Management Summary

The present study “Organised Environmental Crime in the 15 EU Member States” provides

- a research of cases of organised environmental crime in the EU Member States,

- an analyses of the legal environment concerning organised environmental crime in France, Germany, Italy, Spain and the UK,

- a review of the enforcement structures concerning organised environmental crime in France, Germany, Italy, Spain and the UK,

as well as proposals on combating this crime segment.

Sectors requested by the European Commission were:

- illegal commercial trade in endangered species and their products;
- illegal pollution, dumping and storage of waste, including transfrontier shipment of hazardous waste;
- illegal commercial trade in ozone depleting substances;
- illegal dumping and shipment of radioactive waste and potentially radioactive material;
- illegal logging and illegal trade in wood and
- illegal fishing.

Looking at the results of the research on organised environmental crime cases the relatively low number of cases compared to other classical segments of organised crime – e.g. drug trafficking and illegal immigration – is obvious. For all EU Member States a total of 122 cases was found for the period of 1992 to 2003. In some of these 122 cases no full prove could be found concerning the required qualification as organised crime (OC). Those cases represent the group of “borderline cases” which - despite not fulfilling all of the OC criteria set out for this study – were submitted by the national enforcement authorities as qualifying in context of the study.

In due cause of the case research and the finalisation of this study research staff, contrary to the impression of the shire case number, gathered information during fieldwork, analy-
ses of the legal environment and enforcement bodies that indicate the existence of a by far higher number of cases in reality.

Some of the key factors leading to this assumption are:

- **Significance of organised environmental crime**: in some countries (e.g. Ireland, France) the awareness of organised environmental crime is low with resulting low profiled enforcement structures compared to other crime sectors.

- **Market situation and complexity**: market awareness (demand, players, profit margins, trade routes) of the enforcement authorities for the researched segments is low. Most notably is the lack of accurate and up-to-date information/data which – in turn – is vital for the problem conscience and assigned significance of this crime sector.

- **Non reliable data and greatly varying data**: data available from relevant organisations (e.g. OECD, UNEP, FAO)\(^2\) shows that environmental crime plays a larger role as indicated by the researched cases. Unfortunately the number of data sources is insufficient (often recitation of the same sources), varying to far or the available data is simply outdated.

- **Statistical problems**: environmental crime cases in which corporations are involved are often listed under the category economic crime. A comparison of different national statistics is thus often impossible due to the problems to filter out cases of environmental crime. E.g. in Germany the statutory offence that provides the most severe sanction is entered into the registry. If environmental offending comes together with typical elements of economic or organised crime then the environmental offence will not be registered even if the conviction itself is based or partly based upon the environmental provision.

- **Expert knowledge**: a high level of expertise is required for enforcement authorities, prosecutors and judges in some sectors, e.g. identification of ozone depleting substances or species protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Without this expertise the importance of a case can not be determined with the resulting risk that the case is not correctly determined as organised environmental crime.

- **Resources**: complexity of the cases and the generally high degree of organisation of the criminals requires a high level of time, financial and staff resources. Especially by police bodies and public prosecutors the lack of resources in all three areas was named as vital problem. Commonly mentioned problem in many cases was also the lack of technical equipment.

\(^2\) Organization for Economic Cooperation and Development (OECD), United Nations Environment Programme (UNEP), Food and Agriculture Organization of the United Nations (FAO)
Corporate Crime: app. 73% of the researched cases show involvement of corporations or corporate-like structures. Criminal activities thus is allocated to the "white-collar" sector. This fact further complicates investigations due to conflicts of interest arising for example from interest in securing the economic future of an area, prevention of job losses etc. Enforcement agencies thus are not confronted with the classical "bad guys" but moreover with often highly respected players of economic life with the resulting unattractiveness of the environmental sector as profiling platform for enforcement.

Co-operation: app. 71% of the researched cases are cross-border crime. Both inner-EU and international co-operation was found insufficient in almost all interviews. A lack of co-operation can lead to aggravation and procrastination of investigations/preliminary proceedings.

Administrative performance: is determined by negotiations of the environmental administrations with affected corporations. Thus violations of environmental regulations are often not reaching the investigative level ("gatekeeper" function of environmental administrative bodies to the criminal justice system).

Significant differences of the sanctioning practise in the Member States: in cases of low penalties available investigation resources are limited. This raises the attractiveness for criminals to move to other countries with lower sanctions. For example Belgium law foresees a maximum penalty of three month imprisonment for illegal trade in endangered species (CITES violation) compared to the Netherlands with a maximum sentence of 6 years.

Penalties determine investigation methods: Generally penalties for environmental crime are relatively low. In some Member States this especially affects the ability of the enforcement authorities to use appropriate investigative techniques e.g. in Belgium imprisonment on remand exceeding 5 days requires a maximum penalty of minimum 1 year imprisonment in order to work out the case properly but the maximum penalty for illegal trade in endangered species foresees only a three month imprisonment. In Italy most of the environmental offences are considered as misdemeanours. Due to this the enforcement authorities are not allowed to apply modern investigation techniques which are necessary to investigate in organised crime cases. Further they are sometimes not in a position to order the arrest of the defendants.

Crime reporting: Environmental crime is mostly victimless. This leads to a lack of crime reporting and evidence provided regularly in the area of traditional result crimes (robbery, prostitution, murder etc.) by victims or witnesses.

