

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2001/0076(COD) Procedure lapsed or withdrawn
Environmental protection: combating crime, criminal offences and penalties	
Subject 3.70.16 Law and environment, liability 7.40.04 Judicial cooperation in criminal matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ENVI</b> Environment, Public Health, Consumer Policy		29/05/2001
		PPE-DE <a href="#">OOMEN-RUIJTEN Ria</a>	
European Parliament	Committee for opinion	Rapporteur for opinion	Appointed
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs		25/04/2001
		GUE/NGL <a href="#">DI LELLO FINUOLI Giuseppe</a>	
European Parliament			29/05/2001
		V/ALE <a href="#">WUORI Matti</a>	
	Council of the European Union	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2477</a>	19/12/2002
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>	FRATTINI Franco	

Key events			
02/04/2001	Committee referral announced in Parliament, 1st reading		
21/03/2002	Vote in committee, 1st reading		Summary
21/03/2002	Committee report tabled for plenary, 1st reading	<a href="#">A5-0099/2002</a>	
08/04/2002	Debate in Parliament		
09/04/2002	Decision by Parliament, 1st reading	<a href="#">T5-0147/2002</a>	Summary
19/12/2002	Debate in Council	<a href="#">2477</a>	
13/09/2005	Additional information		Summary
09/02/2007	Proposal withdrawn by Commission		
13/03/2008	Additional information		Summary

Technical information

Procedure reference	2001/0076(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 175-p1
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	ENVI/5/14580

### Documentation gateway

Legislative proposal		<a href="#">COM(2001)0139</a> , <a href="#">OJ C 180 26.06.2001, p. 0238 E</a>	13/03/2001	EC	Summary
Committee draft report		PE314.349	21/02/2002	EP	
Committee opinion	<b>LIBE</b>	PE311.003/DEF	19/03/2002	EP	
Committee opinion	<b>JURI</b>	PE312.751/DEF	20/03/2002	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0099/2002</a>	21/03/2002	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0147/2002</a> <a href="#">OJ C 127 29.05.2003, p. 0027-0119 E</a>	09/04/2002	EP	Summary
Modified legislative proposal		<a href="#">COM(2002)0544</a> , OJ C 020 28.01.2003, p. 0284 E	30/09/2002	EC	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
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## Environmental protection: combating crime, criminal offences and penalties

**PURPOSE** : to ensure a more effective application of Community law on the protection of the environment by establishing throughout the Community a minimum set criminal offences. **CONTENT** : in order to guarantee a high level of protection of the environment the increasing problem of environmental crime must be tackled. The Community has adopted numerous acts of legislation protecting the environment. Member States have to transpose and implement those acts. Experience has shown, however, that the sanctions currently established by the Member States are not always sufficient to achieve full compliance with Community law. Not all Member States provide for criminal sanctions against the most serious breaches of Community law protecting the environment. Therefore, a minimum standard on constituent elements of criminal offences in breach of Community law protecting the environment needs to be established. In order to ensure its better and harmonised application in all Member States, this objective can be better achieved by the Community than at the level of the Member States. The proposed draft Directive shall only apply to activities which are in breach of Community law protecting the environment and/or rules adopted by Member States in order to comply with such Community law. Definitions of constituent elements of criminal acts are therefore to be read as corresponding definitions in existing Community law. The proposal does not cover all activities regulated by Community law, but only important types of pollution which can be attributed to individuals or legal persons. For instance, the directive would not apply to pollution caused by diffuse sources, even it is widely covered by Community law setting up quality objectives. With regard to natural persons, the Directive would oblige Member States to provide for effective, dissuasive and proportionate criminal penalties against breaches of Community law. In order to protect the environment effectively, it is important to include sanctions against complicity (participation and instigation) in the offences defined in Article 3. In serious cases, Member States would have to be provided for the possibility of imprisonment. As concerns legal persons, it is essential for effective enforcement of Community law protecting the environment that legal persons can be held liable and that sanctions against legal persons are taken throughout the Community. However, for some Member States it might be difficult to provide for criminal sanctions against legal persons without changing fundamental principles of their national legal systems. This proposal therefore sets a minimum standard of environmental protection through criminal law. According to Article 176 EC, Member States are free to maintain or to introduce more stringent protective measures. For instance, they may establish additional offences and/or additional types of sanctions or penalties.?

## Environmental protection: combating crime, criminal offences and penalties

The committee adopted the report by Ria OOMEN-RUIJTEN (EPP-ED, NL) broadly approving the proposal under the codecision procedure

(1st reading), subject to a few amendments. In particular, it wanted to ensure that incitement to breaking the law was also classed as an offence under the directive and that provision was made for the possibility of confiscating any profits gained as a result of the offences. It also added pollution of the air, soil or water with harmful substances or ionising radiation to the list of offences and deleted the annex itemising the existing Community legislation protecting the environment, preferring to refer to breaches of law in general terms.?

