

# EUROPEAN PARLIAMENT

2004



2009

---

*Session document*

**A6-0154/2008**

15.4.2008

## **\*\*\*I** **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 .....	44
OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY (*).....	46
OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS .....	58
PROCEDURE.....	68

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



## 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 (A6-0154/2008),
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 the Commission.

Text proposed by the Commission

---

Amendments by Parliament

---

Amendment 1  
Recital 4 a (new)

***(4a) It is clear that the success of efforts to tackle environmental crime in a cross-border context will depend on an appropriate role for bodies coordinating international pre-trial proceedings (Europol, Eurojust, joint investigation teams) and greater effectiveness of those bodies in terms of competences and organisation.***

Amendment 2  
Recital 5

***(5) By entrusting judicial authorities, rather than administrative authorities, with the task of imposing sanctions, responsibility for investigating and enforcing the respect of environmental regulations falls to authorities which are independent of those which grant exploitation licences and discharge authorisations.*** *deleted*

*Justification*

*Superseding the principle of ‘loyal cooperation’ and the established legal principle of ‘effet utile’. Moreover, Article 10 of the Treaty establishing the European Community provides that ‘Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community’s tasks’.*

Amendment 3  
Recital 6

(6) In order to achieve effective protection of the environment, there is a particular need for more dissuasive sanctions for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, soil, water, animals or plants, including to the conservation of species.

(6) In order to achieve effective protection of the environment, there is a particular need for more dissuasive sanctions for environmentally harmful activities, which typically cause or are likely to cause substantial damage to ***the landscape***, the air, including the stratosphere, ***bedrock***, soil, water, animals or plants, including to the conservation of species.

*Justification*

*In connection with environmentally harmful activities, no mention is made of bedrock (the lithosphere). Soil (where it exists) is merely an outer layer – up to 1.5 metres deep – which forms on the parent rock.*

*Rubbish dumps and waste stockpiles (which may contain hazardous or radioactive waste) can be found in old mines or quarries (and therefore in the bedrock itself).*

*Open-cast mining in particular can disrupt land ecosystems, causing major damage.*

Amendment 4  
Recital 6 a (new)

***(6a) The legislation listed in the Annex to this Directive contains provisions which should be subject to measures which relate to criminal law, in order to ensure that the rules on environmental protection are fully effective.***

Amendment 5  
Recital 6 b (new)

***(6b) The obligations imposed by this Directive relate only to the provisions of the legislation listed in the Annex hereto which entail an obligation for Member States, when implementing that legislation, to provide for prohibitive measures.***

Amendment 6  
Recital 9 a (new)

***(9a) This Directive obliges the Member States to include in their national legislation criminal sanctions for serious violations of Community environmental protection law. It does not create obligations with regard to the implementation of such sanctions or of other available legal instruments in individual cases.***

#### *Justification*

*Pursuant to the Court of Justice judgment of 23 October 2007 (C-440/05), although in principle criminal law and the rules of criminal procedure do not fall within Community competence, the Community legislator can require the Member States to make provision for sanctions of this kind to ensure that the laws that it enacts in a specific sector are fully effective.*

Amendment 7  
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 8  
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 9  
Recital 12 a (new)

***(12a) Where a continuing activity proves after a lapse of time to give rise to environmental damage which may in turn give rise to criminal liability under this Directive, the question whether or not the***



*perpetrator of the damage acted intentionally or negligently should be determined by reference to the time when the perpetrator became aware, or should have been aware, of the facts constituting the offence and not to the time when the perpetrator commenced its activity. It should be borne in mind in this connection that the prior grant of an authorisation, licence or concession should not constitute a defence in such circumstances.*

Amendment 10  
Recital 12 b (new)

*(12b) The mental element for the criminal offences to be created by the Member States pursuant to this Directive should be intention or at least serious negligence. Accordingly, the prosecuting authorities and the courts in the Member States should have a discretion not to prosecute for offences concerning protected wild fauna and flora species, or parts or derivatives thereof, where the conduct complained of concerns a negligible quantity of specimens and has a negligible impact on the conservation status of the species concerned and where the person or persons concerned were unaware of the protected status of the wild fauna or flora concerned.*

Amendment 11  
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 12 Recital 13 a (new)

***(13a) The Euratom Treaty and the secondary legislation enacted pursuant thereto regulate environmental protection with regard to nuclear activity. As a result, the unlawfulness of actions which affect the environment as a result of nuclear activities can be defined only by reference to the Euratom Treaty and the secondary legislation enacted pursuant thereto.***

