Environment: liability with regard to the prevention and remedying of environmental damage

2002/0021(COD) - 18/09/2003 - Council position

The Common Position was adopted by qualified majority, the Austrian, German and Irish delegations in disagreement. The scope of the Directive covers environmental damage to land, water and biodiversity caused by occupational activities (a number of exceptions is foreseen). It does not cover economic loss. The Directive sets out the obligation for operators to take preventive action when there is an imminent threat of damage and to take remedial action in case the damage has occurred - at their own expenses. The Directive differentiates between on the one hand, certain high-risk occupational activities - listed in an Annex - for which all environmental damage is covered and where strict liability applies and, on the other hand, occupational activities other than those listed, for which only damage to protected species and habitats is covered, if the operator is at fault or negligent. Furthermore, the text foresees: the possibility for the interested public to request action, cooperation between Member States in case of transboundary pollution, and the encouragement to develop financial security instruments. The provisions of this Directive are not retroactive, i.e. do not cover damage caused before the date of its implementation. The Council's common position accepts in total or in part 26 out of the 48 amendments to the proposal adopted by the European Parliament at first reading. Concerning the major innovations introduced by the Council: - Definitions : Article 2 on definitions has been streamlined. Some definitions have been deleted, others have been merged and/or moved to the relevant Annex (Annex II on Remedying of environmental damage) without substantially changing the Commission proposal. In relation to the definition of "environmental damage", however, the Council elaborated a number of criteria, now in Annex I to the proposed Directive, to facilitate the assessment of what would constitute a "significant" damage to protected species and natural habitats; - Exceptions : the common position does not exempt damage caused by an emission or event allowed in applicable law, or in the permit or authorisation issued to the operator or damage caused by emissions or activities which were not considered harmful according to the state of the art of scientific and technical knowledge at the time when the emission was released or the activity took place. However, in such cases, Member States may allow the operator not to bear the costs of remedial actions taken pursuant to the Directive where he demonstrates that he was not at fault or negligent. A new paragraph was added taking into account two international instruments on liability for maritime and inland navigation, to allow ship owners to limit their liability under national legislation. - Subsidiary state liability : the obligation for Member States, when the operator can not be identified, does not comply with its obligations or is not required to bear the costs, to ensure that the necessary preventive or remedial measures are taken has been modified. In such cases, according to the common position, the competent authority may decide to take preventive or remedial actions itself. In addition, a differentiation is made between long-term remediation activity and immediate response. In the event of an incident, to limit or prevent further damage, the common position foresees the immediate containment and removalof contaminants. - Cost allocation in case of multiple party causation: Article 9 of the common position is simplified and leaves this subject entirely within the competence of Member States. - Request for action : the common position also covers, with possible adaptations, the cases of imminent threat of damage. - Temporal application: Article 17 of the common position clarifies these provisions. - Reports and review : a new paragraph has been added to Article 18 of the common position listing the points to be reviewed (among others) by the Commission on the basis of the experience gained applying the Directive. Part of Annex VI, on the information to be included in the national reports, has been made optional for Member States.