New research has examined three different categories of Ecological Risk Assessment (ERA), each with different goals. The researchers find that overlaps between the three assessments could be combined to create a more comprehensive form of ERA, usable by regulators and environmental decision makers.

Administrative sanctions against environmental crime, such as fines, are generally easier and cheaper to implement than criminal punishment methods, such as prison sentences. This study explored enforcement methods for environmental crime in four Western European areas: Flanders (Belgium), Germany, the Netherlands and the UK. Based on their findings, the authors say it is most cost-effective — and may increase deterrence — to use both forms of enforcement.

Criminal law, which focuses on crimes that threaten public safety and imposes punishments such as prison sentences, can be expensive to enforce. Due to financial costs to society, it has been suggested that criminal sanctions should only be used for very serious crimes.

However, many European countries use criminal law as the primary enforcement instrument for environmental crime. In 2008, the Directive1 on the protection of the environment through criminal law was adopted to strengthen the role of criminal law in relation to environmental compliance assurance. It requires Member States to criminalise specific offences and to ensure that serious breaches are punishable by effective, dissuasive and proportional penalties.

This conflicts with a growing trend towards administrative fines in some European countries, which raises the question of whether relying primarily on criminal law is always the most effective option. To answer this question, this study looked at data from four Western European regions: the Flemish region of Belgium and the UK, which have traditionally relied on criminal sanctions; and Germany and the Netherlands, where administrative sanctions are the main enforcement tool to address environmental offences.

The major difference between the sanctioning systems is that administrative sanctions are easier to impose (and therefore assumed to be cheaper) than criminal sanctions, due to complex criminal procedure and the cost effectiveness of criminal sanctions. This study looked at which was more effective at encouraging compliance (given a fixed budget): a criminal system alone, or a combined criminal and administrative system.

In sum, the Flemish region relies mainly on criminal law but only a minority of violations are prosecuted (7% between 1998–2004). In England and Wales, even fewer incidents were prosecuted (3% between 2000–2007). This suggests there are many offences which require some form of enforcement but do not fulfil the requirements for costly criminal prosecution, and are therefore not prosecuted due to the lack of a valuable alternative.

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Environmental criminal enforcement: most effective when combined with administrative sanctions

In the Netherlands, administrative fines are not permitted for environmental crime. Administrative orders are often used in their place (such as an ‘order under penalty’, as a result of which the offender can be forced to pay a monetary sum). Here, such administrative measures are used for around 40% of all violations. In Germany, administrative fines are permitted and are used in over 50% of violations. The researchers suggest that the possibility of facing an administrative measure may increase the level of deterrence, by increasing the likelihood and severity of sanctioning.

Overall, the findings suggest that a combination of administrative and criminal enforcement is the most effective. The researchers say that administrative sanctions are needed for those crimes that do not merit the high-cost criminal procedure, but still require some form of punishment. Without administrative options, many moderately serious cases may not be prosecuted. Although less likely to be imposed, criminal prosecution is also important for serious cases. Thus, a balanced use of criminal law (combining it with administrative law for minor or moderately serious crimes) is more efficient than relying solely on criminal law.

It should be noted that the researchers did not test the effectiveness of the different approaches in terms of whether companies improved their compliance with environmental regulation or whether better environmental protection was achieved. In addition, the researchers highlight limitations caused by a lack of data. Reliable data on the number of violations and their consequences was not available in many cases. They therefore recommend that a harmonised system of data collection on inspections, violations, measures taken and sanctions be established across Europe.