

22 October 2015, London

## Summary<sup>1</sup>

This document provides a summary of a workshop held in London on 22 October 2015 in the framework of the EU-funded project “European Union Action to Fight Environmental Crime” (EFFACE, [www.efface.eu](http://www.efface.eu)). The workshop was organized by METRO<sup>2</sup> in cooperation with the Institute for Environmental Security (IES)<sup>3</sup> and hosted by the Queen Mary University of London (QMUL).<sup>4</sup>

The workshop served to discuss the final conclusions and policy recommendations, which the EFFACE project is developing, with experts and stakeholders. The conclusions and recommendations will address issues at both the EU and national levels. This document features an overview of all (draft) recommendations, which were circulated to workshop participants prior to the workshop and again presented during the workshop, and the key points of the discussions that followed. It should be noted that the workshop was held under Chatham House Rules, i.e. views expressed are not attributed to specific individuals. Participants of the workshop included judges, prosecutors, representatives of public authorities at the national and EU level as well as NGOs, and academics.

After words of welcome by Valsamis Mitsilegas and Malgosia Fitzmaurice (QMUL), Christiane Gerstetter (Ecologic Institute<sup>5</sup>) and Michael Faure (METRO) briefly introduced the EFFACE project, which is at the end of its third year and which will end in March 2016, as well as the goals of this workshop and the work done so far on conclusions and recommendations.

## Discussion of policy recommendations

The draft policy recommendations were separated in five groups (topics), to facilitate the discussion: recommendations concerning the EU level (1), Member States (2), guidelines addressed at courts and enforcement institutions (3), improving enforcement cooperation and data collection (4) and other recommendations, including EU activities concerning third countries or the international level, i.e. the external dimension (5). Moreover, a distinction was made between core proposals, supplementary proposals and topics for further research.<sup>6</sup> Each topic and policy recommendation was briefly introduced by one of the EFFACE partners (summarized in italics below), before allowing discussants and the whole audience to give comments.

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<sup>2</sup>METRO (Maastricht Institute for Transnational Legal Research (<http://www.maastrichtuniversity.nl/web/Institutes/METRO/AboutMETRO.htm>) is an EFFACE partner.

<sup>3</sup>IES (<http://www.envirosecurity.org>) is an EFFACE partner.

<sup>4</sup>QMUL (<http://www.qmul.ac.uk>) is an EFFACE partners.

<sup>5</sup>Ecologic Institute ([www.ecologic.eu](http://www.ecologic.eu)) coordinates the EFFACE project.

<sup>6</sup>The label ‘supplementary proposal’ does not necessarily mean that those proposals are less important than core proposals. However, the distinction provides some indication for the priority setting at the policy level. The reason why also recommendations for further research are formulated is that along the research in different policy areas some potentially important issues were discovered (such as the possibility to increase the role of victims in the criminal procedure). However, in order to make solid recommendations on those specific points, further and more detailed research is needed, which was not the subject of EFFACE.

## Proposals concerning the EU level

Core proposal 1: The fact that environmental crime has been committed in the context of organised crime should be considered an aggravating circumstance in the environmental crime directive.

*Several EFFACE studies have identified that in some cases criminal organisations engage in environmental crime. The fact that environmental crime takes place within the context of organised crime does give it a more serious character. Hence, this should be considered an aggravating circumstance, leading to the possibility for the judge to impose an increased penalty. This possibility should be made explicit in the Environmental Crime Directive. The notion of organised crime may undoubtedly be a very vague one on which national interpretations may vary. Precisely for that reason this may be subject to further development via guidelines.*

This proposal is widely supported, to the extent that in some Member States organised crime does not yet constitute an aggravating circumstance. However, some participants stress that the concept 'organised crime' has already been defined elsewhere, e.g. in conventions, and that (inter alia because EU law-making is a slow process) these earlier definitions should be used as a basis. Also, it may be difficult and potentially risky to try to define (the scope of) organized crime. Moreover, one participant raised the question whether focusing on "organised crime" might diverge attention from the more important issue of "white collar crime", which is sometimes not regarded as organised crime.

The question is raised whether the concept 'aggravated circumstance' implies that the EU needs to prescribe minimum sanctions.

Core proposal 2: Rules on the confiscation of forfeiture of the proceeds of environmental crime should be adopted at the EU level.

