

Protection of the environment through criminal law (proposal for a directive)

*****I**

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on the protection of the environment through criminal law (COM(2001) 139 – C5-0116/2001 – 2001/0076(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 139¹),
 - having regard to Articles 251(2) and 175(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0116/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0099/2002),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Calls on the Council to refrain from taking action on environmental criminal law prior to the adoption of the Directive;
 4. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 180 E, 26.6.2001, p. 238.

Position of the European Parliament adopted at first reading on 9 April 2002 with a view to the adoption of European Parliament and Council Directive 2002/.../EC on the protection of the environment through criminal law

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) Under Article 174(2) of the *Treaty*, Community policy on the environment must aim at a high level of protection.
- (2) *The Tampere European Council on 15-16 October 1999 stated, in Item 48 of the Presidency Conclusions, that it was of the opinion that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as environmental crime.*
- (3) *Pursuant to Article 175(1) of the Treaty, the Council, acting in accordance with the procedure referred to in Article 251, is to decide what action is to be taken by the Community in order to achieve the objectives of environmental policy as referred to in Article 174.*
- (4) *Articles 29 and 47 of the EU Treaty state the primacy of the EC Treaty over the EU Treaty, and the case law of the Court of Justice, for example in cases C-170/96 and C-333/99, does not exclude the possibility that necessary measures to guarantee the application and effectiveness of Community law may include criminal sanctions.*
- (5) *On this basis, any measures may be taken which serve the environmental objectives referred to in Article 174 of the Treaty, provided that they do not violate the subsidiarity principle.*

¹ OJ C 180 E, 26.6.2001, p. 238.

² OJ C....

³ OJ C....

⁴ *Position of the European Parliament of 9 April 2002.*

- (6) *The Community has the competence, in the field of environmental protection, to decree that activities be subject at national level to criminal sanctions, this being without prejudice to complementary measures in the context of judicial cooperation under the EU Treaty.*
- (7) *This Directive is a follow-up to existing environmental directives and regulations and merely adds to them an instrument to enforce this legislation more effectively.*
- (8) *This Directive is not based on specific provisions of criminal law; rather, its purpose is to use criminal-law provisions at national level to pursue an effective environmental policy.*
- (9) *Article 31 of the EU Treaty institutes a power to take common action on judicial cooperation; in particular, point (e) provides for 'progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime', etc.*
- (10) *This Directive contains only minimum rules, thereby leaving Member States free to introduce or apply penalties for environmental offences other than those referred to in the directive. A draft Council framework decision based on Articles 31 and 34(2) of the EU Treaty could complement in this field the directive based on Article 175(1) of the EC Treaty.*
- (11) *The European Parliament recommendation of 15 November 2001 on criminal sanctions and Community law¹ should be taken into account.*
- (12) *The Opinion of the Agriculture, Rural Development and Environment Section of the Economic and Social Committee (CES 463/2001 final), in particular Item 3(2), should be taken into account.*
- (13) *The use of criminal sanctions is indispensable for the purpose of enforcing environmental rules, and the EC Treaty provides scope for such sanctions.*
- (14) *As no explicit penalties, in terms of type and severity, are being indicated, but a framework for criminal sanctions is merely being established, the subsidiarity principle is respected.*
- (15) *The Community is concerned at the rise in environmental offences and their effects, which are increasingly extending beyond the borders of the States in which the offences are committed. Such offences pose a threat to the environment and therefore call for an appropriate response.*
- (16) *Activities breaching Community law and/or rules adopted by Member States in order to comply with Community law should be subject to effective, dissuasive and proportionate sanctions at national level throughout the Community.*

