



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	Working Party on Substantive Criminal Law
to :	COREPER/Council

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COM(2007) 51 final

Subject :	Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law - Presidency report on the state of play
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The Working Party on Substantive Criminal Law discussed the Presidency report on the state of play on the above mentioned file during its meeting on 1 June 2007.

The text of the Presidency report, as it emerged from the discussions in the Working Party is set out in the Annex.

This report will also be submitted for information, to the Environment Council.

COREPER /Council are requested to take note of the attached Presidency report on the state of play on this file.

Presidency report on the state of play

On 9 February 2007 the Commission submitted a proposal for a Directive on environmental protection through criminal law which is of particular importance for the Member States of the European Union.

A uniform level of protection in the field of environmental criminal law throughout Europe is both necessary and appropriate. The Member States had already made this clear by agreeing on the Framework Decision on the protection of the environment through criminal law, which was annulled on grounds of lack of competence by the European Court of Justice in its judgment of 13 September 2005. The proposal for a Directive is intended to replace the annulled Framework Decision and thus fill a gap in the area of environmental protection through criminal law. The Directive will probably be one of the first sets of legal instruments by means of which criminal law arrangements can be made in the context of the first pillar, and as such will to some extent serve as an example.

The Presidency took up the proposal for a Directive at the earliest opportunity and arranged for its timely discussion in the Working Party on Substantive Criminal Law. Three working party meetings have taken place to date, all of which were marked by constructive cooperation among the Member States and the Commission. Discussions are currently focusing on drawing up the criminal offences (Article 3 in conjunction with Article 2(a)). Here there are some fundamental issues to be clarified, on the basis of the European Court of Justice's judgment of 13 September 2005. It has to be decided, for example, whether the Community legislator should confine itself to ensuring, by criminal law means, the enforcement of Community law or of such national law that transposes Community law, or whether the Directive should also apply to purely national environmental law. The clear attitude is emerging among the Member States that only violations of Community environmental legislation should be covered by the Directive.

Discussions on the rules on sanctions (Articles 5 and 7) should, in the unanimous view of the Member States, be postponed until the European Court of Justice has ruled on the Commission's action for annulment of the Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution. That Framework Decision contains detailed rules on sanctions that are comparable to those in the proposal for a Directive. The Court of Justice is expected to give its ruling towards the end of 2007.

Further discussions on the matter will take place under the Portuguese Presidency.
