

Workshop:

“Making the case against environmental crime”



25 March 2015, Grenada

Summary

Introduction

The following is a summary of a workshop held as part of the EU-funded research project “European Union Action to Fight Environmental Crime” (EFFACE, www.efface.eu). This reports provides a summary of the main recommendations arising from the workshop. The proposed objectives of the workshop were mainly: i) to present the results of some of the EFFACE case studies¹; ii) to discuss and receive feedback on the selected EFFACE case studies; iii) to trigger some reflections on the usefulness and limits of the case study method for studying environmental crime and developing policy recommendations, investigating whether results of individual case studies can be generalized across time and space. In addition to the views of the members of the EFFACE project, the workshop brought experts such as the Chief Spanish Prosecutor for Environmental Crime, a former European Commission Chief Counsel on the Environment, academics and an INTERPOL officer.

The case studies selected for the presentation at the workshop were the followings:

The Aznalcollar and Kolontar mining accidents: A case study on the criminal responsibility of operators and administrators, presented by Prof. Teresa Fajardo (University of Granada). The presentation focused on the effectiveness of the EU environmental criminal law and liability regimes to prevent and to sanction environmental crimes related to mining activities in two EU Member States, examining cases in Spain and Hungary: the Aznalcollar and the Kolontar mining accidents. In both cases, criminal charges were brought against the operators and the administrations with different results. In the case of Spain, the criminal charges were dismissed. In the case of Hungary, civil law and criminal law proceedings are still on-going before the Hungarian courts. Specific insights were related to the fact that these mining accidents have some aspects in common and share some legal challenges for the enforcement of environmental law and environmental criminal law. Both accidents raise important questions on the shortcomings of the existing legislation at the moment of the catastrophe regarding i) licenses and authorization procedures, ii) remedial measures, iii) financial guarantees, and iv) legal liability, both criminal and civil.

Environmental crime in Armenia: A case study on mining, presented by Prof. Christoph Stefes (Ecologic Institute; University of Colorado Denver). In the presentation, he underlined that despite the fact that the Republic of Armenia (RA) is signatory to several international environmental treaties and conventions, environmental laws are weak, contradictory, and rarely enforced. Moreover, corruption is widespread at all levels of the state apparatus. Specific insights emerged with regard to the fact that environmental non-governmental organizations have emerged as the crucial defenders of RA's environment, monitoring environmental pollution and denouncing offenders. Moreover, it was emphasized that i) the EU and the governments of its Member States should support RA's environmental NGOs in addition to the already existing technical cooperation projects that involve RA's state agencies and that ii) the EU needs to incentivize compliance with international agreements and help with the development of local institutions to enforce both international and national laws.

¹ The power point slides of the presentations are available on the EFFACE project website (www.efface.eu). The case studies produced in EFFACE are available at <http://efface.eu/wp4-environmental-crime-case-studies-0>

Mining gold and mercury pollution in the Guiana Shield: A case study on the role of the EU in fighting environmental crime, presented by Wouter Veening (President of the Institute for Environmental Security – IES). He underlined several issues, in particular, in particular that that the EU should have stronger legal tools at its disposition to play its role to combat what, in some Member States, is already considered a criminal offence, namely the serious environmental harm caused by mercury pollution. A particular problem, however, is the fact that the UN Minamata Convention banning the use of mercury that can enter the environment does not contain provisions to directly decrease and ban the use of mercury in the so-called artisanal and small-scale mining sector (ASGM). It was emphasized that this is a serious deficiency, as the risk to exposure to the highly toxic substance of mercury will inexorably increase. It was also noted the importance for the EU to also strictly implement its own Regulation to ban the exports of mercury (and mercury compounds) and to stimulate the application of criminal law in case the regulation is violated.

Illegal shipment of e-waste from the EU: A case study on the illegal export of e-waste from the EU to China, presented by Andrea Illes (Institute for European Environmental Policy - IEEP). It was explained that China represents the largest downstream destination for e-waste exported from North America and Europe; around 80 per cent of the total global amount of e-waste ends up in Asia – with around 90 per cent shipped to China. Despite the fact that the import of e-waste into China has been officially banned since 2000, estimates suggest that around 8 million tons of e-waste is imported illegally into China every year. The EU legislative framework to fight illegal e-waste shipments (the Waste Shipment Regulation and the WEEE Directive), which has been significantly amended in recent years, was found to be sufficiently coherent and does not show major gaps. The recent legislative amendments have the potential to improve inspection and enforcement on the ground, but it remains to be seen whether this will effectively occur. However, there is still no level playing field within Europe as a result of differences in implementation and interpretation at the Member State level. This holds true in particular for prosecution: the number of infringements actually brought to the courts, the extent to which penalties are applied and the levels of the actual penalties vary greatly. It was pointed out that enforcement in the EU suffers from differences in implementation of relevant legislation among Member States. From the presentation it emerged that, given the complexity of the e-waste problem, approaches beyond enforcement and inspections are needed.

