

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (88) 18

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES**

**CONCERNING LIABILITY OF ENTERPRISES HAVING LEGAL PERSONALITY**  
**FOR OFFENCES COMMITTED IN THE EXERCISE OF THEIR ACTIVITIES<sup>1</sup>**

*(Adopted by the Committee of Ministers on 20 October 1988  
at the 420th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the increasing number of criminal offences committed in the exercise of the activities of enterprises which cause considerable damage to both individuals and the community;

Considering the desirability of placing the responsibility where the benefit derived from the illegal activity is obtained;

Considering the difficulty, due to the often complex management structure in an enterprise, of identifying the individuals responsible for the commission of an offence;

Considering the difficulty, rooted in the legal traditions of many European states, of rendering enterprises which are corporate bodies criminally liable;

Desirous of overcoming these difficulties, with a view to making enterprises as such answerable, without exonerating from liability natural persons implicated in the offence, and to providing appropriate sanctions and measures to apply to enterprises, so as to achieve the due punishment of illegal activities, the prevention of further offences and the reparation of the damage caused;

Considering that the introduction in national law of the principle of criminal liability of enterprises having legal personality is not the only means of solving these difficulties and does not exclude the adoption of other solutions serving the same purpose;

Having regard to Resolution (77) 28 on the contribution of criminal law to the protection of the environment, Recommendation No. R (81) 12 on economic crime and Recommendation No. R (82) 15 on the role of criminal law in consumer protection,

Recommends that the governments of member states be guided in their law and practice by the principles set out in the appendix to this recommendation.

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1. When this recommendation was adopted, the Representatives of the Federal Republic of Germany and of Greece, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of their Governments to comply with it or not.

## Appendix to Recommendation No. R (88) 18

The following recommendations are designed to promote measures for rendering enterprises liable for offences committed in the exercise of their activities, beyond existing regimes of civil liability of enterprises to which these recommendations do not apply.

They apply to enterprises, whether private or public, provided they have legal personality and to the extent that they pursue economic activities.

### I. *Liability*

1. Enterprises should be able to be made liable for offences committed in the exercise of their activities, even where the offence is alien to the purposes of the enterprise.
2. The enterprise should be so liable, whether a natural person who committed the acts or omissions constituting the offence can be identified or not.
3. To render enterprises liable, consideration should be given in particular to:
  - a. applying criminal liability and sanctions to enterprises, where the nature of the offence, the degree of fault on the part of the enterprise, the consequences for society and the need to prevent further offences so require;
  - b. applying other systems of liability and sanctions, for instance those imposed by administrative authorities and subject to judicial control, in particular for illicit behaviour which does not require treating the offender as a criminal.
4. The enterprise should be exonerated from liability where its management is not implicated in the offence and has taken all the necessary steps to prevent its commission.
5. The imposition of liability upon the enterprise should not exonerate from liability a natural person implicated in the offence. In particular, persons performing managerial functions should be made liable for breaches of duties which conduce to the commission of an offence.

### II. *Sanctions*

6. In providing for the appropriate sanctions which might be imposed against enterprises, special attention should be paid to objectives other than punishment such as the prevention of further offences and the reparation of damage suffered by victims of the offence.
7. Consideration should be given to the introduction of sanctions and measures particularly suited to apply to enterprises. These may include the following:
  - warning, reprimand, recognisance;
  - a decision declaratory of responsibility, but no sanction;
  - fine or other pecuniary sanction;
  - confiscation of property which was used in the commission of the offence or represents the gains derived from the illegal activity;
  - prohibition of certain activities, in particular exclusion from doing business with public authorities;
  - exclusion from fiscal advantages and subsidies;
  - prohibition upon advertising goods or services;
  - annulment of licences;
  - removal of managers;
  - appointment of a provisional caretaker management by the judicial authority;
  - closure of the enterprise;
  - winding-up of the enterprise;
  - compensation and/or restitution to the victim;
  - restoration of the former state;
  - publication of the decision imposing a sanction or measure.

These sanctions and measures may be taken alone or in combination, with or without suspensive effect, as main or as subsidiary orders.

8. When determining what sanctions or measures to apply in a given case, in particular those of a pecuniary nature, account should be taken of the economic benefit the enterprise derived from its illegal activities, to be assessed, where necessary, by estimation.
9. Where this is necessary for preventing the continuance of an offence or the commission of further offences, or for securing the enforcement of a sanction or measure, the competent authority should consider the application of interim measures.
10. To enable the competent authority to take its decision with full knowledge of any sanctions or measures previously imposed against the enterprise, consideration should be given to their inclusion in the criminal records or to the establishment of a register in which all such sanctions or measures are recorded.