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MEETING DOCUMENT

From:	Presidency
To:	Delegations
N° prev. doc.:	13203/22
N° Cion doc.:	ST 14459/2021 + COR 1 + ADD 1 + ADD 2 REV 1 + ADD 3
Subject:	Proposal for a Directive on the protection of the environment through criminal law - Presidency suggestions following the bilateral meetings on 18 October 2022

Based on the bilateral meetings held on Tuesday 18 October, the Presidency concludes the following:

Regarding Article 5:

- The majority of Member States can support the current wording of Article 5 with paragraphs 2 and 3 included. Major concerns of Member States regarding the sanctioning of negligent causing of death by environmental offences seem to have been resolved by the revised text of recital 14.

Regarding Article 7:

- A large majority of Member States can support the criterion of worldwide turnover (WWT). Many of them prefer WWT to be the sole criterion for sanctioning legal persons.
- The Commission will be kindly asked to provide more information and examples regarding the application of the WWT, such as on how to deal with problematic situations, e.g. when a legal person has no turnover, when the turnover is not ascertainable, when the legal person has existed for a shorter period of time than a business year, etc.

- Several Member States still need an alternative to the calculation of fines. Since the alternative should be commensurate to the criterion of worldwide turnover to prevent forum shopping and disproportionate discrepancies between different Member States, the threshold of fixed amounts (i.e. the minimum-maximum levels) is proposed to be 40 and 20 million EUR, respectively, for serious and less serious offences.

Some Member States mentioned a need to change the recitals to clarify certain criteria. In regard to the bilateral meeting discussion, some changes are proposed in recitals 14, 15, 15a and 25, see the [annex](#). Changes to the revised text in 13203/22 have been marked in [blue](#).

NB: As regards the beginning of recital 15a, this sentence was moved from the end of recital 15.

Proposed changes in recitals 14, 15, 15a and 25

- (14) Sanctions for the offences should be effective, dissuasive and proportionate. To this end, minimum levels for the maximum term of imprisonment should be set for natural persons. **The maximum terms of imprisonment provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences in particular where they cause death to any person. The criminal law systems of all Member States include provisions on manslaughter homicide, either committed intentionally or with serious negligence. Member States should be able to rely on those general provisions, including their provisions on aggravating circumstances, when transposing the provisions in this Directive relating to offences that cause death to any person, whether committed intentionally or with serious negligence.**

- (15) Where **possible according to** national law ~~provides for it~~, legal persons should also be held criminally liable for environmental criminal offences according to this Directive. Member States whose national law does not provide for the criminal liability of legal persons should ensure that their administrative sanctioning systems provide for effective, dissuasive and proportionate sanctions types and levels as laid down in this Directive in order to achieve its objectives. **The maximum levels of fines provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences.** ~~Financial situation~~ The seriousness of the conduct, and the individual, financial and other circumstances of legal persons, should be taken into account to ensure the effectiveness, dissuasiveness and proportionality of the sanction imposed. With regard to maximum levels of fines in national law, Member States may either use a percentage of the total worldwide turnover of the legal person concerned, or they may determine the maximum level of fines in absolute amounts. **When implementing the criterion of the total worldwide turnover, Member States should provide for rules for the situations where the turnover of a legal person is non-existent or undetectable. Should these rules include the setting of minimum amounts of fines, then the minimum-maximum levels of these do not have to reach the levels established in this Directive. When transposing the provisions of this Directive regarding the calculation of minimum-maximum level of sanctions, Member States may choose one of the alternatives or both of them or combine the two, provided that the minimum standard of at least one of them is respected.**

(15a) Where Member States opt for minimum-maximum level of fines determined in absolute amounts, these should be laid down in national law. The highest levels of such fines should apply to the most serious forms of offences provided for in this Directive, which are committed by financially strong legal persons. The Member States which may decide on the method of their calculation of these levels of fines. ~~and should apply proportionally with regard to individual, financial and other circumstances economic and financial situation of the legal person at least to the most serious forms of offences provided for in this Directive.~~ The definition of the maximum level of fines is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate sanctions in the individual cases. As this Directive does not set out any minimum levels of fines, the judges or courts should, in any case, impose appropriate sanction with respect to the individual, financial and other circumstances of the legal person concerned and the seriousness of the conduct. The actual amount of fine imposed in an individual case is left to the discretion of the judge or court and while the maximum level of fine provided for the respective criminal offence by this Directive should be taken into account, the actual amount of fine imposed in an individual case does not have to reach the maximum level of fine determined by this Directive. ~~This Directive does not compel judges or courts to consider imposing disproportionate sanctions.~~ Member States are invited to regularly review the levels of fines determined in absolute amounts with regard to inflation and other changes in the value of money, in line with procedures set out in their national law. Member States not using EUR as their national currency should provide for minimum maximum levels of fines in their national currency that corresponds to the levels determined in this Directive in EUR on the date of adoption of this Directive. These Member States are invited to regularly review the levels also with regard to development of the exchange rate.

(25) (24) Environmental criminal offences harm nature and society. By reporting breaches of Union environmental law, people perform a service of public interest and play a key role in exposing and preventing such breaches, and thus safeguarding the welfare of society. Individuals in contact with an organisation in the context of their work-related activities are often the first to know about threats or harm to the public interest and the environment. Persons who report irregularities are known as whistleblowers. Potential whistleblowers are often discouraged from reporting their concerns or suspicions for fear of retaliation. Such persons should benefit from balanced and effective whistleblowers protection set out under Directive (EU) 2019/1937 of the European Parliament and of the Council, **which included Directive 2008/99/EC within its scope. Following the replacement of Directive 2008/99/EC by this Directive Directive (EU) 2019/1937, whistleblowers should, by virtue of this Directive (EU) 2019/1937, continue to benefit from that protection from the Member States bound by it.**
