



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

Mid-term Conference of the project on [European Union Action to Fight Environmental Crime](#)
In Cooperation with the [Flemish High Enforcement Council for the Environment](#)

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BACKGROUND NOTE *

Smart Enforcement: Setting the Stage

Budgets for enforcements activities are necessarily limited. Since the early writings of Noble Prize winner George Stigler it is therefore known that society will not strive for a maximum on enforcement, but rather for optimal enforcement. Moreover, especially in the area of environmental crime the problem arises that crime will often not be discovered as a result of *ex post* reporting by victims. One reason is that environmental crime can often be considered “victimless crime”; another is that victims may not always discover environmental criminality, since it may require high costs to discover e.g. a violation of environmental regulations. That hence increases the need for *ex ante* monitoring and inspection. However, budgets for enforcement activities are necessarily limited. Regular police officers will not focus on monitoring environmental crime as a first priority. Often it are therefore specialized environmental agencies that will engage in the *ex ante* monitoring. However, one can increasingly notice (especially in times of budget cuts resulting from the financial crisis) that the funding for monitoring activities will be reduced. That is hence also a reason to ask how optimal enforcement can be organized. This therefore increasingly calls for a need to use the scarce available resources for monitoring and enforcement in a “smart” way. Following the need for “smart regulation” in environmental policy (based on the famous book of Neil Gunningham and Peter Grabosky, *Smart Regulation*, 1998) many now also ask the question whether it is possible to come to “smart enforcement”.

The way in which the literature has addressed this issue is under the heading of so-called “targeting” of enforcement efforts. The basic philosophy is that given the high costs of monitoring and inspection (and limited capacity) systems have to be developed allowing enforcement agencies to focus their efforts on specific categories of polluters or violators in order to achieve better results. Such a targeting could take place on the basis of an *ex ante* monitoring which will not take place generally or at random, but rather on the basis of a risk assessment. This risk assessment is then based on an *ex ante* analysis of the particular risk profile of particular activities or offenders. This risk-based monitoring and targeting could then increase the effectiveness of monitoring efforts. After violations would be established agencies would be able to spend more efforts on those firms where indeed violations were established and would for example put particular firms where no violations were established in a separate category (of the “good guys”) on which less monitoring efforts would have to be spent.

One aspect of this smart enforcement agenda is also environmental monitoring and self-reporting. It is based on an idea launched by Arlen and Kraakman arguing that a strategy whereby firms that would voluntarily self-report a violation of pollution standards would be rewarded with lenient treatment, would pay off as far as the effectiveness of enforcement efforts is concerned. This reliance on self-monitoring would mean that agencies would use tolerance in some contexts and increase compliance for other types of violations. To some extent reliance on voluntary compliance mechanisms of firms could hence fit into the smart regulation strategy and would allow a “smart” targeting of enforcement efforts.

The basic philosophy is that targeting allows to differentiate between risk profiles of various firms. Voluntary environmental compliance schemes could be an indicator in that respect. That would hence allow to focus the scarce resources on those categories of firms or activities where most violations could be expected and hence where most benefits of enforcement activities could be expected as well.

However, although there is theoretical and empirical research supporting this call for “smart” enforcement strategies (*inter alia* via targeting and risk-based monitoring) several questions arise as well. One question is to what extent it is indeed possible to rely on voluntary compliance mechanisms. Is there not a danger that this will simply lead to window-dressing without effectively improving internal compliance? Another question that arises is to what extent it is indeed possible to differentiate firms *ex ante* based on a risk assessment without having actually done any inspection or monitoring. A related issue is that obviously such a risk-based enforcement policy also fits into a call for an evidenced-based enforcement policy, underscoring the need for an effective data collection. Targeting and smart enforcement may obviously also require detailed information e.g. on the number of companies that should have licenses, the number of companies that do have licenses, the number of inspections taking place on a yearly basis, numbers of violations established etc. Especially as far as data collection is concerned it seems that still important steps need to be made in many Member States.

The core question at the workshop is hence to what extent smart enforcement can indeed be used as a practical tool to increase the effectiveness of environmental enforcement efforts.

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