



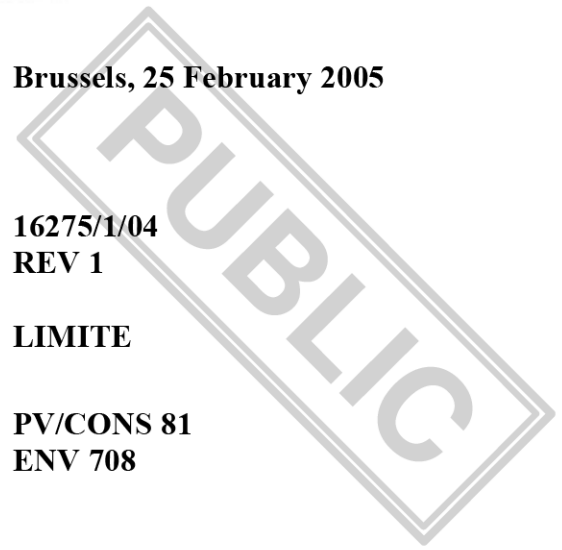
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 February 2005

**16275/1/04
REV 1**

LIMITE

**PV/CONS 81
ENV 708**



DRAFT MINUTES ¹

Subject : **2632nd** meeting of the Council of the European Union (**ENVIRONMENT**), held
in Brussels on 20 December 2004

¹ Information relating to the final adoption of Council acts which may be released to the public is contained in Addendum 1 to these minutes.

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1. Adoption of the agenda

15999/04 OJ CONS 80 ENV 681

The Council adopted the agenda as contained in the above document.

2. Approval of the list of "A" items

16106/04 PTS A 67

The Council approved the "A" items listed in 16106/04.

Addendum 1 to these minutes gives information on items 4 and 7 on that list.

When it approved item 8 on the list, the Council agreed to include the following statement by the Estonian delegation in its minutes:

"Estonia supports the proposal in principal, but is of the opinion that in order to avoid any legal gaps in the fisheries management of the Baltic Sea, the withdrawal by the European Community from the Gdansk Convention should be realized only after the agreement between the EU and Russia is concluded. Therefore Estonia votes against the decision."

Moreover, the documents under item 9 should read :

15636/04 ACP 183 FIN 581 PTOM 45

15305/04 ACP 182 FIN 558 PTOM 44

+ COR 1 (en)

+ **REV 1 (dk,de,el,pt,fi,sv).**

3. (a) **Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies**

– **Political agreement
(Public deliberation)**

14152/03 ENV 584 JUSTCIV 221 INF 197 ONU 58 CODEC 1502
16038/04 ENV 686 JUSTCIV 190 INF 191 ONU 116 CODEC 1337
+ ADD 1
16137/04 JUR 515 ENV 695 JUSTCIV 193 INF 192 ONU 117
CODEC 1352

The Council reached political agreement on the above draft Regulation (5172/05) with Belgium indicating its intention to vote against and Germany its intention to abstain.

After legal linguistic finalisation in all Community languages, the text will be adopted at a forthcoming Council meeting as a Council common position.

(b) **Proposal for a Council Decision on the conclusion, on behalf of the European Community, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**

– **Political agreement**

14153/03 ENV 585 JUSTCIV 222 INF 198 ONU 59
16037/04 ENV 685 JUSTCIV 189 INF 190 ONU 115
+ COR 1 (en)

The Council reached unanimous agreement on the above decision. The text will be finalised by the legal linguistic experts before adoption at a forthcoming Council meeting.

The Commission statement and the joint Council and Commission statement can be found in Annex I to these minutes.

(c) **Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters**

– **Information from the Presidency**

14154/03 ENV 586 JUSTCIV 223 INF 199 ONU 60 CODEC 1503

The Chair confirmed that examination of the above proposal would be carried out under the Luxembourg Presidency, as part of the so-called "Aarhus package".

