



European Union Action to  
**Fight Environmental Crime**

Contribution to conclusions  
and recommendations on  
environmental crime:  
Functioning of enforcement  
institutions and cooperation  
between them (MS/EU level)



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## List of Abbreviations

EEN	Environmental Enforcement Network
EJN	European Justice Network
ENPE	European Network of Prosecutors for the Environment
EnviCrimeNet	European Network for Environmental Crime
IMPEL	European Network for the Implementation and Enforcement of Environmental Law
JIT	Joint Investigation Team
MLA	Mutual Legal Assistance
MS	Member States
OECE	Organisation for Security and Co-operation in Europe
SWOT	Strengths, Weaknesses, Opportunities, Threats

# 1 Introduction

The EU itself, although setting the regulatory framework on environmental crime, does not have the authority to enforce the provisions aimed at fighting environmental crime. This competence lies with the authorities of the Member States. The focus of this report is therefore on the functioning of the enforcement institutions, i.e. the police, prosecutor's offices and criminal courts, the cooperation between them on the national and trans-boundary level, and the potential role of the EU in facilitating the task of these institutions.

This report is based on the analysis of strengths, weaknesses, opportunities and threats (SWOT) of enforcement institutions and the cooperation between them that has been conducted as part of the EFFACE project.<sup>1</sup> The weaknesses and strengths identified in the course of this research and the opportunities that could address these weaknesses and strengths on the level of EU Member States as well as the level of the European Union form the basis of the policy options that will be discussed in this report.

First, an overview of the weaknesses that should be addressed, the strengths that could be built on and the opportunities that were identified in the former EFFACE research is given, followed by a critical discussion of possible policy options regarding the specialization of enforcement institutions, measures to facilitate cooperation, priority setting and capacity building, and on which governance level they should be addressed. The report concludes with giving core recommendations to Member States and the EU how to improve the functioning of enforcement institutions and cooperation between them.

## 2 Opportunities

The SWOT analysis of enforcement institutions and their cooperation has identified a number of weaknesses of the current system as well as some strengths that can be built on and some opportunities to address them<sup>2</sup>, all of which are summarized in table 1. The opportunities fall into four overarching categories: specialization of enforcement institutions, cooperation between institutions within and between member States, priority setting and capacity building.

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<sup>1</sup> A. Farmer et al., "Evaluation of the Strengths, Weaknesses, Threats and Opportunities Associated with EU Efforts to Combat Environmental Crime," Study in the Framework of the EFFACE Research Project (Institute for European Environmental Policy; Queen Mary University of London; METRO, Maastricht University; Ecologic Institute; University of Rome "La Sapienza"; University of Granada; University of Catania, 2015).

<sup>2</sup> Ibid., sec. 6.

**Table 1: Overview of Opportunities, Weaknesses and Strengths**

Opportunity	Weakness addressed	Strengths to build on	
<b>Specialization</b>	MS consider (different models of) specialization of enforcement institutions	Lack of specialization of enforcement institutions in many MS	Specialized police forces and prosecutors in some countries, possibility to learn from these examples in other Member States
<b>Cooperation</b>	MS encourage use of existing structures for judicial cooperation	Implementation in MS of trans-boundary judicial cooperation lengthy and complicated, therefore not used much	Instruments and structures for judicial cooperation and mutual recognition in place
	EU support for enforcement networks		Enforcement networks exist, some well established
<b>Priority setting</b>	Potential evolution of Eurojust's mandate according to Art. 85 TFEU	Underutilization of Eurojust & Europol by MS	
	Use EU's power to define enforcement and political priorities		Environmental crime no priority in many MS
<b>Capacity Building</b>	MS provide more funding and capacity building for enforcement institutions	Lack of staff and financial resources of enforcement institutions	Lawful functioning of enforcement institutions in many Member States
	EU develops toolbox for enforcement (analytical tools, guidelines, etc.)		

## Specialization

Although the degree of specialization and competence of environmental enforcement institutions in dealing with environmental crime differs between the Member States, many of them are not specialized on environmental crime. This presents an opportunity for Member States to consider different models of specialization that exist in other EU countries which could be a model to look at.

## Cooperation

There are various forms of trans-national cooperation between environmental enforcement institutions, from formal procedures of mutual legal assistance and joint investigation teams (JITs) to the participation of government officials in informal networks of environmental officials and Europol and Eurojust.

Mutual legal assistance is based on the EU Convention on Mutual Assistance in Criminal Matters of 29 May 2000. However, requests for mutual assistance can be complex and lengthy procedures and are therefore used only reluctantly by officials. Another possibility for Member States to cooperate is to set up joint investigation teams, based on the Framework Decision on Joint Investigation Teams 13 June 2002. This instrument is also not frequently used in investigating environmental crimes, despite having several advantages which are being discussed during the following sections. As an opportunity, Member States could encourage their authorities to make more frequent use of such existing instruments and to contribute to an improvement of their performance.

A more informal way of cooperation is through environmental enforcement networks<sup>3</sup>, which are considered highly useful by their members in setting up contacts between officials which facilitate and enhance trans-national cooperation in cases of cross-border environmental crimes. An opportunity for the EU in this case is the funding and support for these networks, and for Member States to actively participate in networks.

Eurojust and Europol, although also considered highly valuable by their members, are underutilized by the Member States and not involved in as many cases as they could be according to their mandate. This is a lost opportunity to further enhance cooperation and coordination between Member State enforcement authorities. The potential evolution of Eurojust's mandate by the Treaty of Lisbon (Art. 85 TFEU), and the following "Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust)"<sup>4</sup> presented by the Commission in July 2013, provide an opportunity in this regard, aiming at an increase of Eurojust's efficiency by establishing a new governance model and to improve its operational effectiveness.

### Priority setting

Environmental enforcement has a low priority in many Member States. The EU has the opportunity to use its power to define political priorities to place European environmental crime higher on the EU political agenda, which can drive Member States to consider taking forward environmental crime issues as they are reviewing their domestic overarching priorities.

### Capacity Building

A lack of priority given to environmental crime is at the same time a cause and a consequence of a lack of staff and resources allocated to the issue and therefore also a lack of specialized knowledge of enforcement institutions. To compensate to a certain extent the lack of resources and specialization, Member States and the EU can address capacity building issues by means such as providing guidelines along the enforcement chain and providing toolboxes and training for enforcement officials, and supporting networks like IMPEL which provide such guidance and tools.

