Protection of environment against serious crimes

1999/0911(CNS) - 01/02/1999 - Legislative proposal

PURPOSE: establishment of a common system on combating serious environmental crime. CONTENT: In view of the increasing scale and frequent cross-border effects of environmental crimes, based on Article K.3 of the Treaty, this proposal seeks to set up a system to enable effective investigation and prosecution in Member States and effective police, criminal justice and administrative cooperation between Member States. The term 'serious environmental crime' is defines as acts or omissions, under aggravating circumstances and in breach of national environmental legislation, involving: - pollution of air, water, soil or subsoil resulting in substantial damage to the environment or a clear danger thereof, or - storage or disposal of waste or similar substances resulting in substantial damage to the environment or a clear danger thereof. 'Aggravating circumstances' are defined as: - the act or omission cannot be considered part of the normal, everyday operation of an otherwise lawful activity; - the offence is sizeable in scale, or - financial gain was obtained or sought. In assessing whether the offence is sizeable in scale, significance shall be attached to the following factors among others: - whether such behaviour is more regular or persistent, showing deliberate disregard for basic environmental considerations; - whether the offence committed was planned in advance, or - whether an attempt was made to conceal the pollution or storage, thereby increasing the damage or danger, by not taking any clean-up or preventive measures or taking them only at a very late stage. Member States are required to ensure that: a) serious environmental crime is punishable under criminal law in a way which is effective, commensurate with the offence, acts as a deterrent and may entail extradition; b) legal persons can be held criminally responsible, in accordance with national law, for serious environmental crime. They must also undertake to ensure that it is possible to seize and confiscate equipment and profits (or capital goods of equivalent value) in connection with serious environmental crime. Member States must also introduce provisions that: - anyone convicted of serious environmental crime may be precluded or disqualified from engaging in an activity requiring official authorisation or approval, where the facts established show a clear risk that the situation or activity might be abused; - anyone convicted of serious environmental crime may, where special circumstances so dictate, be disqualified from engaging in another activity or from being a founder, manager or director of a limited liability company, a company or association requiring special official approval or a fund; - serious environmental crime is covered by effective compensation rules and rules on environmental rehabilitation under national law. Measures also need to be taken by the Member States to ensurethat, in addition to the ordinary use of coercive measures such as searching and seizure, there are powers and methods of inquiry available such that law enforcement authorities can effectively investigate and prosecute serious environmental crime, while observing suitable legal safeguards. Provision is made for measures to coordinate the work of the competent authorities in the Member States (e.g. exchanges of information). Each Member State will designate one or more contact points for the collection and exchanging of information and the Council Secretariat shall prepare and keep an up to date list of Member States' contact points. The Council Secretariat as 'keeper of the register' will take charge of preparing, keeping and supplying a register of special skills or know-how with regard to the combat of serious environmental crime. Should Europol be assigned responsibility for dealing with environmental crime, it will be responsible for the register. Each Member State is asked to take the necessary steps to sign the 1998 Council of Europe Convention on the Protection of the Environment through Criminal Law by 1 June 1999. Each Member State is to ensure that it has placed before its legislature by 1 June 2000 proposals for ratification of the 1998 Convention. By the end of the year 2000, the Council is to assess, on the basis of information compiled by the Council Secretariat, whether Member States have fulfilled their obligations under this Joint Action or whether any further measures are required.