4. **Proposal for a Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators**

– **Political agreement**

(Public deliberation)

15494/03 ENV 655 ENT 221 CODEC 1704

15995/04 ENV 679 ENT 158 CODEC 1331

+ COR 1

+ ADD 1

+ ADD 1 COR 1 (en)

The Council reached political agreement on the proposed Directive on the basis of a revised Presidency compromise package (16303/04). Compared to the draft Directive annexed to document 15995/04 ADD 1, this involved the following five changes:

1. the addition, at the end of **Article 4(4)**, of the phrase: "with a view to the prohibition of cadmium in batteries and accumulators";
2. the modification of **Article 13(2)** to set a 25% collection target 4 years after transposition of the Directive and a 45% collection target 8 years after transposition;
3. rewording of **Article 15(1)**, second subparagraph, to clarify that national measures would have to be in accordance with the Treaty, that the exemption would apply only to portable batteries and that Member States would have to notify draft measures to the Commission;
4. rewording of **Article 22a** to leave the definition of *de minimis* rules to comitology; and
5. the reduction of the recycling target in **Annex III**, paragraph 3(c), from 55 to 50%.

While the Commission and a large majority of delegations could accept the Presidency's revised compromise package, Belgium, Greece, Ireland and Italy indicated that they intended to abstain when the Council adopted its common position.

Several delegations and the Commission made written statements (see Annex II).

The Council invited the Permanent Representatives Committee to oversee the legal-linguistic finalisation of the text so that the Council might adopt its common position as an "A" item at one of its future sessions.

5. (a) **Proposal for a Regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency and amending Directive 1999/45/EC and the Regulation on persistent organic pollutants**
- (b) **Proposal for a Directive of the European Parliament and of the Council amending Council Directive 67/548/EEC in order to adapt it to the Regulation of the European Parliament and of the Council concerning the registration, evaluation, authorisation and restriction of chemicals**
- **Policy debate**
 - 15409/03 COMPET 75 ENV 651 CHIMIE 3 CODEC 1692
 - 15499/1/04 COMPET 208 ENV 658 CHIMIE 54 CODEC 1306 REV 1

The Council held a policy debate further to the one in the Competitiveness Council on 25-26 November 2004 and took note of the Presidency's Report set out in document 15499/1/04 REV 1 on a set of key issues. At the end of the debate the President made the following summing-up:

- “1. As to the Workshop on REACH Impact Assessment held in The Hague on 25-27 October 2004, the President noted that the Council welcomed the conclusions and recommendations and instructed its preparatory bodies in co-operation with the Commission to take account of them in their future work. The Council stressed the importance of avoiding unnecessary testing on animals and underlined the need to improve the protection of human health and the environment while ensuring the competitiveness of the European chemicals industry, in particular of SMEs.

2. On priority setting in the Registration, the importance of examining further options in this field was stressed, in particular by addressing substances of very high concern at an early stage. The necessity to explore workable, cost effective solutions providing sufficient flexibility, while not overburdening the registration phase and providing a level of certainty for industry, was underlined. With this in mind, delegations considered it appropriate to explore a possible extension of priority setting in the registration phase with the inclusion of potential PBTs and vPvBs.

The Council noted that a risk-based approach, whilst difficult to apply at registration, may be appropriate for subsequent phases of REACH and this should be further analysed. There was general recognition of the need for flexibility, ensuring that in the future appropriate priority is given to emerging or new concerns.

3. The need to regulate substances in finished articles was recognized by some delegations but doubts were expressed as to the workability and the effect on competitiveness of the Commission's Proposal in this field.

Some concern was expressed regarding the registration of dangerous substances intended and/or likely to be released from articles. It was considered to focus on articles containing substances of very high concern in the early stages of REACH.

Concerns were also expressed regarding EU produced articles that may suffer competitive disadvantages compared to importers of articles into the EU.

