

Seminar-No 18/20

Environmental Crimes

2020-09-28

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Presentation.

We are here to talk about challenges and indeed there are a lot of challenge at all stages. There are challenges

- In finding the crime
- In the investigation and in
- prosecution and sanctioning and
- In cooperation between al involved enforcement authorities both national and international.

I will share my experience from a Swedish perspective.

But what we have notices in Sweden have also been recognized by the EU. In particular, I would like to mention two documents.

The first one is – Next Slide

Brussels, 12 December 2016
(OR. en)

15412/16

ENFOPOL 484
ENV 791
ENFOCUSTOM 235

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	8 December 2016
To:	Delegations
No. prev. doc.:	15184/16
Subject:	Council Conclusions on countering environmental crime - Council conclusions (8 December 2016)

Delegations will find in the annex the Council Conclusions on countering environmental crime, adopted by the Council at its 3508th meeting held on 8 December 2016.

What is pointed out in the preamble is

That environmental crime has become one of the world's most profitable organised criminal activities and has a significant impact not only on the environment, but on society and the economy in general.

After the preamble the Member States are invited to take action in different ways.

We will look at some examples later.



Brussels, 15 November 2019
(OR_en)

14065/19

LIMITE

COPEN 432
ENFOPOL 506
ENV 924
CRIMORG 159
CATS 134
JAI 1205

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	13458/19
Subject:	Final report of the Eighth round of mutual evaluations on environmental crime - Information and discussion at the Council

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997¹, the Working Party on General Matters including Evaluations (GENVAL) decided on 14 December 2016 that the eighth round of mutual evaluations would be devoted to the practical implementation and operation of the European policies on prevention and combating environmental crime.

The second one is the Final Report of the Eighth round of mutual evaluations on environmental crimes.

Recommendation: to read the documents because they gives a really good summary of the challenges in combatting environmental crimes but, also highlights ideas of improvements.

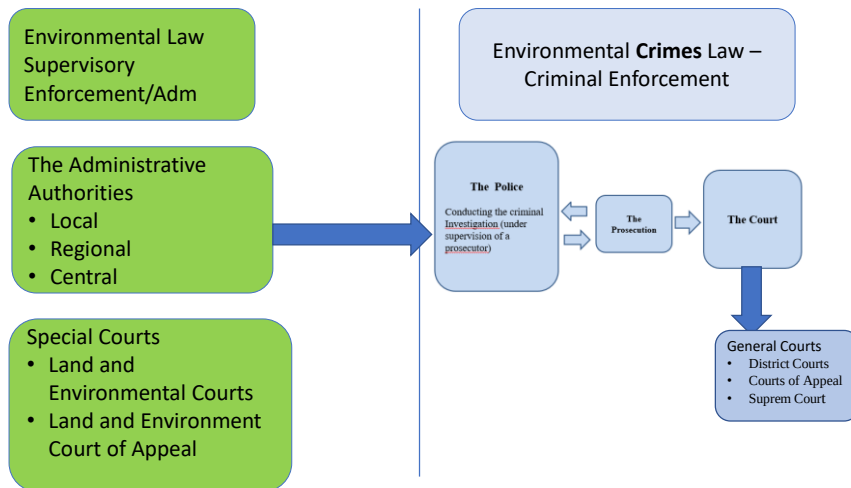
At the website of the Council you can find these two reports translated into the languages of all Member States if you prepare your own language.

Summary Introduction:

I will at this first section try to tie my experiences together with the conclusions drawn in these two documents and I hope that will give you a good picture of the challenges you find in the environmental criminal enforcement.

Finally we will go through a case that high lights the conclusions.

ENVIRONMENTAL ENFORCEMENT IN SWEDEN



Well, we will have a Swedish perspective so we start with an overview of the actors involved within the Swedish Environmental Enforcement System.

The Environmental enforcement is divided into two systems,

- the Supervisory enforcement/Administration (presented in green) and
- the Criminal Enforcement (here presented in blue)

And they are carried out by different actors.

SUPERVISORY is carried out by the administrative authorities. The purpose of their enforcement is to make sure that companies and operators conduct their activities in compliance with the regulations.

They give permits,
they make inspections and they
shall take necessary measures to ensure compliance with the objectives of the Swedish Environmental Code and make sure that errors are corrected.

They also have the role to inform and guide stakeholders concerning the application and interpretation of the legislation.

If they in their work discover suspected crimes then it is mandatory – **without exception** – to report the crime to the police/prosecutor.

