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

2000/0801(CNS) - 27/01/2003 - Final act

PURPOSE : to protect the environment through criminal law. COMMUNITY MEASURE : Council Framework Decision 2003/80/JHA on the protection of the environment though the criminal law. LEGAL CONTEXT : the Justice and Home Affairs Council, concerned about the progression of infringements to the detriment of the environment, recognised the need for establishing an 'acquis communautaire' intended to fight environmental criminality. Noting moreover that the infringements with the detriment of the environment exceed, by their effects, the borders of the States where these infringements are made, the Council wants answers to be found in order to fight against this type of criminality. Consequently, the Council adopted this framework decision, proposed by a Danish initiative, in order to establish police and judicial co-operation on the matter and to lay down minimum standards aiming at penalising, in the Member States, the serious offences against the environment. It should be noted that the Commission had also presented a proposal relating to the same topic (see COD/2001/0076) based on Article 175 of the TEC and aiming at establishing minimum standards of environmental protection through criminal law. However, the Council not having managed to find the majority necessary to adopt this text, decided to adopt the present framework decision based on Article 34 of the TEC which constitutes a suitable instrument to impose on the Member States the obligation to provide penal sanctions on their territory. CONTENT : according to this Framework decision, each Member State shall take the necessary measures to establish as criminal offences under its domestic law: - the discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes death or serious injury to any person; - the unlawful discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes or is likely to cause their lasting or substantial deterioration or death or serious injury to any person or substantial damage to protected monuments, other protected objects, property, animals or plants; - the unlawful disposal, treatment, storage, transport, export or import of waste, including hazardous waste, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; - the unlawful operation of a plant in which a dangerous activity is carried out and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; - the unlawful manufacture, treatment, storage, use, transport, export or import of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants; - the unlawful possession, taking, damaging, killing or trading of or in protected wild fauna and flora species or parts thereof, at least where they are threatened with extinction as defined under national law; - the unlawful trade in ozone-depleting substances; whencommitted intentionally. As regards the participation and instigation, each Member States shall take the necessary measures to ensure that participating in or instigating such behaviour is punishable. Concerning the sanctions for legal persons, each Member State shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as: a) exclusion from entitlement to public benefits or aid; b) temporary or permanent disqualification from the practice of industrial or commercial activities; c) placing under judicial supervision; d) a judicial winding-up order; e) the obligation to adopt specific measures in order to avoid the consequences of conduct such as that on which the criminal liability was founded. With regard to the extradition and prosecution, any Member State which, under its law, does not yet extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offices provides for above when committed by its own national outside its own territory. ENTRY INTO FORCE : 5 February 2003. IMPLEMENTATION IN THE MEMBER STATES : 27 January 2005. Before 27 April 2005, Member States shall communicate to the general Secretariat of the Council and to the Commission the texts of the provisions transposing it in their national law the obligations imposed on them by this Framework

Decision. On the basis of that information and a written report by the Commission, the Council shall no later than 27 January 2006 check the extent to which the Member States have take the measures necessary to comply with this Framework Decision. The Framework Decision shall apply to Gibraltar.