

ECBA WORKING GROUP - EDINBURGH CONFERENCE

CRIMINAL OFFENCES IN ENVIRONMENTAL LAW

Open Debate and Discussion on the following topics:

A. How do you define what an environmental crime is?

Do you think any of the following clarifications help?

- (1) An environmental crime is an act committed with the intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage;
- (2) An environmental crime is an unauthorised act or omission that violates the law and is therefore subject to criminal prosecution and criminal sanction. This offence harms or endangers people's physical safety or health as well as the environment itself. It serves the interests of either organisations - typically corporations - or individuals;
- (3) Environmental crime includes littering, abandoned vehicles, graffiti, fly posting, dog fouling, fly-tipping, dumped business waste, vandalism, abandoned shopping trolleys and noise nuisance;
- (4) Environmental crime includes all offences either created by statute or developed under the common law that relate to the environment.

B. Since it seems to be universally agreed that the environment is in need of greater protection, is this the moment to increase the development of environmental criminal law in Europe?

C. Should there be a greater use of criminal sanctions to improve the effectiveness of European Community Environmental Law or are the criminal courts the wrong means to deal with serious breaches of Community Environmental Law?

D. What single change in environmental law, procedure, or practice would you introduce in order to reduce or increase the number of environmental crimes?

E. Is there a need to make the language of environmental law clearer, so that citizens and prosecutors alike can more easily relate the law to the actual offences being committed?

- F. Is it easy to make the politically correct argument that there is a need for further harmonisation of both legal practices and the substantive environmental criminal law in the member states.

Is this a good objective?

Example:

The general approach to the enforcement of environmental law across England and Wales, Scotland and Northern Ireland is similar, ie. the adoption of the co-operative approach.

However, the increase in the use of prosecution is much less marked outside England and Wales. In Scotland, there were 38 and 31 prosecutions in 2001-2 and 2002-3 respectively. This is about 2.5% of the number of prosecutions brought by the Environment Agency in England and Wales over the same period.

In Scotland, all prosecutions were brought by the Crown Office and Procurator Fiscal Service (COPFS) which has lacked expertise in relation to the enforcement of environmental offences.

- G. Transfrontier or transboundary environmental problems (mostly pollution incidents) do not give rise to problems of substantive law or of co-operation between neighbouring countries but of difficulties in obtaining evidence or disclosure especially where a complex network of companies exists.

Do you agree?

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