*Restoration of harm done in the past is one of the crucial starting points of these recommendations. Not only the environment, but also the perpetrator should be put back in the position he was in before the crime. This is referred to as "restitutio ad integrum". That does not only mean that for instance illegally deposited waste would have to be removed, but also that when profits were made as a result of environmental crime, these profits should be seized and forfeited. This is a recommendation to be implemented at the EU level, since it also contributes to making penalties "dissuasive, effective and proportional". This implementation could take place via a revision of the Environmental Crime Directive, but also in other specific instruments addressing the proceeds of crime (e.g. the Money Laundering Directive or the Directive on the Freezing and Confiscation of Proceeds of Crime).*

The importance of restoration of harm done is supported by all. Whether this is an EU matter or a national matter, is a point on which opinions seem to differ. If the EU intervenes, it is recommended to use existing legal instruments.

Core proposal 3: Impose an obligation on Member States to provide data on the number of violations, prosecutions and imposed sanctions for violations of European environmental law, commonly referred to as the environmental acquis.

*In order to be able to verify whether violations are indeed sanctioned with "effective, dissuasive and proportional" penalties it is necessary that data is available in order to verify in what way Member States implement this obligation.*

This proposal is generally supported. Several discussants stress the importance of monitoring and reporting on results of enforcement. A distinction can be made in this regard between outputs (e.g. number of prosecutions) and outcomes (e.g. fewer people/companies engaging in environmental crime). However, as pointed out by one discussant, outcomes are much more difficult to monitor and measure. Reports of Member States should include administrative sanctions as well, cover regional specifics (e.g. Wales vs. England) but also elaborate on resources available (e.g. number of prosecutors working on environmental

crime for which part of their working time). The idea of a directive aimed at the (integrated) reporting on data at the national level is also mentioned. Others stress the importance of guidelines instead (see also the discussion on that specific topic below). One participant notes that data gathering and better exchange of data do not necessarily lead to a significant additional burden for authorities; experiences from Ireland are mentioned as a positive example. A suggestion is also made that the EU could not only impose an obligation on Member States to gather such data, but also to actively publish and disseminate it so that e.g. NGOs could take action in response to shortcomings identified.

It is also highlighted that better data may lead Member States to move forward on the matter; in recent discussions on environmental crime at the EU level, some Member States were reluctant to move forward on the topic of environmental crime, because there was a lack of data showing its seriousness.

Core proposal 4: Specific rules with respect to harmonized minimum criminal sanctions applicable to wildlife crime and illegal trafficking of waste need to be adopted at EU level.

*Both EFFACE case studies and other research with respect to inter alia wildlife crime have identified particular cross-border types of environmental crime as particularly problematic and requiring more attention, both at the legislative phase and concerning applicable sanctions.*

This proposal, though supported by various participants, is not fully supported by everyone, as it may interfere too much with discretion at the national level. Some participants state that this proposal should be supported by arguments why for these two particular types of crime harmonisation is seen as desirable.

Supplementary proposal 1: Make clear in the language of Directive 2008/99 that not only criminal sanctions can provide “effective, dissuasive and proportional” penalties.

*Given the starting point that criminal law is a tool of last resort, it should be signalled in the Directive that other remedies (civil or administrative sanctions) could, in principle, also be effective, proportional and dissuasive. This suggestion is especially important in the light of developments in Member States towards an increasing use of (particularly) administrative fines for environmental crime.*

The ‘toolbox approach’ to sanctioning, also discussed below under recommendations for Member States, is supported by many participants. One discussant, however, argued that it is not the aim of a directive dealing with criminal law to consider administrative or civil sanctions.

It was stressed that, although criminal sanctions are a tool of last resort, they do have an important expressive function and in some cases are the only effective sanction. Moreover, although criminal law is relatively slow and expensive, it can facilitate investigations by allowing investigators to use certain techniques (e.g. wire tapping).

Supplementary proposal 2: Improve the Environmental Liability Directive

*Improving environmental liability and hence private enforcement can be an important tool in the fight against environmental harm. One issue to be considered in this regard is to make the Environmental Liability Directive and the Environmental Crime Directive more consistent with each other, e.g. in relation to what is considered an environmental damage.*

The importance of liability rules as an element of the ‘instrument toolbox’ is supported by all but not discussed in detail. In relation to this, it is mentioned that environmental NGOs may sometimes be able to bring a case when a prosecutor is unable to do so [JR].

Topic for debate: do we need minimum sanctions?