You find the administrative authorities at a

- Local
- Regional
- Central Level

All with different shared responsibilities.

The decisions from the administration are taken to specialised courts – the Land and Environmental Courts where the judges are specialised and experts in the environmental law system. It is also possible to point out experts in a special area if that is necessary in a specific case. That expert is then a part of the judge team.

The **CRIMINAL ENFORCEMENT** is separated from the administration and is handled as every other type of crime in Sweden.

The criminal investigation is carried out by the police and the prosecutor together, but with different roles. Both the police and the prosecutors are specialised in environmental crimes – I will come back to that soon.

The courts however are not "The Specialised Land and Environmental Courts" with specialised judges.

Instead it is the General Courts often, with judges with no or little expertise and experience in environmental law.

Some of the judges are very good and very interested – but that is not enough; many of them have not the knowledge that is necessary to understand the complexity of the evidence and the environmental law system itself. And it causes problems when those who are ultimately to handle the most important/serious cases of environmental crime does not have the expertise or experience that is necessary for an effective sanctioning.

Because of this it has been and still are a discussion – well not a very lively one but, still a discussion - in Sweden if the environmental crimes

should be prosecuted in the Special Courts. One of the reason why this discussion was brought up in Sweden was the mentioned Council decision from December 2016 – next slide and point 1.

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INVITES MEMBER STATES TO:

1. provide law enforcement and other relevant authorities with sufficient capacity to detect and investigate offences against the environment in a timely manner and bring their perpetrators to justice, and consider the potential added value of establishing specialised police units as well as extending the expertise of forensic and other scientific units to cover the investigation and examination of environmental offences. The specialisation of prosecutors at both national and regional level as well as of judges, in accordance with national law and practice, could also be considered;

RECOMMENDATIONS

- *Member States should take appropriate measures to ensure or increase the level of specialisation of their prosecutors and judges, with a view to efficiently prosecuting and sanctioning environmental crime.*
- *For that purpose, they should consider establishing specialised structures/units and/or appoint specialised prosecutors and judges with a good level of understanding and knowledge of this complex area of crime, and provide them with continuous specialised training in environmental crime, including waste, legislation and related crimes.*
- *Member States should consider establishing networks of prosecutors and judges specialising in environmental crime at national level, to help them exchange experience and assist each other, as a measure to improve the effectiveness of the fight against this type of crime.*

Bullet point 1:

is a recommendation of the **Level of specialisation in the judiciary area -**

READ

The reason for that recommendation is in the conclusion that a successful convictions depends to a large extent on how skilful and experienced the authorities in charge of a trial are. A good level of understanding and specialised knowledge on the part of the judiciary in this area is therefore of utmost importance – page 32 in the Evaluation. And I agree.

Bullet point 2: animation

is about **how to get** that specialisation – and the recommendation is that they should consider establishing specialised units or appoint specialised prosecutors/judge and provide them with continuous specialised training in environmental crime.

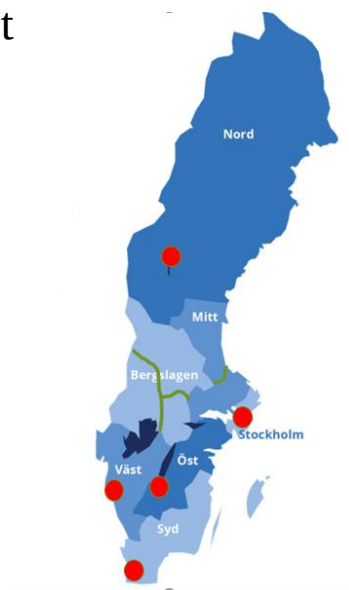
Bullet point 3 animation:

a recommendation to consider establishing networks of prosecutors/judges so they can exchange experience and assist each other as a measure to improve the effectiveness of the fight against this type of crime.

I you want to read more about the outcome in the Evaluation – page 32-34.

As you can see in the conclusions it is also stressed the importance of specialised prosecutors. In Sweden we fortunately have specialisation in that area.

The Swedish National Unit for Environmental Crimes



Prosecution

In the year 2000 the Swedish Prosecution Authority pointed out special prosecutors that only should work with environmental crimes and nothing else. The goal was to get prosecutors specialised in these matters.

But in the Swedish Prosecutor Office in 1999 the reality was that nearly all the investigations was closed down. The reason for that I think was two.

