

# Workshop on instruments, actors and institutions in the fight against environmental crime

21 January 2014, Berlin

Summary



## ***Introduction***

The following is a summary of workshop held as part of the EU-funded research project “European Union Action to Fight Environmental Crime” (EFFACE, [www.efface.eu](http://www.efface.eu)). Workshop participants included academic, practitioners and representatives of NGOs and international and European public bodies. This document summarises the presentations as well as the most important discussions during the workshop.

The main questions for the workshop were: How do instruments, actors and institutions combating environmental crime work in practice? What could and should be changed in legislation, assessment and enforcement? How well do they cooperate?

## ***EFFACE research on instruments, actors, and institutions to combat environmental crime: an overview***

**Grazia Maria Vagliasindi** (Researcher in Criminal Law, University of Catania) gave an overview of the EFFACE work on actors and institutions to combat environmental crime. EFFACE is seeking to conduct a comprehensive analysis of the status quo of existing instruments, actors and institutions and to identify strengths and weaknesses. National legislation as well as actors and institutions are analysed in Italy, France, Poland, UK, Spain, Germany, and Sweden; in addition, relevant EU legislation and international treaties are analysed.

## ***National level action against environmental crime: Instruments, actors, and institutions - the examples of Germany and Italy***

### ***Germany***

**Heino Kirchner** (Desk officer, German Federal Ministry of Justice and Consumer Protection) talked about German environmental criminal legislation. In most provisions a mere endangerment of the protected legal interests is sufficient. Other typical aspects include the dependency of environmental criminal law on administrative law, punishment of negligent conduct and often the attempt to commit an environmental crime, and the medium gravity of sanctions. He also pointed to the fact that the law contains vague legal terms that require specification by the judiciary. Finally, the implementation of the EU Environmental Crime Directive required no major alterations of German Law, as most of the requirements had already been implemented in German criminal law before the Directive.

### ***Italy***

**Antonio Pergolizzi** (Legambiente, Italy, and Member of the EFFACE Advisory Board) introduced in his presentation the Italian NGO Legambiente, which wrote the Ecomafia Report in cooperation with enforcement authorities. He considers the writing of the ecomafia report as a way to improve the system, proposing policy changes and legal reforms, and suggests that such a report should also be done at the EU level because of a current lack of information on the topic

Regarding the Italian legal system, he pointed out that penal law provides penalties just for formal violations, not for the actual damage caused, and imposes only small fines. The command and control principle in Italian law requires a big bureaucracy and leads to high corruption, and the laws are more focused on economic than on environmental issues. Furthermore, despite the creation of special forces to fight environmental crime, police and prosecutors have only inadequate expertise to cope with the complexity of environmental crime.

Focusing on the problem of waste, Antonio described the attitude of most people as classic not-in-my-backyard-problem, meaning that they do not want waste treatment plants in their territory but do not care much about what happens with the waste elsewhere.

As part of the current criminal law reform in Italy, the introduction of several new environmental crime provisions into the penal code is discussed. In this context, a shift from abstract endangerment to concrete endangerment of protected legal interests is discussed, which would however mean that the prosecution authorities have to prove such endangerment.

Antonio concluded with some suggestions, the most important being prevention of environmental crimes through good policy, e.g. on recycling.

### ***EU level action against environmental crime: Instruments, actors, and institutions***

#### **EU-level action on environmental crime – a perspective by a national prosecutor**

**Rob de Rijck** (National Coordinating Prosecutor for Environmental Criminal Law, Dutch Public Prosecution Service, The Netherlands and Member of the EFFACE Advisory Board) gave a presentation on action on environmental crime from a practitioner's perspective as a national prosecutor in the Netherlands.

Due to substantial peculiarities, environmental criminal law cannot be considered as just one of several branches of criminal law. On the national level, it is set up between general criminal law and administrative law, and has also to take into account substantive EU environmental law representing two thirds of substantive environmental law. One could thus say that national environmental criminal law is "caught" between national regular criminal and administrative law, EU substantive law and, in some cases, internationally active defendants.

National prosecutors and judges have to interpret terms of such EU law; referring a case to the European Court of Justice is time-consuming. It must also be noted that it can be extremely difficult to prove the chain of causation between acts and results. For example, in the *Trafigura* case the burden of proof as to the events in Ivory Coast would have been that the casualties had been the result of dumping toxic waste.

For all these reasons, prosecuting classical crimes such as forgery and fraud may be easier for prosecutors than prosecuting environmental crimes.

