

European Union environmental law

1. Protecting environmental assets - water, air, nature, soil
2. Limiting polluting activities - permits, procedures, status provisions
3. Monitoring – plans and programmes, reports, publications

Directive 2008/99 on the protection of the environment through criminal law

Official Journal EU 2008, L 328 p.28.

Directive 2005/35 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences, amended by Dir.2009/123.

Official Journal EU 2005, L 255 p.11.

Directive 2008/99 – content I

Member States shall provide for criminal sanctions regarding actions that were unlawful and committed intentionally or at least with serious negligence

- 1. Introduction of polluting substances into the environment that cause damage**
- 2. Waste collection, treatment and transport that causes damage**
- 3. Shipment of waste undertaken in non-negligeable quantities**
- 4. Operation of a plant with dangerous materials that cases damage**
- 5. Production, processing and transporting of nuclear material that causes damage**
- 6. Killing or taking of specimens of protected wild fauna and flora species**
- 7. Trading in specimens of protected wild fauna and flora, unless negligeable quantities**
- 8. Significant deterioration of a habitat within a protected site**
- 9. Production, handling of ozone-depleting substances.**

Directive 2008/99 – content II

- 1. Inciting, aiding and abetting shall also constitute offences;**
- 2. A certain liability also of legal persons;**
- 3. Sanctions must be effective, proportionate and dissuasive.**
- 4. New legislation shall be included (since two years, it is not)**

Court of Justice, case C-440/05:

There is no EC competence to fix the type and levels of sanctions. This is the Member States' competence

See now also Articles 82 ss Treaty on the Functioning of the European Union

Main issues of enforcing EU environmental law by criminal sanctions

- 1. Nemo prudens punit quia peccatur, sed ne peccetur (Seneca)**

This is not a standard in all Member States

- 2. Societas delinquere non potest**

This is not the standard in the great majority of Member States

- 3. Administrative sanctions**

Introduced in the UK in 2009/2010

- 4. Action and sanctions against officials**

This is a tabou in the majority of Member States

Example

Red mud accident in Hungary

- Nine persons dead, some 150 injured, villages evacuated, property destroyed, several rivers severely contaminated
- Directive 2006/21, Article 4(3) : „(Member States shall impose) the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the waste facility, its geographical location and the local environmental conditions“.
[Transition period until 2012]
- Directive 2006/12: Waste shall be handled, treated and disposed of without harming human health and the environment.

Tailing ponds are not the best available technique (not used in several Member States)

Example

Air pollution in London (and Athens)

Dir.2008/50 : concentrations for NO² in the air must not be exceeded

(a) Member States must take the necessary measures

(b) Penalties must be dissuasive, proportionate and effective

The pollution already goes on for decades

There are some 4.000 persons prematurely dying in London per year

due to air pollution

Administrations and prosecutors (police)

- 1. An administrative permit normally protects against criminal prosecution**
- 2. When the administration learns of an impairing practice, it tries to**
 - improve the permit;**
 - put new conditions on the permit**
 - pronounce an administrative fine**
- 3. The administrations do normally not inform the police of lack of respect of the law**
- 4. Roughly half of the infringements which the police discovers, are discovered on its own initiative; one third come from private denouncements.**
- 5. For this reason, visual impairments are most frequently inspected by the police**
(*waste* treatment and disposal; *water* pollution)
- 6. The police and prosecutors are not specialised in environmental issues**
(destruction of a natural habitat; excessive noise; air pollution)

Administrative and criminal sanction

- 1. Criminal procedure allows to find evidence (through investigation)**
- 2. Criminal procedure is capable of identifying the responsible polluter**
- 3. Criminal procedure (and its accessories) allow victims to get reparation**
- 4. Criminal proceedings are public (!?) and have thus a preventive effect**
- 5. Criminal proceedings are not bargaining procedures**

Is there a specificity of EU environmental law enforcement?

No, for the following reasons:

- (1) Insufficient knowledge of the environmental provisions in administrations, policy and prosecutors
- (2) Lack of awareness that the problem of the environment is not the big accident, but the slow, permanent and progressive degradation
- (3) The environment has no voice (an interest without a group)
- (4) Environmental impairment is seen as a gentleman's delict
- (5) A great lack of personal and financial resources to monitor application
- (6) Polluters argue that environmental enforcement costs jobs, reduces competitiveness with other countries, is economically harmful.

Conclusion

- 1. Despite the numerous provisions in international, EU and national environmental law, the environment is not getting better, but slowly degrades further (climate change, biodiversity, chemicals, noise, air pollution etc)**
- 2. There is no serious wish to change this situation, neither from the side of the administration, nor from policy, nor from polluters.**
- 3. Criminal enforcement was, is and will be accessory to administrative enforcement.**
- 4. As the administrations' interest in proper enforcement is limited, this spills over to prosecutors and the police.**
- 5. Much environmental law within the EU Member States finds its origin in the EU. However, enforcement of EU environmental law has no specific features.**
- 6. All want a cleaner and better environment for the next generations. However, in practice, little is done to realise this objective.**