The first reason was (and as the Evaluation stresses), that the regulations are so complex and differs so much from ordinary crimes and therefore requires specialisation and training. It is easy to put a case a way if you don't understand the system and the regulations. In addition the investigations are complex and could take a lot of time. The second reason I think was that if you had a successful investigation, it often resulted in no sanctions to talk about – often just a small/low fine.

Taking all these conditions in to account, it was of course very tempting to priorities other crimes and that was also what happened, al sanctioned by the management.

So we needed specialised prosecutors to solve this– but why did we get it? Who saw the problems?

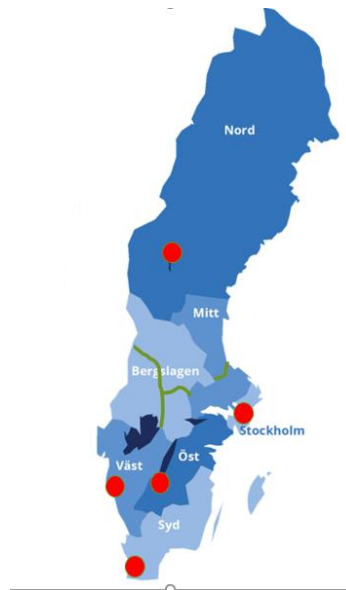
I think the crucial factor at that time was that we got a new “Environmental Party” with a new politic influence in Sweden. They had environmental issues on the agenda and for the first time it was a political focus on environmental enforcement and a focus on combatting these crimes.

The importance of political priorities and strategies are also a conclusion in the Evalutation.

RECOMMENDATIONS

- *Member States which have not yet adopted a National Environmental Strategy on environmental crime are encouraged to do so in the best possible timeframe and also to consider the adoption of an action plan for the implementation of such a strategy, with a view to improving the overall coherence and consistency of relevant actions in this field.*
- *The strategy should outline the objectives and priorities of national policy in this area of crime, clearly lay down the roles and responsibilities of all the competent authorities involved in countering this type of criminal activity and the modes of their cooperation, the resources needed and procedures and mechanisms for regular monitoring of the results achieved.*
- *Member States are also recommended to attribute coordinating functions for the implementation of the above strategy to a single body/entity or cooperative structure and to ensure that it is regular updated and reviewed, on a risk-analysis-based approach, in order to take account of relevant developments and trends and of related threats regarding environmental crime.*

The Swedish National Unit for Environmental Crimes



BACK TO SWEDEN:

So, in 2000, we got specialised environmental crime prosecutors – BUT the problem was that the new specialised environmental prosecutors – worked in the ordinary units often alone and miles from there colleges also working with environmental crimes.

The management at the units were still in charge also of murders and other exiting crimes and – they still, at that time no matter what the Environmental Party said - thought that other crimes was more important than environmental crimes.

Therefore the environmental prosecutors – at some units -, sanctioned by the management, did every thing else than handling environmental crimes.

This problems was brought up from us – the environmental prosecutors - to the highest level in the Prosecutor Authority and they listened.

So in **2009 – 9 years after the first specialised environmental prosecutors-** the **National Unit for Environmental Crimes** was established.

The unit became national and the environmental prosecutors were placed in five cites in Sweden – Malmö, Gotenburgh, Jönköping, Sthl and Östersund and with one chief prosecutor – placed in Malmö. Al separated from ordinary prosecutors..

The purpose was that the prosecutors in the unit

- should only handle environmental crimes and health and safety crimes under a management that was **interested** in environmental crimes and prioritised these crimes
- In this way we could get the experience
- The unit also made sure that the specialised prosecutors could operate in one common direction and to achieve a uniform practise of law. Before we noticed that we interpreted the law differently because we never sat down and discussed legal issues. But now we have the possibility to work out common guidelines and we can take deeper part of our own development.

- To work together and learn from each other - We have become a kind of network exchanging experience and assist each other just like the Evaluation recommended.
- The unit also find ways and time to cooperate with other actors in the enforcement chain both the administration and the police.

And it made results – **it gave positive energy and we could work in a supportive atmosphere and with that came an increasing number of prosecutions and well founded uniformed decisions for closing down investigations.**

Environmental Specialisation in the Police

- 7 Investigation Units with regional responsibility
- National Development Unit
- National Forensic Unit with expertise
- National Intelligence Unit



7

Police

So that was the prosecution. But we also need the police for successful investigations. In the same time and for the same reasons as for the prosecutors, special environmental police investigators were pointed out in year 2000.

Today there are 7 Investigation units in Sweden, one in each region, with investigators responsible for environmental crimes. South, West, East, Bergslagen, middle and north and Sthl.