### *Justification*

*Chapter III of the Euratom Treaty is the legal basis for Community action in the area of environmental protection where nuclear activity is involved. It is most important that the text be brought into line by specifying that the Euratom Treaty remains the basis for nuclear-related issues. Consequently, any infringement of Community legislation passed on the basis of the Treaty must, if it stems from nuclear activity, be considered unlawful.*

#### Amendment 13 Recital 15

(15) Since the objectives of the action to be taken, namely to ensure a more effective protection of the environment, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(15) Since the objectives of the action to be taken, namely to ensure a more effective protection of the environment, ***for example by combating large-scale organised crime which causes serious environmental damage***, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those

objectives.

Amendment 14

Article 1

This Directive establishes measures relating to criminal law in order to protect the environment more effectively.

This Directive establishes measures relating to criminal law in order to protect the environment more effectively. ***It concerns criminal liability only and is without prejudice to Community or national law, and to any rules derived therefrom, with respect to civil liability for environmental harm.***

*Justification*

*It is important to ensure that a criminal prosecution does not preclude at the same time the application of environmental liability legislation, which is focused on damage repair.*

Amendment 15

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 hereto*** or a law, an administrative regulation or a decision taken by a competent authority in a Member State ***intended to transpose Community legislation.***

***As regards activities covered by the Euratom Treaty, it means infringing any Community act listed in Annex B hereto;***

*Justification*

*Chapter III of the Euratom Treaty is the legal basis for Community action in the area of environmental protection where nuclear activity is involved. It is most important that the text be brought into line by specifying that the Euratom Treaty remains the basis for nuclear-related issues. Consequently, any infringement of Community legislation passed on the basis of the Treaty must, if it stems from nuclear activity, be considered unlawful.*

Amendment 16

Article 2, point a (new)

***(aa) "protected wild fauna and flora species" means:***

***(i) for the offence referred to in Article 3(g), those listed in:***

***– Annex IV to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and wild fauna and flora<sup>1</sup>;***

***– Annex 1 to, and referred to in Article 4(2) of, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds<sup>2</sup>; and***

***(ii) for the trade-related offence referred to in Article 3(ga), those listed in:***

***– Annexes A or B to 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>3</sup>;***

---

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

<sup>2</sup> OJ L 103, 25.4.1979, p. 1. Directive as last amended by Directive 2006/105/EC (JO L 363, 20.12.2006, p. 368).

<sup>3</sup> OJ L 61, 3.3.1997, p. 1. Regulation as last amended by Commission Regulation (EC) No 1332/2005 (OJ L 215, 19.8.2005, p. 1).

Amendment 17  
Article 2, point a b (new)

***(ab) "habitat within a protected site", means any habitat of species for which an area is classified as a special protection area pursuant to Article 4(1) or (2) of Directive 79/409/EEC, or any natural habitat or a habitat of species for which a site is designated as a special area of conservation pursuant to Article 4(4) of Directive 92/43/EEC;***

Amendment 18  
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 19  
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. (b) “legal person” means any legal entity having such status under the applicable national law, except for States or **any** other public bodies acting in the exercise of their **prerogative of public power, as well as** public international organisations.

*Justification*

*In its definitions the directive must be uniform with other directives that Parliament has adopted, in this case P6\_TA(2007)0145 on COM (2006)0168, adopted on 25 April 2007.*

Amendment 20  
Article 3, introductory part

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 **unlawful and** committed intentionally or with at least serious negligence:

Amendment 21  
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*

Amendment 22  
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 **onto the Earth's surface, or** into air, **bedrock**, 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, **rock 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.*

*The provision fails to mention the outermost layer of the lithosphere, where topography (relief, exposure) directly influences the spread of ionising radiation and other materials.*

Amendment 23  
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, **rock 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 24  
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 rock** 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 25  
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 26 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, **sale and distribution and** 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, **bedrock**, soil **or** water **or to** animals or plants;

### *Justification*

*The provision fails to cover trade in and distribution of hazardous materials.*

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 27 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, taking, damaging, **processing or** killing of specimens of protected wild fauna and flora species or parts or derivatives thereof **and the killing or destruction of such specimens, 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;**



Amendment 28  
Article 3, point g a (new)

*(ga) 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;*

Amendment 29  
Article 3, point h a (new)

*(ha) the significant deterioration of a habitat within a protected site through building work, stone clearance, deforestation, grubbing and planting work, and arson or any comparable serious acts;*

Amendment 30  
Article 3, point i

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

(i) trade in, or *the manufacture, placing on the market, distribution or* use of, ozone-depleting substances.

