21 June 2000

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REPORT

on the initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework Decision on combating serious environmental crime (5343/2000 – C5-0078/2000 – 2000/0801(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Giuseppe Di Lello Finuoli

Draftsman*

Inger Schörling, Committee on the Environment, Public Health and Consumer Policy

(* Hughes procedure)
Symbols for procedures

* Consultation procedure
  majority of the votes cast

**I Cooperation procedure (first reading)
  majority of the votes cast

**II Cooperation procedure (second reading)
  majority of the votes cast, to approve the common position
  majority of Parliament’s component Members, to reject or amend
  the common position

*** Assent procedure
  majority of Parliament’s component Members except in cases
  covered by Articles 105, 107, 161 and 300 of the EC Treaty and
  Article 7 of the EU Treaty

***I Codecision procedure (first reading)
  majority of the votes cast

***II Codecision procedure (second reading)
  majority of the votes cast, to approve the common position
  majority of Parliament’s component Members, to reject or amend
  the common position

***III Codecision procedure (third reading)
  majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROCEDURAL PAGE</td>
<td>4</td>
</tr>
<tr>
<td>LEGISLATIVE PROPOSAL</td>
<td>5</td>
</tr>
<tr>
<td>DRAFT LEGISLATIVE RESOLUTION</td>
<td>24</td>
</tr>
<tr>
<td>EXPLANATORY STATEMENT</td>
<td>25</td>
</tr>
<tr>
<td>OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY</td>
<td>35</td>
</tr>
</tbody>
</table>

(* Hughes procedure)
By letter of 11 February 2000 the Council consulted Parliament, pursuant to Article 39 of the Treaty on European Union, on the initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework Decision on combating serious environmental crime (5343/2000 - 2000/0801 (CNS)).

At the sitting of 18 February 2000 the President of Parliament announced that she had referred this initiative to the Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy for its opinion (C5-0078/2000).

At the sitting of 14 April 2000 the President announced that the report would be drawn up under the Hughes procedure by the Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs and the Committee on the Environment, Public Health and Consumer Policy.

The Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs appointed Giuseppe Di Lello Finuoli rapporteur at its meeting of 3 April 2000.

It considered the initiative of the Kingdom of Denmark and draft report at its meetings of 19 April 2000, 22 May 2000, 6 June 2000 and 21 June 2000.

At the last meeting it adopted the draft legislative resolution by 24 votes to 0, with 1 abstention.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Giuseppe Di Lello Finuoli, rapporteur; Mary Elizabeth Banotti, Christian von Boetticher, Alima Boumediene-Thiery, Marco Cappato, Michael Cashman, Carmen Cerdeira Morterero (for Anna Karamanou), Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Olivier Duhamel, Evelyne Gebhardt (for Margot Keßler), Daniel J. Hannan, Adeline Hazan (for Elena Ornella Paciotti), Ewa Klamt, Alain Krivine (for Pernille Frahm), Klaus-Heiner Lehne (for Thierry Cornillet), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Gerhard Schmid), Hartmut Nassauer, Ana Palacio Vallelersundi (for Bernd Posselt), Hubert Pirker, Martin Schulz, Sérgio Sousa Pinto, Joke Swiebel, Fodé Sylla, Anna Terrón i Cusí, Gianni Vattimo and Jan-Kees Wiebenga.

The opinions of the Committee on the Environment, Public Health and Consumer Policy is attached.

The report was tabled on 21 June 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.
LEGISLATIVE PROPOSAL

Initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework Decision on combating serious environmental crime (5343/2000 – C5-0078/2000 – 2000/0801(CNS))

The initiative is amended as follows:

Text proposed by the Kingdom of Denmark

Amendments by Parliament

(Amendment 1)

Preamble, recitals 1 and 2

(1) The Council is concerned at the increasing scale and frequent cross-border effects of environmental crime; (1) The Council is concerned at the increase in environmental crime and its consequences, which are increasingly being felt beyond the borders of the States where such crimes are committed;

(2) Serious environmental crime poses a threat to the environment and serious environmental offences therefore should be met by a tough response;

(2) Such crime poses a threat to the environment and therefore should be met by a tough response;

Justification:

Recital 1 has been amended only in form.

(Amendment 2)

Preamble, recital 3

(3) Serious environmental crime is a problem jointly faced by Member States, which should therefore take concerted action to protect the environment under criminal law;

(3) Serious environmental crime is a problem that all the Member States have to tackle and they should therefore take concerted action to protect the environment by means of criminal law provisions and severe sanctions which act as effective deterrents and entail prison sentences and fines which make environmental damage non-economic;

Justification:
Recital 3 has been amended only in form and a call for effective sanctions has been added.

(Amendment 3)
Recital 3a (new)

These crimes are increasingly being committed by legal persons more concerned with profit than with respect for the environment.

Justification:
The reference to legal persons is due to the fact that serious environmental crime is now being committed in most cases by companies that manage land and sea transport, industries, mining, etc. and it is therefore necessary to introduce criminal law provisions that take account of this situation.

(Amendment 4)
Recital 3b (new)

These problems are also of concern to the countries of Central and Eastern Europe, which will join the European Union in the near future.

Justification:
The new recital is at the root of the EU’s concerns since there are enormous environmental protection problems in the CEECs, which are shortly to join the Union and which will therefore have to bring their legislation into line with the principles of this framework decision.

(Amendment 5)
Recital 4

(4) Combating serious environmental crime requires effective investigation and prosecution in Member States and effective police, criminal justice and administrative cooperation between Member States;

(4) Combating serious environmental crime requires effective investigation and prosecution and effective police, criminal justice and administrative cooperation between Member States;
Justification:

The proposed wording is more correct from a technical point of view.

(Amendment 6)
Recital 4a (new)

*Combating serious environmental crime should be complemented by effective legislation on environmental liability;*

Justification:

Combating serious environmental crime through criminal law is only one way of preventing environmental damage and should be integrated into an approach that includes other measures like civil liability for environmental damages.

(Amendment 7)
Recital 4b (new)

*(4b) Combating serious environmental crime requires knowledge and understanding of environmental issues, obtained by adequate education and training of the personnel investigating and prosecuting crime in Member States.*

Justification:

The State and local law enforcement personnel needs special training as they investigate and prosecute environmental crimes. For the harmonisation and co-operation this is as vital as are the other parts of this decision.

The competence of the authorities is a key question in combating environmental crime. There is a need for expertise in environmental law, environmental technology and environmental issues in general, as well as scientific knowledge. To combat environmental crime more effectively it is important that the authorities concerned coordinate their work and cooperate on strategic issues, specific cases, working practices and expertise. A very important element in combating environmental crime more effectively is the focused development of competence and procedures for reporting suspected environmental crime.

(Amendment 8)
Recital 4c (new)

*(4c) Every Member State shall ensure that, in any operations involving environmentally hazardous activities which*
may adversely affect the public’s health or environment, operators are responsible for familiarising themselves with the environmental consequences of those activities and taking safety measures and other precautions as part of their operations.

Justification:

It is not enough to intervene once crimes have been committed. Crimes must be prevented altogether. There should be greater emphasis on preventive measures.

(Amendment 9)
Recital 5a (new)

Member States should publish reports on the scale and effects of environmental crime;

Justification:

Publishing information on environmental crime contributes to public awareness-building and so supports the prevention of environmental damage.