The units have regional responsibility and the investigators work close to the prosecutors.

The investigators are police officers or civil investigators, some of them with special expertise in environmental law. This is a very good combination. At the moment – but there has been some ups and downs, I find the investigators very competent and very dedicated in the work.

Development Unit

Beside the 7 investigation units one (1) National Development Unit for special crimes – included environmental crimes - started some years ago.

The aim of the unit is to give guidelines, to give common directions and to achieve a uniform practice of law within the police regions. This unit cooperates with the prosecutors for a uniform approach.

The Development unit is also responsible for the education and training of environmental police investigators.

We have a common basic education for new police investigators and new environmental crime prosecutors and the Development Unit is responsible for that.

Forensic Unit

At national level we have our National Forensic Unit and within this, a special environmental expert unit. Their task is to analyse samples and make assessments of how harmful a specific pollution is for the

environment.

Sometimes in the most serious environmental crimes, the experts from this unit participate at the crime scene and take the samples themselves. They can also guide the regional forensic units in this matter so the regional inspectors can take the samples and do other investigations measures at the crime scene. .

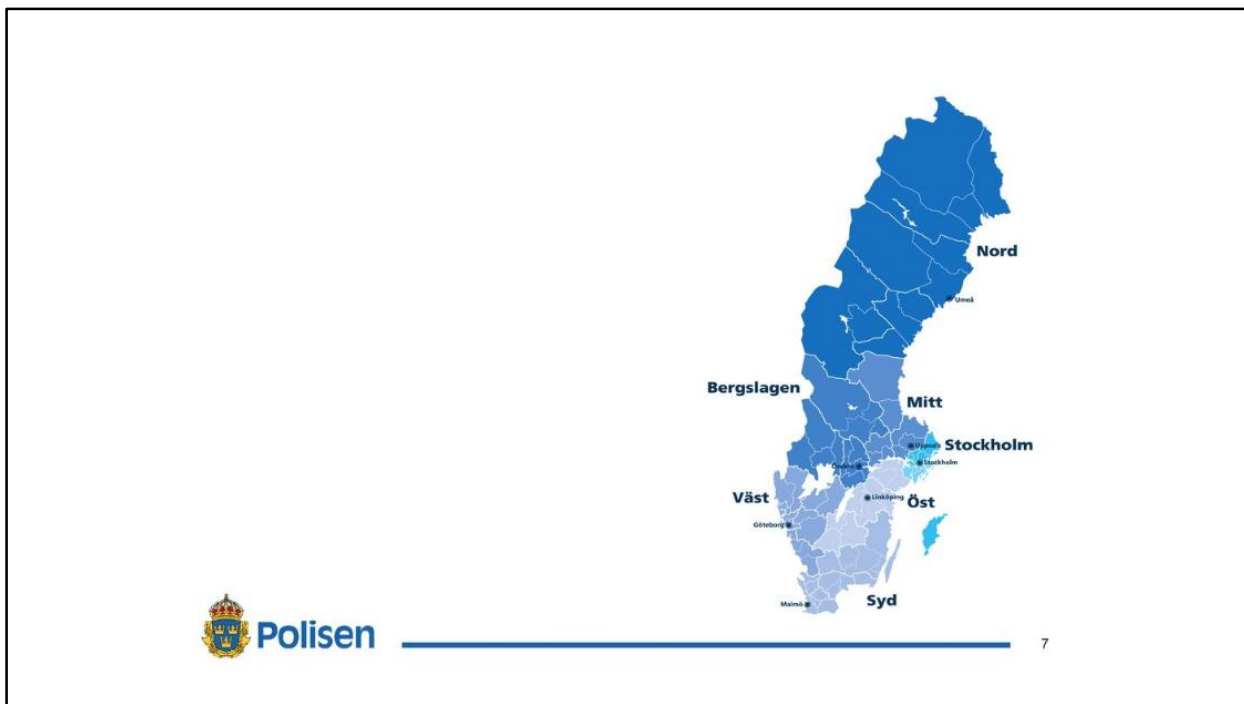
National Intelligence Unit

Let me come back to this unit in a minute.

Specialisation within the police is also a recommendation from the Evaluation.