The EFFACE team also presented a list of arguments for and against harmonisation of minimum sanctions on environmental crime and explained that no position would be taken on this matter as convincing arguments existed both for and against the proposition and EFFACE had produced no conclusive evidence on the matter.<sup>7</sup>

The participants in the workshop also disagreed on the matter, with some more inclined to favour harmonisations of minimum sanctions at the EU level, notably because of the significant divergence in sanctions applied in Member States, and others opposing it. Among others, it was questioned whether Art. 83 TFEU would actually be a sufficient basis for harmonising minimum sanctions on environmental crime by one discussant.

Further on the issue of minimum sanctions, one discussant suggests a directive on environmental sanctions providing a toolbox with a range of sanctions and leaving discretion to Member States. It is always important to keep in mind *why* certain sanctions are imposed (e.g. changing behaviour, eliminating financial incentives of crime, proportionality, compensation and deterrence). One discussant mentions that increasing the level of penalties does not automatically lead to higher deterrence, e.g. according to the criminological literature. Moreover, high sanctions sometimes have a perverse effect; prosecutors may consider them too severe and thus choose not to prosecute a certain crime. Also in that respect, better information on what courts are doing in practice is important.

EFFACE is also encouraged by one discussant to look at the issue of minimum harmonisation of maximal sentences (e.g. a maximum sentence of no less than four years in prison) and clarify which of the arguments for and against harmonisation still applied to these types of sanctions. Moreover, a need for more clarity is seen in relation to what is meant by “harmonisation” of sanctions also in other regards – e.g. harmonising the type of sanction or only the level of sanctions.

One participant pointed out that if minimum sanctions were harmonised, this would only apply to 25 Member States (excluding e.g. the UK).

### **Proposals concerning Member States**

In line with the “bottom-up approach” to harmonisation advocated by law and economics scholars, the legal principle of subsidiarity, and the fact that currently there are many differences between the legal systems across EU Member States, there are two core recommendations addressing Member States rather than the EU level.

Core proposal 1: Promote effective sanctions, including civil and administrative sanctions (also fines).

*It is important that Member States are encouraged to use a variety of different instruments, of which criminal law has to be considered a last resort. Civil and administrative penalties fit into a “toolbox” or “enforcement pyramid” approach whereby a variety of different instruments are made available to enforcers to react to the circumstances of a specific case in an appropriate and proportionate manner.*

This proposal is supported by all participants. One discussant warns against giving too much power and discretion to decision-makers, taking into account e.g. the lessons from the public choice theory (regulatory capture, lobbying, corruption, etc.). In that respect, the importance of guidelines is stressed. An added value is seen by some in requiring Member States to adopt a defined enforcement policy and publishing it. It is suggested that one way how the EU could act would be requiring Member States to do precisely that

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<sup>7</sup> See the forthcoming WP7 Deliverable ‘EFFACE conclusions and recommendations’. A draft version of this document was distributed to the workshop participants.

through a directive. Hence, this proposal can be linked to the proposals on publication of data on enforcement, to be discussed below.

While looking for effective sanctions, the *costs* of a particular sanction should also be taken into account as a guiding principle, because resources are limited according to one statement, which is, however, not uncontested. Furthermore, it is important to distinguish between different types of defendants, e.g. small versus big firms, repeat offenders vs first-timers, etc. Moreover, one discussant recommends referring to the case law of the ECHR on the “ne bis in idem” principle, i.e. avoidance of double punishment through administrative and criminal sanctions.

One of the participants notes that the effectiveness of a sanction depends on the criminal and administrative system, and that it is important to have prosecutors specialized in environmental crime. Another participant adds that criminal prosecution needs to be facilitated by supporting powers, such as phone tapping.

Core proposal 2: Introduce and use complementary sanctions.

*The sanctioning toolbox should include sanctions aiming at restoration of harm done in the past or prevention of future harm (e.g. forfeiture of illegal profits obtained through environmental crime). The way in which Member States have currently incorporated such ‘complementary sanctions’ in their legislation varies strongly. In some Member States they are of a criminal nature; in others they can be imposed as a civil penalty or as an administrative measure (e.g. a prohibition to further use a polluting installation). That is why it would be difficult to harmonise those complementary sanctions at the EU level. It is merely recommended that Member States make more use of complementary sanctions, either by providing them in their legislation (to the extent that that is not yet the case) or by imposing them in practice. When imposed, a complementary sanction should also be accompanied by appropriate financial incentives (e.g. penalty payments), guaranteeing that the sanction will also be complied with.*

The importance of complementary sanctions is acknowledged by all. It is a procedural question whether or not complementary sanctions are possible and in what form. This more particularly refers to the question whether a complementary sanction, like e.g. an order to remove illegally deposited waste, will be taken as a civil penalty, an administrative measure, or imposed by the judge as the result of a criminal procedure.