(Amendment 10)
Recital 6


Justification:

The wrong date – 9 September – was indicated in the text submitted to Parliament.

(Amendment 11)
Recital 6a (new)

Member States, as well as applicant states should sign, if they have not yet done so,
and ratify as soon as possible the 1998 Convention;

Justification:

Signature and ratification of the Convention would considerably strengthen the environmental acquis.

(Amendment 12)
Article 1(1), introductory sentence

1. For the purposes of this Framework Decision, the term "serious environmental crime" shall be defined as acts or omissions, under aggravating circumstances and in breach of national environmental legislation, consisting in:

Justification:
In the area of environmental protection, it is important to take account of the legislative and regulatory powers, autonomous or delegated, of the regions and local authorities.

(Amendment 13)
Article 1(1)(a)

(a) pollution of air, water, soil or subsoil resulting in substantial damage to the environment or presenting an obvious risk thereof, or

Justification:
As a distinction is made between soil or subsoil, a similar distinction should be made between surface and underground water.

The risk of damage must be specific, i.e. real and not simply abstract, probable and not merely possible.

The specific elements that are to be protected must also include at least flora, fauna, protected areas and the artistic and cultural heritage, as provided for by the 1998 Council of
Europe Convention, by other international conventions and by national legislation. ‘Environment’ is defined, for instance, in Directive 85/337/EEC (OJ L 175, 5.7.1985, p. 40).

(Amendment 14)
Article 1(1)(b)

(b) storage or disposal of waste or similar substances resulting in substantial damage to the environment or presenting an obvious risk thereof.

(b) production, transport, processing, storage, disposal, import or export of waste or similar substances resulting in substantial damage to the environment or presenting a specific risk to the environment, fauna, flora, protected areas and the artistic and cultural heritage.

Justification:
To ensure more effective environmental protection, particularly in economically vulnerable areas of the Union and in the developing countries - which have become dumping grounds for rich areas and countries - all the possible illegal activities connected with waste are listed here.

(Amendment 15)
Article 1(1)(ba)(new)

(ba) illegal trade in endangered species of fauna and flora and their products.

Justification:
The definition of "serious environmental crime" should allow for the widest possible scope of the proposed framework decision.

(Amendment 16)
Article 1 (1)(bb)(new)

(bb) dishonest conduct of a local, regional or national authority which biases the decision of any other authority or which constitutes assisting, or an attempt to assist, an offence under Article 1(a) and (b).

Justification:
Combating serious environmental crime cannot be focusing on the private sector only. Also administrative crime should be included.
(Amendment 17)
Article 1(1)(c) (new)

(c) the act or omission cannot be considered part of the normal, everyday operation of an otherwise lawful activity;

Justification:

This exception, which serves to determine and circumscribe unlawful actions or omissions, has been transferred to a new subparagraph (c), as it was illogical for it to be listed as one of the aggravating circumstances.

(Amendment 18)
Article 1(2)(a)

2. "Aggravating circumstances" shall mean in particular that:
   (a) the act or omission cannot be considered part of the normal, everyday operation of an otherwise lawful activity;
   (b) the offence is major in scale, or

Justification:

This amendment clarifies that the major scale of the offence refers to the risk of damage or damage actually caused. The text of subparagraph (a) has been moved to a new subparagraph (c) in paragraph 1, see Amendment 17.

(Amendment 19)
Article 1(2)(aa)(new)

(aa) competent authorities have been provided with misleading information as to the environmental risks involved in an activity;

Justification:

If competent supervising or approving authorities have been misled, for instance in respect to an environmental impact assessment, this should be considered as an aggravating circumstance, since it annuls the possibilities for a preventive precautionary approach.
(Amendment 20)
Article 1(2)(c)

(c) financial gain was obtained or sought (b) was committed to obtain financial or other gain.

Justification:
The aim of obtaining financial gain also includes its realisation. Specifying only financial gain is too restrictive since it is possible that damage to the environment could be caused to obtain 'gains' of other kinds.

(Amendment 21)
Article 1(2), second paragraph

In assessing whether the offence is major in scale, significance shall be attached to the following factors among others:

3. In assessing whether the offence is major in scale, significance shall be attached to the following factors among others:

Justification:
Technical amendment. Adding number (3) in the beginning of the second sentence is needed in order to make referring to the points a, b and c clearer while there are now two series of the points a to c in Article 1(2).

(Amendment 22)
Article 1(2), second sentence, subparagraph (a)

In assessing whether the offence is major in scale, significance shall be attached to the following factors among others:

(a) whether such behaviour is more systematic or persistent, showing deliberate disregard for basic environmental considerations;

In assessing whether the offence is major in scale, significance shall be attached to the following factors among others:

(a) whether such actions, attempts to act or omissions have been or are so persistent, systematic or repeated as to show deliberate disregard for basic environmental considerations;

Justification:
It should be spelled out that the actions, attempts to act or omissions are repeated, habitual and persistent.
(Amendment 23)
Article 1(2), second sentence, subparagraph (b)

(b) whether the offence committed was planned in advance, or
(b) whether the offence committed, or the attempt to commit, was premeditated, or

Justification:
The term 'premeditated' is technically more correct than 'planned in advance'.

(Amendment 24)
Article 1(2), second sentence, subparagraph (c)

(c) whether an attempt was made to conceal the pollution or storage, thereby increasing the damage or danger, as clean-up or preventive measures were not taken or were taken only at a very late stage.
(c) whether an attempt was made to conceal the actions or omissions concerned by failing to take, or taking at a very late stage, preventive or clean-up measures, thereby increasing the damage or risk of damage.

Justification:
This amendment proposes a rewording of subparagraph (c) - without changing the substance - which is consistent with the actions and omissions described in Article 1.

(Amendment 25)
Article 1(2)(ca)(new)

(c) whether an attempt was made to conceal the pollution or storage, thereby increasing the damage or danger, as clean-up or preventive measures were not taken or were taken only at a very late stage.
(c) whether an attempt was made to conceal the pollution or storage, thereby increasing the damage or danger, as clean-up or preventive measures were not taken or were taken only at a very late stage;

(ca) whether an activity which has caused serious environmental damage was intentionally or negligently under-insured against the risks involved in the activity;

Justification:
It is essential for the application of the polluter-pays principle that activities involving
environmental risks are adequately covered by insurance. There would otherwise be the additional risk of avoidance of responsibility under the principle, thus laying the burden of reparation of damages on others.

(Amendment 26)
Article 2(1)(a)

1. Member States shall take measures to ensure that:
   (a) serious environmental crime is punishable under criminal law **in a way which is effective and commensurate with the offence, acts as a deterrent and may entail extradition**;

   (Amendment 26)
   Article 2(1)(a)

1. Member States shall take measures to ensure that:
   (a) serious environmental crime is punishable under criminal law **with severe sanctions which are effective, commensurate with the offence, entail prison sentences and fines making it uneconomic, act as a deterrent and may allow extradition**;

   Justification:

   The term 'sanctions' and the details regarding the nature of those sanctions make it clearer how environmental crime is to be punished.

(Amendment 27)
Article 2(1)(b)

(b) **legal persons can be held criminally liable, in accordance with national law, for serious environmental crime.**

(b) **under national law legal persons can be held criminally liable for serious environmental crime.**

Justification:

Formal change, the wording of which is more correct than that of the draft framework decision.

