

Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law

(2001/C 180 E/20)

COM(2001) 139 final — 2001/0076(COD)

(Submitted by the Commission on 15 March 2001)

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 Commission,

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

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

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

Whereas:

- (1) Under Article 174(2) of the Treaty Community policy on the environment must aim at a high level of protection.
- (2) 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.
- (3) 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.
- (4) Experience has shown that the existing systems of sanctions have not been sufficient to achieve complete compliance with Community law. Such compliance can and should be strengthened by the application of criminal sanctions, which demonstrate a social disapproval of a qualitatively different nature compared to administrative sanctions or a compensation mechanism under civil law.
- (5) Common rules on criminal sanctions would 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 cooperation.

(6) Entrusting to judicial authorities, rather than administrative authorities the task of imposing sanctions, entails giving responsibility for investigating and enforcing the respect of environmental regulations to authorities which are independent of those which grant exploitation licences and discharge authorisations.

(7) 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.

(8) Therefore, those activities should be considered criminal offences throughout in the Community, when they are committed intentionally or with serious negligence, and should be subject to criminal penalties, involving in serious cases deprivation of liberty.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

*Article 3***Offences**

Member States shall ensure that the following activities are criminal offences, when committed intentionally or with serious negligence, as far as they breach the rules of Community law protecting the environment as set out in the Annex 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 materials into air, soil or water and the treatment, disposal, storage, transport, export or import of hazardous waste;
- (c) the discharge of waste on or into land or into water, including the operation of a landfill;
- (d) the possession, taking, damaging, killing or trading of or in protected wild fauna and flora species or parts thereof;
- (e) the significant deterioration of a protected habitat;
- (f) trade in ozone-depleting substances;
- (g) 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 sanctions.

- (a) As concerns natural persons, Member States shall provide for criminal penalties, involving in serious cases deprivation of liberty.

- (b) 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.

ANNEX

LIST OF COMMUNITY LAW PROVISIONS PROTECTING THE ENVIRONMENT, REFERRED TO IN ARTICLE 3 ⁽¹⁾

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 ⁽²⁾;

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 ⁽³⁾;

Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils ⁽⁴⁾;

Council Directive 75/442/EEC of 15 July 1975 on waste ⁽⁵⁾;

Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community ⁽⁶⁾;

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 ⁽⁷⁾;

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 ⁽⁸⁾;

Council Directive 78/176/EEC 20 February 1978 on waste from the titanium dioxide industry ⁽⁹⁾;

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 ⁽¹⁰⁾;

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ⁽¹¹⁾;

Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances ⁽¹²⁾;

Regulation (EEC) No 348/81 of 20 January 1981 on common rules for imports of whales or other cetacean products ⁽¹³⁾;

Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry ⁽¹⁴⁾;

Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom ⁽¹⁵⁾;

Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges ⁽¹⁶⁾;

⁽¹⁾ The legislation referred to hereafter includes the amendments of the legislation which have been adopted until 1 March 2001.

⁽²⁾ OJ 1970, L 76, p. 1.

⁽³⁾ OJ 1972, L 190, p. 1.

⁽⁴⁾ OJ 1975, L 194, p. 23.

⁽⁵⁾ OJ 1975, L 194, p. 39.

⁽⁶⁾ OJ 1976, L 129, p. 23.

⁽⁷⁾ OJ 1976, L 262, p. 201.

⁽⁸⁾ OJ 1977, L 220, p. 38.

⁽⁹⁾ OJ 1978, L 54, p. 19.

⁽¹⁰⁾ OJ 1979, L 33, p. 36.

⁽¹¹⁾ OJ 1979, L 103, p. 1.

⁽¹²⁾ OJ 1980, L 20, p. 43.

⁽¹³⁾ OJ 1981, L 39, p. 1.

⁽¹⁴⁾ OJ 1982, L 81, p. 29.

⁽¹⁵⁾ OJ 1983, L 91, p. 30.

⁽¹⁶⁾ OJ 1983, L 291, p. 1.