## 3 Options

### Specialization

#### ➤ MS consider increased specialization of enforcement institutions

One policy option to increase the efficiency of the environmental enforcement system is the specialization of police forces, prosecutors and judges, either by ensuring that institutions have sufficient specialist staff or even by establishing specialized units within the existing institutions. Member States should look at different models that exist throughout the EU and consider which possibilities of specialization could be appropriate for their respective legal system.

### Cooperation

#### ➤ MS make more use of JITs in case of cross-border environmental crimes

<sup>3</sup> For a more detailed evaluation of environmental enforcement networks, see L. Smith and K. Klaas, "Networks and NGOs Relevant to Fighting Environmental Crime," Study in the Framework of the EFFACE Research Project (Berlin: Ecologic Institute, 2014).

<sup>4</sup> COM(2013) 535 final, 17 July 2013.

A policy option to facilitate cooperation in cross-border investigations is the set up of Joint Investigation Teams (JITs). This option should be used more frequently and systematically by Member States, which should encourage authorities to increase the use of JITs in cross-border environmental crime cases.

➤ **MS increase the involvement of Eurojust and Europol in cross-border investigations and JITs**

The underutilization of Eurojust and Europol presents a lost opportunity for better cooperation and coordination across the EU. Member States should involve both institutions actively and from the start in cross-border investigations and the setting up of JITs, and provide them with information to be collected and shared with other Member States.

➤ **EU institutions provide sufficient funding for Eurojust for financing JITs**

Eurojust provides financial assistance to JITs from its own budget. The European Commission could consider the reestablishment of the grant scheme that was given to Eurojust until 2013 to support it to finance JITs.

➤ **MS facilitate the utilization of environmental enforcement networks and send officials of government agencies; the EU provides funding to EENs**

To facilitate cooperation between government officials and members of agencies also on a personal level, Member States should actively participate in (informal) environmental enforcement networks by sending officials of government agencies and institutions and providing them with adequate resources to do so. The EU should acknowledge the importance and utility of such informal networks by providing funding.

➤ **MS increase efforts in raising awareness of judges, prosecutors and police authorities about competences and activities of Eurojust and Europol to ensure full utilization of their benefits**

Member States should encourage their judges, prosecutors and police forces to make use of Europol and Eurojust, involve them in their investigations and forward cases to them.

➤ **MS ensure sufficient budget and staffing levels of their Eurojust national desks**

Member States also should make sure that the officials at the Eurojust national desks are appropriately trained and have adequate resources according to their workload.

➤ **Member States who have not yet fully implemented the consolidated Eurojust Decision should do so without delay**

➤ **In cases where no specific legislation has been deemed necessary to implement the Eurojust Decisions, Member States should consider making specific reference to Eurojust in any future legislation on MLA and mutual recognition cooperation**

A specific reference to Eurojust in future legislation on mutual legal assistance and mutual recognition cooperation can give visibility and create awareness among practitioners about the obligations under the Eurojust Decision and the benefits of Eurojust.

## Priority Setting

➤ **Put environmental crime on the list of priority areas of crime**

An option for the EU to give environmental crime a higher priority would be to use its power of agenda setting and include these crimes in the list of priority areas of crime by the Council of the European Union and Eurojust.<sup>5</sup> This would also increase the probability that JITs set up for combating environmental crimes are eligible for funding by the grants from Eurojust.

➤ **Environmental agencies and prosecutors use a targeted enforcement strategy**

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<sup>5</sup> For the list of priority areas of crime, see Council of the European Union, “Council Conclusions on Setting the EU’s Priorities for the Fight against Serious and Organised Crime between 2014 and 2017,” 2013, [http://www.eurojust.europa.eu/Practitioners/operational/THB/Documents/JHA-2013-06-06\\_137401\\_EN.pdf](http://www.eurojust.europa.eu/Practitioners/operational/THB/Documents/JHA-2013-06-06_137401_EN.pdf).



Environmental agencies and prosecutors should set priorities and focus their efforts on specific categories of polluters or violators and most important cases to ensure the highest possible level of compliance with the lowest effort.

➤ **Enhance the legal obligations with regard to enforcement institutions in EU environmental law**

For many areas of EU environmental law, the provisions relating to the capacity, functions, etc., of enforcement institutions are limited. An option could be to amend the existing legislation to require an assessment of enforcement needs and to require delivery of basic standard to address these needs (e.g. on planning, capacity, etc.).

## Capacity Building

➤ **EU provides funding for training measures and guidance for practitioners; MS make use of various projects for capacity building offered by EENs and other organizations**

The EU should provide guidance on enforcement matters and funding for training measures, research projects and support environmental enforcement networks (EENs) which offer training and capacity building measures and develop guidelines on various environmental enforcement matters. The Member States should make use of the various measures that are offered by EENs and other organizations.

## 4 Critical analysis of options

### 4.1 Specialization

➤ **MS consider increased specialization of enforcement institutions**

It has been emphasized in EFFACE and other research that specialized enforcement institutions increase the effectiveness of the environmental enforcement system.<sup>6</sup> Specialization is closely related to the problem of adequate resources for fighting environmental crime since it requires training, equipment etc. In terms of cost efficiency, however, the benefits of specialization also include the potential of reallocating work from overstrained institutions that have to deal with all kinds of crimes simultaneously. Thus, Member States should consider establishing specialized enforcement institutions for environmental crimes. The need for specialization extends to police forces, prosecutors and judicial institutions.

Given the variety of legal systems of the Member States, no specific recommendations can be made, but in some Member States examples exist which could present a model of good practice for other Member States to look at.<sup>7</sup> For example, police forces specialized in environmental crime exist in France, Spain, Italy and, at the regional level, in Berlin. At the prosecutor's level, a specialists unit serving the entire country exists in Sweden. Sweden is an interesting example to look at also in relation to courts, with the possibility to appoint technical experts as judges in the criminal court. The UK model of allowing public authorities to directly bring criminal charges has

<sup>6</sup> M. G. Faure et al., "Instruments, Actors and Institutions in the Fight Against Environmental Crime," Study in the Framework of the EFFACE Research Project (Berlin: Ecologic Institute, 2015), sec. 3.15.2.

