CHAPTER 7

Could the Harmonisation of Environmental Criminal Law Improve the Enforcement of Environmental Law?

7.1 Introduction

In Chapter 2 the philosophical and legal-criminological foundations for the criminalisation of environmental offences were discussed. The objective of this chapter is to investigate further the case for interstate harmonisation of environmental criminal law from the perspective of improving environmental law enforcement. It will start by examining whether other enforcement mechanisms – in particular administrative law – could not offer the desired level of environmental protection and at lower costs without the need for recourse to criminal sanctions, which are often regarded as costly to enforce and as having strong impacts on civil liberties. In other words, an analysis of the effectiveness of criminal sanctions alone is not complete unless it takes into account the effectiveness of other sanctions and enforcement mechanisms.

The chapter then focuses on whether the harmonisation of environmental criminal law could improve the levels of environmental protection, focusing on the European Union and its Member States. It analyses three areas in which the Commission argues there could be an improvement on the levels of enforcement of environmental law in the Member States: the implementation of EU environmental law; the establishment and completion of the EU internal market; and the improvement of interstate cooperation in criminal matters.

7.2 The Methodology Applied in the Chapter

In order to ascertain whether criminal law is necessary in light of the existence of other alternative enforcement mechanisms such as civil or administrative law, this chapter will assess the data and the findings of a number of comparative studies commissioned by the European Commission on the enforcement of environmental law in the European Union Member States (including some of the acceding countries that joined the EU in May 2004). The findings of those studies will be used so that the effectiveness of each system of enforcement (criminal and administrative) is assessed according to selected topics and criteria.
One of the first studies to be conducted in this area was the 2000 study on the Criminal Enforcement of Environmental Law in the European Union commissioned by the IMPEL Working Group on Criminal Prosecution (hereinafter referred to as IMPEL Network Report). The methodology applied by this study was to gather information on the criminal enforcement of environmental law in the EU-15 Member States based on a questionnaire sent to national experts who produced country reports which form part of the study. The study focused on deterrence as the basis on which to assess the effectiveness of criminal law in the environmental field. This study was complemented by another study commissioned by the European Commission which was released on 20 September 2004, entitled ‘Study on measures other than criminal ones in case where Environmental Criminal Law has not been respected in EU member-states’. The objective of this study was to gather information on the extent to which administrative measures (but also civil ones) were applied in the EU 15 Member States and to evaluate the effectiveness of non-criminal sanctions in relation to criminal ones. Like the 2000 IMPEL study, this study assessed the effectiveness of non-criminal sanctions on the basis of their deterrent effect. Those two studies have been complemented by two others dealing with criminal and non-criminal enforcement of environmental law in five of the (then) new Member States that acceded to the EU in 2004. These latter studies applied a

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2 Milieu & Huglo Lepage ‘Summary Report: Study on Measures other than Criminal Ones in Cases where Environmental Community Law has not been Respected in the EU Member States’, 20 September 2004, at 52. (B4-3040A/2003/369724/MAR/A.3) hereinafter referred to as ‘Study on non-criminal measures’.

3 Ibid at 5.