(Amendment 28)
Article 2(1)(ba)(new)

(ba) **the statute of limitations is no bar to prosecution, trial or punishment of such serious environmental crimes which may only be detected over a longer period of time.**
Justification:

Punishing for serious environmental crimes should not be barred under the statute of limitations in cases where--due to the nature of the crime--it cannot reasonably be detected shortly after the crime is conducted.

(Amendment 29)
Article 2(2)(a)

(a) it is possible, as specified in national law, to seize and confiscate equipment and proceeds, or assets of equivalent value, in connection with serious environmental crime;

Justification:
The reference to movable or immovable property is more comprehensive than referring only to 'equipment', which could rule out the seizure or confiscation, for example, of buildings in an industrial complex that has caused pollution.

(Amendment 30)
Article 2(2)(c)

(c) anyone convicted of serious environmental crime may be precluded or disqualified from engaging in an activity requiring official authorisation or approval, where the facts established show an obvious risk that the situation or activity might be abused;

Justification:
Legal persons must be included to cover cases where national law makes this possible. In addition to preclusion and disqualification, provision must be made for temporary disqualification, while 'authorisation, a concession or a licence' is more exhaustive than 'official authorisation or approval'. Furthermore, this type of sanction must be restricted to activities which have a bearing on the environment.
(Amendment 31)
Article 2(2)(d)

(d) any natural person and, where so permitted by law, any legal person convicted of serious environmental crime may, possibly temporarily, from engaging in another activity or holding positions in public limited companies or partnerships or in associations or foundations requiring an authorisation, licence or concession from a national or local authority, under the conditions in (c) above, and

Justification:

Legal persons must be included to cover cases where national law makes this possible. In addition to preclusion and disqualification, provision must be made for temporary disqualification, while 'limited-liability company, company or association' might not cover some other legal forms of undertaking, so it is better to use 'public limited companies, partnerships, associations or foundations'. Furthermore, this type of sanction must be restricted to activities which have a bearing on the environment.

(Amendment 32)
Article 2(2)(e)

(e) national law provides for effective rules for making good the damage, compensation and environmental rehabilitation.

Justification:

It is necessary to provide for the damage caused by an illegal act to be made good, as well as for compensation (for acts which, although not unlawful, cause an unwarranted deterioration in assets at the expense of third parties).

(Amendment 33)
Article 3

Each Member State shall take the necessary measures to ensure that, in addition to coercive measures such as searching and seizure, the investigating authorities, police or officials otherwise responsible for law...
enforcement authorities can effectively investigate and prosecute serious environmental crime, while observing suitable legal safeguards of due process.

enforcement are given appropriate powers of investigation to enable them to prosecute serious environmental crime effectively, while respecting the guarantees provided for by national law.

Justification:

The proposed change does not alter the meaning of the text but simply seeks to clarify it.

(Amendment 34)
Article 4(1) (a), (b) and (c)

(a) in whole or in part on its territory, including on vessels registered in that Member State;
(b) by a natural person who is a national of or permanently resident in that Member State;
(c) by a legal person based on its territory.

(a) This amendment does not apply to the English text;
(b) by a natural person who is a national of or permanently resident in that Member State;
(c) by a legal person that has its legal seat in its territory.

Justification:

The proposed change does not alter the meaning of the text but simply seeks to clarify it.

(Amendment 35)
Article 4(2)

2. Where the criminal offence has been committed on the territory of another State, the national authorities' jurisdiction in the cases referred to in paragraph 1(b) and (c) may be conditional upon the matter also constituting a criminal offence under the legislation applicable in that other State.

2. Where the criminal offence has been committed on the territory of another State, the national authorities' jurisdiction in the cases referred to in paragraph 1(b) and (c) may be conditional upon the action or omission also being classified as a criminal offence by the law of that other State.

Justification:

The proposed change does not alter the meaning of the text but simply seeks to clarify it.
3. Each Member State shall ensure that its authorities have jurisdiction in respect of serious environmental crime affecting or intended to affect its territory.

3. Each Member State shall ensure that its authorities have sufficient jurisdiction where serious environmental crime has caused damage or poses a specific risk affecting or intended to affect its territory.

Justification:

Jurisdiction must be sufficient to cover cases in which damage has been caused or a specific risk posed in the territory of the Member State in question or in another Member State, but in such a way as to affect the territory of the first Member State.

(Amendment 37)

Article 6

1. Member States shall cooperate as extensively as possible in investigating and prosecuting serious environmental crime.

2. Member States which have entered reservations or made declarations pursuant to Article 5 of the European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters shall consider whether such reservations or declarations impede effective cooperation with other Member States in combating serious environmental crime and, if so, shall limit the scope of such reservations or declarations in relation to other Member States.

3. Member States shall ensure, in accordance with the relevant agreements, conventions and other instruments, that they expedite the handling of letters rogatory regarding serious environmental crime and keep the requesting State informed of progress in the case, including any problems in processing the letters rogatory.

4. Member States shall, where relevant, take the necessary measures for letters rogatory regarding serious environmental crime and keep the requesting State informed of progress in the case, and of impediments or delays.

4. Member States shall, where relevant, endeavour to take the necessary measures
for letters rogatory to be forwarded directly between the competent authorities at local level, \textit{in particular on the basis of the convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union.}

\textbf{Justification:}

\textit{The amendments proposed seek to underline the Member States’ obligation to cooperate, in particular at all stages of the criminal procedure which may easily give rise to delays and damaging inefficiencies. In paragraph 4, a reference has been inserted to the convention on mutual assistance in criminal matters between the Member States of the European Union which is now being considered by the Council.}

(Amendment 38)

\textbf{Article 7}

1. Member States shall \textit{assist one another as extensively} as possible, in accordance with national law and international conventions and agreements, in exchanging information on serious environmental crime, including any information of an administrative nature or coming under administrative authorities.

2. Each Member State shall unsolicited, in accordance with national law, pass on to another Member State specific information on serious environmental crime, where it considers the supply of such information appropriate for the opening or conduct of a criminal investigation or prosecution in the recipient State.

3. Each Member State shall pass on forthwith to another Member State, without undue delay, such information on serious environmental crime as is necessary in order for clean-up or preventive measures to be taken in the Member State in question or as is otherwise necessary in order to secure evidence or arrest in connection with serious environmental crime. According to the circumstances, information may be passed on via the national contact points designated pursuant to Article 9.

\textit{This amendment does not apply to the English text.}
**Justification:**

The reference to full and effective cooperation is more specific and less vague than that in the text. In the Italian version the term ‘injustificato’ referring to action by a State is more correct than the term ‘indebito’; the substance of the text therefore remains the same.

(Amendment 39)
Article 9(1), second sentence)

Where a contact point is not itself able to reply to an application or meet a request from another Member State, it shall be empowered to pass the application or request on to the proper authority in the Member State in question. At least one contact point in each Member State shall be manned around the clock.

(Amendment 40)
Article 9(2)

2. The General Secretariat of the Council shall prepare and keep up to date a list of individual Member States' contact points. The list shall be circulated to all Member States. Should Europol, in order to achieve the objectives in Article 2(1) of the Europol Convention, be assigned responsibility for dealing with environmental crime, this ask shall be transferred to Europol.

(Amendment 41)
Article 9a (new)

The decisions of courts and, whenever
possible, other bodies, shall be publicly available in accordance with Article 9(4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, done at Aarhus, Denmark, on 25 June 1998.

