to his conviction show a high risk that the same kind of criminal activity may be pursued again;**

**(b) the publication of the judicial decision relating to the conviction or any sanctions or measures applied;**

**(c) the obligation to reinstate the environment.**

#### *Justification*

*Drafting changes.*

*Consequence of the ruling handed down by the Court of Justice on 23 October 2007 (C-440/05) to the effect that determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence (see paragraph 70).*

#### Amendment 22

##### Article 6, paragraph 1, introductory part

1. Member States shall ensure that legal

1. Member States shall ensure that legal

persons can be held liable for offences referred to in **Article 3** 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, based on

persons can be held liable for offences referred to in **Articles 3 to 4** 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, based on

*Justification*

*The scope is widened to encompass acts of serious negligence.*

Amendment 23  
Article 6, paragraph 2

2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in **Article 3** for the benefit of that legal person by a person under its authority.

2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in **Articles 3 to 4** for the benefit of that legal person by a person under its authority.

*Justification*

*The scope is widened to encompass acts of serious negligence.*

Amendment 24  
Article 7

1. Member States shall ensure that a legal person held liable for an offence pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions, ***which shall include criminal or non-criminal fines.***

***2. The fines provided for in paragraph 1 shall be:***

***(a) of a maximum of at least between EUR 300 000 and EUR 500 000 in cases where an offence referred to in Article 3(b) to (h) is committed with***

1. Member States shall ***take the steps required to*** ensure that a legal person held liable for an offence pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions.



*serious negligence and causes substantial damage to air, soil, water, animals or plants.*

*(b) of a maximum of at least between EUR 500 000 and EUR 750 000 in cases where:*

*(i) the offence referred to in Article 3(a) is committed with serious negligence, or*

*(ii) an offence referred to in Article 3(b) to (h):*

*- is committed with serious negligence and causes the death or serious injury of a person, or*

*- is committed intentionally and causes substantial damage to air, soil or water or to animal or plants, or*

*(iii) an offence referred to in Article 3 is committed intentionally in the framework of a criminal organisation within the meaning of Framework Decision [... on the fight against organised crime];*

*(c) of a maximum of at least between EUR 750 000 and EUR 1 500 000 in cases where:*

*(i) an offence referred to in Article 3(a) is committed intentionally, or*

*(ii) an offence referred to in Article 3(b) to (f) is committed intentionally and causes the death or serious injury of a person.*

*Member States may apply a system whereby the fine is proportionate to the turnover of the legal person, to the financial advantage achieved or envisaged by the commission of the offence, or to any other value indicating the financial situation of the legal person, provided that such system allows for maximum fines, which are at least equivalent to the minimum for the maximum fines. Member States that implement the Directive in accordance with such a system shall notify the*

*Commission that they intend to do so.*

*3. Member States in which the Euro has not been adopted shall apply the exchange rate between the Euro and their currency as published in the Official Journal of the European Union on [...].*

*4. The sanctions provided for in this article may be accompanied by other sanctions or measures, in particular:*

*(a) the obligation to reinstate the environment;*

*(b) the exclusion from entitlement to public benefits or aid;*

*(c) the temporary or permanent disqualification from the practice of industrial or commercial activities;*

*(d) the placing under judicial supervision;*

*(e) a judicial winding-up order;*

*(f) the obligation to adopt specific measures in order to eliminate the consequences of conduct such as that on which the criminal liability was founded;*

*(g) the publication of the judicial decision relating to the conviction or any sanctions or measures applied.*

#### *Justification*

*1. Drafting change.*

*2. Consequence of the Court ruling of 23 October 2007 (C-440/05), paragraph 66.*

*Consequence of the ruling handed down by the Court of Justice on 23 October 2007 (C-440/05) to the effect that determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence (see paragraph 70).*

Amendment 25

Article 8

*Article 8*

*deleted*

### ***Reporting***

***By ... at the latest, and every three years thereafter, Member States shall transmit information to the Commission on the implementation of this Directive in the form of a report.***

***On the basis of those reports, the Commission shall submit a report to the European Parliament and the Council.***

### ***Justification***

*Community law differs from other third pillar areas to the extent that the Commission can employ the appropriate means to ensure compliance. A reporting obligations thus no more than unnecessary red tape.*

### **Amendment 26**

#### **Article 9, paragraph 1, subparagraph 1**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by at the latest. ***They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.***

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by at the latest.