Amendment 31  
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 32  
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 organised crime].*

*4. Member States shall ensure that the commission of the following offences is punishable by a maximum of at least*

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

*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 33 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,*

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

*which shall include criminal or non-criminal fines.*

and dissuasive sanctions.

**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 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 34  
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 35  
Article 8 a (new)

**Article 8a**

***Adoption of new legislation***

***Whenever subsequent legislation on environmental matters is adopted, it shall specify where appropriate that the Annexes to this Directive are to be amended.***

Amendment 36  
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***

1. Member States shall bring into force the provisions necessary to comply with this Directive by [...] at the latest.

*forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.*

*Justification*

*The deleted provision should be incorporated in a recital. There is no need to go into detail.*

Amendment 37  
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 as from 2 January 2013 by Regulation (EC) No 715/2007 of the European Parliament and of the Council);***
- 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 (to be repealed as from 2 January 2013 by Regulation (EC) No 715/2007);***
- Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils;***
- 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 repealed and replaced with effect from 1 June 2009 by the REACH Regulation (Regulation (EC) No 1907/2006 of the European Parliament and of the Council));*

*- 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/EEC 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 84/491/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 of 15 July 1991 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;*
- *European Parliament and Council Directive 94/63/EC of 20 December 1994 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 (PCB/PCT);*

*- 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/EEC;*

*- Council Directive 1999/13/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 of 23 October 2001 on the limitation of 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 (WEEE);*

*- 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 of the European Parliament and of the Council of 6 September 2006 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;*

*- Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 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 repeal Directive 70/220/EEC with effect from 2 January 2013);*

*- Commission Regulation (EC) No 1418/2007 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.*

Amendment 38  
Annex B (new)

#### *Annex B*

***LIST OF COMMUNITY LAWS  
INFRINGEMENT OF WHICH  
CONSTITUTES UNLAWFUL  
CONDUCT WITHIN THE MEANING  
OF THE SECOND SUBPARAGRAPH  
OF POINT (A) OF ARTICLE 2 OF THIS  
DIRECTIVE, AS REGARDS NUCLEAR  
ACTIVITIES***

**- Council Decision 87/600/Euratom of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency;**

**- Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation;**

**- Council Directive 2003/122/Euratom of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources;**

**- Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel.**

### *Justification*

*Chapter III of the Euratom Treaty is the legal basis for Community action in the area of environmental protection where nuclear activity is involved. It is most important that the text be brought into line by specifying that the Euratom Treaty remains the basis for nuclear-related issues. Consequently, any infringement of Community legislation passed on the basis of the Treaty must, if it stems from nuclear activity, be considered unlawful.*

## 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.

\*\*\*\*\*



27.2.2008

## **OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY (\*)**

for the Committee on Legal Affairs

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))

Draftsman: (\*) Dan Jørgensen

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

### **SHORT JUSTIFICATION**

#### **The general background:**

Back in 1998 the Council for the first time agreed to take action to protect the environment through criminal law, and following the discussion and decisions back then the Commission adopted a proposal for a directive in 2001 and the Parliament adopted a 1<sup>st</sup> reading report in 2002.

The main point was to ensure more effective application of Community law by defining a common minimum set of offences. The Council, however, did not discuss the proposals of Parliament and Commission but instead adopted a framework decision in January 2003 based on the 3<sup>rd</sup> pillar (EU Treaty).

This framework decision was annulled by the European Court of Justice since it was found that everything in the decision aimed at protecting the environment – and that this could and should be done by applying EC Treaty Article 175 (which is the 1<sup>st</sup> pillar).

The outcome was a lack of legislation or regulation in this field since the Council had adopted a third pillar decision which was annulled by the Court while no first pillar legislation was in place.

As a consequence both Parliament and the Commission have argued the need for the new proposal which was put forward last year (COM(2007)0051).

#### **The proposal:**

The two most essential and controversial parts of the current Commission proposal aim to (1) set out a harmonised set of offences which should be punished by criminal sanctions by all Member States, and (2) harmonise or approximate sanctions for particularly serious environmental crimes by agreeing on a common frame.