RECOMMENDATIONS

- *Member States which have not yet done so are encouraged to establish within their national police services specialised units both at central and at local level for the investigation of environmental crime, including waste-related crime, in the best possible timeframe in order to combat such crimes more effectively.*
- *Member States should maintain and/or, where appropriate, increase the level of specialisation of LEA staff dealing with investigations of environmental crime, including waste-related crime, in order to ensure the appropriate expertise for dealing with such complex forms of crime.*
- *Member States are encouraged to provide or further develop the relevant units/services of their Law enforcement authorities (LEAs) with adequate human resources in order to boost their inspection and enforcement capacity in countering environmental crime, including waste-related crime.*



PROBLEMS/CHALLENGES:

Although we have this specialisation in the police there are still some challenges in the investigations.

The mayor problem is that there are only *investigators* in the regional units.

And that is maybe enough if we only investigate cases coming from the administration reports. These reported crimes are often offences within normal companies who often dont have any intention to committe

crimes. These companies often reports themself to the administration and then the administration report the crime to the police/prosecutor. The cases are difficult to investigate so you need specialists – and you get that with the investigators.

For many years this is the crimes that we have investigated and prosecuted. That is of course important – but it is also important to combat serious organised environmental crimes – and we all know that criminals involved in serious organised crimes are not in the supervisory system and if they are they do not conduct self-monitoring and go to the police and say what they did. And you often don't find these crimes on pre-announced visits or random inspections.

You combate these crimes in the same way as other serious organised crimes, through police intelligence where you can collect and follow up

- Information from the administration
- Information from stakeholders
- Other information

And then you need surveillance work to get concrete suspicions.

For many years Sweden had no environmental specialist in the intelligence units. But for some years ago earmarked money from the government was sent to these units to employ specialist to work with environmental crime intelligence. And this was really a step forward. But still environmental crime are not a priority for the surveillance units

and that results in that an important link between the intelligence and the investigation units is missing.

And furthermore, during the investigation there is a need of all other expert units in the police such as the cyber unit, the financial unit and more.

But the environmental investigation units– in Sweden - have no clear access or influence over these other units with special expertise.

Although there is a theoretical possibility to use inspectors from the different units in one case, in reality, it is very difficult to get the resources when you have to compete with other crimes.

And still, in 2020 , environmental crimes are not a priority in competition with many other crimes we face in Sweden.

The lack of cooperation between these units and different priorities in the units was and still are my problem in the case we are going to look at later.

The need of using all relevant units within the police is also highlighted in the Council Decision from December 2016.

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6. where appropriate, involve cybercrime units in countering illegal activities in the field of environmental crime, especially illegal wildlife trade and trafficking in illegal pesticides and other dangerous substances;
7. where appropriate, enable the involvement of financial investigators in environmental crime cases, at least for serious types of environmental crimes, in order to better understand the criminal structure of the phenomenon;

7 Polisregioner

- Secret wiretapping
- Secret camera surveillance
- Secret tele-surveillance
- Secret room interception
- Under cover operations



7

PROBLEMS/CHALLENGES:

We have talked about specialisation, but you also need tools for successful investigations.

To combat organised crimes there often is a need for secret investigation techniques

- Secret wiretapping
- Secret camera surveillance
- Secret tele-surveillance
- Secret room interception and
- Under cover operations

Secret investigations technics

- Secret wiretapping and camera surveillance
 - Minimum 2 years imprisonment
 - If the penal value for the crime exceeds imprisonment for two years
- Secret room interception
 - Minimum 4 years imprisonment
- Secret tele-surveillance
 - Minimum 6 month imprisonment

In Sweden we have the possibility to use secret investigation technics but only in the most serious crimes.

For Secret wiretapping and secret camera surveillance:

You need a crime that has a minimum sanction of two year imprisonment – and that is not the case for any waste crime we have seen.

There is a possibility also in other crimes - also waste crimes - to use wire tapping and cameras, if the **penal value** for the crime exceeds imprisonment for two years. But it is one crime that must be this serious, you can not look at the total criminality.

We are far away from penal values in that level in most of the cases.

Secret room interception , you need a crime with a minimum of 4 years, so is not possible at all in waste crime

Secret tele-surveillance is possible but only for *serious environmental crimes* because you need 6 month imprisonment as a minimum.

So in reality – as it is now in Sweden we don't have access to these investigations tools and of course, that is an obstacle to successful combat these crimes.