<sup>7</sup> Farmer et al., "Evaluation of the Strengths, Weaknesses, Threats and Opportunities Associated with EU Efforts to Combat Environmental Crime," sec. 6.2.1; An overview of specialized environmental crime units in EU Member States is presented in Eurojust, "Strategic Project on Environmental Crime - Report," 2014, 23–30, [http://www.eurojust.europa.eu/doclibrary/eurojust-framework/casework/strategic%20project%20on%20environmental%20crime%20%28october%202014%29/environmental-crime-report\\_2014-11-21-en.pdf](http://www.eurojust.europa.eu/doclibrary/eurojust-framework/casework/strategic%20project%20on%20environmental%20crime%20%28october%202014%29/environmental-crime-report_2014-11-21-en.pdf).

the advantage that specialised knowledge with the prosecuting agency is available, which somewhat remedies a lack of specialization of the courts.<sup>8</sup>

Regarding the differences in legal systems, the recommendation is merely for Member States to consider an increase in specialization of the enforcement institutions, choosing the scope and form that is most appropriate for their respective system.

## 4.2 Cooperation

In addressing the weaknesses in cooperation between the Member States and between Member States and the EU level, the problem is not the legal framework, as there are several provisions and instruments in place, but rather a gap between theory and practice. As Spapens (2011) states, the frustration and mishap in cooperation and joint investigations usually occur because of practical, not of legal constraints.<sup>9</sup> Therefore, no recommendations are given to change the legal framework, but rather to enhance the use and effectiveness of existing measures.

### Joint Investigations

#### ➤ MS make more use of JITs in case of cross-border environmental crimes

One instrument for the cooperation between Member States in cases of trans-boundary crimes is setting up joint investigation teams (JITs). Such JITs are so far not widely used, especially for environmental crime cases, despite their advantages of enhancing the effectiveness of judicial cooperation. One policy option for Member States to make cooperation more efficient is therefore to encourage authorities to increase the use of JITs in the case of cross-border environmental crimes.

As Eurojust points out in its Strategic Project on Environmental Crime Report:

*“Given the advantages of JITs, in particular in allowing competent authorities to exchange information in a quick and simplified manner, this instrument could be of great help to enhance judicial cooperation in [environmental crime] cases. Also, it would allow the participation and contribution of necessary experts within the framework of such a JIT.”*<sup>10</sup>

Joint Investigation Teams have several advantages, including but not limited to the

- Ability of sharing information directly between JIT members without the need for formal requests;
- Ability of requesting directly investigative measures between JIT members, dispensing with the need for rogatory letters;
- Ability for members to be present at interviews, house searches, etc. in all jurisdictions covered (helping to overcome language barriers as well);
- Ability to build up mutual trust between practitioners from different jurisdictions working together and deciding on prosecution and investigative strategies;
- Ability of coordinating efforts on the spot and informal exchange of specialized knowledge.<sup>11</sup>

However, there are also reasons and disadvantages why JITs have not been widely used by Member States. One reason might be simply a lack of awareness of JITs as an investigative option, another is that JITs are time and money consuming, requiring the commitment and time of national officials, money for accommodation and travel and an awareness of the need to start a cross-border investigation in cases of environmental crime.

<sup>8</sup> M. G. Faure et al., “Instruments, Actors and Institutions in the Fight Against Environmental Crime,” Study in the Framework of the EFFACE Research Project (Berlin: Ecologic Institute, 2015), sec. 3.11.2.

<sup>9</sup> Toine Spapens, “Cross-Border Police Cooperation in Tackling Environmental Crime” (9th International Conference on Environmental Compliance and Enforcement, Canada, 2011), 237–49.

<sup>10</sup> Eurojust, “Strategic Project on Environmental Crime - Report,” 33.

<sup>11</sup> J. Nagy, “About Joint Investigation Teams in a Nutshell,” *Issues of Business and Law* 2 (2010): 109.

Another problem is that it may be difficult to ensure that the investigations are carried out in such a way that, regardless in which of the participating States the information has been collected, the information can later be used as evidence and will not be considered as inadmissible.<sup>12</sup>

➤ **MS increase the involvement of Eurojust and Europol in cross-border investigations and JITs**

Some of the obstacles to the use of JITs by Member States can be remedied by the involvement of Eurojust and Europol into the investigations. These organizations can not only facilitate the exchange of information, they also provide legal advice and expertise as they have great knowledge about the different legal systems of all Member States, which can be highly useful during joint investigations. They can also facilitate international mutual legal assistance with non-participating countries, provide advice on technical matters (like appropriate investigation techniques, technical and forensic methods etc.) and assist with the administrative management of the JIT.<sup>13</sup> The involvement of Eurojust in the JITs has also the benefit that it gains information on the operation, needs and effectiveness of JITs as a whole and enables Eurojust to disseminate valuable information to national authorities and other stakeholders.<sup>14</sup>

Involving Eurojust is also important concerning financial obstacles. Since JITs involve high expenditures, especially for accommodation, travel and telecommunication, Eurojust provides logistical and financial support to JITs. This includes travel expenses, accommodation, translation and interpretation and the lending of equipment like laptops or mobile telephones. Originally, the European Commission had established a grant for Eurojust entitled “Financial, administrative and logistic support to JITs with establishment of a centre of expertise with a central contact point”. However, the Commission provided the grant only until 2013, since then Eurojust provides the money from their regular budget.<sup>15</sup>

An obstacle especially for setting up JITs in cases of environmental crime might be, however, that one award criterion for granting funds to a JIT is that the “*Investigation of a crime (is) identified as a Eurojust and SOCTA priority by the most recent Council Conclusions*”<sup>16</sup>. Environmental crime is listed as an area of crime that Eurojust is competent to deal with, but not as a priority in the Council conclusions on setting the EU’s priorities for the fight against serious and organised crime<sup>17</sup>.

As Helmberg (2007) concludes, “*Eurojust’s role is to be seen in this context: its expertise in cross-border co-operation, in particular in coordinating operational cases, its international contacts and its facilities all serve to make it a key player in helping Member States to overcome these difficulties [of JITs] and in maximising the use of this innovative EU instrument.*”<sup>18</sup>

➤ **EU institutions provide sufficient funding to Eurojust for financing JITs**

If there is an effort to increase the use of Member States of the instrument of JITs, it has to be ensured that Eurojust is able to properly provide funding and support. Therefore, the Council of the European Union in its conclusions on the Eurojust Annual Report 2014 “*notes the continued financial and logistical assistance provided by Eurojust to JITs from within its regular budget*” and “*calls on EU institutions and bodies to ensure stable*

<sup>12</sup> M. Helmberg, “Eurojust and Joint Investigation Teams: How Eurojust Can Support JITs,” *ERA Forum* 8, no. 2 (2007): 248.

