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MEETING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Judicial Cooperation in Criminal Matters (COPEN)
(Environmental Crime)

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Subject: Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC
- Swedish proposal regarding Article 5

Delegations will find attached the proposal for a revised text of Article 5, which was presented by the Swedish delegation during the COPEN Working Party this morning (Wednesday 7 September, 2022).



Ministry of the Environment
Legal Secretariat



Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC

Swedish proposal regarding Article 5

- We suggest deleting article 5.2 and 5.3 because they have little relevance as currently drafted. Environmental crime does not lead to death in such close connection in time to the offence that it can be part of a prosecution.
- As a consequence, offences committed with negligence will only fall under article 5.1.
- We suggest raising the minimum maximum term of imprisonment in articles 5.4 and 5.5 to 6 years and 4 years (as originally proposed by the Commission).
- Why? Articles 5.4 and 5.5 will apply to all environmental offences committed with intent, including those which cause severe damage to human health and the environment for generations. The society must be able to provide an appropriate, dissuasive and effective response to such severe offences.
- The thresholds are maximum penalties. The courts must in every specific case evaluate the seriousness of the crime committed and decide a penalty which is proportional.

Article 5

Penalties for natural persons

1. Member States shall take the necessary measures to ensure that offence referred to in Article 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.
- ~~2. Member States shall take the necessary measures to ensure that offences referred to in Article 3(2) points (a), (b), (c), (c)bis, (e), (i), (i)bis, (j) and (p) are punishable by a maximum term of imprisonment of at least ten years if the cause death to any person.~~
- ~~3. Member States shall take the necessary measures to ensure that offences referred to in Article 3(3), as it refers to Article 3(2) points (a), (b), (c), (c)bis, (e), (i), (i)bis and (j), are punishable by a maximum term of imprisonment of at least five years if they cause death to any person.~~
4. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(2) points [(a) to (e), (i), (i)bis, (j), (q) and (r)] are punishable by a maximum term of imprisonment of at least ~~five~~ six years.
5. Member States shall take the necessary measures to ensure that the offences referred to in Article 3(2)[points (f), (g), (h), (k) to (p)] are punishable by a maximum term of imprisonment of at least ~~three~~ four years.

(We have put the subpoints in article 5.4 and 5.5 within brackets since that is a separate issue.)