Environmental protection: combating crime, criminal offences and penalties

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PURPOSE : to ensure a more effective application of Community law on the protection of the environment by establishing throughout the Community a minimum set criminal offences. CONTENT : in order to guarantee a high level of protection of the environment the increasing problem of environmental crime must be tackled. The Community has adopted numerous acts of legislation protecting the environment. Member States have to transpose and implement those acts. Experience has shown, however, that the sanctions currently established by the Member States are not always sufficient to achieve full compliance with Community law. Not all Member States provide for criminal sanctions against the most serious breaches of Community law protecting the environment. Therefore, a minimum standard on constituent elements of criminal offences in breach of Community law protecting the environment needs to be established. In order to ensure its better and harmonised application in all Member States, this objective can be better achieved by the Community than at the level of the Member States. The proposed draft Directive shall only apply to activities which are in breach of Community law protecting the environment and/or rules adopted by Member States in order to comply with such Community law. Definitions of constituent elements of criminal acts are therefore to be read as corresponding definitions in existing Community law. The proposal does not cover all activities regulated by Community law, but only important types of pollution which can be attributed to individuals or legal persons. For instance, the directive would not apply to pollution caused by diffuse sources, even it is widely covered by Community law setting up quality objectives. With regard to natural persons, the Directive would oblige Member Sates to provide for effective, dissuasive and proportionate criminal penalties against breaches of Community law. In order to protect the environment effectively, it is important to include sanctions against complicity (participation and instigation) in the offences defined in Article 3. In serious cases, Member States would have to be provided for the possibility of imprisonment. As concerns legal persons, it is essential for effective enforcement of Community law protecting the environment that legal persons can be held liable and that sanctions against legal persons are taken throughout the Community. However, for some Member States it might be difficult to provide for criminal sanctions against legal persons without changing fundamental principles of their national legal systems. This proposal therefore sets a minimum standard of environmental protection through criminal law. According to Article 176 EC, Member States are free to maintain or to introduce more stringent protective measures. For instance, they may establish additional offences and/or additional types of sanctions or penalties.