The Council noted the idea of professional customers' "right to know" with regards to dangerous substances in articles as well as a possible role for the Agency in making relevant information available.

The Council instructed its preparatory bodies to examine in greater detail these issues while, besides considerations of cost effectiveness, taking into account the benefits for human health and the environment of REACH.”.

6. Proposal for a Council Decision concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of an oilseed rape product (*Brassica napus* L., GT73 line) genetically modified for tolerance to the herbicide glyphosate

– **Adoption**

12343/04 AGRI 224 DENLEG 46 MI 242 CONSOM 66 SAN 126 ENV 462

15930/04 ENV 677 AGRILEG 171

Without holding a discussion on the matter, the Council noted that five delegations (France, Netherlands, Slovakia, Finland and Sweden) supported the Commission's proposal, 13 delegations (Belgium, Denmark, Estonia, Greece, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Austria and Poland) opposed it and 7 delegations (Czech Republic, Germany, Spain, Ireland, Portugal, Slovenia and United Kingdom) abstained.

In the absence of a qualified majority, the President concluded that the Council was not in a position to adopt a decision on the proposal and that it was for the Commission to draw the appropriate conclusions.

7. Climate change: medium and long-term strategies and targets

– **Council conclusions**

15561/04 ENV 667 ENER 262 FISC 255 ONU 111

The Council adopted the conclusions as set out in 16298/04.

8. (a) Lisbon Strategy: High-Level Group's Report on the Lisbon Mid-Term Review ("Kok Report")

– **Council conclusions**

15735/04 ENV 671 AGRI 330 ECO 200 ECOFIN 419 ENER 266

DEVGEN 251 MI 308 PECHE 406 RELEX 628 SAN 224

SOC 584 TRANS 387 RECH 260 ENT 157 COMPET 214

The Council held an in-depth debate regarding the preparations of the Lisbon Mid-Term Review, in particular concerning the environmental aspects, on the basis of the High-Level Group's Report ("Kok Report"). It recognised the need to continue discussions on this subject under the next Presidency.

(b) Sustainable Development Strategy
– **Council conclusions**

The Council adopted conclusions on the above subject, as they appear in the Annex to document 16308/04.

9. Proposal for a Regulation of the European Parliament and of the Council concerning the Financial Instrument for the Environment (LIFE +)

– **Exchange of views**

13071/04 ENV 528 CADREFIN 60 FORETS 31 CODEC 1080
15554/04 ENV 666 CADREFIN 153 FORETS 38 CODEC 1316
16224/04 ENV 698 CADREFIN 167 FORETS 43 CODEC 1358
16236/04 ENV 701 CADREFIN 168 FORETS 44 CODEC 1363
16264/04 ENV 705 CADREFIN 169 FORETS 45 CODEC 1368
16281/04 ENV 709 CADREFIN 170 FORETS 46 CODEC 1372
16335/04 ENV 716 CADREFIN 171 FORETS 47 CODEC 1375

The Council held a first exchange of views on the proposed Regulation on the Financial instrument for the environment (LIFE +), on the basis of the Presidency's discussion document (15554/04). This will provide guidance for continuing examination of the file. It showed that, while there was agreement on the need for a specific financial instrument for the environment to supplement the funding for environmental measures available under other Community financial instruments, there are differing opinions about the priorities for the LIFE+ instrument and how it should operate.

Several delegations provided detailed written answers to the questions in the Presidency's discussion document (16236/04, 16264/04, 16281/04 and 16335/04). Twelve delegations made a joint statement (see Annex III).

10. Preparation of UNEP Governing Council (February 2005)

- **Exchange of views**
15736/04 ENV 672 DEVGEN 252 ONU 112
16285/1/04 ENV 710 DEVGEN 265 ONU 119 REV 1

The Council held an exchange of views on preparations for the above-mentioned meeting with the participation of UNEP's Executive Director, Dr Klaus Töpfer, on the basis of a questionnaire prepared by the Presidency.