These steps were considered necessary to ensure an effective protection of the environment and secure uniform and fair enforcement and implementation across the Community.

Recently, however, the Court ruling in the case of ship pollution (judgment of 23 October 2007 in case C-440/05) has increased the pressure on specifically the provisions of Articles 5 and 7 of the current proposal dealing with approximation of sanctions for natural and legal persons respectively.

#### **The opinion of the Environment Committee:**

The draftsman considers the framework put forward by the Commission a fruitful one in order to effectively protect the environment and secure uniform and fair enforcement and implementation across the Community.

Hence, the draftsman proposes not to delete or amend the Commission proposal on these particular points.

Turning to the offences, the draftsman wishes to strengthen the wording and meaning of certain specific aspects.

Protection of habitats should be a main priority but the proposals of the Commission have been criticised by Member States for being unclear and ambiguous, and hence the draftsman has proposed an amendment to clarify and define exactly what is meant by “protected habitats”.

Furthermore the draftsman suggests stressing the responsibility of manufacturers, exporters, importers, transporters, etc.

In cases where there is reason to believe that the product or substance of concern is likely to cause death or serious injury to persons or substantial damage to the environment, the treatment, sale, storage and such like should be considered an offence according to this Directive.

Finally, the draftsman proposes to clarify the obligation of Member States to ensure sufficient resources, personnel and training to actually reduce environmental crime through the novel approach outlined in this Directive.

## **AMENDMENTS**

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

---

Text proposed by the Commission<sup>1</sup>

---

Amendments by Parliament

---

<sup>1</sup> Not yet published in OJ.

Amendment 1  
Recital 5

(5) By entrusting judicial authorities, rather than administrative authorities, with the task of imposing sanctions, responsibility for investigating and enforcing the respect of environmental regulations falls to authorities which are independent of those which grant exploitation licences and discharge authorisations.

(5) By entrusting judicial authorities, rather than administrative authorities, with the task of imposing sanctions, responsibility for investigating and enforcing the respect of environmental regulations falls to **the authorities of the Member State in which the geohazard constituting a criminal offence under the law occurs and** which are independent of those which grant exploitation licences and discharge authorisations.

*Justification*

*It is important for the place at which proceedings for damage caused to the environment or an offence committed intentionally that causes death or serious injury are brought. Owing to the fact that pollutants are generally carried across borders, the authorities best suited to investigating the matter and imposing sanctions are not the competent authorities of the state in which the hazard originated but those in which it caused damage to the environment and public health.*

Amendment 2  
Recital 6

(6) In order to achieve effective protection of the environment, there is a particular need for more dissuasive sanctions for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, soil, water, animals or plants, including to the conservation of species.

(6) In order to achieve effective protection of the environment, there is a particular need for more dissuasive sanctions for environmentally harmful activities, which typically cause or are likely to cause substantial damage to **the landscape**, the air, including the stratosphere, **bedrock**, soil, water, animals or plants, including to the conservation of species.

*Justification*

*In connection with environmentally harmful activities, no mention is made of bedrock (the lithosphere). Soil (where it exists) is merely an outer layer – up to 1.5 metres deep – which forms on the parent rock.*

*Rubbish dumps and waste stockpiles (which may contain hazardous or radioactive waste) can be found in old mines or quarries (and therefore in the bedrock itself).*

*Open-cast mining in particular can disrupt land ecosystems, causing major damage.*

#### Amendment 3

##### Recital 7

(7) Failure to comply with a legal duty to act can have ***the same effect as*** active behaviour and should therefore be subject to corresponding sanctions, as well.

(7) Failure to comply with a legal duty to act can have ***consequences which are the same as or more serious than those resulting from*** active behaviour and should therefore be subject to corresponding sanctions, as well.

#### Amendment 4

##### Recital 9

(9) In order to achieve effective protection of the environment, participation in and instigation of such activities should also be considered a criminal offence.

(9) In order to achieve effective protection of the environment, participation in and instigation of such activities ***or behaviour which, by action or omission, results in damage or a threat of serious damage to the environment*** should also be considered a criminal offence ***and, with a view to effectively protecting the environment and in accordance with the principles of prevention and precaution, the instruments whereby an offence is committed should form the subject of genuine precautionary measures.***

#### Amendment 5

##### Article 1

This Directive establishes measures relating to criminal law in order to protect the environment more effectively.

