Science for Environment Policy

Efforts to fight environmental crime in the EU evaluated

A SWOT (strengths, weaknesses, opportunities, threats) analysis of efforts to combat environmental crime in the EU has been recently conducted. It highlights a number of opportunities for improvement, including better crime data gathering across the EU and enhanced cooperation between Member States.

The extensive analysis was performed by EFFACE (European Union Action to Fight Environmental Crime), an EU-funded project delivered by a pan-European team of researchers. It identifies critical issues associated with the battle against environmental crimes. A few examples of such crimes include the dumping of toxic waste, trade in endangered species and arson in forests. The results identify critical issues which provide a platform for developing specific policy recommendations.

The researchers conducted SWOT analyses of nine environmental crime themes (listed below) and considered how the results of each theme may interact.

1. Data and information management.
2. Further harmonisation of substantive environmental criminal law at the EU level (excluding sanctions).
3. System of sanctions (administrative vs. criminal vs. civil proceedings).
4. Functioning of enforcement institutions and cooperation between them.
5. Trust-based and cooperation-based approaches: environmental crime victims and civil society.
6. External dimensions of environmental crime — what the EU can do.
7. Use of environmental liability or the ‘polluter pays principle’ — an obligation based on the principle that a polluting party should pay for damage to the environment from its activities.
8. Organised environmental crime.
9. Corporate responsibility and liability in relation to environmental crime.

From their results, the researchers present many opportunities which could be used to address environmental crime. Among these are a number of issues which concern the review of the Environmental Crime Directive and include opportunities to consider the effectiveness of criminal law, different forms of sanction and the relevance of criminal law to non-criminal law.

For instance, while the analysis shows that criminal law is important in tackling environmental crime, it also suggests that less costly, non-criminal sanctions (e.g. administrative or civil fines), as used in some Member States (such as Germany, France and Sweden), may also act as good deterrents. A mix of available sanctions is considered a strength by the study. However, data on the effectiveness of different types and sizes of sanction, and on environmental crime in general, is seriously lacking, and is threatened by budget cuts. This highlights an important opportunity to improve data gathering and analysis in the EU and individual Member States, for example, through new software and reporting practices.

Good data on environmental crime is important to help understand its extent, its impacts and where combative actions will be most effective. The study concluded that data for soils, waste shipment, pollution incidents, fisheries and logging can be considered strengths, in terms of data sources for managing environmental crime. For instance, there is good availability for national-level data on soil in countries where the management of contaminated sites is centralised. For waste movement, there are also effective shared systems (including for data sharing) and cooperation between Member States.

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There are a number of major gaps in data and information in the EU, however. These include a lack of quantitative information on certain crimes, such as the economic impacts of soil contamination, the costs of pollution incidents and the volume of waste movements. IT-based opportunities for improving information exchange could allow information to quickly translate from detection to enforcement and improve the ability to analyse large databases to identify criminal organisations and activities rapidly, among other opportunities. The study acknowledges that data gathering is costly, and pressures on public budgets could threaten efforts in this area.

It also comments on the need to address gaps and inconsistencies in EU environmental criminal law. It points to a gap between those measures addressing environmental crime and measures addressing organised crime more broadly — such as the lack of criminalisation (at the EU level) of wildlife trafficking and organised waste trafficking. It also points to a lack of clarity in the relationship between criminal and administrative law in environmental protection.

The analysis also highlights an opportunity to assess if enforcement is effective. The effectiveness of the EU’s current regulatory framework on environmental crime depends significantly on the degree to which it is properly enforced by Member States. The study suggests enforcement is more effective if specialist agencies are in operation (e.g. France’s inter-institutional unit, OCLAESP, in charge of investigating environmental crime, or Spain’s specialised police force for environmental crime, SEPRONA). It is also more effective if Member States prioritise it as a political issue, where there is good cooperation between administrative and criminal authorities, and where there is good cooperation with other Member States. The EU could therefore consider opportunities to support these competencies. For example, it could enhance transboundary cooperation by providing additional support to Europol and Eurojust.

Cooperation needs to be not only between EU Member States, but also with non-EU countries. International treaties therefore present key opportunities to address transboundary crime, data sharing, criminalisation and enforcement in the fight against environmental crime, the study suggests.