<sup>13</sup> Nagy, “About Joint Investigation Teams in a Nutshell,” 112.

<sup>14</sup> Eurojust, “Eurojust Annual Work Programme 2015,” 2014, <http://www.eurojust.europa.eu/doclibrary/budget-finance/workprogrammes/Eurojust%20work%20programme%202015/Eurojust-WP-2015-EN.pdf>.

<sup>15</sup> A. G. Zarza, ed., *Exchange of Information and Data Protection in Cross-Border Criminal Proceedings in Europe* (Berlin Heidelberg: Springer, 2015).

<sup>16</sup> Eurojust, “Eurojust Annual Work Programme 2015,” Annex IV.

<sup>17</sup> Council of the European Union, “Council Conclusions on Setting the EU’s Priorities for the Fight against Serious and Organised Crime between 2014 and 2017.”

<sup>18</sup> Helmberg, “Eurojust and Joint Investigation Teams: How Eurojust Can Support JITs,” 251.

*means of funding of JITs in the new financial period, which is crucial for the operation of effective cross-border investigations”.*<sup>19</sup>

## **Environmental Enforcement Networks (EENs)**

- **MS facilitate the utilization of environmental enforcement networks and send officials of government agencies; the EU provides funding to EENs**

The utility and value of more or less informal environmental enforcement networks - like the European Network of Prosecutors for the Environment (ENPE), the European Network for Environmental Crime (EnviCrimeNet) or the European Network for the Implementation and Enforcement of Environmental Law (IMPEL) to name only a few - has been pointed out throughout the EFFACE research<sup>20</sup>. They facilitate the cooperation among enforcement professionals, enhancing the ability to work together on cross-jurisdictional investigations and enforcement matters and increasing their efficiency. EENs also develop best practices and produce guidance to contribute to improvements of inspections, monitoring, reporting and enforcement of environmental law. They provide forums for the sharing of expertise among members and collect, pool and disseminate valuable information on environmental enforcement issues to all relevant stakeholders.

Some Member States already make much use of these networks, while others remain rather inactive regarding the participation in EENs. Active participation is crucial for the continuity of these voluntary networks, but there is always the danger that some members stay passive and only take advantage of the existing material. A reason for some Member States to refrain from actively participating is budget constraints, i.e. they cannot afford to send officials to the network events.

Therefore the EU can facilitate the use of these networks by providing financial assistance to the EENs such as is done through LIFE+ support for IMPEL. The personal relations established via the networks are crucial for successful cooperation, so the Member States should carefully consider whom to send to represent the members in the networks and ensure they are appropriately matched to the position.<sup>21</sup>

## **Eurojust and Europol**

- **MS increase efforts in raising awareness of judges, prosecutors and police authorities about competences and activities of Eurojust and Europol to ensure full utilization of their benefits**

The value of Eurojust and Europol as facilitators of cooperation and coordination of investigations and prosecutions and sharing of information across the EU has been widely recognized, as has also been pointed out in the previous EFFACE research. Also the Council of the European Union, in its report on the sixth round on mutual evaluations of Eurojust, recognizes that Eurojust

*“...has had a tremendous effect in bringing practitioners from various Member States together, creating networks of law enforcement professionals and judicial authorities, bridging the EUs wide variety of legal systems and traditions, leading to successful operational results within the fight against organised crime and terrorism. In particular instruments such as Joint Investigation Teams (JITs) and coordination meetings (including their financing via Eurojust) are considered to be of great value for an effective, coherent and well coordinated approach to cross-border crime and due to the fact that practitioners from courts, prosecution services, police and other investigating bodies from all countries involved are present to discuss and plan further actions to be undertaken. Serious cross-border crime continues to increase and combating it effectively will require ever more*

<sup>19</sup> Council of the European Union, “Draft Council Conclusions on the Eurojust Annual Report 2014” (Brussels, 2015), [http://www.parlament.gv.at/PAKT/EU/XXV/EU/07/20/EU\\_72057/imfname\\_10563773.pdf](http://www.parlament.gv.at/PAKT/EU/XXV/EU/07/20/EU_72057/imfname_10563773.pdf).

<sup>20</sup> see Smith and Klaas, “Networks and NGOs Relevant to Fighting Environmental Crime,” sec. 2; Faure et al., “Instruments, Actors and Institutions in the Fight Against Environmental Crime,” sec. 2.2.3.

<sup>21</sup> Smith and Klaas, “Networks and NGOs Relevant to Fighting Environmental Crime,” sec. 2.1.3.

*concerted efforts. The added value of Eurojust in coordinating complex cases and facilitating the completion of legal assistance in delicate situations has been fully acknowledged by practitioners”<sup>22</sup>.*

However, the Council also states that there is still room for improvement regarding a certain reluctance of Member States to forward cases to Eurojust. This may be due to a fear of additional work, limited administrative capacity and also a lack of knowledge at the practitioners’ level about the benefits that an involvement of Eurojust can generate.<sup>23</sup>

Given the advantages and benefits of an Eurojust involvement<sup>24</sup> that outweigh the costs, efforts should be made to increase the awareness of judges, prosecutors and police forces about the competences and activities of both Eurojust and Europol to fully tap the potential they offer for an improved and more efficient cross-border cooperation.

