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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 November 2002

13743/02

LIMITE

**DROIPEN 77
ENV 624**

"I/A" NOTE

from :	Secretariat
to :	Coreper/Council
No. prev. doc. :	12406/02 DROIPEN 66 ENV 514
Subject :	Adoption in the official languages of a Framework Decision on the protection of the environment through criminal law

On 23 September 1999, Denmark submitted a proposal for a Framework Decision on combating serious environmental crime.¹

The European Parliament delivered its opinion on the proposal on 7 July 2000.²

On 15 March 2001, the JHA Council reached a preliminary approach concerning the objectives and, in principle, the substance of the draft, subject to parliamentary scrutiny reservations by a number of delegations, a reservation by the Commission and a re-consultation of the European Parliament.

¹ OJ C 39, 11.2.2000, p. 4.

² OJ C 121, 24.4.2001, p. 494.

The Council agreed that it should be examined whether the instrument should be complemented in the light of the Commission proposal for a Directive on the protection of the environment through criminal law, presented by the Commission the same day,¹ and that the European Parliament should be re-consulted in due course. The question of the legal basis for the proposal also had to be further addressed.²

Following further examination of the text by the Working Party on Substantive Criminal Law, the Article 36 Committee and the JHA Counsellors, Coreper agreed on 19 December 2001 to re-consult the European Parliament on the basis of a revised text with a view to the adoption of the draft Framework Decision.³

The European Parliament gave its opinion on the draft Framework Decision on 9 April 2002. On the same day, it gave its opinion on the proposal by the Commission for a Directive on the protection of the environment through criminal law.⁴

At its meeting on 16 July 2002, the JHA Counsellors group agreed to invite Coreper to agree that the amendments proposed by the European Parliament concerning the draft Framework Decision should be rejected, and that the legal linguists should edit the draft Framework Decision for the purpose of its adoption.⁵

On 2 October 2002 the Commission submitted in the light of the opinion delivered by the European Parliament a modified proposal for a Directive pursuant to Article 250(2) TEC.⁶

¹ OJ C 180 E, 26.6.2001, p. 238.

² 7181/01 PV/CONS 13 JAI 23.

³ 15526/01 DROIPEN 114 ENV 679 and 15525/01 DROIPEN 113 ENV 678.

⁴ PE 316.564.

⁵ The edited version of the text is set out in 11884/02 DROIPEN 58 ENV 469 + REV 1(de).

⁶ 12738/02 DROIPEN 69 ENV 546.

On 9 October 2002 Coreper examined the modified proposal by the Commission on the basis of 12406/02 DROIPEN 66 ENV 514. It was agreed that the modified proposal should not give rise to any changes of substance in the draft Framework Decision. It was also agreed to update the recitals of the draft as indicated in Annex I of DROIPEN 66.

The Legal Linguist group has on this basis established 13421/02 DROIPEN 73 ENV 602.

Subject to the lifting of parliamentary scrutiny reservations by the Irish and Netherlands delegations, Coreper is invited to ask Council to:

- adopt the Framework Decision as set out in 13421/02 DROIPEN 73 ENV 602 by unanimity, and
- decide to enter the declarations set out in the Annex in the minutes of the Council.

A. Declarations for entry in the minutes of the Council at the adoption of the Framework Decision.

1. Statement by the United Kingdom

"The UK believes that the draft Framework Decision should be interpreted in line with the explanatory guidance to the 1998 Council of Europe Convention on the Protection of the Environment through Criminal Law."

2. Statement by Belgium and the Netherlands

"Belgium and the Netherlands can accept the draft Framework Decision on the protection of the environment through criminal law, but reserve the right at a later stage, if the Commission proposals on the basis of Article 175(1) of EC Treaty are still being considered, to support certain elements of those proposals."

3. Statement by the Commission

"The Commission takes the view that the Framework Decision is not the appropriate legal instrument by which to require Member States to introduce sanctions of a criminal nature at national level in the case of offences detrimental to the environment.

As the Commission pointed out on several occasions within Council bodies, it considers that in the context of the competences conferred on it for the purpose of attaining the objectives stated in Article 2 of the Treaty establishing the European Community, the Community is competent to require the Member States to impose sanctions at national level – including criminal sanctions if appropriate – where that proves necessary in order to attain a Community objective.

This is the case for environmental matters which are the subject of Title XIX of the Treaty establishing the European Community.

Furthermore, the Commission points out that its proposal for a Directive on the protection of the environment through criminal law has not been appropriately examined under the codecision procedure.

If the Council adopts the Framework Decision despite this Community competence, the Commission reserves all the rights conferred on it by the Treaty."
