



# EEB POSITION ON THE

Proposal for a Directive on

## THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

COM (2007) 51

Containing proposals for amendments

July 5, 2007

**EEB calls on the European Parliament and Council to strengthen and adopt this proposal, and not reduce its scope.**

### Introduction:

The European Environmental Bureau, the largest federation of environmental citizens' organisations in Europe, with members in all EU Member States as well as Croatia, Norway, Serbia, Switzerland and Turkey, welcomes the Commission's proposal, issued in February this year, for a Directive on protecting the environment through criminal law. EEB herewith presents several proposals to improve the text. Our main objectives are to ensure complementarity with the Environmental Liability Directive and promote the view that environmental crimes should not be treated leniently.

EEB fully endorses the need to ensure that certain violations of environmental law are treated as criminal offences throughout the EU. The Commission is right to speak about an increasing problem with environmental crime and the lack of adequate sanctions from Member States. EEB also agrees with the preventive aspects of having EU criminal legislation, including social disapproval and the deterrent effect of prison sentences or large fines. Such legislation would involve more neutral institutions, such as the police and courts, and the EU nature of the proposed measures will help prevent environmental crime, such as illegal dumping of waste, becoming concentrated in countries where punishment of offenders is currently unlikely.

*EEB calls on both Parliament and Council to accept the approach presented by the Commission, so as finally to make progress on this long overdue issue.*

**John Hontelez, Secretary General EEB**

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**Improvements EEB would like to see [see amendments below]**

## EEB AMENDMENTS TO THE

Proposal for a Directive on

# THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW

COM (2007) 51

### *Article 1*

#### *Subject matter*

This Directive establishes measures relating to criminal law in order to protect the environment more effectively. It addresses criminal liability only and is without prejudice to (any rules derived from) community or national law with respect to civil liability for environmental harm.

#### **EXPLANATION:**

*It is important to ensure that a criminal prosecution does not preclude at the same time the application of environmental liability legislation, which is focussed at repair of damage.*

### *Article 2*

#### *Definitions*

For the purpose of this Directive

[...]

- (b) “legal person” means any legal entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of their sovereign rights in accordance with the principle of sovereign immunity under international law, and for public international organisations.

#### **EXPLANATION:**

*This amendment is to ensure that the exception for States or other public bodies is not interpreted too widely.*

Article 5

Sanctions **for natural persons**

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[..]

2. Member States shall ensure that the commission of the offences referred to in Article 3 (b) to (h) is punishable by a maximum of at least ~~three years imprisonment~~ where the offence is committed with serious negligence and causes substantial damage to air, soil, water, animals or plants.

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3. Member States shall ensure that the commission of the following offences is punishable by a maximum of at least ~~five years~~ imprisonment:

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- (a) the offence referred to in Article 3(a), where the offence is committed with serious negligence;
- (b) the offences referred to in Article 3 (b) to (f), where the offence is committed with serious negligence and causes the death of or serious injury to a person;
- (c) the offences referred to in Article 3 (b) to (h) where the offence is committed intentionally and causes substantial damage to air, soil, water, animals or plants;
- (d) the offences referred to in Article 3, where the offence is committed in the framework of a criminal organisation within the meaning of Framework Decision [...] on the fight against organised crime].

4. Member States shall ensure that the commission of the following offences is punishable by a maximum of at least ~~ten years~~ imprisonment:

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- (a) the offence referred to in Article 3 (a), where the offence is committed intentionally;
- (b) the offences referred to in Article 3 (b) to (f) where the offence is committed intentionally and causes the death of or serious injury to a person.

5. The criminal sanctions provided for in this article **shall** be accompanied, **where appropriate**, by other sanctions or measures, in particular:

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- (a) the disqualification of a natural person from engaging in an activity requiring official authorization or approval, or founding, managing or directing a company or a foundation, where the facts having led to his conviction show a high risk that the same kind of criminal activity may be pursued again;
- (a) the publication of the judicial decision relating to the conviction or any sanctions or measures applied;
- (b) the obligation to reinstate the environment.

**EXPLANATION:** These amendments are to

- clarify the nature of the sanctions
- ensure that maximum sentences are not too low, and that there is a common minimum for the EU.
- emphasize that the additional sanctions should always be considered at least.

## Article 6

### Liability of legal persons

[...]

ADD:

- 4. Member States shall ensure that in case liability of a legal person arises pursuant to paragraph 1 or 2 of this Article, criminal liability of natural persons having**
- (a) a power of representation of the legal person, or**
  - (b) an authority to take decisions on behalf of the legal person, or**
  - (c) an authority to exercise control within the legal person**
- whose action or lack of supervision or control made the commission of an offence possible, shall be investigated.**

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**EXPLANATION:**

*This amendment is to ensure that in appropriate cases both a legal AND a natural person are being prosecuted.*

## Article 7

### Sanctions for legal persons

[..]

2. The fines provided for in paragraph 1 shall be:

- (a) of a maximum of at least ~~EUR 300 000~~ and at least EUR 500 000 in cases where an offence referred to in Article 3 (b) to (h) is committed with serious negligence and causes substantial damage to air, soil, water, animals or plants.

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(b) of a maximum of at least EUR 1 000 000 in cases where:

- i) the offence referred to in Article 3 (a) is committed with serious negligence, or
- (ii) an offence referred to in Article 3 (b) to (h):
  - is committed with serious negligence and causes the death or serious injury of a person, or
  - is committed intentionally and causes substantial damage to air, soil or water or to animal or plants, or
- (iii) an offence referred to in Article 3 is committed intentionally in the framework of a criminal organisation within the meaning of Framework Decision [... on the fight against organised crime];

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(c) of a maximum of at least EUR 10 000 000 in cases where:

- (i) an offence referred to in Article 3 (a) is committed intentionally, or
- (ii) an offence referred to in Article 3 (b) to (f) is committed intentionally and causes the death or serious injury of a person.

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Member States may apply a system whereby the fine is proportionate to the turnover of the legal person, to the financial advantage achieved or envisaged by the commission of the offence, or to any other value indicating the financial situation of the legal person, provided that such system allows for maximum fines, which are at least equivalent to the minimum for the maximum fines. Member States that implement the Directive in accordance with such a system shall notify the Commission that they intend to do so.

[..]

4. The sanctions provided for in this article shall be accompanied, where appropriate, by other sanctions or measures, in particular:

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- (a) the obligation to reinstate the environment;
- (b) the exclusion from entitlement to public benefits or aid;
- (c) the temporary or permanent disqualification from the practice of industrial or commercial activities;
- (d) the placing under judicial supervision;
- (e) a judicial winding-up order
- (f) the obligation to adopt specific measures in order to eliminate the consequences of conduct such as that on which the criminal liability was founded
- (g) the publication of the judicial decision relating to the conviction or any sanctions or measures applied.

**EXPLANATION:** *These amendments are to*

- *ensure that maximum sentences are not too low, and that there is a common minimum for the EU.*
- *emphasize that the additional sanctions should always be considered at least.*

## Article 9

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They ensure sufficient staffing and training with the relevant services, to ensure that the capacity of the authorities and courts meet the challenge of substantially reducing environmental crime. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.  
[...]

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**EXPLANATION:**

*It is important to emphasize that real harmonisation of circumstances does not only rely on the transposition of legislation, but in particular on an effective police force and courts with sufficient training and capacity to work on environmental crime.*