➤ **MS ensure sufficient budget and staffing levels of their Eurojust national desks**

Another crucial point for a proper utilization of the benefits Eurojust provides is that Member States ensure a sufficient budget and staffing level of the officials at the national desks. The Council of the European Union recommends that

*„Member States should regularly assess the allocation of resources to the National Desk in relation to its workload and, if necessary, consider making use of the possibilities to appoint assistants or seconded national experts to the National Desk.“<sup>25</sup>*

➤ **Member States who have not yet fully implemented the consolidated Eurojust Decision should do so without delay**

➤ **In cases where no specific legislation has been deemed necessary to implement the Eurojust Decisions, Member States should consider making specific reference to Eurojust in any future legislation on MLA and mutual recognition cooperation**

The Council also recommends to Member States which have not yet fully implemented the consolidated Eurojust Decision 2002/187/JHA, which has a deadline for implementation on 4 July 2011, to do so. It also states that

*“By taking account of Member States different approaches in implementing legislation generally and acknowledging that the Decisions have been adequately implemented in practice, this was deemed acceptable in many cases. However, in order to give visibility to Eurojust and the EJM, to ensure that all practitioners, including courts/judges, where relevant, are aware of the obligations under the Council Decisions and for reasons of clarity, it was recommended to several countries to introduce specific legislative measures or amend existing legislation on international legal assistance in criminal matters, to include explicit references to Eurojust and the EJM.”*

<sup>22</sup> Council of the European Union, “Final Report on the Sixth Round of Mutual Evaluations on ‘The Practical Implementation and Operation of the Council Decision 2002/187/JHA of 28 February 2002 Setting up Eurojust with a View to Reinforcing the Fight against Serious Crime and of the Council Decision 2008/976/JHA on the European Judicial Network in Criminal Matters” (Brussels, 2014), 16, [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/6thRME/Final%20report%20on%20the%20sixth%20round%20of%20mutual%20evaluations/6RME-Final-Report\\_2014-12-02\\_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/6thRME/Final%20report%20on%20the%20sixth%20round%20of%20mutual%20evaluations/6RME-Final-Report_2014-12-02_EN.pdf).

<sup>23</sup> Ibid., 17.

<sup>24</sup> See also section 3.3 on cooperation and the role Eurojust can play in joint investigations.

<sup>25</sup> Council of the European Union, “Final Report on the Sixth Round of Mutual Evaluations on the Practical Implementation and Operation of the Council Decision 2002/187/JHA Setting up Eurojust.”

## 4.3 Priority Setting

### ➤ Put environmental crime on the list of priority areas of crime

One way of giving environmental crimes a higher priority would be to include these crimes in the list of priority areas of crime by the Council and Eurojust. As has been pointed out above, environmental crime is listed as an area of crime that Eurojust is competent to deal with, but not as a priority in the Council conclusions on setting the EU's priorities for the fight against serious and organised crime<sup>26</sup>. This could not only increase the awareness of the seriousness of environmental crime among enforcement institutions, but would also increase the probability that JITs set up for combating environmental crimes are eligible for funding by the grants from Eurojust.

### ➤ Environmental agencies and prosecutors use a targeted enforcement strategy

Given the limited budgets for enforcement activities and the high costs of monitoring, inspections and criminal prosecutions, the question is how these limited resources are spent most effectively. Environmental agencies and prosecutors therefore have to set priorities and focus their efforts on specific categories of polluters or violators and most important cases to ensure the highest possible level of compliance with the lowest effort.

Such so-called targeting can take place in relation to monitoring, with inspections not carried out randomly, but based on an ex ante risk assessment and/or intelligence-led approaches. This risk-based monitoring and targeting could then increase the effectiveness and efficiency of monitoring efforts. Another aspect is self-reporting, where firms that voluntarily self-report a violation of pollution standards would be rewarded with lenient sentences. This would allow the agencies to focus their scarce resources on those firms or activities where the most violations and therefore the highest benefits of enforcement activities can be expected.

There are, however, several questions that have to be addressed concerning those strategies: to what extent it is possible to rely on voluntary compliance mechanisms and in how far is it possible to differentiate firms based on an ex ante risk assessment where there is no information, e.g. before any inspections have been done? Are the information and data on inspections and violations that are necessary for a targeted approach available?

Targeting enforcement activities can also take place in prosecution, with prosecutors focusing on those cases that are most important or severe. This, however, is only possible in Member States where the principle of opportunity applies, instead of the principle of legality. In the latter case, the prosecutor has no right to decide to not prosecute a crime, although there may be some leeway in practice. Whether prosecution efforts can be targeted therefore highly depends on the legal system and framework of the respective Member State.

In general, it has to be kept in mind that when applying the strategy of targeting at the prosecution level, there is the danger that where no specialized enforcement institutions exist, the lack of priority given to environmental crime cases can lead to no prosecution of environmental crimes. Therefore, targeting should be understood as focusing on the most severe and important cases of environmental crime, not of all crimes in general.

### ➤ Enhance the legal obligations with regard to enforcement institutions in EU environmental law

EU environmental law is highly variable in the provisions it contains on inspection and enforcement. Such provisions are found in directives regulating industry<sup>27</sup>, waste (shipment<sup>28</sup>, mining<sup>29</sup>, WEEE<sup>30</sup>, ship recycling<sup>31</sup>),

<sup>26</sup> Council of the European Union, "Council Conclusions on Setting the EU's Priorities for the Fight against Serious and Organised Crime between 2014 and 2017."

<sup>27</sup> Industrial Emissions Directive 2010/75/EU: Art. 23. establishes requirements for inspection plans and programmes and for inspections to be based on a systematic appraisal of the environmental risks.

<sup>28</sup> Waste Shipment Regulation (EC) No 1013/2006: Art. 50 sets out details for inspections at any point in the waste chain to point of shipment. An amendment introduced the need for inspection planning.

<sup>29</sup> Mining Waste Directive 2006/21/EC: Art. 17 establishes requirements for inspections to ensure compliance with permits.

and CITES<sup>32</sup>. Other areas (e.g. much water law) contain no (or almost no) specific enforcement requirements. In many cases even where there are legally binding provisions, they are very brief. Only a few recently adopted items of legislation have introduced more extended provisions (e.g. Industrial Emissions Directive and amended Waste Shipment Regulation). These items of legislation include concepts of a risk-based approach to enforcement activity and of the need for planning.

It is possible to amend EU environmental law to enhance the work of enforcement institutions. This could be done through amending law as opportunities arise (e.g. when directives are reviewed) or through a horizontal amending item of law. In either case, the provisions would need to recognise the specific contexts of Member States (so not being too prescriptive and allowing flexibility in enforcement structures). So, for example, a directive could require Member States to assess the extent of non-compliance, to determine the capacity of enforcement institutions to address this, produce a plan, implement, evaluate, etc. Poor enforcement might still occur, but this would be much more apparent to stakeholders.

