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MEETING DOCUMENT

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| From: | General Secretariat of the Council |
| To: | Delegations |
| N° prev. doc.: | 8569/22 |
| N° Cion doc.: | 14459/21 + COR 1 |
| Subject: | Draft Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC |

Delegations will find attached a drafting suggestion by Sweden for Article 7.

PROPOSAL BY SWEDEN

As you are well aware we support the ambition to raise the level of sanctions to achieve an effective regulation against violations of the provisions in the directive. However, we are still concerned about Articles 7(3)–7(6) and oppose the proposed wording in the articles. No existing criminal law directive has a regulated minimum sanction level for legal persons, as proposed here. The MS criminal law systems are based on partly different traditions and principles, and it is therefore not appropriate to regulate criminal law matters of this nature at such level of detail as is proposed.

In order to, in at least some extent, meet the objections raised by us and other MS, the directive needs to leave some room for different solutions between the MS in this matter. To achieve this, we have drafted a proposal for the provision. The proposal should be perceived as an attempt to reach a compromise that is acceptable to more MS.

In substance, only Article 7 (4) is new but in addition to that new paragraph, we have tried to merge the different paragraphs with maximum limits into one paragraph (Article 7 (3)). That way, there is no need to repeat the same text in all different paragraphs. For the same reason, we propose that the text relating to the proportionality is placed in a single paragraph (Article 7 (5)). In that paragraph we have also tried to clarify the meaning of the last part of the sentence by adding the word “financial” as it is our understanding of the text that the referral to the situation of the legal person should be understood as the “financial” situation of the legal person.

See the proposed text below:

Article 7

1. (According to the latest proposal)
 2. (According to the latest proposal)
 3. Member States shall take the necessary measures to ensure that, for legal persons liable pursuant to Article 6(1), offences referred to in Article 3(2) are punishable by criminal or non-criminal fines. Member States shall take the necessary measures to ensure that the maximum limit of such fines shall not be less than
 - (i) 5 % of the total worldwide turnover of the legal person in the business year preceding the fining decision for offences referred to in Article 3(2) points (a) to (j), (n), (q), (r),
 - (ii) X % of the total worldwide turnover of the legal person in the business year preceding the fining decision for offences referred to in Article 3(2) points (a), (b), (c), (c)bis, (e) (i) and (ii), (i), (i)bis, (j), and p (i) and (ii) having caused death to any person. Such maximum limit is reduced to Y % for offences referred to in Article 3(3), as it refers to Article 3(2) points (a), (b), (c), (c)bis, (e) (i) and (ii), (i), (i)bis, (j), and p (i) and (ii), having caused death to any person, and
 - (iii) 3 % of the total worldwide turnover of the legal person in the business year preceding the fining decision for offences referred to in Article 3(2) points (k), (l), (m), (o), (p).
 4. **Member States may, regarding criminal fines, use other methods to provide a maximum limit and level of fines, provided that the result is similarly effective, proportionate and dissuasive to those listed in Article 7(3).**
 5. The Member States shall take the necessary measures to ensure that the level of fines is proportionate to the seriousness of the conduct and the financial situation of the legal person concerned.
 6. (According to the latest proposal)
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