



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 11 November 2002
(OR. en)**

13421/02

**DROIPEN 73
ENV 602**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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

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 ¹,

Having regard to the Opinions of the European Parliament ²,

¹ OJ C 39, 11.2.2000, p. 4.

² Opinions delivered on 7 July 2000 (OJ C 121, 24.4.2001, p. 494) and on 9 April 2002 (not yet published in the Official Journal).

Whereas:

- (1) The Union 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. ¹
- (4) The European Commission has submitted in March 2001 a proposal for a Directive of the European Parliament and the Council concerning the protection of the environment by criminal law ², based on Article 175(1) of the Treaty establishing the European Community.
- (5) The Council considered it appropriate to incorporate into the present Framework decision a number of substantive provisions contained in the proposed Directive, in particular those defining the conduct which Member States have to establish as criminal offences under their domestic law.
- (6) The European Parliament delivered its Opinion on the proposed Directive on 9 April 2002. The European Commission submitted in October 2002 an amended proposal for a Directive pursuant to Article 250(2) of the Treaty establishing the European Community. The Council did not consider it appropriate to modify the present Framework Decision on that basis.

¹ See also the Annex.

² OJ C 180 E, 26.6.2001, p. 238.

- (7) The Council has considered this proposal but has come to the conclusion that the majority required for its adoption by the Council can not be obtained. The said majority considered that the proposal went beyond the powers attributed to the Community by the Treaty establishing the European Community and that the objectives could be reached by adopting a Framework-Decision on the basis of Title VI of the Treaty on European Union. The Council also considered that the present Framework Decision, based on Article 34 of the Treaty on European Union, is a correct instrument to impose on the member States the obligation to provide for criminal sanctions. The amended proposal submitted by the Commission was not of a nature to allow the Council to change its position in this respect.
- (8) Not only physical persons but also legal persons should be held liable for environmental offences.
- (9) Member States should establish wide-ranging jurisdiction with respect to the said offences in such a way as to avoid that physical or legal persons would escape prosecution by the simple fact that the offence was not committed in their territory.
- (10) On 4 November 1998 the Council of Europe adopted a Convention on the protection of the environment through criminal law, which has been taken account of in the provisions of the present instrument,

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 effect to binding provisions of 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, at least where they are threatened with extinction as defined under national law;
- (g) the unlawful trade in ozone-depleting substances;

when committed intentionally.

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.

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

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 6

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) a power of representation of the legal person, or
- (b) an authority to take decisions on behalf of the legal person, or
- (c) 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 7

Sanctions for legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 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 8

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 9, 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:

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

Article 9

Extradition and prosecution

- 1.(a) Any Member State which, under its law, does not yet 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 yet 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^{*}.
2. Before^{**}, 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^{***}, check the extent to which Member States have taken the measures necessary to comply with this Framework Decision.

^{*} Two years after the adoption of this Decision.

^{**} Two years and three months after the adoption of this Decision.

^{***} Three years after the adoption of this 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

The Council takes note that Austria intends to comply with Article 2(f) and (g) as far as minor cases are concerned and Article 3 by providing for effective, proportionate and dissuasive sanctions under administrative criminal law.
