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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Judicial Cooperation in Criminal Matters (COPEN) (Environmental Crime)
N° prev. doc.:	ST 14734/22
N° Cion doc.:	ST 14459 2021 + COR 1
Subject:	Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law - Drafting suggestions following the meeting on Monday 21 November 2022 (morning session)

During the meeting of the JHA Counsellors and Experts on Monday 21 November 2022 (morning session), the Presidency noted that the current text as set out in 14734/22 has large support by Member States.

However, in the light of some suggestions made by Member States, the Presidency invites Member States to consider the drafting suggestions on recital 10 and Article 7(3) as set out in the [Annex](#). The Presidency is willing to take these texts on board if the Member States prefer these to the relevant current texts.

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Drafting suggestions following the meeting on 21 November (morning session)

Recital 10

(10) The acceleration of climate change, biodiversity loss and environmental degradation, paired with tangible examples of their devastating effects, have led to the recognition of the green transition as the defining objective of our time and a matter of intergenerational equity. The references in this Directive to the relevant terms in Union environmental law used for the purpose of defining unlawful conducts should be construed, where applicable, in accordance with definitions provided in Union environmental law covered by this Directive. This Directive should therefore also cover any Union acts amending provisions or requirements relevant to defining unlawful conduct which falls within the scope of criminal offences defined under this Directive.

When drafting such amending Union acts, the legislators are encouraged to include a reference to this Directive. However, when new categories of unlawful conduct not yet covered by the scope of this Directive are defined in Union environmental law, an amendment to this Directive should be required to include those new categories of unlawful conduct in its scope.

Article 7(3)

3. Member States shall take the necessary measures to ensure that, at least for legal persons held liable pursuant to Article 6(1), offences referred to in Article 3(2) are punishable by criminal or non-criminal fines, the amount of which shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of the fines is not less than:
- (a) for offences referred to in Article 3(2) points (a) to (j), (n), (q), and (r):
 - (i) 5% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision;
 - (ii) 5% of the average total worldwide turnover of the legal person in the last three business years preceding, either the one in which the offence was committed, or the one of the fining decision; or**
 - (iii) an amount corresponding to EUR 40 million.

 - (b) for offences referred to in Article 3(2) points (k), (l), (m), (o), and (p):
 - (i) 3% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the offence was committed, or in the business year preceding the fining decision;
 - (ii) 3% of the average total worldwide turnover of the legal person in the last three business years preceding, either the one in which the offence was committed, or the one of the fining decision; or**
 - (iii) an amount corresponding to EUR 24 million.

(rest of text and corresponding recitals to be aligned)