This Directive establishes measures relating to criminal law in order to protect the environment more effectively. ***It concerns criminal liability only and is without prejudice to Community or national law, and to any rules derived therefrom, with respect to civil liability for environmental harm.***

#### *Justification*

*It is important to ensure that a criminal prosecution does not preclude at the same time the application of environmental liability legislation, which is focused on damage repair.*

Amendment 6  
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 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 **and public health.**

*Justification*

*The offences and sanctions dealt with in Articles 3, 5 and 7 of the proposal cover issues relating to various aspects of life and public health, as well as to the environment. Article 7 provides for specific fines and financial compensation in respect of offences causing death or serious injury.*

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.

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

*Justification*

*Public bodies should not be exempted from following environmental law or criminal liability as prescribed in this Directive.*

Amendment 8  
Article 2, point (b a) (new)

***(ba) "protected habitat" means any site designated as a special protection area pursuant to Article 4(1) or (2) of Directive 79/409/EEC or as a special area of conservation pursuant to Article 4(4) of Directive 92/43/EEC.***

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;

(a) the discharge, emission or introduction of a quantity of materials or ionising radiation **onto the Earth's surface**, into air, **bedrock**, soil or water, which causes death or serious injury to any person **or animal**;

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 unlawful discharge, emission or introduction of a quantity of materials or ionising radiation **onto the Earth's surface**, into air, **bedrock**, 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, **rock**, water, animals or plants;

*Justification*

*The provision fails to mention the outermost layer of the lithosphere, where topography (relief, exposure) directly influences the spread of ionising radiation and other materials.*

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 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, **bedrock**, soil, water, animals or plants;

*Justification*

*In connection with environmentally harmful activities, no mention is made of bedrock (the lithosphere). Soil (where it exists) is merely an outer layer – up to 1.5 metres deep – which forms on the parent rock.*

*Rubbish dumps and waste stockpiles (which may contain hazardous or radioactive waste) can be found in old mines or quarries (and therefore in the bedrock itself).*

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 irregular operation, the malfunctioning due to a wrongful act, negligence, carelessness, lack of judgment or poor maintenance*** or 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;

Amendment 13  
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 unlawful manufacture, treatment, storage, use, transport, ***sale and distribution*** and 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, ***bedrock***, soil, water, animals or plants;

*Justification*

*The provision fails to cover trade in and distribution of hazardous materials.*

Amendment 14  
Article 3, point (h)

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

(h) ***any conduct which causes*** significant deterioration of a protected habitat, ***including through building work, stone clearance, deforestation, grubbing and planting work, and arson***;

Amendment 15  
Article 3, point (i a) (new)

***(ia) the manufacture, treatment, storage, use, transport, export or import of:***

- genetically modified organisms, the release thereof into the environment, the marketing of such organisms and the failure to disclose new evidence of their risks,***
- explosives for civil use,***
- pyrotechnical materials,***
- chemical substances,***
- biocides and plant protection products, 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.***

Amendment 16  
Article 3, point (i b) (new)

***(ib) the import and export of illegally harvested timber or biomass;***

Amendment 17  
Article 3, point (i c) (new)

***(ic) the possession or putting into circulation of means of sea transport that have a scientifically proven severe adverse impact on the environment (inter alia the possession or putting into circulation of 'rustbucket' single-hull vessels).***

Amendment 18  
Article 4

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

Member States shall ensure that participation in or instigation of the conduct referred to in Article 3 ***is deemed to be a criminal offence and shall ensure, in***



offence.

*general, that behaviour which, by action or omission, damages or may result in serious damage to the environment also constitutes a criminal offence.*

Amendment 19  
Article 4, paragraph 1 a (new)

*Member States shall ensure that, with a view to effectively protecting the environment and in accordance with the principles of prevention and precaution, the instruments whereby an offence is committed, either in terms of posing a threat or of causing damage, form the subject of genuine precautionary measures (seizure).*

Amendment 20  
Article 5, paragraph 5, point (a)

(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;

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

Amendment 21  
Article 6, paragraph 1, introductory part

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

1. Member States shall ensure that legal persons can be held liable – *beyond civil liability* – 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 *or had such a position at the time when the offence was committed or during the period of the*

*negligence*, based on

Amendment 22  
Article 6, paragraph 1 a (new)

***1a. Member States shall ensure that the criminal liability of a legal person does not cease when the legal person ceases to exist, but that, when the damage caused and/or commission of the offence or negligence is uncovered, the members of the legal person who or which were members of the legal person at the time of commission or during the period of the offence or negligence are liable in criminal and civil law.***