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 ⁽¹⁾;

Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants ⁽²⁾;

Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachloro-cyclohexane ⁽³⁾;

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 ⁽⁴⁾;

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 ⁽⁵⁾;

Council Directive 88/77/EEC of 3 December 1987 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles ⁽⁶⁾;

Council Directive 88/609/EEC of 24 November 1988 on the limitation of emissions of certain pollutants into the air from large combustion plants ⁽⁷⁾;

Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants ⁽⁸⁾;

Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste incineration plants ⁽⁹⁾;

Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms ⁽¹⁰⁾;

Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms ⁽¹¹⁾;

Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ⁽¹²⁾;

Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ⁽¹³⁾;

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽¹⁴⁾;

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 ⁽¹⁵⁾;

Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community ⁽¹⁶⁾;

⁽¹⁾ OJ 1984, L 74, p. 49.

⁽²⁾ OJ 1984, L 188, p. 20.

⁽³⁾ OJ 1994, L 274, p. 11.

⁽⁴⁾ OJ 1986, L 181, p. 6.

⁽⁵⁾ OJ 1986, L 181, p. 16.

⁽⁶⁾ OJ 1988, L 36, p. 33.

⁽⁷⁾ OJ 1988, L 336, p. 1.

⁽⁸⁾ OJ 1989, L 163, p. 32.

⁽⁹⁾ OJ 1989, L 203, p. 50.

⁽¹⁰⁾ OJ 1990, L 117, p. 1.

⁽¹¹⁾ OJ 1990, L 117, p. 15.

⁽¹²⁾ OJ 1991, L 135, p. 40.

⁽¹³⁾ OJ 1991, L 377, p. 20.

⁽¹⁴⁾ OJ 1992, L 206, p. 7.

⁽¹⁵⁾ OJ 1992, L 409, p. 11.

⁽¹⁶⁾ OJ 1993, L 30, p. 1.

Council Directive 93/76/EEC of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (SAVE) ⁽¹⁾;

Directive 94/12/EC of the European Parliament and the Council of 23 March 1994 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Directive 70/220/EEC ⁽²⁾;

Council Directive 94/63/EC of 20 December 1993 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations ⁽³⁾;

Council Directive 94/67/EC of 16 December 1994 on the incineration of hazardous waste ⁽⁴⁾;

Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port state control) ⁽⁵⁾;

Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls ⁽⁶⁾;

Council Directive 96/61/EC 24 September 1996 concerning integrated pollution prevention and control ⁽⁷⁾;

Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances ⁽⁸⁾;

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 ⁽⁹⁾;

Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein ⁽¹⁰⁾;

Directive 98/69/EC of the European Parliament and of the Council of 13 October 1998 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC ⁽¹¹⁾;

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 ⁽¹²⁾;

Council Directive 99/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations ⁽¹³⁾;

Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ⁽¹⁴⁾;

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 ⁽¹⁵⁾;

⁽¹⁾ OJ 1993, L 237, p. 28.

⁽²⁾ OJ 1994, L 100, p. 42.

⁽³⁾ OJ 1994, L 365, p. 24.

⁽⁴⁾ OJ 1997, L 365, p. 34.

⁽⁵⁾ OJ 1995, L 157, p. 1.

⁽⁶⁾ OJ 1996, L 243, p. 31.

⁽⁷⁾ OJ 1996, L 257, p. 26.

⁽⁸⁾ OJ 1997, L 10, p. 13.

⁽⁹⁾ OJ 1997, L 59, p. 1.

⁽¹⁰⁾ OJ 1997, L 61, p. 1.

⁽¹¹⁾ OJ 1998, L 350, p. 1.

⁽¹²⁾ OJ 1998, L 350, p. 58.

⁽¹³⁾ OJ 1999, L 85, p. 1.

⁽¹⁴⁾ OJ 1999, L 182, p. 1.

⁽¹⁵⁾ OJ 1999, L 121, p. 13.

Directive 1999/96/EC of the European Parliament and of the Council of 13 December 1998 on the approximation of the laws of the Member States relating to 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 Council Directive 88/77/EEC ⁽¹⁾;

Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end of life vehicles ⁽²⁾;

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 ⁽³⁾;

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 ⁽⁴⁾;

Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer ⁽⁵⁾.

⁽¹⁾ OJ 2000, L 44, p. 1.

⁽²⁾ OJ 2000, L 269, p. 34.

⁽³⁾ OJ 2000, L 332, p. 81.

⁽⁴⁾ OJ 2000, L 327, p. 1.

⁽⁵⁾ OJ 2000, L 244, p. 1.