Furthermore, whereas there is a historically established level of penalties for classic crimes, no such level exists for environmental crimes and it is complicated to establish one. Thus, for the same type of environmental crime, there are substantial differences between EU countries in the level of punishment; this creates opportunities for loopholes and further weakens the international system because a company can commit a crime in a neighboring country with less stringent laws in place. For instance, in the case of a Portuguese shipping company, according to the Dutch policy regarding violations of the Waste Shipment Regulation based on the weight of the waste transported, the Dutch prosecution office intended to demand a fine of €100,000, but it was later found out that the company had already been fined in Portugal for that same specific crime, where it had merely to pay a €1,500. In addition, there are differences of the criminal procedural rules in the EU, for example concerning wire tapping.

The speaker drew the conclusion that from the practitioner's perspective, there is no need for more regulation, but for harmonization of interpretation and sentencing practices between EU Member States. However, during the drafting of the Directive 2008/1999, attempts by the Commission to further harmonize these systems with minimum and maximum sanctions for the most serious violations were heavily opposed by the EU Member States and therefore did not take place.

A problem that makes the enforcement of environmental crimes furthermore difficult is the lack of cooperation between the authorities responsible for enforcing criminal law and administrative law respectively. This is occasionally due to mistrust, but more often to system differences and a fundamentally different culture between the two. Cooperation on information exchange is weak, in addition to structural problems such as the fragmented character of administrative environmental law

and the corresponding authorities. In the Netherlands, strong efforts to improve this situation are now being undertaken.

Rob de Rijck also considered a better international cooperation as an essential way to improve the situation in practice. Concerning networks like ENPE or IMPEL which are trying to establish contacts and exchange information on a practical level, the establishment of a database for prosecutors to learn from previous cases, including such in other Member States, has been started through a network of prosecutors operating at the EU level.

There was a **discussion** about whether these problems were particular to environmental crime or typical for any sort of criminality with cross border implications.

### **The work of Eurojust**

**Nadja Long** (Analyst, Eurojust) presented the work of Eurojust. Eurojust works closely with EUROPOL and cooperates with INTERPOL and third countries outside the EU, but due to strict data protection rules, there is no sharing of personal data with Interpol and third countries which Eurojust has not signed an agreement with.

According to the results of Eurojust's last strategic meeting, one major problem is the fact that environmental crime is not considered a serious crime. Relatively few environmental crime cases are reported to Eurojust because national prosecutors are not specialized in this area and cases of environmental crime are not considered important enough at national level, thereby not sent to Eurojust for assistance.

This perception also has a consequence for investigative techniques, for example in cases concerning environmental crime wire tapping is possible in certain Member States, but not in most of the other ones.

Another problem is that the EU's Environmental Crime Directive does not prescribe a certain level of sanctions and the practice in EU Member States differs widely, and so does the interpretation of central legal terms. Finally, gathering of evidence can be difficult (for instance in the field of water pollution).

Recommendations that were given by participants in the Strategic Meeting included the possibility to use investigative techniques that are currently used for other more "traditional" crime types, more cooperation between Member States and different bodies at the national level, raising awareness, knowledge and expertise through training of practitioners and facilitating the common understanding of EU legislation.

It was stressed how important networks are to raise awareness among practitioners and enhance knowledge. Also NGOs often have great expertise which should be used.

### ***International level action against environmental crime: Instruments, actors, and institutions***

#### **The contribution of the UN institutions to fighting transnational environmental crime – the example of the United Nations Office on Drugs and Crime (UNODC)**

**Anja Korenblik** (United Nations Office on Drugs and Crime) described that at the international level, there is large number of institutions besides the UNODC dealing with certain aspects of combating environmental crime (CITES, FAO, UNIDO, INTERPOL, UNEP etc.). Environmental crime is a new focus for UNODC, linked to its mandates in the areas of crime, organized crime and corruption. UNODC has limited expertise on environmental issues and therefore needs to cooperate with other organizations. However, there is a multitude of organizations responsible for the implementation of Multilateral Environmental Agreements and intensive coordination and cooperation is necessary. Many of the responsible organizations and institutions collect data on their specific area of responsibility, including on illegal activities (CITES on illicit trade in protected species, Basel Secretariat on traffic in hazardous waste, etc) and there are great opportunities to merge disparate data sets from all the above institutions to get a broader view of what is environmental crime and who are the perpetrators.. UNODC has a tool to request information and reporting from the member states (United Nations

Survey of Crime Trends and Operations of Criminal Justice Systems), but not all countries report and many of them do not have data on the issues that UNODC asks about (e.g. environmental pollution offences and prosecutions).