There is a limit to how far EU law could go in setting obligations for Member State institutions and their objectives. For example, any objectives in relation to achieving particular levels of compliance are both redundant and impracticable. A directive already requires Member States to ensure compliance, while a requirement to ensure 100% compliance may be unworkable where criminal activity is prolific.

## 4.4 Capacity Building

- **EU provides funding for training measures and guidance for practitioners; MS make use of various projects for capacity building offered by EENs and other organizations**

The problem of a lack of specialization and therefore specialized knowledge of police officers, prosecutors and judges in some Member States regarding environmental crime and enforcement has been described already in one of the previous sections. The EU will not be able to fully remedy a lack of resources available for combating environmental crime at the national level. However, the EU can and already does to a certain extent provide guidance on enforcement matters and funding for training measures, research projects and support environmental enforcement networks which offer training and capacity building measures. This facilitates the exchange and increase of expertise among practitioners.

Guidelines on enforcement matters can provide direction, general information and practical guidance for investigators, prosecutors and judges. They could lay down expected procedures to be followed during investigation and prosecution, taking into account the powers given to inspectors under the different national legislations.<sup>33</sup> They could also contain information on sanctioning practices in various Member States for different types of environmental crimes.

One of the main activities of environmental enforcement networks and many other organizations active in the field of environmental crime is capacity building. Along with the recommendation to Member States to actively participate in EENs to facilitate cooperation, it is also recommended to Member States (especially the ones that so far are rather passive or inactive and have rather weak environmental enforcement institutions) to participate and make use of the various possibilities of training measures and guidelines that are offered.

<sup>30</sup> WEEE Directive 2012/19/EU: Art. 23 establishes requirements for inspections to ensure compliance including cooperation between administrations to achieve this.

<sup>31</sup> Regulation (EU) No 1257/2013 on ship recycling Art. 8 sets out requirements for ship surveys, including repetition and details of what is to be examined.

<sup>32</sup> In this case the non-binding Commission Recommendation on Enforcement of CITES 2007/425/EC.

<sup>33</sup> G. L. Rose, "Gaps in the Implementation of Environmental Law at the National, Regional and Global Level" (First Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability, Kuala Lumpur, Malaysia: UNEP, 2011), 28, <http://www.unep.org/delc/Portals/24151/FormatedGapsEL.pdf>.

Within the EU, examples are mostly related to improving environmental enforcement in general and include: the IMPEL Review Initiative (IRI), a voluntary scheme providing for informal reviews of environmental authorities through an external review of their structure, operation or performance, carried out by experts from other IMPEL member countries<sup>34</sup>; the web based assessment tool developed also by IMPEL which can be used for inspections planning under for example the IED Directive, the Seveso Directive and the Waste Framework Directive<sup>35</sup>; the Environmental Compliance Training Resource Library by INECE<sup>36</sup> or the OECE offering training sessions on “capacity building for law enforcement in environmental crime”<sup>37</sup>.

## 5 Alternatives

The question of alternative policy options outside the criminal justice system is not so relevant for the topic of environmental enforcement institutions and their cooperation, since the recommendations made do not suggest changes in the criminal law but rather address the use of existing instruments for improving cooperation between institutions. Moreover, the cooperation between enforcement agencies is not strictly limited to the criminal justice system, but includes also the cooperation with environmental agencies with no criminal law functions.

However, to some extent, an alternative to the proposed policy options would consist in promoting the prevention of environmental crimes through the increase of pro-active monitoring by supporting the responsible environmental authorities. Pro-active monitoring not only leads to the detection of environmental crimes and thus forms part of the judicial chain, but also and foremost contributes to preventing environmental crimes by regularly controlling compliance with environmental requirements. This double function already makes clear that more support for pro-active monitoring does not really represent an alternative to the other policy options, but an additional option. However, one could say that the more efforts are put on this option including a strong preventive component, the less effort is needed for policy options on the reactive side, e.g. concerning resources.

In the end, more political priority, resources, specialization and capacity building should be given not only to environmental crime enforcement institutions, but also to administrative authorities in order to strengthen pro-active monitoring.

## 6 Harmonization/coordination/MS

### 6.1 Coordination, cooperation and networking

The EU, while setting the regulatory framework, does not have the authority to enforce provisions on environmental crime itself, but this competence lies with the authorities of the Member States. The enforcement institutions of the Member States are therefore the crucial actors that determine the effectiveness of efforts to combat environmental crime. This effectiveness also depends on the cooperation between those enforcement institutions, within the Member States and between them. Many of the policy options discussed before therefore address the level of the Member States, while the options that concern the EU involve mostly a supporting role, providing funding and setting policy priorities. For an overview which policy options concern the Member State level and which the EU level see Table 2 below.

<sup>34</sup> “IRI Slovenia | IMPEL,” accessed December 16, 2013, <http://impel.eu/projects/iri-slovenia/>.

<sup>35</sup> See <http://impel.eu/projects/supporting-the-implementation-of-the-integrated-risk-assessment-method-iram/>

<sup>36</sup> Available at <http://inece.org/resources/>

<sup>37</sup> See <http://www.osce.org/serbia/100418>



The weaknesses and problems identified in the former EFFACE research regarding the functioning of environmental enforcement institutions and the cooperation between them mostly concern the enforcement level, not the regulatory framework. Therefore no recommendations are given in this report to change criminal law, but rather to address the operational level by increasing and facilitating cooperation, coordination and networking, setting priorities on environmental crime and provide guidance for enforcement institutions and increase their capacities to combat environmental crime more efficiently. Concerning non-criminal law, however, some changes on the legislative level may be appropriate to enhance pro-active monitoring of compliance with environmental provisions (see below).

## **6.2 Harmonization of monitoring and inspections**

The recommendation to enhance the legal obligations with regard to enforcement institutions in EU environmental law, either through amending law as opportunities arise (e.g. when directives are reviewed) or through a horizontal directive setting out requirements on monitoring and inspection across a range of sectoral directives in one go, implies the harmonization of monitoring and inspections. This would go beyond the previous Recommendation on Minimum Criteria for Environmental Inspections, which had some impact, but was limited both by the scope of issues it addressed and by the fact that it was not legally binding. As has been pointed out above, the option would not prevent poor enforcement, but could make the level of compliance and enforcement more transparent.

