

Workshop on environmental crime and organised crime

24 June 2014, Catania

Summary



Introduction

The following is a summary of a workshop held as part of the EU-funded research project “European Union Action to Fight Environmental Crime” (EFFACE, www.efface.eu). 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.

EFFACE research on environmental crime and organised crime – legal instruments: summary of country reports

Stephan Sina (Ecologic Institute) gave an overview of the EFFACE country reports on legal instruments related to organised crime. After a brief introduction to EFFACE research on the role of organised crime, he pointed to relevant substantive and procedural provisions in the respective Member States (Italy, France, Poland, UK, Spain, Germany, and Sweden). In his provisional findings, he concluded that there was no legal definition of organised crime with the legislation of the Member States investigated, and there were only few explicit links between organised crime and environmental crime, notably in Italy concerning organised illegal waste trafficking. Substantive and procedural provisions on organised crime are only applicable to some extent to environmental crime. Overall, environmental criminal law is only integrated to a small extent into organised crime legislation.

The International and EU Framework on organised crime

Teresa Fajardo del Castillo, University of Granada, presented EFFACE research on organised crime at the international and EU level in the perspective of fighting environmental crime. In her opinion, organised crime still needs a consensual overall definition. States have difficulties in dealing with organised crime because of the lack of legal and policy tradition in this field. Fajardo del Castillo pointed to the importance of the UN Convention on Transnational Organised Crime (Palermo Convention) for cooperation on organised crime, and to the importance of the UN Office on Drugs and Crime (UNDOC) for coordination activities. The Palermo Convention’s Conference of the Parties (COP) stated in 2012 that environmental crime had evolved to become a serious form of transnational organised crime. At the EU level, Art. 83 TFEU enables the EU to enact directives in areas of particularly serious crime with a cross-border dimension, but this is currently not on the agenda. Disparities in implementation of environmental law and of the Council Framework Decision 2008/841/JHA on the fight against organised crime have resulted in organised crime to thrive in those Member States with low sanctions and lowest resources for combating organised crime. The draft of the Environmental Crime Directive 2008/99 contained references to organised crime that were deleted in the process. Fajardo del Castillo considers cooperation important to overcome the different legal traditions. Problems and challenges concerning extradition include the double criminality principle. Under the Council Framework Decision 2002/584/JHA on the European arrest warrant, the European Court of Justice accepted in the Mantello case (C-261/09) that this principle was not verified, provided that the relevant offence was punishable in the Member State issuing the arrest warrant by a maximum prison sentence of at least three years; Among the list of offences to which this exemption applies are participation in a criminal organisation and environmental crime.

Comment

Gorazd Mesko (University of Maribor, Slovenia, Member of the EFFACE Advisory Board) commented on EFFACE research on environmental crime and organised crime from a criminological perspective. He pointed to the differences in understanding of practitioners and law-makers and to the difficulties to cope with ever-changing rules and procedures. Not every environmental crime is organised crime; one example of organised environmental crime is illegal waste shipment. One has to be cautious in applying alleged best practice to other circumstances where they might not be suitable. Public awareness campaigns and NGOs as watchdogs are important in fighting environmental crime.

In the subsequent **discussion**, it was mentioned that cases of environmental crime were not prioritized by enforcement bodies if they are not related to organised crime, and that strongly depended on the people involved (police, judges etc.). There may be an interest of the police to consider environmental crime as organised crime because of the more extended competences of the prosecution authorities in cases of organised crime. One reply was that the question whether organised crime is at stake was not a matter of choice but of fact. Another response confirmed that the problems in practice were rather problems of applicability of organised crime provisions, e.g. legal considerations on whether something is waste or not in the context of illegal waste trafficking (cf. the ECJ decision of 12 December 2012, *Shell v. Netherlands Government*, C-241/12 and C-242/12). The minimum inspection criteria and (some) shift of the burden of proof in amendments to the Waste Shipment Regulations were considered useful in practice. Model provisions (e.g. from Italy) were suggested as basis for a future directive to be adopted according to Art. 83 TFEU. Concerning best practice, a problem was seen in what is really good or applicable to other contexts. Therefore a simple example is not necessarily a best practice.