11. Protection and conservation of the marine environment

- **Council conclusions**
16030/04 ENV 684 MAR 221 PECHE 417

The Council adopted the conclusions as set out in the above-mentioned document.

12. Other business

- (a) **Mercury strategy**
 - **Commission briefing**

The Council took note of the Commission's intention to adopt the mercury strategy early in 2005.

- (b) **Briefing by the Presidency on Conferences organised by the Netherlands Presidency**
 - (i) **Legionella in Europe**
 - (ii) **Exploring new approaches for the regulation of industrial installations (ENAP)**
 - (iii) **High-level meeting on energy in motion**
 - (iv) **25 years of Directive 79/409/EEC on the conservation of wild birds**
 - (v) **Conference on soil strategy**
 - (vi) **Conference on the Environment and Health Action Plan**
16048/04 ENV 687 SAN 226 ENER 269
+ ADD 1

The Council took note of the written information submitted by the Dutch Presidency.

(c) Forthcoming thematic strategies

– **Commission briefing**

The Council took note of the state of play of the preparation of the thematic strategies according to the 6th Environment Action Programme.

(d) Greenhouse gas emissions from aviation

– **Requested by the United Kingdom delegation**
15986/04 ENV 678 AVIATION 213

United Kingdom, supported by Germany, encouraged the Commission to come forward with a proposal to incorporate aviation into the EU Emission Trading Scheme.

The Commission confirmed that it was studying such a possibility and that it would organise a stakeholder consultation early in 2005.

(e) UNECE and UNESCO high-level meeting of Environment and Education Ministries (Vilnius, 17 and 18 March 2005)

– **Requested by the Lithuanian delegation**
16005/04 ENV 682 EDUC 225 ONU 114

The Council took note of the Lithuanian delegation's information about the abovementioned high-level meeting.

(f) Management of biowaste

– **Requested by the Spanish delegation**
16127/04 ENV 693

Spain asked the Commission to clarify the state of play in relation to a new legal instrument for the management of biowaste. Austria suggested to deal with the issue of composting in the context of the new soil thematic strategy to be submitted in 2005.

Re: Item 3.b) on the agenda

Proposal for a Council Decision on the conclusion, on behalf of the European Community, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

1. Statement by the Commission in relation to the Declaration by the European Community in accordance with Article 19 of the Convention on access to information, public participation in decision making and access to justice in environmental matters

"The European Community, in accordance with the Treaty, is competent to enter into international agreements, and to implement the obligations resulting therefrom, that contribute to the pursuit of the objectives of its environmental policy. Moreover, the provisions of the Aarhus Convention fall within the Community framework since they are in a mixed agreement to be concluded by the Community and its Member States and concern a field in large measure covered by Community law.

Consequently, the European Commission disagrees with the modifications introduced by the Council to the proposed declaration of competence to the extent that they create ambiguity concerning Community competence based on the EC Treaty as regards access to justice at Member State level and they do not correctly reflect the legal consequences of ratification by the Community in relation of the application of Article 9(3) of the Convention in the Member States.

By stating that Member States are responsible for the performance of such obligations in the absence of provisions of Community law on the subject matter, the modified declaration of competence suggests that the Community is not competent in this respect. This is contrary to well established case law of the Court of Justice, as confirmed recently by the judgement of the Court in case C-239/03 ("Etang de Berre").

The European Commission reserves its right to make use of the legal means at its disposal."

2. Joint statement by the Council and the Commission

"Some activities in Annex I to the Convention may require consecutive decisions by a public authority or public authorities on whether to permit the activity in question. The European Community considers that each Party may, within the framework of its national legislation determine at what stage the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 may be challenged pursuant to Article 9(2)."

Re: Item 4 on the agenda

Proposal for a Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators

Statement by the Commission

"The Commission underlines the importance of impact assessments being carried out in line with the agreed interinstitutional objections of better regulation in future. These issues should be further explored between the three Institutions in the ongoing work under the Interinstitutional Agreement, with a view to reaching agreement on a methodology for such impact assessments."