Justification:

Publishing information on environmental crime contributes to public awareness-building and so supports the prevention of environmental damage.

(Amendment 42)
Article 10(2)

2. Should Europol, in order to achieve the objectives in Article 2(1) of the Europol Convention, be assigned responsibility for dealing with environmental crime, the task referred to in paragraph 1 shall be transferred to Europol.

Justification:

In order to avoid repetition, the sentence about Europol is deleted in Article 9(2) and reference is made here to both Articles.

(Amendment 43)
Article 11

1. Member States shall submit their contributions for inclusion in the register to the keeper thereof.

2. The keeper of the register shall draw up the register on the basis of Member States' contributions.

3. The keeper shall ensure that any amendments or additions to the register on the basis of further contributions from Member States are duly included in it and that Member States are notified of amendments and additions.

1. Member States shall send their contributions for inclusion in the register to the keeper thereof.

2. The keeper of the register shall draw up the register on the basis of Member States' contributions.

3. The keeper shall ensure that any amendments or additions to the register on the basis of further contributions from Member States are duly included in it and that amendments and additions are communicated to Member States.
Justification:

These two changes clarify the action to be taken by Member States.

(Amendment 44)
Article 12(1), (2) and (3)

1. Each Member State shall supply for the purposes of the register information on special expertise, skills or know-how which it has built up in combating serious environmental crime and which it considers should be made available to all Member States.

2. Member States' contributions shall at the very least furnish a sufficiently detailed description of the various kinds of special expertise, skills or know-how in order to provide the appropriate bodies in the Member States with a basis on which to assess whether that information is of relevance in conducting their operations to combat serious environmental crime. Contributions shall also specify how the source of the expertise can be speedily contacted.

3. Member States shall be responsible for having contributions updated where necessary.

Justification:

The proposed change does not alter the substance of the text but merely clarifies the wording.

(Amendment 45)
Article 12(4)

4. Member States may at any time have further contributions included or ask for contributions to be deleted from the register.

Justification:

"At any time" seems too open for the deletion of the information from the register.
(Amendment 46)
Article 13(2)

2. **The question of terms and conditions for the use of special expertise, know-how and skills listed in the register shall be settled directly between the Member States concerned, there being under no circumstances any entitlement to their use.**

*Delete*

**Justification:**

The Italian version is incomprehensible and even in the French version this paragraph appears to contradict all the rules laid down for cooperation relating to the register – it is proposed that the paragraph be deleted. If the amendment to delete this paragraph is rejected, the rapporteur would be prepared to propose an amended version of paragraph 2.

(Amendment 47)
Article 14

Each Member State shall ensure that, in accordance with national law, it takes the necessary steps as soon as possible **and by 1 January 2000** to sign the 1998 Convention. Each Member State shall ensure that it has placed before its legislature by 1 January 2001 proposals for ratification of the 1998 Convention. In ratifying the 1998 Convention, Member States shall as far as possible ensure that they do not enter any reservations in respect of it.

Each Member State shall ensure that, in accordance with national law, it takes the necessary steps as soon as possible to sign the 1998 Convention. Each Member State shall ensure that it has placed before its legislature by 1 January 2001 proposals for ratification of the 1998 Convention. In ratifying the 1998 Convention, Member States shall as far as possible ensure that they do not enter any reservations in respect of it.

**Justification:**

*The date of 1 January 2000 has long passed.*
DRAFT LEGISLATIVE RESOLUTION


(Consultation procedure)

The European Parliament,

– having regard to the initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework Decision on combating serious environmental crime (5343/2000),
– having been consulted by the Council pursuant to Article 39(1) of the Treaty on European Union (C5-0078/2000),
– having regard to Articles 31 and 34(2)(b) of the Treaty on European Union,
– having regard to Rules 106 and 67 of its Rules of Procedure,

1. Approves the Kingdom of Denmark’s initiative as amended;
2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
3. Asks to be consulted again should the Council intend to make substantial modifications to the initiative of the Kingdom of Denmark;
4. Instructs its President to forward this resolution to the Council and Commission and the Government of the Kingdom of Denmark.

EXPLANATORY STATEMENT

I. Provisions of the Treaty on European Union, conclusions of the Tampere Summit and scoreboard

The relevant articles of the Treaty on European Union are, above all, Article 29, Article 31 and Article 34.

The Danish Government is using one of the formal instruments (framework decision) introduced by the new TEU but the area it has selected for the approximation of criminal provisions is not one of those specified by the Treaty in that serious environmental crime was not one of the priorities established at Amsterdam.

The conclusions of the Tampere Summit should be borne in mind when evaluating the Danish initiative and, in particular:

Conclusion 36: mutual recognition of pre-trial orders issued by judicial authorities (in particular on securing evidence and the seizure of assets); evidence lawfully gathered by one Member State’s authorities should be admissible before the courts of other Member States;
Conclusion 43: cooperation between Member States’ authorities when investigating cross-border crime; setting up of joint investigative teams (initially only for trafficking in drugs and human beings and terrorism);
Conclusion 48: environmental crime is one of the areas in which efforts should be made to agree on common definitions, incriminations and sanctions with regard to national criminal law.

The scoreboard in section IV (4.2 and 4.3) lists major initiatives which may be related in practical terms, such as Eurojust, the European judicial network, the joint investigative teams, the convention on mutual assistance in criminal matters, Europol and environmental crime, providing a timetable for each of them.

II. Analysis of the substance, structure and justification for the Danish Government’s initiative

In the recitals, the Danish Government refers to the increasing scale and cross-border effects of environmental crime; the threat to the environment requires a tough response; the need for joint action by the Member States to protect the environment under criminal law; the Council of Europe Convention of 4 November 1998 (the English translation of the draft probably contains a mistake as the date given is 9 September 1998).

Article 1 defines ‘serious environmental crime’, ‘aggravating circumstances’ and sets out the criteria for assessing the seriousness of the offence.

Articles 2 to 4 provide for the adoption of provisions by the Member States to:
- make environmental crime punishable under criminal law (also vis-à-vis legal persons);
- allow the seizure and confiscation of equipment and proceeds;
- implement the Council of Europe Convention of 8 November 1990 relating to the proceeds from crime;
- preclude or disqualify those convicted from engaging in particular activities;
- provide compensation and environmental rehabilitation;
- allow effective investigation and prosecution, including the use of coercive measures;
- confer jurisdiction on the national authorities.

Articles 5 to 7 concern the coordination of the activities of the national authorities (for example ministries, public prosecutors’ offices, police, environmental authorities); mutual assistance between Member States in the case of serious crimes; the exchange of information on serious environmental crime (early and unsolicited exchange of information to allow clean-up or preventive measures).

Article 8 concerns the transfer of criminal proceedings to another Member State.

Article 9 provides for the designation of contact points in Member States for the collection and exchange of information, the list of which is to be kept by the General Secretariat of the Council (but this task might be transferred to Europol).

Articles 10 to 13 provide for the creation of a register listing special expertise, skills and know-how on combating serious environmental crime (here too, provision is made for responsibility for drawing up the register and making it available, being transferred from the General Secretariat of the Council to Europol).

Article 14 requires each Member State to take the necessary steps to ratify the 1998 Council of Europe Convention, as far as possible without entering any reservations.

