



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 22 December 2000 (12.01)
(OR. fr)**

14880/00

LIMITE

**DROIPEN 63
ENV 493**

OUTCOME OF PROCEEDINGS

of :	Article 36 Committee
on :	14 December 2000
No. prev. doc. :	14373/00 DROIPEN 60 ENV 471
Subject :	Draft Framework Decision on the protection of the environment through criminal law

The Presidency introduced the Draft Framework Decision on the protection of the environment through criminal law as it stood following the discussions of the Working Party on Substantive Criminal Law on 8 December 2000 (14373/00 DROIPEN 60). It was noted that the substantial amendments made to the draft submitted to the European Parliament for consultation could make it necessary to consult the Parliament again.

The Commission representative maintained her general reservation on the draft, reiterating the position expressed by Commissioner VITORINO during the discussion in the Council of Ministers on 28 September 2000 and challenged by several delegations. It was the Commission's view that the matter of protection of the environment was covered by numerous Community texts, most of which imposed penalties. Consequently, the question should be addressed via Community instruments. As it had stated previously, a summary of the abundant Community legislation in force as well as an explanatory note would be sent to the Council as soon as possible.

The Finnish delegation maintained its general scrutiny reservation on the text and its reservation on Article 7 (legal persons).

The United Kingdom delegation maintained a scrutiny reservation, and stated that it had begun discussions with Gibraltar, the Isle of Man and the Channel Islands on the possible applicability of the Framework Decision to those territories.

The United Kingdom, German, Netherlands and Swedish delegations entered parliamentary scrutiny reservations on the draft.

The Italian delegation maintained its reservation on Article 3. It was joined by the Netherlands and Greek delegations.

The Legal Service of the Council also announced that it should examine to what extent a third pillar instrument could provide the opt out facility provided for in Article 9(1)c (jurisdiction).

It should be noted that the European Parliament Opinion and the recitals have not yet been examined by the Working Party.

Amendments made to the text of 14373/00 DROIPEN 60 during the discussion are indicated in the attached document.

The Article 36 Committee is invited to examine the outstanding reservations.

DRAFT
COUNCIL FRAMEWORK DECISION .../.../JHA
of

on the protection of the environment through criminal law

THE COUNCIL OF THE EUROPEAN UNION ¹

Having regard to the Treaty on European Union, and in particular Articles 29, 31(e) and 34(2)(b) thereof,

Having regard to the initiative of the Kingdom of Denmark,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) The Council 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.
- (2) Such offences pose a threat to the environment and therefore call for a tough response.

¹ The recitals were drafted taking into account the initial proposal by Denmark, the Opinion of the European Parliament, a request made by the German delegation at the Article 36 Committee meeting on 14 December 2000 and the fact that the current text is confined to substantive criminal law.

- (3) Environmental offences are a problem jointly faced by Member States, which should therefore take concerted action to protect the environment under criminal law.
- (4) Legal persons may be held liable for such offences.
- (5) On 4 November 1998 the Council of Europe adopted a Convention on the protection of the environment through criminal law,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision

- (a) "unlawful" means infringing a law, an administrative regulation or a decision taken by a competent authority, aiming at the protection of the environment;
- (b) "water" means all kinds of groundwater and surface water including the water of lakes, rivers, oceans and seas;
- (c) "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.

Article 2

Intentional offences

Each Member State shall take the necessary measures to establish as criminal offences under its domestic law:

- (a) the discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes death or serious injury to any person;
- (b) the unlawful discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes or is likely to cause their (...) deterioration or death or serious injury to any person or substantial damage to protected monuments, other protected objects, property, animals or plants;

- (c) the unlawful disposal, treatment, storage, transport, export or import of 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;
- (d) the unlawful operation of a plant in which a dangerous activity is carried out 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;
- (e) 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,

when committed intentionally.