Overall conclusions from EFFACE case studies, presented by Prof. Anna Rita Germani (University of Rome “La Sapienza”). It was noted that the twelve case studies produced by EFFACE do not seek to encompass the full range of issues addressed within the project but aim to contribute to the understanding of some specific important concerns. Given the high heterogeneity of the case studies, in terms of both methodologies applied (i.e., legal-qualitative, economic-quantitative approaches) and themes considered, if on one hand, making a cross-case comparative analysis is not possible, on the other hand, they offer a number of possibilities to think about common factors. Therefore, an attempt of aggregation of the twelve case studies was provided based on the analytical framework’s research questions that have been grouped in five thematic areas: i) definition and understanding of what is “environmental crime”; ii) motivations and drivers to commit environmental crime; iii) link between environmental crime and organised crime; iv) effectiveness of enforcement procedures; v) information and data on environmental crime; vi) coherence of the EU framework. In order to address these research questions, different methodological approaches (qualitative/quantitative empirical analysis) have been employed. Some overarching considerations were in relation to i) the recent global economic crisis which seems to have worsened environmental problems (i.e., circumventing the regulations in force, at both national and EU level), and ii) the socio-political, economic, and cultural contexts which are important in each of the case studies, creating the landscape within which illegal actions were initiated and carried out. Overall, from the aggregation of the 12 case studies, a list of recommendations has emerged:

- a) legislative policy changes;
- b) improvement of inter-agency co-operation in enforcement

- c) strengthening public participation as an important precondition for effective law enforcement;
- d) EU law harmonization offers a unique opportunity to the different legislators to restructure environmental protection laws but a less fragmented system should be created to ensure that enforcement is more focused on effectiveness.

Among the conclusive considerations, it was underlined that the EFFACE case studies have helped to provide some clues on the “reality” behind some specific environmental illegal actions. However, many important questions remain and a continued sharing of experiences is vital to improve the breadth and depth of our understanding of how to best tackle environmental crimes at both national and European level.

During the workshop and final round table discussion there was a large measure of common thinking among participants on enforcement, efficiency of environmental legislations and corruption. It was recognized that for an effective fight against environmental crimes, it is important to have a coordinating pool of environmental prosecutors which have the assistance not only of police officers units but also of a “technical” unit composed by environmental scientists, chemists, economists, etc. There are several actors that are pushing institutions and political authorities to implement more effective laws and enforcement procedures to fight environmental crimes but stronger coordination efforts among those actors (Interpol, Europol, grassroots movements, NGOs, single citizens etc.) is necessary.

A point was made with regard to the opportunity to prosecute cases as corruption cases: in Spain, for example, where many cases of environmental crimes are related to land and building speculation it has been useful to prosecute them, in the first instance, as corruption cases.

There was acknowledgement of the experience of the public prosecutors’ office for the protection of the environment and land planning in Spain, which shows the role of NGOs in fighting environmental crimes. Environmental prosecutors could build a useful database, as emerged in the case of Spain, but the general lack of resources hamper the conduction of long and (sometimes) difficult investigations. In this regard, during the workshop, it strengthening cooperation and research collaboration between environmental prosecutors and academics was considered desirable.

The point was made that increasing the role for NGO’s raising public awareness, increasing transparency and fighting corruption are all very important actions that should be developed step by step to tackle the failure of our society in not adequately protecting the environment. Participants of the workshop recognized that the biggest problem is that enforcement agencies in the majority of the EU Member States do not enforce. The exchange of information on economic, social, and environmental consequences of environmental crimes should be improved to raise awareness of the real problems and to better coordinate lawmakers and policy-makers.

With regard to the illegal e-waste shipment, a specific insight that was developed in the brainstorming was related to the need to understand who is involved in the actual trade and the logistic trails that enable the movement of illicit goods from source to final destination (buyer), and in what capacity they are involved. A stronger focus on agency would also encourage attention to response strategies (i.e., for prevention, interdiction and prosecution); the agencies involved should strengthen their approaches of investigation and develop a global information network aimed at controlling and deterring the illegal traffic of e-waste, especially when it comes from the industrialized world to developing countries.

During the workshop there was an interesting discussion on the definition of environmental crime during which emerged the different viewpoints between experts with a law background and academics with research background. One of insights of this discussion was that the definition needs to be flexible because of the changing nature of crimes.

It was pointed out that there is the risk that the current economic crisis can increase the actual environmental problems in Europe; the fear is that European authorities concentrate and prioritize their

attention only on economic growth and job market problems. A European action program for the environment is therefore needed.

All the participants agreed on the need to create synergies between efforts and actions in order to enforce the law and to prevent and minimize illegal activities. With this respect, the exchange of information and communication in the years to come should be improved to raise awareness of the real problems to better coordinate policy responses. Confidentiality of information about environmental standards should be abandoned in Europe; better access to the information on infringements of European environmental laws should be granted to all citizens. For this aim, it was suggested that we should look at the enforcement problem with an international perspective; it will be also useful to implement more informal meetings among the actors of the enforcement chain (NGOs, regulatory agencies, enforcement agencies, etc.) strengthening the efforts towards a better global governance of the environment.

Overall, the workshop was a much appreciated opportunity to share the different experiences coming from the case studies and from the external experts who attended. The most desirable actions that governments should take envisioned by workshop participants included one in which environmental public awareness is prioritized, NGOs empower victims to identify their rights, environmental conflicts are identified and geographically mapped, data become more widely available, networking and cooperation and information-exchange among investigative agencies and enforcement authorities are strengthened. In a friendly and stimulating environment, we were able to share ideas, goals for future research, and engage in problem-solving dialogue.



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