DIRECTIVES

of 19 November 2008
on the protection of the environment through criminal law
(Text with EEA relevance)

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 European Economic and Social Committee (1),

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty (2),

Whereas:

(1) According to 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 at 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) Experience has shown that the existing systems of penalties have not been sufficient to achieve complete compliance with the laws for the protection of the environment. Such compliance can and should be strengthened by the availability of criminal penalties, which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law.

(4) Common rules on criminal offences make it possible to use effective methods of investigation and assistance within and between Member States.

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

(6) Failure to comply with a legal duty to act can have the same effect as active behaviour and should therefore also be subject to corresponding penalties.

(7) Therefore, such conduct should be considered a criminal offence throughout the Community when committed intentionally or with serious negligence.

(8) The legislation listed in the Annexes to this Directive contains provisions which should be subject to criminal law measures in order to ensure that the rules on environmental protection are fully effective.

(9) The obligations under this Directive only relate to the provisions of the legislation listed in the Annexes to this Directive which entail an obligation for Member States, when implementing that legislation, to provide for prohibitive measures.

(10) This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment. This Directive creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.

(11) This Directive is without prejudice to other systems of liability for environmental damage under Community law or national law.

(12) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent measures regarding the effective criminal law protection of the environment. Such measures must be compatible with the Treaty.

(13) 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.

(14) Since the objective of this Directive, namely to ensure a more effective protection of the environment, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, 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 that objective.

(15) Whenever subsequent legislation on environmental matters is adopted, it should specify where appropriate that this Directive will apply. Where necessary, Article 3 should be amended.

(16) This Directive respects the fundamental rights and observes the principles as recognised in particular by the Charter of Fundamental Rights of the European Union.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

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

Article 2

Definitions

For the purpose of this Directive:

(a) ‘unlawful’ means infringing:

(i) the legislation adopted pursuant to the EC Treaty and listed in Annex A; or

(ii) with regard to activities covered by the Euratom Treaty, the legislation adopted pursuant to the Euratom Treaty and listed in Annex B; or

(iii) a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State that gives effect to the Community legislation referred to in (i) or (ii);

(b) ‘protected wild fauna and flora species’ are:

(i) for the purposes of Article 3(f), those listed in:


(ii) for the purposes of Article 3(g), those listed in Annex 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 (3);

(c) ‘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;

(d) ‘legal person’ means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations.

Article 3

Offences

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

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

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

c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (1) and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;

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, the quality of soil or the quality of water, or to animals or plants;

e) the production, processing, handling, use, holding, storage, transport, import, export or disposal 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, the quality of soil or the quality of water, or to animals or plants;

(f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;

g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;

(h) any conduct which causes the significant deterioration of a habitat within a protected site;

(i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.

Article 4
Inciting, aiding and abetting
Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in Article 3 is punishable as a criminal offence.

Article 5
Penalties
Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.

Article 6
Liability of legal persons
1. Member States shall ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

or

(c) an authority to exercise control within the legal person.

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

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.

Article 7
Penalties for legal persons
Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 6 are punishable by effective, proportionate and dissuasive penalties.

Article 8
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 26 December 2010.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive and a table indicating the correlation between those provisions and this Directive.

Article 9
Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 10
Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 19 November 2008.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
J.-P. JOUYET
ANNEX A

List of Community legislation adopted pursuant to the EC Treaty, the infringement of which constitutes unlawful conduct pursuant to Article 2(a)(i) of this Directive


(8) OJ L 33, 8.2.1979, p. 36.
(10) OJ L 81, 27.3.1982, p. 29.


— Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (10),


(13) OJ L 269, 21.10.2000, p. 34.


(14) OJ L 64, 4.3.2006, p. 52.


— 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 (1),


ANNEX B

List of Community Legislation adopted pursuant to the Euratom Treaty, the infringement of which constitutes unlawful conduct pursuant to Article 2(a)(ii) of this Directive

— 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 (1);

