OPINION

of the Committee on the Environment, Public Health and Food Safety

for the Committee on Legal Affairs


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 1st 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 3rd 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 1st 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 an ambiguous, and hence the draftsman has proposed an amendment to clarify and define exactly what is meant by “protected habitats”.

AD:710785EN.doc 3/13 PE400.272v02-00 EN
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:

<table>
<thead>
<tr>
<th>Text proposed by the Commission¹</th>
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<tbody>
<tr>
<td>Amendment 1</td>
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<td>Recital 5</td>
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</table>

(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.*

¹ Not yet published in OJ.
(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.

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.

(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.

Amendment 3
Recital 7

(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.

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 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(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;

(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**;

Justification

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

Amendment 14
Article 3, point (h)

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 offence.

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 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:

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.
**PROCEDURE**

<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>Protection of the environment through criminal law</th>
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<tbody>
<tr>
<td><strong>Committee responsible</strong></td>
<td>JURI</td>
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<tr>
<td><strong>Opinion by</strong>&lt;br&gt;Date announced in plenary</td>
<td>ENVI 15.3.2007</td>
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<tr>
<td><strong>Associated committee(s) - date announced in plenary</strong></td>
<td>12.7.2007</td>
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<tr>
<td><strong>Drafts(woman)</strong>&lt;br&gt;Date appointed</td>
<td>Dan Jørgensen 24.5.2007</td>
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<tr>
<td><strong>Date adopted</strong></td>
<td>26.2.2008</td>
</tr>
<tr>
<td><strong>Result of final vote</strong></td>
<td>+: 54  –: 2  0: 3</td>
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<tr>
<td><strong>Substitute(s) present for the final vote</strong></td>
<td>Iles Braghetto, Kathalijne Maria Buitenweg, Philip Bushill-Matthews, Genowefa Grabowska, Jutta Haug, Erna Hennicot-Schoepges, Johannes Lebech, Jiří Maštálka, Alojz Peterle, Lambert van Nistelrooij</td>
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