Amendment 23  
Article 6, paragraph 3 a (new)

***3a. Member States shall ensure that natural persons responsible for the aforementioned acts are temporarily or permanently prohibited from holding public office.***

Amendment 24  
Article 7, paragraph 4, introductory part

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

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

Amendment 25  
Article 7 a (new)

***Article 7a***

***Precautionary measures***

***Member States shall introduce or maintain appropriate precautionary measures.***

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. ***They shall ensure that the relevant services receive sufficient staffing and training to enable the authorities and the courts to meet the challenge of substantially reducing environmental crime.*** They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

## PROCEDURE

<b>Title</b>	Protection of the environment through criminal law
<b>References</b>	COM(2007)0051 – C6-0063/2007 – 2007/0022(COD)
<b>Committee responsible</b>	JURI
<b>Opinion by</b> Date announced in plenary	ENVI 15.3.2007
<b>Associated committee(s) - date announced in plenary</b>	12.7.2007
<b>Drafts(wo)man</b> Date appointed	Dan Jørgensen 24.5.2007
<b>Discussed in committee</b>	19.12.2007      28.1.2008
<b>Date adopted</b>	26.2.2008
<b>Result of final vote</b>	+:            54 -:            2 0:            3
<b>Members present for the final vote</b>	Adamos Adamou, Margrete Auken, Liam Aylward, Pilar Ayuso, Irena Belohorská, Johannes Blokland, John Bowis, Frieda Brepoels, Magor Imre Csibi, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Jill Evans, Karl-Heinz Florenz, Matthias Groote, Françoise Grossetête, Satu Hassi, Gyula Hegyi, Jens Holm, Marie Anne Isler Béguin, Dan Jørgensen, Christa Klauß, Eija-Riitta Korhola, Holger Kraemer, Urszula Krupa, Aldis Kušķis, Peter Liese, Jules Maaten, Linda McAvan, Roberto Musacchio, Riitta Myller, Miroslav Ouzký, Vladko Todorov Panayotov, Vittorio Prodi, Frédérique Ries, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Carl Schlyter, Richard Seeber, María Sornosa Martínez, Antonios Trakatellis, Evangelia Tzampazi, Thomas Ulmer, Marcello Vernola, Anja Weisgerber, Åsa Westlund, Anders Wijkman, Glenis Willmott
<b>Substitute(s) present for the final vote</b>	Iles Braghetto, Kathalijne Maria Buitenweg, Philip Bushill-Matthews, Genowefa Grabowska, Jutta Haug, Erna Hennicot-Schoepges, Johannes Lebech, Jiří Maštálka, Alojz Peterle, Lambert van Nistelrooij

27.3.2008

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

for the Committee on Legal Affairs

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))

Draftsman: Luis Herrero-Tejedor

### **SHORT JUSTIFICATION**

The draftsman of the committee on Civil Liberties, Justice and Home Affairs would like to suggest the following remarks to the rapporteur in the Legal Affairs committee with regard to the proposal of the European Parliament and of the Council on the protection of the environment through criminal law.<sup>1</sup>

The draftsman is of the opinion that, to a big extent, legislation protecting the environment should be enforced through criminal sanctions since only the latter will have a sufficiently dissuasive and deterrent effect.

The current Commission proposal replaces the Proposal for a Directive on the Protection of the Environment through Criminal Law (2001/0076(COD)) in order to implement the judgment of the European Court of Justice (ECJ) in the so called 'environment case'<sup>2</sup> by which Framework Decision 2003/80/JHA was annulled. In this case the ECJ decided that the Community could take measures relating to the criminal law of the Member States which it considers necessary in order to ensure that the rules concerning environmental protection are fully effective. It was therefore necessary to withdraw the 2001 proposal and to present a new proposal. The new text takes into consideration Articles 1-7 of the annulled Framework Decision as they should have been adopted on the basis of Article 175 EC-Treaty rather than on the basis of Title VI TEU.

Its aim is to ensure a partial approximation with regard to which serious breach environmental

---

<sup>1</sup> COM(2007)0051 of 9 February 2007.

<sup>2</sup> C-176/03, of 13 September 2005.

legislation should be considered as criminal offences throughout the EU. These offences should be punishable by effective, proportionate and dissuasive criminal sanctions and in the most serious cases the level of sanctions is subject to approximation too.