### ***Justification***

*The deleted provision should be incorporated in a recital.*

### **Amendment 27**

#### **Annex a (new)**

#### ***Annex a***

#### ***LIST OF COMMUNITY LEGISLATION INFRINGEMENT OF WHICH CONSTITUTES UNLAWFUL CONDUCT WITHIN THE MEANING OF ARTICLE 2(a) OF THIS DIRECTIVE***

***- Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by gases from positive-ignition engines of motor vehicles: to be repealed by new Regulation;***

***- Council Directive 72/306/EEC of 2 August 1972 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in vehicles;***

***- Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils;***

***- Council Directive 76/464 of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community: repealed by Directive 2000/60 as of 2013;***

***- Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations: to be replaced by REACH Regulation as of 1 June 2009;***

***- Council Directive 77/537/EEC of 28 June 1977 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in wheeled agricultural or forestry tractors;***

***- Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry;***

***- Council Directive 79/117 of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances;***

- ***Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;***
- ***Regulation (EEC) No 348/81 of 20 January 1981 on common rules for imports of whales or other cetacean products;***
- ***Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry: repeal proposed;***
- ***Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges: repeal proposed;***
- ***Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis sector: repeal proposed;***
- ***Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants: will be repealed in October 2007;***
- ***Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane: repeal proposed;***
- ***Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture;***
- ***Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC: repeal proposed;***
- ***Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms;***

- *Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment;*
- *Council Directive 91/414/EEC concerning the placing of plant protection products on the market;*
- *Council Directive 91/689/EEC of 12 December 1991 on hazardous waste;*
- *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;*
- *Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry;*
- *Council Directive 94/63/EC of 20 December 1993 on the control of volatile organic compound(VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations;*
- *Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls;*
- *Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control;*
- *Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances;*
- *Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery;*

- *Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein;*
- *Directive 98/8/EC of the European Parliament and the Council of 16 February 1998 concerning the placing of biocidal products on the market;*
- *Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12;*
- *Council Directive 99/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations;*
- *Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste;*
- *Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC;*
- *Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end of life vehicles;*
- *Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues;*
- *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy;*
- *Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste;*
- *Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that*

*deplete the ozone layer;*

*- Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC;*

*- Directive 2001/80/EC of the European Parliament and of the Council on emissions of certain pollutants into the air from large combustion plants;*

*- Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment;*

*- Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EC;*

*- Directive 2005/55/EC of the European Parliament and of the Council of 28 September 2005 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles;*

*- Commission Directive 2005/78/EC of 14 November 2005 implementing Directive 2005/55/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles and amending Annexes I,*



*II, III, IV and VI thereto;*

*- Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community;*

*- Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste;*

*- Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from the extractive industries and amending Directive 2004/35/EC;*

*- Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC;*

*- Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC;*

*- Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration;*

*- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste: applicable from 12 July 2007;*

*- Regulation of the European Parliament and of the Council on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information: will be adopted in the next few days and will repeal Directive 70/220/EEC 66 months after entry into force;*

*- Commission Regulation (EC)*

***No 1418/07 of 29 November 2007  
concerning the export for recovery of  
certain waste listed in Annex III or IIIA  
to Regulation (EC) No 1013/2006 of the  
European Parliament and of the Council  
to certain countries to which the OECD  
Decision on the control of transboundary  
movements of wastes does not apply.***

*Justification*

*Ancillary competence for the purposes of Article 2(a).*

## EXPLANATORY STATEMENT

### I. General background

The background to the draft directive is set out in detail in point I of the rapporteur's working document of 12 June 2007, already submitted to the Committee on Legal Affairs.

### II. Court ruling of 23 October 2007

In the ruling that it handed down on 23 October 2007 in Case C-440/05 (Commission v Council: Council Framework Decision to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution), the Court of Justice explicitly stipulated for the first time that determining the type and level of criminal penalties to be applied is not a matter falling within the Community's sphere of competence. The Commission proposal of 9 February 2007 for a directive on the protection of the environment through criminal law (COM(2007)0051) runs counter to that ruling and must therefore be corrected as and where necessary.

### III. The draft committee report

In summary, the rapporteur is proposing to the committee members that the Commission draft be amended as follows:

1. The Court ruling of 23 October 2007 has to be reflected in Articles 5 and 7. Given that, according to the ruling, it is not for the Community to determine the type and level of criminal penalties to be applied, paragraph 2 and all following paragraphs should be deleted in both instances.
2. The definitions in Article 2 should be clarified or enlarged upon in order to guarantee the proper rigour. The term 'unlawful' is defined more precisely. In this case an ancillary competence is established. More complete definitions are provided for 'protected wild fauna and flora species' and a 'protected habitat'.
3. Regarding the offences referred to in Article 3, intentional acts and acts of serious negligence should be treated separately. This is consistent with the structure of Council Framework Decision 2005/667/JHA of 12 July 2005. As regards the individual elements of the offences, bearing in mind the need for legal certainty and exactitude in the framing of the law, a number of details need to be added, and the necessary adjustments should be made to allow for more recent law.
4. The reporting obligations that the Commission is proposing to impose on the Member States are bureaucratic and in this case superfluous, given that for the purposes of Community

law, contrary to the position regarding the third pillar of the European Treaties, there are appropriate means in place to ensure compliance.

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