Article 15 says that by the end of 2000 the Member States are to take the necessary measures to comply with the framework decision and gives the Council six months from that date to verify whether the Member States have complied.

Article 16 sets the date for the entry into force of the framework decision.

* * *

1. The Danish initiative falls into three parts:

   (i) harmonisation of criminal law (basically, Articles 1 to 5), including definitions and responsibilities;
   (ii) cooperation (Articles 6 to 9);
   (iii) register of expertise and know-how (Articles 10 to 13) and suggested involvement of Europol in management of the register in the future.

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3 See also joint action 96/747/JHA of 29 November 1996 on the creation and maintaining a directory of specialised competences, skills and expertise in the fight against international crime, in order to facilitate law enforcement between EU Member States.
2. The Danish Government recognises that there are a number of contradictions in the text, that it covers a number of areas and that they will have to be subdivided between various working parties in the Council. Many of the issues are sensitive. For example, the United Kingdom and Ireland still claim that they are unable to ratify the 1998 Council of Europe Convention.

3. The Danish Government takes the view that it is far preferable to adopt a Union instrument in the near future and to create an acquis before enlargement of the Union. This is a political objective.

4. As far as the national laws of the Member States are concerned, these have not been examined in detail by the authors of the initiative but they accept that national legislation differs considerably.

5. The core of the Danish initiative is that, on the basis of the statistics, it has taken approximately 20% of the most serious cases and dealt with them by means of the text which provides for the harmonisation of criminal law throughout the European Union. The aim is to achieve more stringent sanctions under criminal law than now exist, particularly where the offences have been committed for financial gain, the aim being that those responsible should not be able to ‘get off’ with mere fines.

Beyond this 20%, national legislation can remain unchanged.

6. The initiative focuses on criminal law and thus somewhat disregards the question of prevention.

7. Problem of the role of Europol: the Danes maintain that the best solution would be to give Europol responsibility for making know-how available to the Member States, but many of the Member States feel that it is too early to widen Europol’s remit.

8. This proposal was originally in the form of a joint action and was presented under the provisions of the Maastricht Treaty.

III. Comparison with Council of Europe instruments

(i) Recital 6 quotes the Council of Europe Convention of 4 November 1998 on the protection of the environment through criminal law.

This Convention, which on 28 March 2000 had been signed by 9 of the 15 EU Member States and ratified by none, refers in its preamble to the following main issues:

- the Council of Europe’s aim of achieving a greater unity between its members;
- the need to pursue a common criminal policy aimed at the protection of the environment;
- the risk posed to the environment by unregulated industrial development;
- the important part that can be played by criminal law.

However, above all, it contains important definitions of the terms ‘unlawful’, ‘water’ and ‘criminal offences against the environment’ in Articles 1 and 2.

While Article 2 deals with intentional offences, Article 3 covers negligent offences and Article 4 other criminal offences or administrative offences.

A comparison between Article 2 of the Convention and Article 1 of the draft framework decision reveals that the Council of Europe text is far more detailed than the Danish Government’s proposal in that it refers to damage caused to persons (death, serious injury), as well as substantial damage to protected monuments and other protected objects, property, animals or plants. The framework decision proposed by Denmark does not mention damage to persons.

The Council of Europe Convention also contains a number of other interesting provisions concerning:

- sanctions (Article 6 says that sanctions must include imprisonment; the Danish proposal shares this objective politically but confines itself to the wording: ‘serious environmental crime is punishable under criminal law in a way which is effective and commensurate with the offence, act as a deterrent and may entail extradition’ (Article 2(1)(a));
- confiscation measures (Article 7 covering instrumentalities and proceeds or property, cf. Article 2(2)(a) of the Danish proposal);
- reinstatement of the environment (Article 8, which also provides for reinstatement orders to be made executable, cf. Article 2(2)(c) of the Danish proposal, which is couched in much more general terms);
- corporate liability (Article 9, cf. Article 2(1)(b), and Article 4(1)(c) of the Danish proposal);
- the rights that may be granted to environmental groups, foundations or associations to participate in proceedings (Article 11; the Danish proposal says nothing about this).

* * *

(ii) Article 2(2)(b) of the draft framework decision says that ‘serious environmental crime is covered by national rules designed to implement the Council of Europe of 8 November 1990 on laundering, search, seizure and confiscation of the proceeds from crime’.

That Convention^4 contains a number of important definitions: the terms ‘proceeds’ (or proceeds from crime), ‘property’, ‘instrumentalities’ (used to commit a criminal offence or criminal offences), ‘confiscation’ and ‘predicate offence’. Chapter II (Articles 2 to 6) covers the main measures to be adopted by signatory States, some of which are included in the Danish proposal for a framework decision: confiscation of

^4 signed by all EU Member States and ratified by 14 of them (all except Luxembourg).
instrumentalities and proceeds or property, the value of which corresponds to the proceeds from the offence. (Article 2 of the Convention and Article 2(2)(a) of the framework decision); investigative and provisional measures (to identify and trace property which is liable to confiscation and to prevent any dealing in, transfer and disposal of such property: Article 3 of the Convention and Article 2(2)(a) of the draft framework decision; special investigative powers and techniques (for example, to empower courts or other competent authorities to order that bank, financial or commercial records be made available or be seized; special investigative techniques include monitoring orders, observation, interception of telecommunications, access to computer systems, etc. Article 4 of the Convention and Article 3 of the framework decision).

It is worth noting that in every instance the Convention is much more detailed and explicit than the Danish proposal; on the other hand, it contains a number of safeguard clauses (allowing Member States to impose restrictions or grant exemptions from its application).

Article 6 of the Convention covers the very important area of laundering offences (definition, establishing it as an offence, subjective element). On 3 December 1998 the Council of the EU adopted a joint action on the basis of Article K.3 of the EU Treaty on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime⁵.

IV. Position of the Council working party

The chairman of the working party, Mr Suoto de Moura, has drawn attention to the following aspects:

1. The Danish proposal comprises four fundamental objectives:

   (i) creation of substantive criminal law;
   (ii) cooperation between Member States;
   (iii) register of expertise and know-how;
   (iv) obligation to ratify the 1998 Council of Europe Convention.

2. Only the first aspect would be dealt with at political level under the Portuguese Presidency.

3. The Presidency’s intention is to persuade the Member States to include in the draft framework decision substantially the same criminal law provisions as those of the Council of Europe Convention.

4. The Danish definition of ‘serious environmental crime’ has no equivalent in Member State legislation, which has consequently not been examined in detail.

V. **Preliminary position of the European Commission**

The Commission has not yet formed a clear view on the Danish initiative but it is sympathetic to the argument that it is first necessary to examine Community legislation under the first pillar (which often reflects obligations into at United Nations level). Community provisions usually require the Member States impose sanctions in the case of failure to comply with the relevant regulations, for example, to protect particular species of fauna or flora, or to protect the ozone layer, etc.

However, an informal exchange of views has highlighted the following aspects, which are still not dealt with adequately in first pillar instruments:

- the network of environmental authorities and experts is only a small part of the criminal judicial system in the Member States: sooner or later reference will have to be made to the police, customs authorities and public prosecutors;

- it would be useful to have a reference in Community law for the criminal liability of legal persons: many environmental offences are, by definition and by their very nature, committed by corporations;

- sanctions are a very important element: while respecting the principle of subsidiarity, the Commission would encourage any provisions requiring national implementing measures to include appropriate sanctions that will act as deterrents. This is already the case in a number of regulations.