Recently, on the 23rd of October 2007, the European Court of Justice gave judgment in the so called 'ship-source pollution case'.<sup>1</sup> In this case the ECJ confirmed its judgment of 13 September 2005 (the environment case). On the question whether the Community was competent to determine the type and level of criminal penalties that the Member States were required to lay down, however, the ECJ clearly stated that this was not a Community competence<sup>2</sup>. Much to the regret of the draftsman the ECJ left this last issue without any motivation and it remains unclear how it came to this decision. Especially when keeping in mind the logic behind the proposal (trans-boundary nature of environmental crime) this point is disappointing. It means that offenders still are in a position to exploit existing differences between Member States legislation to their advantage (as the level of sanctions that are applied to similar offences in the different Member States are very different) as apparently within the current state of play no approximation on the level of penalties at Community level is allowed. The draftsman therefore thinks that, in order to effectively protect the environment, approximation of the level of the sanctions is of the utmost importance and regrets that the ECJ did not grant this faculty to the Community.

It remains to be seen what the Lisbon-Treaty (which presumably enters into force in 2009) may bring us on this point as then there is foreseen the possibility to establish minimum rules with regard to the definition of criminal offences and sanctions by means of the co-decision procedure<sup>3</sup>.

Given the trans-boundary nature of environmental crime, an established set of minimum standards concerning environmental crime and sanctions would be a useful instrument in maintaining a comprehensive and effective environmental protection strategy.

The draftsman would therefore advise to the rapporteur of the Legal Affairs committee to take into consideration the following amendments:

## AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

---

Text proposed by the Commission

---

Amendments by Parliament

---

<sup>1</sup> C-440/05 (Commission v. Council).

<sup>2</sup> Paragraph 70 of the judgment.

<sup>3</sup> Article 69 (f) paragraph 2, although the UK, Ireland and Denmark will (along with other Member States) be able to pull the 'emergency brake' to block the adoption of criminal law measures concerning.

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*

*In view of the judgment issued by the European Court of Justice on 27 October 2007, this recital - which alludes to a harmonisation of sanction levels - should preferably be deleted.*

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.** **12. The commission of such offences in the framework of criminal organisations *should be regarded as an aggravating circumstance.***

*Justification*

*This amendment is consistent with the amendment calling for recital 11 to be deleted. However, a request should nonetheless be made for the commission of environmental offences in the framework of criminal organisations to be regarded as an aggravating circumstance. This in no way affects the Member States' power to determine the type and the level of sanctions.*

Amendment 3  
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*

*In order to be sanctioned as a criminal offence, a determined behaviour shall be necessarily*

*unlawful (i.e., which infringes Community legislation or a law). Hence, the possibility of sanctioning criminally a behaviour which is not unlawful shall be ruled out.*

Amendment 4  
Article 3, point (h a) (new)

***(ha) the introduction into the environment of genetically modified organisms (GMOs) that are not approved by the European Union;***

*Justification*

*The risks of GMOs to men and environment are hardly known. Therefore no GMOs should be introduced into the environment at all. But if they are still introduced into the environment, that should not occur until they have been approved by the European Union. If any GMOs are introduced intentionally without having been approved, that should be viewed as a criminal offence.*

Amendment 5  
Article 4

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

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

*Justification*

*From a legal point of view, participation or instigation of a negligent behaviour can hardly be considered as a criminal offence. Only intentional participation and instigation could be considered as such.*

Amendment 6  
Article 5, paragraph 1

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.

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

*Justification*

*This wording makes it clearer that the offences referred to in Articles 3 and 4 must in all*



*cases be punishable by criminal sanctions, although the possibility whereby the Member States may impose additional sanctions of a different kind on top of criminal sanctions must not be excluded (see my amendment to Article 5(5)).*

Amendment 7  
Article 5, paragraph 2

**2. Member States shall ensure that the *deleted*  
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.**

*Justification*

*In its judgment of 23 of October 2007 (C-440/05, Commission v. Council), the ECJ clearly stipulated that "...the determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence". In order to render the Commission proposal consistent with the judgment, these paragraphs should be deleted.*

Amendment 8  
Article 5, paragraph 3

**3. Member States shall ensure that the *deleted*  
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 organised crime].***

*Justification*

*In its judgment of 23 of October 2007 (C-440/05, Commission v. Council), the ECJ clearly stipulated that "...the determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence". In order to render the Commission proposal consistent with the judgment, these paragraphs should be deleted.*

Amendment 9  
Article 5, paragraph 4

***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:*** ***deleted***

***(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.***

*Justification*

*In its judgment of 23 of October 2007 (C-440/05, Commission v. Council), the ECJ clearly stipulated that "...the determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence". In order to render the Commission proposal consistent with the judgment, these paragraphs should be deleted.*

Amendment 10  
Article 5, paragraph 5

***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***

***5. Those criminal sanctions may be accompanied by additional administrative or civil sanctions or measures, such as:***

***(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.

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.