It is suggested to use the term “complementary measures” or “complementary sanctions and measures” rather than “complementary measures” only, and to refer to non-binding or ‘semi-binding’ guidelines as a means to foster the introduction and/or use of such measures.

One participant notes that, although penalty payments<sup>8</sup> may indeed provide an appropriate financial incentive, there may be political or institutional resistance to using penalty payments.

### **Proposal concerning guidelines**

Core proposal: Draft non-binding bottom-up guidelines concerning prosecution and sentencing policy.

*EFFACE suggests that non-binding bottom-up guidelines concerning prosecution and sentencing policy are formulated, to be used by prosecutors and judges and enforcement authorities in cases of environmental crime. These should ideally be developed bottom-up, building on existing efforts at collaboration between judges and prosecutors working the field. Such guidelines could relate e.g. to the types of violations that would necessitate a prosecution via the criminal law rather than via other means (civil or administrative) as well as to the crucial role of restoration of environmental harm and how that could be achieved in specific*

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<sup>8</sup> “Penalty payment” here refers to a concept whereby someone who is found to have violated the law is ordered to remedy the situation by an authority and must pay a certain amount for each day of non-compliance with the authority’s order.

*cases. Moreover, guidelines could be formulated concerning particular types of penalties requested and imposed for particular types of environmental harm.*

The role of evidence to support the choice whether to investigate and/or prosecute is supported by the discussants. The 'educational' element of guidelines is stressed as well, in that they can provide an overview of available options and sanctions used in other jurisdictions.

Another discussant brings in evidence from England, where recently introduced sentencing guidelines for environmental offenses have had instant effects. However, also an unintended effect was found, namely that defendants will fight harder not to lose a case. Other participants point to existing guidelines also in other Member States.

One participant recommends to take into account the outcomes of the Spanish LIFE+ funded project 'Veneno' on combating illegal poisoning, which has a clear impact on the prosecution of illegal poisoning and awareness of judges and prosecutors in Spain and could be replicated in other countries as well.

Several participants recommend further elaborating on the character and content of the guidelines; in particular a need for clarification is seen on why EFFACE would, on the one hand, not recommend harmonisation of minimum sanctions, but on the other hand suggest guidelines. Another proposal by one participant is to reflect on whether it would make sense for the EU to impose on MS a requirement to develop such guidelines nationally.

### **Proposals concerning enforcement cooperation and data collection**

Core proposal 1: Make environmental crime a priority both at the EU and at the Member State level.

*Enforcement and prosecution policy always require choices to be made, e.g. regarding capacity and investment in human resources. When both the EU and the Member States make clear that environmental crime is a serious crime, this should also be reflected in the priority setting.*

According to the discussants, it may be difficult to reach this goal; and international cooperation is needed. Examples are provided of environmental crime not being considered a priority at the national level. Moreover, the fact that there are often no clear victims of environmental crime may be an obstacle to achieving this goal. In terms of how environmental crime could be made into a priority different approaches were discussed, including bringing victims into the court-rooms, stressing the financial implications of environmental crime and highlighting how it affects all of us. Moreover, the approach of "securitising" environmental crime, i.e. presenting it as security issue was also mentioned; however, participants stressed that it can only be applied in relation to certain types of environmental crimes (e.g. wildlife trade) and it is also important to be clear about what is meant by the term security in this context, e.g. border security or human security.

One discussant suggests to conduct a 'psychological' study on how citizens view environmental crime.

Core proposal 2: Provide for specialisation of prosecution and adjudication.

*In countries where enforcement officers and prosecutors are specialised in environmental crimes, more effective reactions against environmental crime take place. Environmental crime needs specific expertise, also at the adjudication level. That hence also requires specialisation from the judiciary.*

This recommendation is generally supported. It is suggested to refer to "Resolution 77/28 on the contribution of criminal law to the protection of the environment" of the Council of Europe which already in 1977 recognised the importance of creating specialised courts and prosecutors offices for environmental crime. One practitioner among the participants mentions that specialisation is also important at the level of appeal courts, as non-specialised appeal courts may not adequately respond to environmental crime cases otherwise.