VI. **COMMENTS ON THE AMMENDMENTS**

(a) **The specific nature of environmental crime (Article 1 of the proposal)**

1. An acceptable definition of 'environment' (based on environmental literature, international conventions and national legislation) has to take into consideration the following factors: natural resources (air, water, soil, fauna and flora: the European Commission also appears to agree with this) and the interaction between them (natural balance, climate). To arrive at a more complete and exhaustive definition, one can also include buildings and monuments which are part of the national cultural heritage and protected areas of the countryside.

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6 In this context, reference should be made to the work on the draft convention on combating crime and the work of G8.

7 Franco Giampietro: Criminal offences to the environment: first suggestions for an international convention of the Council of Europe, in Rivista di diritto europeo, 1993/3; Katrien Beeckman: Transboundary Damage to the environment *per se*: remedial measures and standing, in Revue Belge de Droit International 1996/2; Lugano Convention of 21 June 1993 on civil liability for damage resulting from activities dangerous to the environment; Council of Europe Convention of 4 November 1998 on protection of the environment through criminal law; Treccani Encyclopaedia, Environment chapter.
2. Health, although regarded as something to be protected in international conventions and national legislation relating to the environment, is not an aspect of the environment as such and, therefore, in the rapporteur's view should not be taken into account.

Given that this is a draft framework decision, your rapporteur does not consider it useful to specify the various ways in which pollution may arise - which are frequently well-defined in national legislation - (emission into the atmosphere of ionising or nuclear substances, radiation, depletion of the ozone layer, depletion of groundwater, noise, vibrations, etc.). In the framework decision it is sufficient to refer to the causal link between an action or omission and serious damage or the definite risk of serious damage to one or more aspects of the environment as indicated above: it will then be up to national legislation to specify the various forms of pollution.

3. No definition of 'serious environmental crime' can be found in the legislation of the Member States and the Danish proposal tries to identify a number of parameters that could be used to arrive at such a definition: seriousness of damage, financial gain sought, premeditation, persistent behaviour, attempt to conceal the offence, etc. By imposing penalties that are commensurate with the damage caused and thus constitute effective deterrents, your rapporteur feels that it will be possible to arrive at a uniform definition of 'serious environmental crime'.

4. With regard to the psychological aspects of the action or omission (criminal intent and blame, or deliberate behaviour and negligence) it is worth noting the position expressed by the Danish Government representative at the committee meeting on 19 April 2000 that the proposal was designed only to cover deliberate serious offences, estimated at 20% of all environmental crime (although he did not explain on the basis of what parameters the figure of 20% was arrived at).

5. However, there is no evidence of the Danish proposal being limited to such deliberate offences since it refers only to 'offences' without any further explanation. A restriction to offences committed deliberately would be at odds with:

   (a) all national legislation and international conventions which explicitly include offences committed through negligence;

   (b) the explicit obligation to ratify the 1998 Council of Europe Convention which covers negligence (even if it gives States the right to enter a reservation regarding the application of this part of the Convention);

   (c) the frequent occurrence of environmental disasters undoubtedly due to negligence and not to deliberate action (Chernobyl nuclear power station, the Erika tanker, the pollution of the Danube with cyanide from a mine in Romania, etc.).

6. The question of the subjective element of the offence would have to be clarified with the Council and European Commission and at any rate maintaining, as the rapporteur
proposes, the term 'offence' the proposal would relate to both offences committed deliberately and those committed through negligence.

(b) Sanctions: scope, effectiveness and proportionality (Article 2)

1. Not only environmental organisations, but also government agencies complain of the disproportion between the sanctions provided for and imposed for environmental crime and the damage such crime causes to the community. The imposition of sanctions which act as deterrents, the introduction of provisions for the seizure and confiscation of property which has been used to commit the offences and the related proceeds, and measures to disqualify those responsible from exercising an activity or holding office within a company, seem to be a good way of achieving the goal of effective sanctions commensurate with the offences committed.

2. The possibility of also bringing criminal proceedings against legal persons, which hitherto existed only in the United Kingdom, Finland, Denmark and the Netherlands, is essential since, for the most part, serious environmental crime is the result of the activities of companies that manage processing industries, sea and land transport, etc.: the question is one of how States can impose sanctions that are appropriate for legal persons.

3. The Council of Europe Convention of 8 November 1990 on laundering, search, seizure and confiscation of the proceeds of crime strengthens international cooperation in this area.

4. Subparagraphs 7 (c) and (d) set out the cases where those managing an activity can be disqualified as an individual (c) or as an officer of a legal person or association (d).

(c) Mutual assistance in criminal matters between Member States (Articles 6 and 8)

1. The Council of Europe Convention on mutual assistance in criminal matters of 20 April 1959 allows members to make the execution of letters rogatory for search or seizure of property dependent on whether the offence is:

   (a) punishable under both the law of the requesting Party and the law of the requested Party;

   (b) an extraditable offence;

   (c) consistent with the law of the requested Party.

2. Pursuant to Article 5, some Member States of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg and the Netherlands) have entered reservations or declarations in respect of the acceptance of requests for search or seizure, making them subject to verification that all or some of the conditions laid down in subparagraphs (a), (b), and (c) above have been met: the approximation of national laws on the basis of the principle set out in the framework decision would

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overcome these reservations.

On the matter of letters rogatory, the reader is referred to the recent report by Mr Di Petro on the draft convention on mutual assistance in criminal matters between the Member States of the European Union (A5-0019/2000)9.

Requests for search or seizure (and especially the latter) are almost always urgent and should be processed speedily to prevent those concerned from removing the equipment, proceeds or assets referred to in Article 2(1)(c) or evidence of the offence. Letters rogatory should therefore be sent directly to the competent local authority (Article 6(4)) and not through the usual central channels (Ministry of Justice).

The provision contained in Article 15(2) of the Council of Europe Convention of 20 April 1959 should therefore be used. ‘In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this Article’ (i.e., once executed, they must be returned to the requesting authority through the Ministry of Justice as there will no longer be any risk of jeopardising a positive outcome of the request).

On this point, your rapporteur may, at a later stage, table an amendment to Article 6(4) to bring it into line with the substance of the 1959 Convention. Among the EU Member States that are signatories to the 1959 Convention, the only declaration concerning Article 15(2) comes from Sweden (which requests that even in urgent cases requests should be sent directly to the Legal Affairs Directorate of the Foreign Ministry), whereas Italy, France and Spain request only that a copy of the request should also be sent to the Ministry of Justice.

3. With regard to Article 8, the Council of Europe Convention of 15 May 1972 on the transfer of proceedings in criminal matters seeks to avoid conflicts of competence, while the Convention of 28 May 1970 on the international validity of criminal judgments provides for the enforcement of sanctions imposed by the judicial authority of another State.

(d) Collection and exchange of information, contact points, role of Europol

Paragraph 2 of Article 9 refers to Article 2(1) of the Europol Convention. That article reads:

‘The objective of Europol shall be, within the framework of cooperation between the Member States pursuant to Article K.1(9) of the Treaty on European Union, to improve, by means of the measures referred to in this convention, the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organised criminal structure is

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9 See minutes of sitting of 17 February 2000.
involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned’.

