Environmental protection: combating crime, criminal offences and penalties

2001/0076(COD) - 30/09/2002 - Modified legislative proposal

In its amended proposal, the European Commission accepted in full or partially 16 out of the 24 amendments adopted by the Parliament at its plenary session in April 2002. The amendments concern the following issues: - legal basis : the Commission agrees with the Parliament and proposes that the proposed Directive be based on Article 175(1) TEC); - subsidiarity principle :the amendment makes it clear that criminal law provisions are to be deployed at national level and that the Directive is not intended to empower the Community to intervene in national criminal law provisions; - Community competence : the amendment clarifies that, in the context of the distribution of powers between the Community and the Union, the proposal for a Directive under the first pillar is the appropriate legal instrument and that Article 175 (1) TEC is the correct legal basis for the protection of the environment through criminal law in the Community. It is fully in line with the Commission's position concerning the Community competence to oblige Member States to provide for criminal sanctions against breaches of environmental legislation; - reference to the Tampere European Council: referring to the political mandate given by the Tampere European Council, which identifies environmental crime as a priority sector where the Member States should agree common definitions and sanctions in the field of national criminal law. It is a political statement that is not appropriate in the recitals of a legal text; - clarifying that the use of criminal sanctions is indispensable for the purpose of enforcing environmental rules and that the EC Treaty provides scope for criminal sanctions; - more stringent national measures : Member States are free to maintain or introduce more stringent protective measures; - "production" of hazardous waste : Community environmental legislation does not provide for a general prohibition against the production of hazardous waste. For this reason, it is impossible to refer to production in the proposal; - extradition : this amendment suggests adding a reference to the fact that prison sentences referred to in the Directive are to be subject to extradition or surrender. Requiring that the penalties be such as to give rise to extradition is in conformity with other UE texts and is accepted in principle. The amendment is slightly reworded. On the other hand, the Commission rejects the amendments which make erroneous reference to Article 31 TEU. The reference to Article 31 (e) TEU focuses on EU ("third pillar") competence to provide for judicial cooperation in the fields of organised crime, terrorism and illicit drug-trafficking under the Title VI of the EU Treaty. It also rejects the amendment concerning the addition of a reference to instigation in the definition of "activities". It also rejects the idea of the deletion of the Annex to the proposal. This Annex has been considered as necessary as the Diretcive will oblige the member States to provide for criminal sanctions within their national legalsystems and that it would be impossible to provide so such criminal sanctions without them to be clearly defined. In addition, the Commission rejects more technical amendments for the reasons of legal uncertainty (in particular, the amendment concerning "harmful substances", the term is considered to be toovague and "nuclear materials" (it is legally impossible to provide for criminal sanctions against unauthorised activities dealing with nuclear materials under the legal basis of the proposal for a Directive, Art. 175 TEC. Lastly, the Commission rejects the proposal to add the word "criminal" to Article 4 of the proposal for linguistic reasons (this word does not have the same meaning in all the Community languages and risks slowing down the adoption of the Directive.