

II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

COUNCIL

Initiative of the Kingdom of Denmark with a view to adopting a Council framework Decision on combating serious environmental crime

(2000/C 39/05)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative by the Kingdom of Denmark,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Council is concerned at the increasing scale and frequent cross-border effects of environmental crime.
- (2) Serious environmental crime poses a threat to the environment and serious environmental offences therefore should be met by a tough response.
- (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.
- (4) Combating serious environmental crime requires effective investigation and prosecution in Member States and effective police, criminal justice and administrative cooperation between Member States.
- (5) Exchanges of information on serious environmental crime between Member States should be stepped up.
- (6) On 9 September 1998 the Council of Europe adopted a Convention on the protection of the environment through criminal law ('the 1998 Convention'),

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

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:

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

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

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
- (c) financial gain was obtained or sought.

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;
- (b) whether the offence committed was planned in advance, or
- (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.

Article 2

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

2. Member States shall take measures to ensure that:

- (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;
- (b) serious environmental crime is covered by national rules designed to implement the Council of Europe Convention of 8 November 1990 on laundering, search, seizure and confiscation of the proceeds from crime;
- (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;
- (d) anyone convicted of serious environmental crime may, where special circumstances so dictate, be disqualified from the right to engage in another activity or from the right to be a founder, manager or director of a limited-liability company, a company or association requiring special official approval or a foundation, under the conditions in (c) above, and
- (e) serious environmental crime is covered by effective compensation rules and rules on environmental rehabilitation under national law.

Article 3

Each Member State shall take the necessary measures to ensure that, in addition to the ordinary use of coercive measures such as searching and seizure, there are powers and methods of inquiry available such that law enforcement authorities can effectively investigate and prosecute serious environmental crime, while observing suitable legal safeguards of due process.

Article 4

1. Each Member State shall ensure that its authorities have jurisdiction in respect of serious environmental crime committed:

- (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.

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.

3. Each Member State shall ensure that its authorities have jurisdiction in respect of serious environmental crime affecting or intended to affect its territory.

Article 5

Each Member States shall take the necessary measures to ensure that efforts by the competent national authorities in order to combat serious environmental crime are appropriately coordinated. Depending on the administrative structure and legal system of the Member State in question, such national, regional or local coordination may, for instance, involve ministries, the public prosecution service, the police and environmental authorities.

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 case, including any problems in processing the letters rogatory.

4. Member States shall, where relevant, take the necessary measures for letters rogatory to be forwarded directly between the competent authorities at local level.

Article 7

1. Member States shall 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 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.

Article 8

1. Each Member State shall ensure that criminal proceedings arising from serious environmental crime can be transferred to another Member State in accordance with the principles laid down in the European Convention of 15 May 1972 on the transfer of proceedings in criminal matters.

2. Each Member State shall ensure that criminal penalties can be enforced in accordance with the principles laid down in the European Convention of 28 May 1970 on the international validity of criminal judgments.

Article 9

1. Each Member State shall designate one or more contact points for the collection and exchanging with other Member States of information on serious environmental crime.

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.

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.

Article 10

1. The General Secretariat of the Council, hereinafter referred to as 'the keeper of the register', shall take charge of preparing, keeping and supplying a register of special skills or know-how with regard to combating serious environmental crime, hereinafter referred to as 'the register'.

2. Should Europol, in order to fulfil 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.

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.

Article 12

1. Each Member State shall supply for the purpose 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.

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

5. The register may not include any personal data apart from the names and contact details required in order for the scheme to work.

Article 13

1. Each Member States shall hold a copy of the register or otherwise have access to the register. The relevant bodies in a Member State that wish to make use of special expertise, know-how or skills listed in the register shall themselves contact the Member State which included the information.

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.

Article 14

Each Member States 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.

Article 15

1. Member States shall take the necessary measures to comply with the provisions of this framework Decision by the end of 2000.

2. Member States shall transmit to the General Secretariat of the Council the text of the provisions transposing into their national law the obligations imposed on them under this framework Decision. On the basis of this information the Council shall assess before 30 June 2001 whether Member States have complied with this framework Decision.

Article 16

This Framework Decision shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Done at ...

For the Council

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The President
