



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 June 2001**

**10031/01**

**LIMITE**

**DROIPEN 53  
ENV 339**

## **REPORT**

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from : Substantive Criminal Law

on : 13 June 2001

to : Article 36 Committee

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No. prev. doc. : 6977/01 DROIPEN 27 ENV 118

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Subject : Draft Framework Decision on the protection of the environment through criminal law

Draft Directive on the protection of the environment through criminal law

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## **I. INTRODUCTION**

The JHA Council examined the proposal for a Draft Framework Decision on the protection of the environment through criminal law at its meeting on 15 March 2001 on the basis of document 6977/01 DROIPEN 27 ENV 118, containing the outcome of the discussion the Coreper had on this subject on 7 March 2001. The Council reached a preliminary agreement concerning the objectives and, in principle, the substance of the Draft Framework Decision on the protection of the environment through criminal law. It instructed the Council's relevant working groups to consider whether it would be necessary to complement the Framework Decision in the light of the Commission proposal for a draft Directive on the protection of the environment through criminal law (document 7407/01 DROIPEN 29 ENV 139).

The Council agreed in due course to reconsult the European Parliament on the basis of the agreement reached by the Council. The Council noted requests from Ministers that discussions in the Council on the appropriate choice of legal base (3<sup>rd</sup> or a combined 1<sup>st</sup> and 3<sup>rd</sup> pillar instrument) to reach the objectives on this issue had not been finalised.

The Committee on Article 36 confirmed this view during its meeting on 11 April 2001 and has decided that the matter should be dealt with by the Working party on Substantive Criminal Law.

The Working Party on Substantive Criminal Law has fulfilled this mandate during its meeting on 12 June 2001.

## **II. Examination of the Commission proposal on a draft directive on the protection of the environment through criminal law**

(document 7407/01 DROIPEN 29 ENV 139).

The Commission presented its proposal and recalled its views on the legal basis of the proposed instrument, as already set out in the Commission staff working paper set out in document 6076/01 DROIPEN 14 ENV 60. It underlined that these views were partially supported by the Legal Service of the Council in document 6793/01 JUR 75 DROIPEN 25 ENV 110.

All delegations which expressed their views disagreed with the Commission as they were of the opinion that a first pillar instrument could not contain an obligation to provide for criminal sanctions. However, two Member States declared that they could consider the possibility of having a first pillar Directive containing the definitions and a third pillar Framework Decision for what concerns the penalties.

It was concluded that no Member State supported the proposal from the Commission and that the Committee of Article 36 would be informed thereof.

### **III. Complementing the Framework Decision in the light of the Commission proposal.**

The Working Party agreed to complement the draft Framework Decision in the light of the Commission proposal on a draft directive on the protection of the environment through criminal law (document 7407/01 DROIPEN 29 ENV 139) as follows:

The substance of Article 1 of the Directive was taken on board by adding a reference to Community law in the definition of "unlawful" (Article 1) in the draft Framework Decision. It was also agreed to complement the definitions of Article 2 of the draft Framework Decision in the light of Article 3 (c), (d) and (f) of the draft Directive.

The other parts of the draft Directive were either estimated to be covered by the draft Framework Decision already, or not supported by the majority of the delegations that expressed themselves.

The Commission maintained its reservation, as it would have preferred an obligation to provide for criminal sanctions for any violation of Community environmental law, whereas the new text of the draft Framework Decision limits this obligation to the behaviours described in Article 2.

Many delegations expressed their preference for a double system of administrative and criminal sanctions.

The text of the draft Framework Decision resulting from the meeting is set out in Annex I. Changes are underlined as compared to document 6977/01 DROIPEN 27 ENV 118. The outstanding questions are set out below and in footnotes to the text.

#### **IV. SCRUTINY RESERVATIONS**

Apart from the reservation from the Commission, the text was acceptable to delegations subject to the following:

- General parliamentary scrutiny reservation by the German, Swedish, Danish and United Kingdom delegations.
- Waiting reservation by the Irish, Netherlands and Austrian delegations on the amendments made to the text during the meeting.

The United Kingdom delegation has informed delegations that it has begun discussions on the possible application of the Framework Decision to Gibraltar, the Isle of Man and the Channel Islands territories.

#### **V. EUROPEAN PARLIAMENT**

The European Parliament gave its opinion on the original proposal by Denmark on 7 July 2000<sup>1</sup>. The opinion has not yet been examined. Considering the substantial changes the text has undergone during negotiations, it had earlier been agreed that the European Parliament should be reconsulted.

#### **VI. CONCLUSIONS**

The Article 36 Committee is invited to examine the above questions with a view to:

- concluding that there is no support from the Member States to the draft Directive as proposed by the Commission
- reaching agreement on the draft Framework Decision and deciding to reconsult the European Parliament.

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<sup>1</sup> Document PE 292.933.

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

on the protection of the environment through criminal law

THE COUNCIL OF THE EUROPEAN UNION

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.
- (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, including those giving binding effect to Community law, 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 lasting or substantial 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 (...) waste, including 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,
- (f) the unlawful possession, taking, damaging, killing or trading of or in protected wild fauna and flora species or parts thereof<sup>1</sup>;
- (g) the unlawful trade in ozone-depleting substances;

when committed intentionally<sup>2</sup>.

### **Article 3**

#### **Negligent offences**

Each Member State shall take the necessary measures to establish as criminal offences under its domestic law, when committed with negligence, or at least serious negligence, the offences enumerated in Article 2.

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<sup>1</sup> The UK delegation entered a scrutiny reservation on the insertion of this provision.

<sup>2</sup> The Greek delegation was in favour of complementing the Framework Decision with Article 3(a) and (e) of the draft Council Directive.  
The Belgian delegation proposed inserting Article 3(e).

**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**  
[deleted]

**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**  
**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 conduct referred to in Article 2.

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.

## **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**  
**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, even if the effects of the offence occur entirely elsewhere;
- (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.

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 9a**  
*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.

## **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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