The legal setting for harmonisation of monitoring and inspections is only one route. There are also different opportunities to enhance the capacity and effectiveness of monitoring and inspection by the Member States through funding, sharing best practice, training, information sharing, etc. The activities of IMPEL (including peer reviews, joint inspections, etc.) are good examples of such initiatives. However, they are often most effective when linked to particular obligations in EU law which can form the focus for comparison of approaches and sharing best practice.

**Table 2: Overview of Policy Options for MS and the EU**

	Policy Option MS	Policy Option EU
<b>Specialization</b>	➤ consider increased specialization of enforcement institutions	
	➤ make more use of JITs in case of cross-border environmental crimes	
<b>Cooperation</b>	➤ increase the involvement of Eurojust and Europol in cross-border investigations and JITs and forward cases to Eurojust	➤ provide sufficient funding for the grants of Eurojust for financing JITs
	➤ facilitate the utilization of EENs and send officials of government agencies	➤ provide funding for EENs
	➤ increase efforts in raising awareness of judges, prosecutors and police authorities about competences and activities of Eurojust and Europol to ensure full utilization of their benefits	
	ensure sufficient budget and staffing levels of their Eurojust national desks	
	Consider including references to Eurojust in future legislation on mutual legal assistance	
<b>Priority setting</b>	➤ consider giving environmental crime a higher priority in their national agendas	➤ use its power of agenda setting and put environmental crime on the list of priority areas of crime
	Environmental agencies and prosecutors use a targeted enforcement strategy	
		➤ enhance the legal obligations with regard to enforcement institutions in EU environmental law
<b>Capacity Building</b>	make more actively use of various projects for capacity building offered by EENs and other organizations	provide funding for training measures and guidance for practitioners & for EENs offering such measures and guidance

## 7 Effectiveness

One main weakness that has been identified in many of the EFFACE reports on the situation in individual Member States is the problem that too few resources are allocated to the monitoring and investigation of environmental crimes within the police and prosecutors' offices.<sup>38</sup> It is, however, important to not only plead for more resources and funding. Although such demands might be justified, given the budget constraints that exist and are exacerbated by the current financial crisis in many Member States, the danger is that those calls are simply not effective. Therefore it is rather important to use the available resources as effectively and smartly as possible, with better cooperation between enforcement institutions being one way, targeting enforcement activities another way to do so.

### Specialization

The issues of funding and specialization of police, prosecutors and judges are closely linked, and also related to the effectiveness of the environmental enforcement system. If insufficient capacity is made available for pro-active monitoring, detection rates are likely to fall, and if no specialised prosecutors or judges are available, there is a higher likelihood of dismissals or wrongful acquittals. This can lead to lower probabilities of prosecution and sanctioning and, in case of lacking capacity building of the judiciary, to low imposed fines. Specialization, as has been often repeated, is therefore necessary at all levels of the enforcement chain (the pro-active monitoring of environmental crimes by either the police or administrative authorities, the prosecution and the judicial level) and can increase the effectiveness of the environmental enforcement system.<sup>39</sup>

### Cooperation

One weakness identified is that the implementation of the procedures existing for trans-boundary cooperation in criminal matters in the Member States appears lengthy and complicated with the result that these procedures are used only reluctantly by officials. Member States should increase their use of the instrument of JITs, which, given the advantages pointed out above, has the potential of making trans-boundary cooperation more effective. This can be further enhanced by involving Eurojust and Europol into the investigations, since they can contribute with their legal and operational expertise to overcome some of the obstacles Member States face when setting up joint investigations. Another way of addressing the weakness for Member States is the participation in EENs, which – by facilitating personal contacts between officials of different Member States – can contribute to more and easier cooperation across borders.<sup>40</sup>

Another weakness regarding cooperation is the underutilization of Eurojust and Europol by Member States. The effectiveness of the suggested options – increase awareness, ensure sufficient budget and staff for the Eurojust national desks and referring to Eurojust in future legislation on MLA – depends highly on the degree to which the Member States apply them.

The role of the EU concerning cooperation is more of a supportive nature, as it is merely suggested to provide funding for EENs as well as Eurojust. In how far this is effective in facilitating trans-boundary cooperation depends on the utilization by the Member States and can only indirectly be influenced by the EU.

### Priority Setting

The weakness of environmental crime being no priority in many Member States' political agendas can be addressed by the EU by putting environmental crime on the list of priority areas of crime and thereby raising

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<sup>38</sup> For example Faure et al., "Instruments, Actors and Institutions in the Fight Against Environmental Crime," sec. 3.15.2.

<sup>39</sup> see *ibid.*, sec. 3.9, 3.10 and 3.11.

<sup>40</sup> for more details see Smith and Klaas, "Networks and NGOs Relevant to Fighting Environmental Crime," sec. 2.

awareness about the importance of the topic. In addition, a higher priority given to environmental crime is closely connected to the issues of funding and specialization. As the topic ranks higher on the political agenda, more of the scarce resources can be allocated to it which also includes more specialization of the enforcement institutions. The priority setting alone therefore cannot make the environmental enforcement system more effective, but the implications that follow a higher priority of the topic.

Regarding targeting on the monitoring level, empirical evidence has demonstrated the effectiveness of such a “smart” targeting strategy.<sup>41</sup> It is a way to make the most of scarce resources and focus on the most severe cases where the highest benefits of enforcement activities can be expected. For the targeting at prosecution level, it already has been pointed out that this can only be effective regarding environmental cases when there is some specialization of the institutions so that not environmental crime cases in general are ceased to prosecute.

### **Capacity Building**

Regarding the weakness of a lack of staff and resources in many enforcement institutions, it is questionable if the proposed options for Member States of making active use of training measures and tools developed by EENs and other organizations and for the EU of supporting such measures alone are effective enough to increase the capacity of enforcement institutions to deal with environmental crime to the degree that would be desirable. Training and guidelines can help facilitating the exchange and increasing of expertise among practitioners, but most likely will not be able to remedy a lack of resources and specialization of enforcement institutions at the national level completely. So the proposed measure is not effective on its own, but only in combination with the other options proposed.

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<sup>41</sup> See L. Friesen, “Targeting Enforcement to Improve Compliance with Environmental Regulations,” *Journal of Environmental Economics and Management* 46, no. 1 (2003): 72–85; S. Rousseau, “Timing of Environmental Inspections: Survival of the Compliant,” *Journal of Regulatory Economics* 32, no. 1 (2007): 17–36.