Statement by the Council

"In the opinion of the Council, when the word "penalties" is used in the English version of legal instruments of the European Community, this word is used in a neutral sense and does not relate specifically to criminal law sanctions, but could also include administrative and financial sanctions, as well as other types of sanctions. When Member States are obliged under a Community act to introduce "penalties", it is up to them to choose the appropriate type of sanction in conformity with the case law of the ECJ.

In the Community language Data Base, the following translations are made of the word "penalty" in some other languages:

in Spanish, "*sanciones*", in Danish, "*sanktioner*", in German, "*Sanktionen*", in Hungarian, "*jogkövetkezmények*", in Italian, "*sanzioni*", in Latvian, "*sankcijas*", in Lithuanian, "*sankcijos*", in Dutch, "*sancties*", in Portuguese, "*sanções*", in Slovak, "*sankcie*", and in Swedish, "*sanktioner*". If, in revised English versions of legal instruments where the word "sanctions" has previously been used, this word is replaced with the word "penalties", this does not constitute a substantive difference."

Joint statement by Denmark, Estonia, Spain, Lithuania, Austria, Slovenia, Finland and Sweden

"The Danish, Estonian, Spanish, Lithuanian, Austrian, Slovenian, Finnish and Swedish delegations supported political agreement with a view to having the Directive adopted as soon as possible and thereby taking a first step towards prohibiting the use of cadmium in batteries and accumulators. Nevertheless, they regret the lack of ambition of the restrictions on the use of cadmium in batteries and accumulators. They also urge the Commission promptly to review the exemptions provided for in the Directive, with a view to prohibiting, in particular, the use of cadmium in batteries and accumulators used in cordless power tools."

Statement by Greece

"Greece indicated at the Council of 20 December 2004 that it intended to abstain from voting on the above proposal because it considered that the collection and recycling targets proposed were not realistic."

Statement by Ireland

"Ireland supports the introduction of effective measures for collection, treatment and recycling of waste batteries and accumulators and also measures aimed at minimising the risk of their disposal in the environment. Such measures are particularly essential against the background of continuing strong growth in the market for batteries and accumulators."

Ireland also welcomes the exemption for cordless power tools from the prohibition on placing on the market of portable batteries or accumulators that contain more than 0.002% of cadmium by weight as their inclusion in such a ban has not been justified on scientific, environmental or economic grounds. Ireland has, however, concerns about the way in which it is proposed to review this exemption and particularly the “closed” nature of the review. Ireland believes that it should be open to the Commission to review all issues concerning the use of such batteries and accumulators in cordless power tools and, taking account of the Review and the associated extended impact assessment, bring forward any necessary proposals for consideration by the Council and the European Parliament. Given this concern, Ireland will abstain when the Council adopts its common position."

Statement by Italy

"While Italy agrees with the general thrust of the political agreement reached by the Council on the proposal for a Directive, it cannot approve a text which is still incomplete and unclear and which, if finally approved at second reading, would result in a Directive that was difficult to apply in practice.

A number of aspects still lack clarification, especially as regards the identification of producers and of the various types of battery and accumulator.

Italy finds the proposed text in Annex III regarding recycling requirements for non nickel-cadmium and non-lead batteries and accumulators particularly unsatisfactory. That text lumps together without distinction batteries and accumulators produced from very diverse materials, which in some cases cannot be recycled through normal industrial processes.

In the hope that the deficiencies and imprecision that still mark this text can be rectified at second reading, Italy is therefore abstaining from the vote on the common position."