¹ *OJ C...*

- (17) ***It is apparent*** that the existing systems of sanctions have not been sufficient to achieve complete compliance with Community law. ***Compliance with it will be improved*** by the ***introduction*** of criminal sanctions, which demonstrate a social disapproval of a qualitatively different nature compared to administrative sanctions or a compensation mechanism under civil law.
- (18) ***Community law enables the Community legislative authority to ensure compliance with obligations which it imposes by making it compulsory for Member States to provide for appropriate sanctions to be taken so as to ensure that those obligations are complied with. If the Community legislative authority considers that compliance with Community rules may only be guaranteed by the imposition of criminal sanctions, it has the legal capacity to oblige Member States to provide for such sanctions.***
- (19) Common rules on criminal *sanctions make* it possible to use methods of investigation and assistance within and between Member States, which are more effective than the tools available under administrative co-operation.
- (20) Entrusting to judicial authorities, rather than administrative *authorities, the* task of imposing *sanctions entails* giving responsibility for investigating and enforcing *compliance with* environmental regulations to authorities which are independent of those which grant *operating* licences and discharge authorisations.
- (21) In order to achieve effective protection of the environment, there is particular need for more dissuasive sanctions for polluting activities which typically cause or are likely to cause significant deterioration of the environment.
- (22) Therefore, those activities should be considered criminal offences *throughout the* Community, when they are committed intentionally or *as a result of* serious negligence, and should be subject to criminal *sanctions*, involving in serious cases deprivation of liberty.
- (23) Participation in and instigation of such activities should also be considered a criminal offence, in order to achieve effective protection of the environment. This is also true for failures to comply with a legal duty to act, because such failures can have the same effects as active behaviour and should therefore be subject to corresponding sanctions.
- (24) Legal persons should also be subject to effective, dissuasive and proportionate sanctions throughout the Community, because breaches of Community law to a large extent are committed in the interest of legal persons or for their benefit.
- (25) Member States should provide information to the Commission on the implementation of this Directive, in order to enable it to evaluate the effect of this Directive.
- (26) This act respects fundamental rights and principles as recognised notably in the Charter of fundamental rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to ensure a more effective application of Community law on the protection of the environment by establishing throughout the Community a minimum set of criminal offences.

Article 2

Definitions

For the purpose of this Directive

- (a) “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) “activities” means active behaviour and failure to act, insofar as there is a legal duty to act, *or incitement thereto*.

Article 3

Offences

Member States shall ensure that the following activities are criminal offences, when committed intentionally or *as a result of* serious negligence, as far as they breach the rules *and prohibitions* of Community law protecting the *environment and/or* rules adopted by Member States in order to comply with such Community law:

- (a) the discharge of hydrocarbons, waste oils or sewage sludge into water;
- (b) *the discharge, emission or introduction of a quantity of harmful substances or ionising radiation into air, soil or water;*
- (c) the discharge, emission or introduction of a quantity of materials into air, soil *or subsoil*, or *surface or underground* water, and the *production*, treatment, disposal, storage, transport, export or import of hazardous waste;
- (d) the discharge of waste on or into land or into water, including the operation of a landfill;
- (e) the possession, taking, damaging, killing or trading of or in protected wild fauna and flora *species, parts* thereof *or derived products*;
- (f) the significant deterioration of a protected habitat;
- (g) trade in *or use of* ozone-depleting substances;
- (h) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used.

Article 4

Sanctions

Member States shall ensure that the offences referred to in Article 3, and the participation in or instigation of such offences are punishable by effective, proportionate and dissuasive *criminal* sanctions.

As concerns natural persons, Member States shall provide for criminal *sanctions*, involving in serious cases deprivation of liberty, ***which can give rise to extradition or surrender if this is provided for within the national legislation of a Member State.***

As concerns natural and legal persons, where appropriate, Member States shall provide for fines, exclusion from entitlement to public benefits or aid, temporary or permanent disqualification from the practice of commercial activities, placing under judicial supervision or judicial winding up orders.

Article 5

Reporting

Every three years, Member States shall transmit information to the Commission on the implementation of this Directive in the form of a report. Based on these reports, the Commission shall submit a Community report to the European Parliament and the Council.

Article 6

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [1 September 2003] at the latest. They shall forthwith inform the Commission thereof.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 7

Entry into force

This Directive shall enter into force on the twentieth day of its publication in the Official Journal of the European Communities.

Article 8

Addressees

This Directive is addressed to the Member *States*.

Done at

For the European Parliament

The President

For the Council

The President