### Core proposal 3: Harmonise inspections and monitoring

*To prevent a race to the bottom it is crucial that the resources allocated to monitoring and inspecting environmental crime, as well as the approaches used for monitoring, are harmonised. If one Member State has very few resources for environmental inspections or does not engage in risk-based monitoring, whereas others have sufficient capacity for environmental monitoring and have a smart, risk-based enforcement approach, the danger of a race to the bottom still exists. A harmonisation of inspection and monitoring efforts should prevent this.*

It is argued that minimum inspections requirements are indeed a priority. However, one should be aware of over-relying on risk-based inspections only. Other inspections are needed too.

One commentator points out that if there was too far-reaching EU harmonisation on e.g. the frequency of inspections, Member States' authorities might have to spend all their resources on such mandatory inspections, rather than being able to decide where to best invest them.

Moreover, it is argued that this proposal should be rephrased, as it is not the inspections and monitoring that need to be harmonised, but the systems and methods used for inspection and monitoring.

### Core proposal 4: Enhance the role of Eurojust and EPPO, of JIT and Environmental Enforcement Networks.

*Especially as far as cross-border environmental crime is concerned, already established institutions like Eurojust and EPPO can play an important role in the fight against this cross-border crime. Therefore it is important to either enhance the role of those institutions or to simply make more use of the opportunities already provided.*

A discussant notes that, although some networks already exist, they are still underused. These networks should be encouraged to produce data and to make these data public.

### Supplementary proposal 1: Improve capacity building for practitioners.

*All stakeholders in the enforcement chain should receive state-of-the-art training and capacity building.*

### Supplementary proposal 2: Develop measures to assist NGOs in rising awareness of environmental issues.

*Non-governmental organisations aiming to protect the environment may play a crucial role also to raise awareness among the public at large as far as environmental issues are concerned. Such awareness raising can also stimulate the willingness of the public at large to support environmental enforcement actions.*

### Supplementary proposal 3: Stimulate the role of NGOs in monitoring enforcement and compliance and reporting environmental crime.

*Given limited capacity, the possibilities for public authorities to discover environmental violations may be limited. NGOs can play a crucial role by monitoring the state of the environment and reporting environmental crime.*

The role of NGOs in rising awareness and monitoring enforcement is generally acknowledged, even though there are different views on the extent to which NGOs within the EU need further support to perform this role.

In this respect, so it is argued by one participant, it is important to have an effective complaint handling system. Moreover, the contributions of NGOs should be better recognised by authorities.

### Supplementary proposal 4: Support and finance environmental enforcement networks.

*Many case studies have indicated that lacking enforcement is often the result of a lack of effective collaboration and cooperation between the various actors in the enforcement chain. Environmental enforcement networks are crucial tools to stimulate this cooperation. Those networks can either be vertical (between the different layers in the chain) or horizontal and in some cases also transboundary.*

In this context, several discussants stress the importance of national enforcement networks. In some Member States, such as the Netherlands and Belgium, there are national networks for prosecutors; in others there are not. A first important step would be to set up such national networks in countries where they do not yet exist. It is argued that it may be more difficult to bring together judges than prosecutors, due to a “I decide in my court” attitude.

One issue that some of the practitioners stress is that while networks are valuable information garnered through them informally cannot be used directly in prosecution. For information to be used, it needs to be obtained through official, legally recognised channels. One participant points to the fact that in Spain there was a legal basis for enforcement networks and viewed this as a good solution. He suggests that environmental enforcement networks could also be given a legal basis at the EU level and be supervised by DG Environment.

Supplementary proposal 5: Stimulate exchange and information as far as data collection is concerned.

*Data collection may require specific expertise and technical input. Mutual learning via cooperation and information exchange between Member States and EU institutions is of crucial importance.*

The importance of data collection and exchange is stressed again by many participants. There is some discussion as to whether only a bottom-up approach should be used, or whether there should be a more specific role for the EU besides stimulating data collection and exchange.



## **Other recommendations, including external dimension**

Core proposal: European diplomatic actions to put environmental crime high on the international policy agenda.