Comment on organised Crime and environmental crime in Italy (waste)

Antonio Pergolizzi (Legambiente, Member of the EFFACE Advisory Board) made some general comment on organised crime and environmental crime in Italy. According to the last Ecomafia report, published by Legambiente, there was a slight decrease of forest crimes, but a huge increase of crimes in the food sector. Green corruption has become a great problem, and illegal activities on sea are a raising problem. Concerning waste, the financial flows are increasingly different from the waste routes, with a few big actors being the beneficiaries. But involvement of the mafia is not the rule. Pergolizzi considers that Italy has a lot of problems with the Ecomafia, but also a lot of experience that should be shared with other EU States.

In the **discussion**, the cooperation problem concerning waste shipment between the competent authorities from Italy and Slovenia was mentioned, and the involvement of the Ecomafia in waste shipment to Somalia. A participant pointed to the fact that concerning environmental crime the different mafia organizations join forces “because the cake is big enough” whilst they normally fight each another.

Environmental crime and organised crime: a perspective from INTERPOL

Cees Van Duijn (INTERPOL) presented the activities of the Environmental Security Unit of Interpol. The system I-24/7 is the secured way of exchanging information between the 190 member countries. In addition, INTERPOL cooperates with many other organizations including Intergovernmental Organization (IGO), NGOs. INTERPOL encourages and supports countries in the establishment of National Environmental Security Taskforces (NEST) that envision the necessary multi-disciplinary

approach in combating environmental crimes. Within INTERPOL, there are working groups on wildlife crime, pollution crime, fisheries crime; a further group on forestry might be set up soon. In practice, INTERPOL uses the UN Convention definition on organised crime. It provides investigative support (e.g. documentation on ivory trafficking in several countries, training of forensic units) and is involved in projects on ivory, tigers, illegal timber, waste trafficking (e.g. e-waste), all of which constitute organised crime. Concerning the infrastructure for organised crime, it is sometimes illegal (also used for drugs, smuggling etc.), sometimes legal (waste). Other areas of interest or engagement are illegal mining, pesticides, climate change (carbon credits fraud). INTERPOL is also aiming at raising awareness through campaigns like "Turn Back Crime". Turn Back Crime is a global campaign that highlights the dangers of organized crime and its effect on our day-to-day lives.

Using a variety of media channels – including video, website and social networks – the campaign provides advice on how to stay safe and encourages the general public, businesses and governments to play a role in reducing the impact of crime.

Comment

In his comment, **Rudie Neve** (National Police Services Agency, KLPD) pointed to the problem of organised crime by companies within a legal business.

In the subsequent **discussion**, biogas offences were mentioned, whereby e.g. parts of slaughtered animals are used. The problem is that there is a grey zone between waste laws and the laws regarding slaughtered animals. Concerning the relationship of Interpol to Europol, a participant considers it as complementary, with Interpol being ahead on environmental crime and Europol being strong on analysis.

Open forum for participants, with a view on establishing action recommendations

In his summary of the workshop, rapporteur Ralph Bodle (Ecologic Institute, EFFACE scientific coordinator) indicated that the legal rules were considered sufficient, but that their implementation in practice could be difficult for various reasons. He asked what was special about organised crime and whether, in addition to certain offences that are by their nature organised crime (waste and wildlife trafficking), there are also kinds of organised crime that are not transnational. Finally, he asked whether cooperation and sharing of information is a self-organising process or whether it is or should be prescribed.

Concerning legal rules, a participant said that there was still space to create legal precedents by introducing good laws. Concerning the special nature of organised crime, it was mentioned that organised crime was particularly dangerous so that specific rules on investigation etc. apply to it. The problem was which environmental crimes should be included, and that this insecurity may well be the reason that integration of organised crime and environmental crime was still on a low level. Another participant was in favor of an international approach to organised crime and considered the division between economic crime and organised crime artificial.

A participant pointed to the fact that there was also illegal trade with other substances, and that customs is only looking at certain issues. Concerning information sharing, it would be useful to have clearer rules on what authorities are allowed to do, e.g. with respect to countries like China (the main area where waste is sent from the EU) because of human rights and for other political reasons. A problem was also seen in multinational companies based in the EU but acting outside EU's jurisdiction.



This workshop was organised by the EFFACE project. The EFFACE project receives funding from the European Union's Seventh Framework Programme for research, technological development and demonstration under grant agreement no 320276. Nothing in this report can be attributed to the European Union the European Union is not liable for any use that may be made of the information contained therein.