* * *

The Danish proposal refers to a possible widening of Europol’s remit to include serious environmental crime, particularly for the purposes of keeping and maintaining a list of Member States’ contact points. Moreover, the articles concerned with ‘technical’ cooperation to prevent damage to the environment seem out of place in this draft framework decision, which primarily concerns the harmonisation of the types of offence and sanctions, as well as related judicial cooperation.

The Portuguese Government’s representative (see section IV above) has made it clear that the Portuguese Presidency is committed to approving this specific part of the framework decision and the rapporteur has therefore left the articles on technical cooperation (list of national contact points, register of expertise, skills and know-how, etc.) substantially unchanged.
OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework Decision on combating serious environmental crime (5343/00 – C5-0078/2000 – 2000/0801(CNS))

Draftsman: Inger Schörling

PROCEDURE


It considered the draft opinion at its meetings of 23 May and 20 June 2000.

At the latter meeting it adopted the amendments below unanimously.

The following were present for the vote: Caroline F. Jackson, chairman; Alexander de Roo, Carlos Lage, vice-chairmen; Inger Schörling, draftsman; Maria del Pilar Ayuso González, Hans Blokland, David Robert Bowe, John Bowis, Hiltrud Breyer, Philip Rodway Bushill-Matthews (for Per-Arne Arvidsson), Dorette Corbey, Chris Davies, Avril Doyle, Carlo Fatuzzo (for Marielle de Sarnez), Francesco Fiori (for Giuseppe Nisticò pursuant to Rule 153(2)), Marialiese Flemming, Karl-Heinz Florenz, Cristina García-Orcoyen Tormo, Laura González Álvarez, Robert Goodwill, Roger Helmer, Mary Honeyball (for Marie-Noëlle Lienemann), Anneli Hultén, Hedwig Keppelhoff-Wiechert (for Françoise D. Grossetête), Bernd Lange, Peter Liese, Torben Lund, Jules Maaten, Minerva Melpomeni Malliori, Patricia McKenna, Jorge Moreira Da Silva, Emilia Franziska Müller, Riitta Myller, Karl Erik Olsson, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Ursula Schleicher (for Christa Klaß), Horst Schnellhardt, Jonas Sjöstedt, María Sornosa Martínez, Bart Staes (for Marie Anne Isler Béguin), Catherine Stihler, Antonios Trakatellis, Joaquim Vairinhos (for Béatrice Patrie), and Phillip Whitehead.
SHORT JUSTIFICATION

This Council Decision aims at setting up a framework in order to fight the increasing scale and frequent cross-border effects of environmental crime. It proposes concerted actions by Member States to protect the environment under criminal law, including effective investigation and prosecution in Member States, as well as effective police, criminal justice and administrative cooperation between Member States.

Procedurally, this decision is based on Title VI of the Treaty on European Union regarding police and judicial cooperation in criminal matters. According to Article 34(2)(b) of the Treaty on European Union, on the initiative of any Member State, the Council may adopt framework decisions for the purpose of approximation of laws and regulations of Member States. Those framework decisions are binding upon the Member States as to the result to be achieved, but leave to the national authorities the choice of form and methods. According to Article 39 of the Treaty on European Union, the Council shall consult the European Parliament before adopting such a decision.

The initiative proposed by the Kingdom of Denmark contains:

- provisions on the harmonisation of criminal law, including the definition of "serious environmental crime",
- provisions on the cooperation and on the exchange of information between Member States,
- provisions on setting up a register of special skills or know-how with regard to combating serious environmental crime.

The initiative also stipulates that Member States take the necessary steps as soon as possible to sign and ratify the Convention on the Protection of the Environment through Criminal Law adopted by the Council of Europe on 9 September 1998. To date, this Convention has been signed but not yet ratified by 9 Member States.

By these measures, the proposed framework decision would provide for EU-wide minimum sanctions for serious environmental crimes. It would oblige Member States to punish environmental crimes in a way that was "effective and commensurate with the offence". It would aim to introduce police, criminal justice and administrative cooperation to allow Member States to prosecute all acts or omissions under aggravating circumstances in breach of national environmental legislation causing (or likely to cause) substantial damage to the environment through either pollution of air, water, soil or subsoil, or the storage or disposal of waste or similar substances.

The proposed framework decision asks for the introduction of minimum standards for criminal prosecution, as well as for compensation rules and rules on environmental rehabilitation under national law.

The proposed framework decision would assign to the General Secretariat of the Council the task of keeping the register of special skills or know-how with regard to combating serious environmental crime, as well as a list of contact points in the Member States for the collection and exchange of information. This task could be transferred to Europol, if it were to be
assigned responsibility for dealing with environmental crime.

The Committee on the Environment, Public Health and Consumer Policy welcomes the initiative of the Kingdom of Denmark as a useful instrument to combat the increasing scale and frequent cross-border effects of environmental crime, in line with the objective of achieving balanced and sustainable development as set out in Article 2 of the Treaty on European Union, and underlines the importance of complementing measures to prevent environmental damage such as effective legislation in the field of environmental liability or a policy of publishing information on finalised cases. The Committee proposes to amend and enforce the definition of "serious environmental crime" in order to allow for the widest possible scope of the proposed framework decision, and stresses that Member States and applicant states should sign and ratify, as soon as possible, the Convention on the Protection of the Environment through Criminal Law adopted by the Council of Europe on 9 September 1998 in order to strengthen the environmental acquis.

AMENDMENTS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

<table>
<thead>
<tr>
<th>Text proposed by the Council¹⁰</th>
<th>Amendments by Parliament</th>
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<tr>
<td>(Amendment 1)</td>
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<tr>
<td>Recital 4a (new)</td>
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<td><strong>Combating serious environmental crime should be complemented by effective legislation on environmental liability;</strong></td>
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**Justification:**

Combating serious environmental crime through criminal law is only one way of preventing environmental damage and should be integrated into an approach that includes other measures like civil liability for environmental damages.

| (Amendment 2)                 |                          |
| Recital 4b (new)              |                          |
| **(4a) Combating serious environmental crime requires knowledge and understanding of environmental issues, obtained by adequate education and training of the personnel investigating and prosecuting crime in Member States.** |

Justification:

The State and local law enforcement personnel needs special training as they investigate and prosecute environmental crimes. For the harmonisation and co-operation this is as vital as are the other parts of this decision.

The competence of the authorities is a key question in combating environmental crime. There is a need for expertise in environmental law, environmental technology and environmental issues in general, as well as scientific knowledge. To combat environmental crime more effectively it is important that the authorities concerned coordinate their work and cooperate on strategic issues, specific cases, working practices and expertise. A very important element in combating environmental crime more effectively is the focused development of competence and procedures for reporting suspected environmental crime.

(Amendment 3)
Recital 4c (new)

(4b) Every Member State shall ensure that, in any operations involving environmentally hazardous activities which may adversely affect the public’s health or environment, operators are responsible for familiarising themselves with the environmental consequences of those activities and taking safety measures and other precautions as part of their operations.

Justification:

It is not enough to intervene once crimes have been committed. Crimes must be prevented altogether. There should be greater emphasis on preventive measures.