*Environmental crime is not limited to the EU. For example, wildlife crime and waste trafficking often go beyond EU borders. It is important that on the international agenda environmental crime is taken seriously. The EU should use diplomatic pressure and technical assistance to incentivize non-EU countries to pass stricter environmental laws and strengthen related enforcement mechanisms.*

In response to the question why there is only one core proposal on the EU external dimension the EFFACE team explains that other relevant issues have been explored in a separate WP7 contribution. This includes a discussion of the relationship between the EU and international actors like the WTO, IMF and World Bank. The current selection of core proposals is based on the SWOT analysis performed at an earlier stage.

Some other topics suggested for further consideration in EFFACE are linking the EU's environmental enforcement networks to such networks existing outside of the EU (e.g. the ADB's network of Asian environmental judges), examining the role of the EU in multilateral environmental conventions as well as the use of EU trade agreements to promote environmental protection and compliance.

The question is what the EU can do more specifically to make this a success.

Topics for further research:

Topic 1: Examine the possibility to have a more structural reform of the Environmental Crime Directive in order to promote legal certainty

*It has been indicated in the literature that the current structure of the Environmental Crime Directive is problematic in the view of the principles of criminal law. More particularly, the fact that unlawfulness is defined as violating one of the provisions of the domestic legislation implementing the environmental acquis implies that the structure of environmental crime has become quite complicated. The question therefore arises whether a revision of the Environmental Crime Directive is possible, whereby a more direct protection of the environmental interest takes place and at the same time the conditions for criminal liability are formulated in a more transparent manner.*

Topic 2: Examine whether the environmental crime provisions in national legislation (equally beyond the Environmental Crime Directive) actually focus on environmental crime and are easy to apply and enforce by enforcement officials, prosecutors, and courts.

*The reason for this recommendation is that in a few Member States a tendency is noticed that prosecutors experience difficulties in finding appropriate provisions able to adequately react to environmental crime and tend to call on very broad and general provisions that are familiar and where evidence can more easily be established such as fraud; and that police officers find the legal framework difficult to apply.*

Topic 3: Examine possibilities to enhance the criminal and civil liability of corporations for environmental crimes committed outside of the EU.

*Subsidiaries or subcontractors of corporations with a head office in the EU can be engaged in environmental crime committed in third countries outside of the EU, which has raised the question whether those subsidiaries or their EU parent companies could be held civilly or criminally liable within the EU for crimes committed outside of EU territory. That may require quite a few changes to jurisdictional aspects in a variety of Member States and/or to the legal provision on corporate criminal liability. It is therefore an issue which certainly merits further research.*

Topic 4: Examine the possibilities to promote access to justice in environmental matters.

*In cases where damage is widespread, granting standing to NGOs (to force authorities to take action in administrative courts, to claim damage in civil proceedings or to become a civil party in criminal proceedings) may be an important tool to improve the effectiveness of environmental enforcement. This is linked with the appropriate implementation of the access to justice rules of the Aarhus Convention within the EU context.*

The discussants support most of these topics for further research. However, with regard to research topic 1 the remark is made that it is not clear exactly what direction for change is envisioned and it is suggested to be more specific (e.g. is the idea of the dependency of environmental criminal law on administrative law itself questioned?). With regard to research topic 3, one discussant questions whether the necessary evidence can be obtained. Some participants also suggest that some of the research questions should be “upgraded” to become (core) recommendations (e.g. the one on corporate liability).

With regard to topic 4 one discussant suggests to move in the direction of an “actio popularis” in environmental matters, as already existing in some countries such as Spain and Portugal. Moreover, it is highlighted that when discussing access to justice it is important to be aware of the fact that whether people make use of that right is linked to factors such as their educational and socio-economic status.

### **Final discussion and other aspects**

According to the participants, there are no important proposals missing from the list. Everyone seems to agree especially on the importance of data collection and guidelines (although there is no consensus on the form and contents of such guidelines).

Some of the proposals which are now specifically directed to the EU or Member States, could be directed to both levels of regulation.

Also, some proposals have to be made more concrete. The EFFACE team explains that it is exactly their intention to do that in the final months of the project.

Moreover, the EFFACE is recommended to include in the final version of the document a reflection on why to use criminal law at all; some participants feel that the “ultimum remedium” character of criminal law is emphasized somewhat too strongly in the current document.

A discussion also ensues on the role of the Convention on the protection of the environment through criminal law adopted by the Council of Europe in 1998. The Convention has so far not entered into force, for a lack of ratifications; the only Member State that has ratified it is Estonia. However, several participants express the view that Member States could still ratify it. It is therefore recommended that EFFACE refer to this Convention and consider its usefulness in the future.