Amendment 11  
Article 5, paragraph 5 a (new)

***5a. The Member States shall ensure that the commission of the offences referred to in Articles 3 and 4 in the framework of a criminal organisation as defined in Council Framework Decision [... on the fight against organised crime (COM(2005)0006)] is deemed to be an aggravating circumstance.***

*Justification*

*A request should be made for the commission of environmental offences in the framework of criminal organisations to be regarded as an aggravating circumstance. This in no way affects the Member States' power to determine the type and the level of punishment.*

Amendment 12  
Article 7, paragraph 2

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

***(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 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.*

#### *Justification*

*In its judgment of 23 of October 2007 (C-440/05, Commission v. Council), the ECJ clearly stipulated that "...the determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence". In order to render the*

*Commission proposal consistent with the judgment, these paragraphs should be deleted.*

Amendment 13  
Article 7, paragraph 3

***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 [...].***

*Justification*

*In its judgment of 23 of October 2007 (C-440/05, Commission v. Council), the ECJ clearly stipulated that "...the determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence". In order to render the Commission proposal consistent with the judgment, these paragraphs should be deleted.*

## PROCEDURE

<b>Title</b>	Protection of the environment through criminal law
<b>References</b>	COM(2007)0051 – C6-0063/2007 – 2007/0022(COD)
<b>Committee responsible</b>	JURI
<b>Opinion by</b> Date announced in plenary	LIBE 15.3.2007
<b>Drafts(wo)man</b> Date appointed	Luis Herrero-Tejedor 20.3.2007
<b>Discussed in committee</b>	18.12.2007      26.3.2008
<b>Date adopted</b>	26.3.2008
<b>Result of final vote</b>	+:            38 -:            1 0:            0
<b>Members present for the final vote</b>	Alexander Alvaro, Philip Bradbourn, Giusto Catania, Carlos Coelho, Elly de Groen-Kouwenhoven, Esther De Lange, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Armando França, Urszula Gacek, Patrick Gaubert, Lilli Gruber, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klamt, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Sarah Ludford, Rareş-Lucian Niculescu, Martine Roure, Inger Segelström, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Anne Ferreira, Ignasi Guardans Cambó, Luis Herrero-Tejedor, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Metin Kazak, Jean Lambert, Jörg Leichtfried, Siiri Oviir, Nicolae Vlad Popa

## PROCEDURE

<b>Title</b>	Protection of the environment through criminal law		
<b>References</b>	COM(2007)0051 – C6-0063/2007 – 2007/0022(COD)		
<b>Date submitted to Parliament</b>	9.2.2007		
<b>Committee responsible</b> Date announced in plenary	JURI 15.3.2007		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ENVI 15.3.2007	LIBE 15.3.2007	
<b>Associated committee(s)</b> Date announced in plenary	ENVI 12.7.2007		
<b>Rapporteur(s)</b> Date appointed	Hartmut Nassauer 10.4.2007		
<b>Discussed in committee</b>	25.6.2007	26.2.2008	27.3.2008
<b>Date adopted</b>	8.4.2008		
<b>Result of final vote</b>	+: -: 0:	15 11 2	
<b>Members present for the final vote</b>	Carlo Casini, Titus Corlăţean, Marek Aleksander Czarnecki, Bert Doorn, Monica Frassoni, Lidia Joanna Geringer de Oedenberg, Piia-Noora Kauppi, Klaus-Heiner Lehne, Alain Lipietz, Antonio López-Istúriz White, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroj, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka		
<b>Substitute(s) present for the final vote</b>	Sharon Bowles, Mogens Camre, Vicente Miguel Garcés Ramón, Jean-Paul Gauzès, Arlene McCarthy, Georgios Papastamkos, Michel Rocard, József Szájer, Jacques Toubon		
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Reinhard Rack		