Ship-source pollution: judicial cooperation to repress offences, criminal-law framework. Framework Decision

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PURPOSE : to strengthen the criminal law framework for a stricter enforcement of law against ship-source pollution. CONTENT : the purpose of this draft Framework Decision is to reinforce and complement the proposed EU Directive on ship-source pollution and criminal sanctions for pollution offences at sea (refer to COD/2003/0037). Specifically, it aims to fortify criminal law through the approximation of existing Member State provisions on pollution at sea. A further objective is to facilitate and encourage co-operation between the Member States in a bid to repress any such offences. In preparing this legislation the Commission has taken into account a number of already existing, international agreements governing protection of the marine environment. These include, for example, the United Nations Convention on the Law of the Sea (UNCLOS). This draft Framework Decision deals with the detailed rules for imposing penalties provided for by the Directive. Only specific aspects of them are dealt with however, leaving aside more horizontal aspects, which will be dealt with in other contexts. In the most serious cases prison sentences are foreseen - at levels in conformity with the conclusions of the JHA Council. Shorter sentences are not precluded under national law with Member States remaining free to provide for a level of penalties corresponding to lower thresholds. Four types of specific circumstances will fall under the "most serious" category. They include the committing of offences by a criminal organisation and offences as a result of which persons suffer death or serious bodily harm or substantial damage is caused to water quality or to animal or vegetable species or of parts of them. Other penalties include fines. Proposed levels consist of firstly, from 1% to 10% of turnover and secondly from 10% to 20% of turnover. Concerning jurisdiction, each Member State will take measures to establish jurisdiction in : - its inland waterway, (including ports); - its territorial waters; - straits used for international navigation subject to the regime of transit passage; - its exclusive economic area, established in accordance with international law; and - the high seas. Co-ordination between the Member States on proceeding for the settling of conflicts will be strengthened. Concerning criminal investigations in the Port state, port authorities will be allowed to begin criminal investigations if they suspect that a criminal offence has taken place. Further provisions in the proposed Framework Decision allow for Joint Investigations.