

Smart Enforcement: How to Target Environmental Law Enforcement Efforts in Times of Crisis.

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Panel on Practical Perspectives

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'Environmental enforcement: away from the divided reality'

Thinking about enforcement of environmental regulation, and how to make that smarter, it was my observation that the world of environmental law enforcement is very much a divided and fragmented world.

This situation exists, because we have, on one hand the regulatees who are consciously respecting the rules, and, on the other end, those who are willingly breaking the rules. In addition there are probably two other groups: those who unknowingly follow the rules, and those who are unconsciously in conflict with regulation.

It is a divided world, since we have the bad guys making a profit from unlawful activities and the good guys (and dolls) at the side of the authorities that have to go after and catch the first.

It is a divided world, since authorities are restricted to laws, procedures and systems, while perpetrators are flexible and free in the way they wish to operate, cover up and mislead.

It is a divided world, since the jurisdiction of authorities is to a large extent bound to national territory, while the illegal actors often easily take advantage of the open borders and free trade facilities.

It is a divided world, since some countries have much further developed their environmental enforcement approaches than others.

But above all, the world of environmental law enforcement is divided from a more internal perspective

In many, probably most countries, environmental enforcement is very much fragmented in itself. An important underlying reason is that competences regarding enforcement are attributed to different authorities, and at different levels:

In the corner of the public administrations there are nations, regions, provinces, municipalities, waterboards (and maybe more) that have the competence to impose administrative sanctions, like fines, penalties, administrative orders, withdrawal or revocation of permit.

The power of criminal enforcement is institutionalized within the judicial authorities. Criminal investigators, police and public prosecutors prepare cases for a criminal court. When found guilty, the offender may face criminal fines, imprisonment and potentially several other punitive sanctions.

To a substantial degree, the worlds of administrative and criminal enforcement are different realities. They are quite distinct in terms of organization, culture and objectives. And also in tactical and operational sense one can see substantial differences, for example in terms of lines of command, working methods, communication and judgment.

In itself, this is not a bad situation by definition. I am happy to agree that it is a good thing to have both administrative and criminal enforcement, and some other legal mechanisms. I am glad to admit that it would simply be undesirable to punish all environmental offences either through one or through the other approach. I fully realize, that for some offences an administrative enforcement response is more effective than a criminal response, and *vice versa*, and that both have their specific objectives and priorities.

However, my tolerance and understanding end as soon as stakeholders at both sides seem not to coordinate, inform and respect each other. Environmental enforcement at large is not helped with institutions that seem to work in their own ivory tower in splendid isolation. Apart from rare and extreme cases, the least one may expect is mutual information. After that, hopefully also the next levels are within reach, e.g. actual coordination and collaboration can be achieved.

Also from the perspective of the (alleged) offenders, a divided reality and presentation of environmental enforcement is not a good thing, nor a strong message. Enterprises and natural persons may count on a government speaking with one mouth and in clear terms. That one voice would clearly explain which sanction regime or regimes can be expected in given cases.

The famous biblical expression 'let not thy right hand know what thy left hand doeth' is not the best possible advice in this context... For effective environmental enforcement it is far better and smarter that the right hand knows what the left hand is doing – and, for those who are right-handed – it is also strongly preferable if the left hand knows about the activities of the right hand.

Of course - not being ignorant - I do realize that there are compelling reasons and circumstances that full transparency and free information exchange between administrative and judicial authorities sometimes cannot be achieved. Despite such limitations, building on experiences from national and international networking, I see a lot of opportunities to make substantial progress towards bringing the two divided worlds more together.

For this occasion, I like to share some of these with you.

1. Get acquainted

Unknown often means unloved.... Therefore, stimulate and take efforts that the administrative and judicial worlds meet, both as organisations and as experts. Professional networks are excellent vehicles for accomplishing that, both at the national and international level. E.g., within the European IMPEL network initiatives have been taken to bring together environmental inspectors and public prosecutors, particularly on the issue of transnational illegal shipments of waste.

Organise sessions in which professionals with different backgrounds exchange information on how they work and operate. What are the specific expertise areas? Where

are the similarities and distinctions? Discuss in which way complementary skills can be exploited in a smart way to the benefit of better enforcement and counteracting crime. Such get-togethers need top-down and bottom-up initiatives and feedback.

2. Develop and train together

Develop programmes in which officers are stimulated and facilitated to exchange (temporally) positions with a colleague in another organization. This helps to understand and appreciate the work of colleagues and often generates practical ideas to improve the interaction.

Take initiatives which lead to joint capacity building efforts. This is of particular relevance since to a large extent training curricula are until now separated streams. This had led to a situation in which administrative officers are rather ignorant w.r.t. approaches followed by criminal investigators. Vice versa, criminal investigators have only limited knowledge of routines and specifics of administrative organisations.

3. Close the information gap

Do not accept that in general and in specific cases an integrated and bi-directional information position is missing. Both administrations and judicial authorities have knowledge of data, trends and phenomena that are relevant and helpful for the other, and sharing that can help the two in the joint fight against environmental crime. Adding and combining such information multiplies the understanding and opens opportunities for smart interventions.

Where unneeded or unwanted barriers (of legal or other nature) are frustrating effective collaboration and exchange, take initiatives to get rid of those. In doing so, of course the essential and distinct responsibilities and competences of administrative and criminal enforcement should be respected at all times.

In conclusion, looking at what international professional networks like IMPEL can achieve, and seeing the scope of possibilities at the national levels, I am convinced that administrative enforcers and criminal enforcers can together become a lot smarter when they seek effective collaboration. The first step is certainly to get acquainted with each other. After that, joint training and development activities would likely be the next level and a next step to close the gap that at current divides too much the two expertises.

Ultimately, real collaboration and exchange is the smartest thing that we all can and have to do, in order to improve collectively the effectiveness of our fight against environmental crime.