Re: Item 9 on the agenda**Proposal for a Regulation of the European Parliament and of the Council concerning the
Financial Instrument for the Environment (LIFE +)****Joint statement by Belgium, Estonia, Greece, Spain, Italy, Cyprus, Hungary, Malta, Poland,
Portugal, Slovenia, and Slovakia**

"Belgium, Estonia, Greece, Spain, Italy, Cyprus, Hungary, Malta, Poland, Portugal, Slovenia, and Slovakia reiterate our positions expressed at the October meeting of the Environmental Council. We strongly agree on the need to establish a Financial Instrument for the Environment, provided that the relevant contents of the very important existing environmental programmes (i.e., the LIFE III programme and its extension, the Urban programme, the NGO programme and Forest Focus) are maintained and the total financial envelope covering them is strengthened as appropriate.

Although most environmental actions should be delivered by mainstreaming into sectoral policies and measures, there remains a need for an instrument to deliver action of a uniquely environmental nature. In order to achieve this aim, the new instrument should support above all concrete actions on the ground for the implementation and further development of the 6th European Union Environmental Action Program. The 6th Environmental Action Program sets a number of policy objectives considered to be important to be achieved at Community level. Those are the areas where it has been fully agreed that there is an added value for taking action at Community level.

Taking into account the enlargement process, actions to implement these common objectives must have appropriate financial support from the Community.

Concerning the content of the LIFE+, as proposed by the Commission (doc. 13071/04), we remain convinced that, at this stage and bearing in mind that these general considerations will not affect the future negotiation of the specific proposal, the Financial Instrument for the Environment should also cover development and demonstration projects for clean technologies as well as nature conservation projects to support the implementation of environmental policies and legislation.

We express serious concerns about the current lack of appropriate funding provisions in other existing instruments which would guarantee at least the same benefits and good results as those achieved by the previous LIFE instrument, and recognized even by the Special Court of Auditors Report No 11/2003 on the Financial Instrument for the Environment (LIFE).

Moreover, concerning nature conservation projects, we believe that the potential support that Cohesion and Rural Development funding instruments may provide is not enough to achieve the Natura 2000 objectives. We also believe that delegating most of the funding needs for Natura 2000 almost entirely to other sectoral policy instruments would subordinate most of the co-funding for nature to economic and social objectives, therefore contradicting the basis of the EU sustainable development strategy, which advocates that the economic, social and environmental objectives of the EU are on equal footing.

We, therefore, are convinced that the future Financial Instrument for the Environment should at least fill any financial gaps that other sectoral funding instruments may leave. These gaps have been identified at least in the area of biodiversity (as shown in the non-paper prepared by Spain on this issue) and it has become clear that in this case the scope of sectoral funding instruments allows funding only for limited types of interventions, both in terms of the type of activities, actors involved, as well as type of habitats or species eligible. An adequate mechanism for filling funding gaps, setting criteria for eligibility and rates of co-funding should therefore be included, with a convenient budget, in the future Community funding instrument for the environment.

It is a fact that there is an uneven distribution of habitats and species within the EU, there are different types of conservation actions required across the Community and different levels of co-funding necessary in different Member States. Given the particularities of funding required for Natura 2000, we believe that the future Financial Instrument for the Environment should have an independent element, with its own independent budget, dedicated to the implementation of the Birds and Habitats Directives, to promote the conservation of habitats and species dependent on Special Protection Areas and Sites of Community Importance, not covered by other sectoral instruments.

Furthermore, concerning the new approach proposed by the Commission for programming, implementation and management of the financial instrument for the environment, we regret that the proposed regulation lacks adequate criteria in order to ensure a fair regulatory framework consistent with Member States' needs. In particular we express serious concerns about the lack of clear procedures and rules to involve Member State Authorities in a substantial manner in the setting of priorities and the management of funding within their respective territories.

Finally, taking into account the fragmented funding possibilities for different types of projects, for different habitat types and species as well as different actors and countries, in relation to their potential funding eligibility under relevant sectoral instruments, we believe that the proposed regulation should include a list of specific actions and that individual budgets should be earmarked for each broad area of action eligible under the proposed regulation."