(Amendment 4)
Recital 5a (new)

Member States should publish reports on the scale and effects of environmental crime;

Justification:

Publishing information on environmental crime contributes to public awareness-building and so supports the prevention of environmental damage.
(Amendment 5)

Recital 6a (new)

Member States, as well as applicant states should sign, if they have not yet done so, and ratify as soon as possible the 1998 Convention;

Justification:

Signature and ratification of the Convention would considerably strengthen the environmental acquis.

(Amendment 6)

Article 1(1)(a)

(a) pollution of air, water, soil or subsoil resulting in substantial damage to the environment or presenting an obvious risk thereof, or

(a) pollution of air, surface or underground water, soil or subsoil resulting in substantial damage to, or presenting a specific risk to, the environment, human health, fauna, flora, climate, protected areas and the artistic and cultural heritage, or

Justification:

The risk of damage must be specific - the term is clearer. Furthermore, it is too narrowing and unclear to use only the word environment; "environment" is defined in same way e.g. in Directive 85/337/EEC (OJ L 175, 05.07.1985, p. 40).

(Amendment 7)

Article 1(1)(ba)(new)

(ba) illegal trade in endangered species of fauna and flora and their products.

Justification:

The definition of "serious environmental crime" should allow for the widest possible scope of the proposed framework decision.

(Amendment 8)

Article 1(1)(bb)(new)

(bb) dishonest conduct of a local, regional or national authority which biases the
or national authority which biases the decision of any other authority or which constitutes assisting, or an attempt to assist, an offence under Article 1(a) and (b).

Justification:

Combating serious environmental crime cannot be focusing on the private sector only. Also administrative crime should be included.

(Amendment 9)
Article 1(2)(aa)(new)

(aa) competent authorities have been provided with misleading information as to the environmental risks involved in an activity;

Justification:

If competent supervising or approving authorities have been misled, for instance in respect to an environmental impact assessment, this should be considered as an aggravating circumstance, since it annuls the possibilities for a preventive precautionary approach

(Amendment 10)
Article 1(2), second paragraph

In assessing whether the offence is major in scale, significance shall be attached to the following factors among others:

Technical amendment. Adding number (3) in the beginning of the second sentence is needed in order to make referring to the points a, b and c clearer while there are now two series of the points a to c in Article 1(2).

(Amendment 11)
Article 1(2), second paragraph, subparagraph (a)

In assessing whether the offence is major in scale, significance shall be attached to the following factors among others:
(a) whether such **behaviour is more systematic or persistent, showing deliberate disregard for basic environmental considerations**;

(a) whether such **actions, attempts to act or omissions have been or are so persistent, systematic or repeated as to show deliberate disregard for basic environmental considerations**;

**Justification:**

*It should be spelled out that the actions, attempts to act or omissions are repeated, habitual and persistent.*

(Amendment 12)
Article 1(2), second paragraph, subparagraph (b)

(b) whether the offence committed was **planned in advance**, or

(b) whether the offence committed, **or the attempt to commit**, was **premeditated**, or

**Justification:**

*See amendments 2 and 6. Furthermore, the word "premeditate" is technically more correct.*

(Amendment 13)
Article 1(2)(ca)(new)

(c) whether an attempt was made to conceal the pollution or storage, thereby increasing the damage or danger, as clean-up or preventive measures were not taken or were taken only at a very late stage.

(c) whether an attempt was made to conceal the pollution or storage, thereby increasing the damage or danger, as clean-up or preventive measures were not taken or were taken only at a very late stage;

**(ca) whether an activity which has caused serious environmental damage was intentionally or negligently under-insured against the risks involved in the activity;**

**Justification:**

*It is essential for the application of the polluter-pays principle that activities involving environmental risks are adequately covered by insurance. There would otherwise be the additional risk of avoidance of responsibility under the principle, thus laying the burden of reparation of damages on others.*
(Amendment 14)
Article 2(1)(ba)(new)

(ba) the statute of limitations is no bar to prosecution, trial or punishment of such serious environmental crimes which may only be detected over a longer period of time.

Justification:

Punishing for serious environmental crimes should not be barred under the statute of limitations in cases where--due to the nature of the crime--it cannot reasonably be detected shortly after the crime is conducted.

(Amendment 15)
Article 2(2)(da)(new)

(da) a legal person convicted for a serious environmental crime can be declared dissolved, and

Justification:

Unlike a physical person the 'personality' of a legal person is completely dependent on the law for its existence. It should be possible to sanction abuse of this benefit under the law with the withdrawal of the legal personality.

(Amendment 16)
Article 9(1), second paragraph

Where a contact point is not itself able to reply to an application or meet a request from another Member State, it shall be empowered to pass the application or request on to the proper authority in the Member State in question. At least one contact point in each Member State shall be manned around the clock.

Where a contact point is not itself competent or able to reply or meet a request from another Member State, it shall be empowered to pass the application or request without delay on to the authority in the Member State that is competent and able to deal with it. At least one contact point in each Member State shall be manned around the clock.

Justification:

The amendment seeks to clarify the rule that the request should be forwarded without delay to the competent Member State even by the Member State which, although it has received the request, is not competent or at least not able to deal with it.
(Amendment 17)
Article 9(2)

2. The General Secretariat of the Council shall prepare and keep up to date a list of individual Member States' contact points. The list shall be circulated to all Member States. Should Europol, in order to achieve the objectives in Article 2(1) of the Europol Convention, be assigned responsibility for dealing with environmental crime, this task shall be transferred to Europol.

Justification:

In order to avoid repetition the sentence about Europol is deleted here and there is an other amendment for Article 10(2) referring to this Article as well.

(Amendment 18)
Article 9a (new)

The decisions of courts and, whenever possible, other bodies, shall be publicly available in accordance with Article 9(4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, done at Aarhus, Denmark, on 25 June 1998.

Justification:

Publishing information on environmental crime contributes to public awareness-building and so supports the prevention of environmental damage.

(Amendment 19)
Article 10(2)

2. Should Europol, in order to achieve the objectives in Article 2(1) of the Europol Convention, be assigned responsibility for dealing with environmental crime, the task referred to in paragraph 1 shall be transferred to Europol.

2. Should Europol, in order to achieve the objectives in Article 2(1) of the Europol Convention, be assigned responsibility for dealing with environmental crime, the task referred to in Article 9(2) and 10(1) shall be transferred to Europol.
Justification:

In order to avoid repetition the sentence about Europol is deleted in Article 9(2) and here is being referred to both Articles.

(Amendment 20)

Article 12(4)

4. Member States may at any time have further contributions included or ask for contributions to be deleted from the register.

Justification:

"At any time" seems too open for the deletion of the information from the register.

(Amendment 21)

Article 13(2)

2. The question of terms and conditions for the use of special expertise, know-how and skills listed in the register shall be settled directly between the Member States concerned, there being under no circumstances any entitlement to their use.

Justification:

The latter part of the sentence seems to contradict both the logic of the sentence and the idea of the register.

(Amendment 22)

Article 14

Each Member State shall ensure that, in accordance with national law, it takes the necessary steps as soon as possible and by 1 January 2000 to sign the 1998 Convention. Each Member State shall ensure that it has placed before its legislature by 1 January 2001 proposals for ratification of the 1998 Convention. In ratifying the 1998 Convention, Member States shall as far as possible ensure that they do not enter any reservations in respect of it.
Justification:

The wish of the initiative for signing the 1998 Council of Europe Convention by 1.1.2000 is unfortunately too late. Yet, the aim to place proposals for the ratification before 1.1.2001 is still within reach.