Environmental protection: combating serious crime. Framework Decision. Initiative Denmark

2000/0801(CNS) - 20/12/2001 - Amended legislative proposal for reconsultation

By letter dated 11 February 2000, the Council consulted the European Parliament on the Danish initiative with a view to the adoption of a Council Framework Decision on the protection of the environment through criminal law. The Parliament gave its opinion on this proposal on 7 July 2000. In parallel, the Commission proposed a draft Directive of the European Parliament and of the Council aiming to penalise serious crimes against the environment (COD/2001/0076), proposal on which the Parliament has not yet given its opinion. The Council is examining in the meantime the Danish initiative and has made substantial amendments to the text which the European Parliament has already commented on. Consequently, it called on the Parliament to comment yet again on the text in the framework of reconsultation. The main amendments made by the Council mainly concern the legal base of this initiative. In fact, after the debate, it appeared that the Council considered this proposal, specified by the Commission in March 2001, and has come to the conclusion that the majority required for its adoption by the Council can not be obtained because that majority considered that the proposal went beyond the powers attributed to it by the Treaty establishing the European Community and that the objectives could be reached by adopting a Framework Decision on the basis of Title VI of the Treaty on European Union. Many Member States considered in particular that the Commission's proposal (please refer to COD/2001 /0076) falls outside of the competences allocated to the Commission by the Treaty and that it is possible to reach the objectives by adopting a framework decision on the basis of Title VI of the Treaty. The Council also considered that the present Framework Decision, based on Article 34 TEU, is a correct instrument to impose on the Member States the obligation to provide for criminal sanctions. The revised draft Framework Decision has finally established a wide-ranging jurisdiction with respect to environmental offences in such a way as to avoid that physical or legal persons would escape prosecution by the simple fact that the offence was not committed in their territory. It should be noted that the Commission has not indicated that it is prepared to modify its proposal either by changing its legal base or splitting it into two legal instruments, one based on Article 175 TEC and another based on Article 34 TEU.