Missing legal links: Explicit links between environmental criminal law and organized crime legislation are until now virtually non-existent.\(^3\) Currently environmental

\(^3\) Only in some legal systems exist explicit links between environmental criminal law and organised crime legislation. E.g. in 1997 the Italian legislator introduced the offence of organisation of illicit trafficking in waste to the Penal Code. In 1999 Spain modified the Criminal Procedure Code linking organised crime with the offences of trafficking in endangered flora and fauna species and trafficking with nuclear and radioactive material.
crimes in most European countries cannot be investigated and prosecuted as organized crimes.

Definition organised crime: no common definition of organised crime exists. In some cases even within one country different working definitions are used. Classification as organised crime is thus made more difficult for cases in context of the study.

Handling of organised crime cases: Some cases do not fall under the statistics as organised crime cases. This is due to the fact that when faced with a large organised crime complex, the Public Prosecutor e.g. in Germany tends to subdivide the procedure into several smaller court proceedings, in order to avoid extremely complex court cases. Off the record some of the interviewees also mentioned that OC-cases are rarely treated as such in court, as it is extremely demanding to prove this background, particularly if the required investigation resources are not available. The OC-connection could be dropped in order to achieve at least a sentence for the environmental crime (without the OC-aspect).

General availability of information: not all central institutions responded to the request for information in context of this study. The resulting blank suggests the existence of further cases which could not be included in this study.

Enforcement: no exclusive competence on organised environmental crime exists in the five Member States that were analysed concerning enforcement structures for this segment, despite as a by-product in the field of economic crime. For the "classical" OC sector, in contrary, several specialised units exist. However, due to the rising awareness on environmental crime several new initiatives exist in some Member States: a specialised environmental unit was created with the Austrian Federal Bureau of Criminal Investigation (BKA-Umwelteinheit) in 2002, in Belgium new enforcement structures for environmental crime are currently under implementation, Sweden since 2000 disposes of an environmental crime division based within the Office of the Prosecutor-General. Comparable developments can be observed on the international level (e.g. mandate on environmental organised crime for Europol). This leads to the assumption that environmental crime is not a subject, which has been thoroughly investigated so far.

3rd country issues: in some sectors, e.g. illegal ship wrecking in the waste segment, illegal logging and illegal trade in wood and illegal fishing, illegal activities are conducted from or via 3rd countries. Such organised illegal activities do not fall under the definitions of this study and were therefore not included in the case database.

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The UK with the National Crime Intelligence Service (NCIS) disposes of a specialised unit exclusively in charge of organised crime in the wildlife crime sector exists. As a part of the Italian joint police unit Direzione Investigativa Antimafia (DIA) the Nucleo Operativo Ecologico (NOE), a Carabinieri branch specialised in environmental investigations, is responsible for investigations in organised environmental crime.
As the case descriptions in this study, e.g. organised crime waste cases, demonstrate, those cases often bear a high risk potential concerning direct environmental damage as well as long term and consequential damage for humans and the environment. At the same time economic damage is generated (e.g. necessary decontamination, shortening of resources). On the other hand the involved criminal organisations achieve high profit margins respectively high cost savings (e.g. avoidance of costs for regular deposition).

The above listed problem areas are counteracted with – amongst others – the following proposals:

⇒ **Monitoring and intelligence**

Valid and reliable intelligence covering specific illicit markets with focus on demand and supply sides using comparable tools in terms of illicit market assessments. The regulatory and legal frameworks on national and international levels have to be covered as well to monitor and compare effects and to identify loopholes and implementation deficits. Using criminal profiling, risk analysis, operational intelligence etc. demand a systematic cooperation between the enforcement bodies. Data collection and intelligence should be done through standardized system by national centres of criminal investigation and Europol as the central role player on European level.

The knowledge gained should be used to transformation into workable law enforcement strategies.

⇒ **Harmonization of environmental criminal law and integration of environmental criminal law into organized crime legislation**

- Harmonization of penalty ranges
- Integration of environmental crime into the conventional organized crime legislation
- Common understanding of organised crime
- Money laundering offence statutes should be harmonized and include as predicate offences environmental crimes that are carried out for profits
- Harmonization policy should address forfeiture and confiscation
- General introduction of corporate liability
- Integration of environmental criminal law and organized crime legislation in the field of criminal investigation and criminal procedure in order to generally have the possibility to use new investigative techniques (surveillance of telecommunication, undercover agents etc.)
Similar approaches for the specialisation on environmental organised crime in the various subsystems of criminal justice respectively links between traditional organized crime units and units that specialize on economic and organised crime.

Establishment of a system of liaison officers which could be established in administrative bodies and law enforcement agencies to efficiently organize cooperation on national and international level.

Harmonization of environmental administrative laws and methods

- including the development of administrative monitoring and disciplining instruments (e.g. Blacklisting and staff rotation) as an answer to corruption and other problems of close cooperation between environmental authorities and their industrial clients.

- Developing methods to identify precisely the origins of species, timber and waste in order to conceal the origin through false declarations etc. This must be backed up by developing technical methods to monitor illegal fishing and timber logging.

Furthermore the proposals cover the area of prevention:

- by developing concepts of use of shaming strategies towards companies and organizations

- backed up by the adaptation of codes of ethics and conduct of best practices

- Introduction or further development of internal monitoring schemes in corporations and organisations to increase sensitiveness towards environmental problems

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