The Harmonization of National Legal Frameworks as a Strategy to Address Transnational Organized Environmental Crime

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Outline

Part I: Introduction

Part II: The Harmonization of sanctions in the EU

Part III: Alternative policy options at EU level

Part IV: Concluding remarks
Part I: Introduction
Defining the problem

**Environmental crime** is any illegal act related to the exploitation of natural resources that causes harm to the environment.

Environmental crime is increasingly **transnational** as offenders, victims, execution, and impacts can involve more than one nation.

**Transnational organized environmental crime (TOEC)** refers to cross-border environmental crimes involving organized criminal groups, syndicates and networks, which act in concert to obtain, directly or indirectly, a financial or another material benefit.

TOEC involves in practice a wide range of **associated offences** such as money laundering, tax evasion, fraud and corruption, having thus serious short and long-term economic, social, political and environmental local and global impacts.
The traditional approach: Regulatory and enforcement strategies

**Key idea:** State-centric approach. Governments respond to environmental harms through enforcement of strict rules and standards set out in legislation and treaties.

**Academic fields:** Environmental Law, Criminal Law, International Law, Trade Law

The ‘new’ approach: Towards a new environmental governance

**Key idea:** Multi-level governance. Problem-solving before coercion is necessary. Prevention of harms via collaboration between private, public and non-governamental stakeholders. Characteristics: participatory dialogue and deliberation, flexibility rather than uniformity, inclusiveness, transparency and institutionalized consensus-building practices, and a shift from hierarchy to heterarchy (Gunningham, 2009)

**Academic fields:** Law & Governance, Green Criminology
Regulatory and enforcement strategies: recommendations

- Promote **harmonization** of legal frameworks and sanctions
- Strengthen **police and judicial cooperation**
- Create **specialised courts and prosecutors** for environmental crime
- Consider **all applicable offenses**
- **Reduce criminal incentives** by targeting, following, and reducing profit, including confiscation and forfeiture
- Strengthen institutional, legal and regulatory systems to **address corruption**
- Improve **specific and generic deterrence** by increasing the visibility of law enforcement
- **Ensure that law is enforceable** by improving education and awareness of policy makers and utilising law enforcement experts in policy drafting
- Invest in **capacity building and technological support** to national environment, wildlife and law enforcement agencies
The Global Initiative Against Organized Crime
“Tightening the Net: Toward a Global Legal Framework on Transnational
Organized Environmental Crime” (2015)

Ways of implementing a global criminal law perspective to address TOEC

• Bottom-up approach: focus on fostering renewed legal frameworks at the national level. Aimed at the application of the UNTOC.

• Top-down approach: focus on global legal frameworks impacting national laws.
The Global Initiative Against Organized Crime

- Wider criminalization
- Reinforce international cooperation
- Expansion of national jurisdictions
- Harmonization of national laws

Subcategories:
- Internationally agreed definitions
- Specific legislative measures
- Harmonized and appropriate penalties
- Harmonized treatment of ancillary offences
Part II: The Harmonization of Sanctions in the EU
Outline Part II

- The Directive 2008/99/EC on the protection of the environment through Criminal Law
- Research aim and methodology
- Outcomes
- Main conclusions
The Directive 2008/99/EC on the protection of the environment through Criminal Law

Why?

The rise in environmental offences and their effects, which are increasingly extending beyond the borders of the States in which the offences are committed.

The use of criminal law is meant to increase the effectiveness of European environmental legislation since it is believed that only criminal law will have a sufficiently deterrent effect.

Common rules on criminal offences make it possible to use effective methods of investigation and assistance within and between Member States.

Hazardous activities or businesses can benefit from the legal disparities between states.
The Directive 2008/99/EC on the protection of the environment through Criminal Law

**How?**

<table>
<thead>
<tr>
<th>Member States are required to <strong>make sure that a list of offences are considered criminal</strong> when committed intentionally or with at least serious negligence.</th>
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<tr>
<td>The list of offences comprises <strong>nine serious environmental crimes</strong> related to waste, flora and fauna, ionising radiation, nuclear substances and ozone-depleting substances and management of plants.</td>
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<td>Penalties will have to be <strong>effective, dissuasive and proportionate.</strong></td>
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<td>The Directive does not specify a minimum or a maximum level of sanction.</td>
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Research aim

Why
Hazardous activities or businesses can benefit from the legal disparities between states.

How
The Directive does not specify a minimum or a maximum level of sanction.

To what extent harmonization of sanctions has been reached?
Indicators

- Types of criminal sanctions
- Maximum terms of imprisonment

Sources


Limitations

- A conclusive analysis should consider the whole criminal system of each Member State. Particular aggravating factors and other domestic sentencing rules can affect the outcomes.
- Focus on imprisonment and fine.
- Most Member States split the offences described by the Directive into different national offences.

Types of criminal sanctions
3 (a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.
3 (b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the aftercare of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.
the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked.
3 (d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.
3 (e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants.
3 (f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species.

**Article 3f) Directive 2008/99/EC - Wildlife crime - Types of criminal sanctions**

- Green: Imprisonment OR fine
- Purple: Imprisonment AND/OR fine
- Blue: Imprisonment
- Light blue: Imprisonment with or without fine
- Red: Imprisonment AND fine

**Legend:**

- 14%: Imprisonment OR fine
- 18%: Imprisonment AND/OR fine
- 50%: Imprisonment
- 4%: Imprisonment with or without fine
- 4%: Imprisonment AND fine

Created with [mapchart.net](http://mapchart.net)
3 (g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species.
3 (h) any conduct which causes the significant deterioration of a habitat within a protected site;
3 (i) the production, importation, exportation, placing on the market or use of ozone-depleting substances
Overview – Types of criminal sanctions

3a)  
3b)  
3c)  
3d)  
3e)  
3f)  
3g)  
3h)  
3i)  

Maximum terms of imprisonment
3 (a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants
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Main conclusions

High level of compliance with the main goal of the Directive: the use of criminal law to enforce legislation implementing environmental directives. Member States use criminal (or quasi-criminal) sanctions to punish the conducts described in article 3 of the Directive. Only very few exceptions can be observed to this rule.

Significant disparities both in typology and severity of the sanctions. This might be regarded as a lack of proportionality when comparing the Member States. However, this is a problem that exceeds this Directive. It refers to the contested legal and political issue of the approximation of criminal penalties across the UE. Although a common framework would have facilitated a true approximation of sanctions, it is important to recall that principle of proportionality must first operate within each national criminal justice system.
Part III: Alternative policy options at EU level
Policy options at EU level: Sanctions
European Union Action To Fight Environmental Crime (EFFACE) 2016

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<td>Guidelines to increase the effectiveness of sanctions</td>
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<td>Increasing the use of administrative and civil sanctions</td>
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<td>Increasing the use of complementary sanctions (aimed at restoration and prevention)</td>
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Policy options at EU level: Organized Environmental Crime
European Union Action To Fight Environmental Crime (EFFACE) 2016

Review of Directive 2008/99/EC:

• To introduce an obligation for MS to foresee specific aggravating circumstances
• To establish minimum levels of maximum penalties for serious OEC
• To impose MS to criminalize “organized wildlife trafficking” and “organized trafficking in waste”
A global criminal law approach to transnational organized environmental crime (TOEC) needs to take into account the disparity of legal systems and the different regional approaches to this issue.

In this sense, the harmonization of national legal frameworks as a strategy to address TOEC faces great challenges at EU level.

In the EU, the acknowledgment of the global scale of the issue and the need for a greater international cooperation leads to a contested scenario.
Thank you

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