## 8 Conclusions

Based on the strengths, weaknesses and opportunities that have been identified during the SWOT analysis of enforcement institutions and the cooperation between them that has been conducted as part of the EFFACE project, this report proposes a set of policy options addressed at Member States and the EU to improve the effectiveness of the environmental enforcement system. The options presented fall under four overarching categories: specialization, cooperation, priority setting and capacity building. Regarding the specialization of enforcement institutions on the national level, Member States should consider increasing the specialization of police forces, prosecutors and judges to ensure a more effective environmental enforcement system. There are different good practice models across the EU how this could be done at which other Member States can look at and choose appropriate measures for their respective legal system.

For improving the cooperation between enforcement institutions across borders, several instruments are already in place, which have to be utilized more by Member States. The possibility to set up joint investigations in environmental crime cases should be used more systematically, with the involvement of Eurojust and Europol to assist with legal and operational expertise. Member States should also participate actively in environmental enforcement networks to increase personal contacts among officials to make cross-border cooperation easier, and promote the involvement and raise the awareness among enforcement officials about the benefits of Eurojust and Europol for trans-boundary investigations. Member States should also ensure a sufficient budget and staffing level of their Eurojust national desks and consider including references to Eurojust in future legislation on mutual legal assistance. For the EU it is recommended to support these options of facilitating trans-boundary cooperation by providing funding both for EENs and Eurojust's support for JITs.

Given the lack of priority and therefore resources awarded to the issue, the EU should set environmental crimes on the list of priority crimes to increase also awareness about the topic on national level. Giving environmental crime a higher priority also bears the chance that more resources are allocated to combating these crimes and possibly facilitate the specialization of enforcement institutions on environmental crime. On the national level, environmental agencies and prosecutors have to set priorities and focus their efforts on specific categories of polluters or violators and most important cases to ensure the highest possible level of compliance with the lowest effort. Regarding capacity building, the lack of staff and resources in many enforcement institutions cannot be remedied completely by the proposed option for Member States to use the training measures and guidelines offered by many EENs and other organizations and for the EU to support these measures, but it can help facilitating the exchange and increase of expertise among practitioners.

The proposed policy options do not suggest changes in the criminal law, but rather address the enforcement level and the use of instruments for improving cooperation between institutions. Moreover, this cooperation is not limited to the criminal justice system, but also includes the cooperation with environmental agencies. An additional option, rather than an alternative, is the increase of pro-active monitoring, which contributes to the detection and prevention of environmental crime.

The core recommendations that are considered as crucial to improve the effectiveness of the environmental enforcement system are marked in table 2.

The core recommendation regarding the functioning of enforcement institutions and their cooperation is the overarching proposal to put environmental crime higher on the political agenda. This is closely connected with the other options, as the topic ranking high on the agenda implies also that scarce resources are allocated to it, making a higher specialization of enforcement institutions more likely.

This increased specialization is another core proposal. The importance of sufficient competences on issues of environmental crime has been pointed out throughout the whole EFFACE research, which can only be ensured if police forces, prosecutors and judges are adequately trained and specialized on the topic of environmental crime. This option, which lies exclusively with the competences of the Member States and whose feasibility depends on the respective national legal system, has in general great potential to increase the overall effectiveness of the environmental enforcement system.

Another core proposal, which does not require changes in the legal system but rather requires a more systematic use of existing instruments, is the call for increased trans-boundary cooperation between enforcement institutions by facilitating the use of joint investigation teams and including Eurojust and Europol in these investigations, by participating in environmental enforcement networks and encouraging the use of Eurojust and Europol to make this cooperation and thereby the fight against environmental crime more efficient. These options can be considered as ‘low-hanging fruits’ since they are about using instruments that are already in place. Also crucial in this regard is the funding of Eurojust and environmental enforcement networks by the EU.

A core proposal addressing the EU level is the enhancement of legal obligations with regard to enforcement institutions in EU environmental law, either through amending law as opportunities arise (e.g. when directives are reviewed) or through a horizontal directive setting out requirements on monitoring and inspections across sectoral directives, so that they include obligations to monitor and evaluate compliance levels and enforcement needs. This would make poor enforcement and its causes more apparent to stakeholders.

Supporting these core proposals would be for Member States to ensure sufficient staffing levels at Eurojust national desks and consider including references to Eurojust in future legislation on mutual legal assistance. The other recommendations regarding priority setting and capacity building can also be considered as supplementary options, since targeting, training and guidelines may be helpful in using the available resources efficiently, but cannot remedy a lack of resources and specialization in general.

**Table 3: Summary of Policy Options**

<i>Level</i>	<i>Option</i>	<i>Recomm ended</i>	<i>Political feasibility</i>	<i>Priority</i>
<b>EU</b>	• provide sufficient funding for the grants of Eurojust for financing JITs	Yes	high	+
	• provide funding for EENs	Yes	medium	+
	• use its power of agenda setting and put environmental crime on the list of priority areas of crime	Yes	medium	+
	• enhance the legal obligations with regard to enforcement institutions in EU environmental law	Yes	high	+
	• provide funding for training measures and guidance for practitioners & for EENs offering such measures and guidance	Yes	high	+/-
<b>Member States</b>	• consider increased specialization of enforcement institutions	Yes	medium	+
	• make more use of JITs in case of cross-border environmental crimes	Yes	Easy/medium	+
	• increase the involvement of Eurojust and Europol in cross-border investigations and JITs and forward cases to Eurojust	Yes	Easy/medium	+
	• facilitate the utilization of EENs and send officials of government agencies	Yes	Easy/medium	+
	• increase efforts in raising awareness of judges, prosecutors and police authorities about competences and activities of Eurojust and Europol to ensure full utilization of their benefits	Yes	easy	+
	• ensure sufficient budget and staffing levels of their Eurojust national desks	Yes	medium	+/-
	• Consider including references to Eurojust in future legislation on mutual legal assistance	Yes	easy	+/-
	• consider giving environmental crime a higher priority in their national agendas	Yes	medium	+
	• Environmental agencies and prosecutors use a targeted enforcement strategy	Yes	high	+/-
	• make more actively use of various projects for capacity building offered by EENs and other organizations	Yes	easy	+/-

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