## Environmental protection: combating crime, criminal offences and penalties

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The European Parliament adopted the report by Mrs Ria OOMEN-RUIJTEN (EPP-ED, NL) on the draft directive for environmental protection through the criminal law. Parliament makes it clear in the recitals that the directive contains only minimum rules, thereby leaving Member States free to introduce or apply more stringent penalties. Overall, the Parliament adopted the amendments tabled by the committee responsible (please refer to the summary dated 21/03/02). On a technical level, the Parliament preferred this proposal for a directive as opposed to the Council's proposed framework decision on the criminalisation of activities harmful to the environment. The framework decision lists a number of activities which are to be deemed criminal offences when they are committed intentionally or with serious negligence. (Refer to CNS/2000/0801). The Parliament wants to make the framework decision dependent on the proposed directive and deletes those parts which are covered by the directive. Parliament has amended the Commission's draft directive to ensure that incitement to breaking the law is also classed as an offence. It wants extradition to be possible in connection with custodial sentences, so that offenders can be punished in the country where the damage was done. It has added pollution of the air, soil and water with harmful substances or ionising radiation to the list of offences and has deleted the annex itemising Community legislation protecting the environment, preferring to refer to breaches of law in general terms.?

## Environmental protection: combating crime, criminal offences and penalties

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In its amended proposal, the European Commission accepted in full or partially 16 out of the 24 amendments adopted by the Parliament at its plenary session in April 2002. The amendments concern the following issues: - legal basis : the Commission agrees with the Parliament and proposes that the proposed Directive be based on Article 175(1) TEC; - subsidiarity principle :the amendment makes it clear that criminal law provisions are to be deployed at national level and that the Directive is not intended to empower the Community to intervene in national criminal law provisions; - Community competence : the amendment clarifies that, in the context of the distribution of powers between the Community and the Union, the proposal for a Directive under the first pillar is the appropriate legal instrument and that Article 175 (1) TEC is the correct legal basis for the protection of the environment through criminal law in the Community. It is fully in line with the Commission's position concerning the Community competence to oblige Member States to provide for criminal sanctions against breaches of environmental legislation; - reference to the Tampere European Council: referring to the political mandate given by the Tampere European Council, which identifies environmental crime as a priority sector where the Member States should agree common definitions and sanctions in the field of national criminal law. It is a political statement that is not appropriate in the recitals of a legal text; - clarifying that the use of criminal sanctions is indispensable for the purpose of enforcing environmental rules and that the EC Treaty provides scope for criminal sanctions; - more stringent national measures : Member States are free to maintain or introduce more stringent protective measures; - "production" of hazardous waste : Community environmental legislation does not provide for a general prohibition against the production of hazardous waste. For this reason, it is impossible to refer to production in the proposal; - extradition : this amendment suggests adding a reference to the fact that prison sentences referred to in the Directive are to be subject to extradition or surrender. Requiring that the penalties be such as to give rise to extradition is in conformity with other UE texts and is accepted in principle. The amendment is slightly reworded. On the other hand, the Commission rejects the amendments which make erroneous reference to Article 31 TEU. The reference to Article 31 (e) TEU focuses on EU ("third pillar") competence to provide for judicial cooperation in the fields of organised crime, terrorism and illicit drug-trafficking under the Title VI of the EU Treaty. It also rejects the amendment concerning the addition of a reference to instigation in the definition of "activities". It also rejects the idea of the deletion of the Annex to the proposal. This Annex has been considered as necessary as the Directive will oblige the member States to provide for criminal sanctions within their national legal systems and that it would be impossible to provide so such criminal sanctions without them to be clearly defined. In addition, the Commission rejects more technical amendments for the reasons of legal uncertainty (in particular, the amendment concerning "harmful substances", the term is considered to be too vague and "nuclear materials" (it is legally impossible to provide for criminal sanctions against unauthorised activities dealing with nuclear materials under the legal basis of the proposal for a Directive, Art. 175 TEC. Lastly, the Commission rejects the proposal to add the word "criminal" to Article 4 of the proposal for linguistic reasons (this word does not have the same meaning in all the Community languages and risks slowing down the adoption of the Directive.?

## Environmental protection: combating crime, criminal offences and penalties

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The Court of Justice upheld the Commission's application and annulled the Council's Framework Decision (2003/80/JHA) on protection of the environment through criminal law (see summary dated 31/03/2003). The Commission had been supported in these proceedings by the European Parliament and the Economic and Social Committee.

The Court's ruling confirmed the Commission's central argument that, on account of both its aim and content, the Framework Decision had as its main purpose the protection of the environment, and the majority of its provisions could therefore have been properly adopted on the basis of the EC Treaty (the "Community method"), i.e. through the directive proposed by the Commission, rather than on the "third pillar" of the EU Treaty as the Council had chosen.

The Court's judgment was based on the following line of reasoning: although, as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence, that does not prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from taking measures that relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective.

Since the Framework Decision adopted by the Council in 2003 encroaches on the powers which the EC Treaty confers on the Community and thereby infringes the Treaty on European Union, which gives priority to such powers, the Court annulled that Decision in its entirety. This will

now pave the way for the substance of the annulled Decision to be adopted under the EC legislative procedure, with Parliament having full rights as co-legislator and the Council deciding by qualified majority.

## Environmental protection: combating crime, criminal offences and penalties

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As announced in Official Journal C 68 of 13 March 2008, the Commission decided to withdraw this proposal, which had become obsolete.