The activities of UNODC to fight environmental crime include normative work, technical assistance through regional offices which coordinate with the member states to build capacity, help in corruption prevention, research and analysis (analysis of flows, sources and capabilities, to ensure that crime is not simply being displaced). The UNODC cooperates with civil society and also regional organizations like the OSCE, OAS, MERCOSUR, or the AU.

Another problem addressed was that environmental crimes are dealt with as soft crimes. However, environmental crime rings can be as dangerous or serious as drug rings. The harms done by environmental crimes should be shown. Commodity chains need to be understood to understand how environmental crime works.

### ***Recommendations by participants on how to better fight environmental crime***

In his summary of the workshop, the moderator R. Andreas Kraemer (Director, Ecologic Institute) pointed to the following obstacles in fighting environmental crime, as mentioned by speakers and participants: institutional fragmentation, different perceptions of the seriousness of environmental crime, problems of gathering evidence and establishing proof, lack of information exchange and deficits concerning sentencing.

In the final round of discussion all participants were asked to produce recommendations on how to better fight environmental crime. The following policy recommendations were provided by individual participants, but not necessarily agreed upon by all participants:

#### **All levels**

- More cooperation between authorities within and between the different levels; liaison officers are important for successful justice and police cooperation
- Get police, customs, rangers to talk & share their experience; focus on knowledge as it is a multidisciplinary subject
- Fight corruption / organized crime before the rest
- One environmental crime regulation/convention at the EU and international level respectively
- Actors like Interpol, Europol, Eurojust need to appear as a team at all levels
- Work on people's awareness of environmental complexity, show the victims & long-term harm, put it higher on the agenda of police and prosecution; perception of risk should be strengthened
- Make more use of existing knowledge among NGOs (e.g. EIA) and researchers (e.g. green criminologists)
- Address the demand side of environmental crime (e.g. for animal products)

#### **National / Member States level**

- More specialized authorities / departments, establish specialized environmental courts or bodies, finance more specialization
- Systematic collection of intelligence on environmental crime cases to be sent to Europol for cross-checks and situation reports
- Fiscal/economic incentives in order to discourage environmental crimes
- More customs control at the harbors
- Increase penalties
- Facilitate recycling waste activities and at the same time control the waste movement

## **EU level**

### *Improving the legislative framework*

- Harmonize sanctions in Directive 2008/99/EC
- Amendment of Directive 2008/99/EC to insist on the seriousness of environmental crime and provide lower and upper thresholds for penalties applicable. Increasing the seriousness of the offence will lead intelligence to be collected more systematically and the judiciary to increase their knowledge
- Introduce legislation against illegal waste trafficking, food counterfeiting, cultural heritage, and the illegal or dangerous use of the soil
- Directive on the use of the money seized to organized environmental crimes to clean-up
- Establish a principle that all environmental data must be made available for law enforcement, and on evidence in cases of environmental crime (Council of Europe)
- Harmonize concepts such as “serious damage”, “serious crime”, “organized crime”

### *Training and capacity building*

- Training sessions for the judiciary to explain the legal framework and draw attention to assistance available at EU level (e.g. Eurojust) in cross-border cases
- Strengthen Europol’s expertise on environmental crime
- Organize technical seminars on police work, evidence requirements, sentencing, fines etc. (Europol, DG Justice, DG Environment)
- Provide a glossary of key terms in different languages with definitions (Eurojust, EEA)

### *Better information exchange and cooperation*

- Strengthen and expand European Network of Prosecutors for the Environment (ENPE) and their database on environmental crime cases and publish reports of salient case studies
- More coordination between all member states, share data and information on the repression activities
- Strengthen the dialogue and involvement of the industry and most important economic firms
- Further build on the European Space Agency’s expertise to monitor movements of illegal waste and goods and bring that to GMES (Global Monitoring for Environment and Security), Eurojust and Europol

### *More research and analysis*

- Look broader into EU mechanisms of corruption, trade & code of conducts, poverty reduction strategies
- Set up a non-governmental observatory on national cases on environmental crime & PhD programs
- Launch a research project on perceptions of environmental crime (DG Research)
- Prepare a periodical report on environmental crime to better understand the phenomenon

## **International level**

- Establish a common database to exchange case law, best practices and experiences