**Workshop**

**"Environmental crime in the EU: Is there a need for further harmonization?"**

**Den Haag, 9 September 2015**

**Background Information**

The European Union's (EU) efforts to combat environmental crime have a vivid history. Originally the European institutions were not supposed to have powers to force Member States via directives to use criminal law to enforce national legislation implementing EU environmental law. That changed dramatically with the well-known decision of 13 September 2005, in which the European Court of Justice decided that (under specific conditions) a directive can oblige Member States to use the criminal law. Criminal law was considered as an important tool to guarantee an effective implementation of EU environmental law. However, a subsequent decision made clear that directives cannot define a particular type or amount of penalty. Defining sanctions hence remained within Member State discretion, as long as the criminal sanctions chosen by the Member States are "effective, dissuasive and proportional".

Consequently Directive 2008/99 on the protection of the environment through criminal law was enacted. This directive requires Member States to impose effective, dissuasive and proportional criminal penalties in case of specific well-described violations of domestic legislation implementing a long list of European environmental regulations and directives. However, the directive does not regulate the type or size of the penalties, which hence still is within the discretion of the Member States (provided that those penalties are effective, dissuasive and proportional). Another issue is that not only enforcement and monitoring, but also prosecution and judging remain within the discretion of the Member States. The result is that there can still be substantial differences concerning the enforcement of EU environmental law between the Member States. An additional problem is that data on enforcement by Member States are largely lacking. And for those Member States that *do* have data, the collection systems are not harmonized, as a result of which data e.g. on inspections, number of violations or sanctions imposed are not available or comparable. Some actions have been taken to remedy some of these shortcomings. With respect to inspections, for example, the Commission in 2001 issued a (non-binding) recommendation on minimum criteria for environmental inspections.

This raises the question which route European environmental criminal law should take to contribute to better enforcement of the rules against environmental crime. One possible route is further harmonisation, which is made possible via Article 83 (2) TFEU. This provision, which was incorporated into EU primary law through the Lisbon Treaty, now allows the European institutions to impose a particular type and size of penalties. This power has already been used by the EU institutions, with a new directive setting forth particular criminal penalties for violations of domestic legislation implementing EU rules on insider trading and

market manipulation. However, even if such penalties were prescribed in the area of environmental crime as well, the EU institutions still do not control the monitoring and inspection. That raises the question whether the previous recommendation on minimum criteria for environmental inspections should be made compulsory (i.e. transformed into a directive). Yet another possibility to get more grip on the way in which inspections take place in Member States would for example be a benchmarking of monitoring and inspection activities by a European environmental agency, or a network like IMPEL (EU Network for the Implementation and Enforcement of Environmental law). That would be comparable to tasks now executed in the food safety area by the Food and Veterinary Office (FVO). Yet, another question is whether a mandatory system of data collection should be put in place as a result of which there would be more reliable data, e.g. on the number of classified installations, inspections, violations and remedies.

Against this background, the workshop will discuss, among others, the following questions from a legal and economic perspective:

- Will, given the economic theory of federalism, a mere further harmonisation of environmental criminal law (e.g. of penalties) reduce differences in enforcement levels between Member States?
- What are the exact powers allocated to the European institutions with respect to further harmonisation in the area of criminal law, but also with respect to related areas such as inspections, monitoring and prosecution?
- Is it desirable and possible to create a harmonized, mandatory system of data collection on environmental crime?
- Through which kind of mechanisms can it be guaranteed that inspections and monitoring take place under similar conditions in the various Member States? Is benchmarking of inspection activities a solution? If so, who should undertake such a benchmarking?
- How has the EU used its powers to define the type and size of penalties in other policy areas, e.g. the directive with respect to criminal penalties in the field of market manipulation and insider trading?

In other words, all questions dealing with the necessity and desirability of further EU action with respect to EU environmental criminal law and enforcement, and possible related issues, will be discussed in the workshop.

This workshop is part of a series of similar one-day EFFACE workshops that both present and invite feedback on EFFACE research from academic experts, policy-makers and practitioners. If you are interested in participating, please contact the EFFACE coordinator at envcrime@ecologic.eu indicating your background and interest relating to the topic; the number of participants is restricted.