Article 3 ¹

Negligent offences

Each Member State shall take the necessary measures to establish as criminal offences under its domestic law, when committed with serious negligence, the offences enumerated in Article 2(1)(a), (b), (c), (d) and (e) (...).

¹ The Italian, Netherlands and Greek delegations proposed that Article 3 consist of two paragraphs: the first would comprise the current text of Article 3, but with the term "serious" deleted. A second paragraph would be added, stating that Member States retain the possibility, by declaration, to limit the obligation resulting from paragraph 1 purely to cases of serious negligence. Such a format would correspond to the one used in Article 3 of the 1998 Convention of the Council of Europe.

Article 4
Participation and instigation

Each Member State shall take the necessary measures to ensure that participating in or instigating the conduct referred to in Article 2 is punishable.

Article 5
(...)

Article 6
Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3 is punishable by effective, proportionate and dissuasive penalties including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.
2. The criminal penalties provided for in paragraph 1 may be accompanied by other penalties or measures, in particular the disqualification for a natural person from engaging in an activity requiring official authorisation or approval, or founding, managing or directing a company or a foundation, where the facts having led to his or her conviction show an obvious risk that the same kind of criminal activity may be pursued.

Article 7 ¹

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for conduct referred to in Articles 2 and 3 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

- a power of representation of the legal person, or
- an authority to take decisions on behalf of the legal person, or
- an authority to exercise control within the legal person,

as well as for the involvement as accessories or instigators in the commission of such an offence.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

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

¹ Scrutiny reservation by the Finnish delegation, which proposed that legal persons may not be held liable for the conduct referred to in Article 2(1)a.

Article 8

Sanctions for legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of industrial or commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;
- (e) the obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the criminal liability was founded.

Article 9 ¹

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the offences referred to in Articles 2 and 3 where the offence has been committed:
 - (a) fully or in part in its territory;
 - (b) on board a ship or an aircraft registered in it or flying its flag;
 - (c) for the benefit of legal persons with a registered office in its territory;
 - (d) by one of its nationals if the offence is punishable under criminal law where it was committed or if the place where it was committed does not fall under any territorial jurisdiction.

¹ This Article was drafted on the basis of Article 9 of the Draft Framework Decision on combating fraud and counterfeiting of non-cash payment means (8727/00 DROIPEN 20 CRIMORG 85 ECO 144).

2. Subject to the provisions of Article 9a, any Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rule set out in:

- paragraph 1(c);
- paragraph 1(d).

Article 9a¹

Extradition and prosecution

1. (a) Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences provided for in Articles 2 and 3 when committed by its own nationals outside its territory.

(b) Each Member State shall, when one of its nationals is alleged to have committed in another Member State an offence involving the conduct described in Articles 2 and 3, and it does not extradite that person to that other Member State solely on the ground of his nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6(2) of the European Convention on Extradition. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

2. For the purpose of this Article, a "national" of a Member State shall be construed in accordance with any declaration made by that State under Article 6(1)(b) and (c) of the European Convention on Extradition of 13 December 1957.

¹ This provision replaces that of Article 9(2). It is taken from Article 10 of the Draft Framework Decision on combating fraud and counterfeiting of non-cash payment means (8727/00 DROIPEN 20 CRIMORG 85 ECO 144).

Article 10
Implementation

1. Member States shall adopt the measures necessary to comply with the provisions of this Framework Decision before *[the date stated will be the date of adoption plus two years]*.
2. Before *[the date stated will be the date in paragraph 1 plus three months]*, Member States shall communicate to the General Secretariat of the Council and to the Commission the texts of the provisions transposing into their national law the obligations imposed on them by this Framework Decision. On the basis of that information and a written report by the Commission, the Council shall, no later than *[the date stated will be the date of adoption plus three years]*, check the extent to which Member States have taken the measures necessary to comply with this Framework Decision.

Article 11
Effective date

This Framework Decision shall take effect on the day of its publication in the Official Journal of the European Communities.

Done at

For the Council
The President

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