



EUROPEAN

POLICY BRIEF



THE AZNALCOLLAR AND KOLONTAR MINING ACCIDENTS: A CASE STUDY ON MINING AND CRIMINAL RESPONSIBILITY OF OPERATORS AND ADMINISTRATIONS

Policy Brief 7: Policy implications for the EU

February 2015

OVERVIEW OF CASE STUDY

Mining activities are of great importance for the EU that has approved in the last years different strategies in order to guarantee the mineral supplies that the European industry requires. Authorisations, licencing procedures and liability regimes that must be complied with by mining operators as well as Administrations responsible for them, are matters of major concern. Mining activities may test the effectiveness and deterrent capacity of environmental criminal law for violations of licences and liability regimes. Big companies can afford to damage the environment but in other cases they cannot survive the cost of compensation and the penalties, and they may leave victims without justice and heavy monetary burdens on Governments. The case study assesses the effectiveness of the EU environmental criminal law and liability to prevent and to resolve these problems in EU Member States, examining leading cases in Spain and Hungary.

Mining activities are a field that particularly exemplifies that the administrative dependence on criminal law may become a serious obstacle to prosecuting and sanctioning environmental crimes. Criminal law depends heavily on the administrative legislation, and in particular, on a diligent application by the administrative authorities. **Lack of adequate controls, active toleration of infractions and malpractice by the administrative authorities have been a recurring problem at the origin of industrial accidents, and in particular, in mining accidents.** The authorisations and permitting procedures that must be complied with by operators as well as administrations in charge of them have become a matter of major concern and their infringements cannot be just an administrative infraction but also an environmental crime. Legal gaps and loopholes in the mining laws have been exposed by accidents and catastrophes that triggered the adoption of new EU legal regimes in order to better regulate the management of mining waste and the restoration of sites as well as those aspects of the licensing procedures and liability legislation that required a special regime.

The Aznalcollar case shows the relevance of enforcement mechanisms for updating environmental legislation, the content of environmental authorisations and determination of an appropriate legislative framework to enforce liability for legal persons. The Kolontar case shows that even though Hungary complied with the Environmental Liability Directive, the incorrect enforcement of the waste management Directive undermined the enforcement of the former and other directives. In both cases, the companies, Boliden-Apirsa and Magyar Alumina Ltd. did not pay for the total damage caused, raising many questions about the gaps of EU

environmental liability legislation as well as its enforcement and the need to have a better and coordinated implementation of the EU directives.

The case study is analysed from a criminal legal perspective and using the legal rules applicable, professional literature and related case law.

POLICY IMPLICATIONS AND RECOMMENDATIONS FOR THE EU

Environmental crime related with mining activities is often connected with serious violations of permits and licences, lack of control and malpractice of monitoring systems. It needs more attention because it is also a consequence of the problems of the enforcement of EU environmental law. However most reports on mining accidents just point out the need to improve the liability regime but do not explore criminal liability of actors.

The mining accidents that have been examined in this case study have some aspects in common and share some legal challenges for the enforcement of EU environmental law and environmental criminal law, raising important questions on the shortcomings and loopholes of the existing national legislation at the moment of the catastrophe regarding: licences and authorisation procedures, mechanisms to monitor and to update environmental standards and requirements according to scientific knowledge, remedial measures, financial guarantees and legal liability, both criminal and civil.

For these reasons the adoption of compulsory legislation on monitoring and inspectorate services at the European level is of the most importance to improve enforcement and increase efficiency of the administration and effectiveness of the environmental law at national level. Criminal liability of authorities as well as legal public entities must be foreseen in the Member States' legal systems in order to provide the required tools to combat environmental crime.

In the case of hazardous activities, an Environmental Liability Directive Fund should be established in order to cover damage unable to be compensated by operator's resources and insurances as proposed by the Hungarian Government. A better dialogue between the different EU legal instruments and their enforcement is necessary, in particular, between the Environmental Liability Directive and the Environmental Crime Directive.

ABOUT EFFACE CASE STUDIES ON ENVIRONMENTAL CRIME

Authors of this brief: Teresa Fajardo del Castillo, University of Granada and Juan Fuentes Osorio, University of Jaen

Full citation of the case study: Fajardo, T., Fuentes J. The Aznalcollar and Kolontar Mining Accidents. A Case Study on Mining Accidents and the Criminal Responsibility of Operators and Administrations. A study compiled as part of the EFFACE project. Granada: University of Granada, available at <http://www.efface.eu>

"European Union Action to Fight Environmental Crime" (EFFACE) is a 40-months research project involving eleven European research institutions and think tanks. EFFACE assesses the impacts of environmental crime as well as effective and feasible policy options for combating it from an interdisciplinary perspective, with a focus on the EU. Project results include several case studies on the causes, actors and victims of different types of environmental crime as well as policy options and recommendations. For more information on EFFACE, see www.efface.eu or contact: envcrime@ecologic.eu

EFFACE receives funding under the European Union's Seventh Framework Programme for research, technological development and demonstration (FP7) under grant agreement no 320276. The contents of this policy brief are the sole responsibility of EFFACE and can in no way be taken to reflect the views of the European Union.