RECOMMENDATIONS

page
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- *Member States are recommended to ensure that their national legislation allows the use of special investigative tools to investigate environmental crimes, including waste-related crimes, insofar as this is proportionate in relation to the offence concerned, in order to effectively combat these criminal phenomena.*

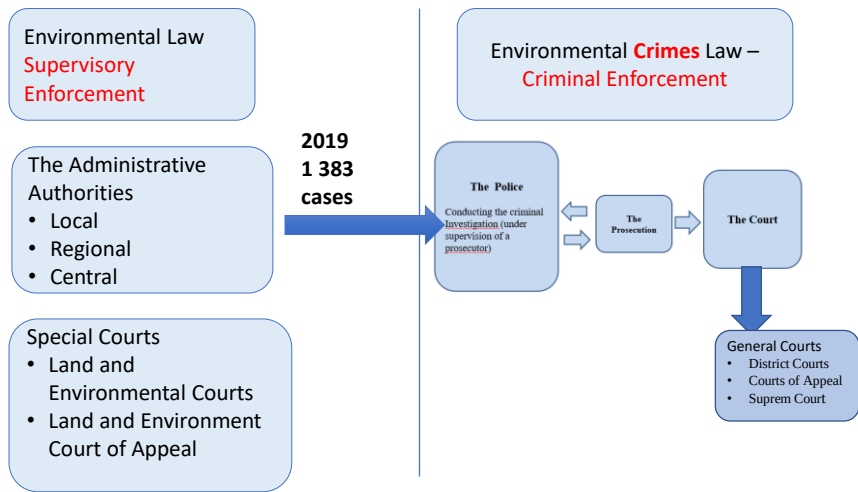
The lack of possibility to use secrete investigations tools has been criticised by the evaluation.

Summary

- No specialised judges in environmental criminal cases
- In reality no excess to special investigations tool necessary to combat organised serious crimes
- Specialised policeinspectors
 - Intelligence
 - Investigators
 - No real excess to the special units such as financial and cyber units
- Specialised prosecutors – *but to many cases*

Conclusion:

ENVIRONMENTAL ENFORCEMENT –
How crimes are detected



As I mentioned before, since the start in 2000 we mainly investigate crimes detected by the supervisory authorities in their work.

Animation

The administration provide us with many cases because it is mandatory for them to report suspected crimes without any exeptions.

The reason for this is because the administration not should end up in a situation where they need to choose. An inspector could come in a strange situation when he/she shall countinue to have a good

relationship with the company and to avoid such problems reporting the crime is mandatory. I think that is good idea.

But it also causes some problems – beause it means a lot of cases.

In 2019 – animation - **1 383** cases were reported to the police/prosecutor. And we are 20 prosecutors.

Another factor that is important here is that the Swedish legislator has statued that there is very litte possibility for the prosecutor not to prosecute a crime if we manage to proove the crime. We shall investigate and prosecute nearly everything. But there are some exeptions.

One is if the crime is considered *minor*, then we shall not investigate it and can close the investigation.

But, the problem is that minor, when it comes to enviromental crimes, has been assessed to be very minor and not many cases are considered minor. In my opinion we should try to expand the meening of *minor*.

If that is not possible there is another option.

Even if a crime is not considered minor there is an existing possibility in the law to close down investigations that could only result in a small fine and is not of public interest. But there are a statement from the legislator that environmental crimes nearly always are of public interest.

The reason for that statement I think is the way that environmental

crimes were handled before year 2000 and before we were specialist. Nearly all environmental crimes were at that time closed down for reasons we discussed earlier. And to prevent the prosecutors to use this possibility the statement was made.

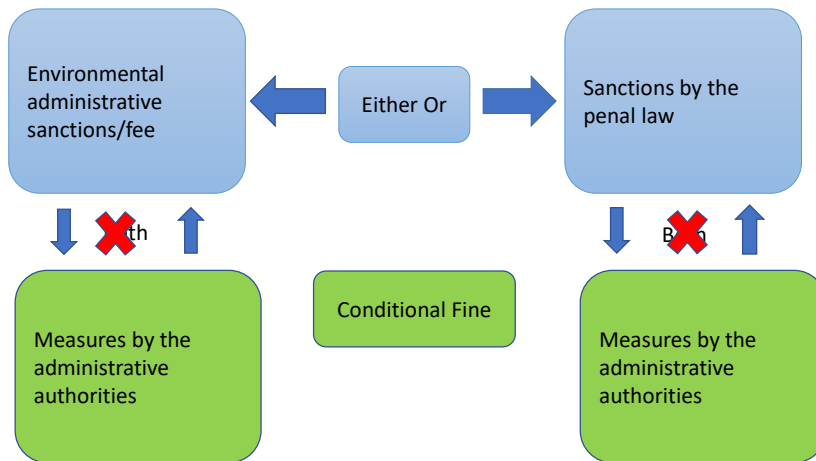
These factors result in too many cases and investigations and neither the police nor the prosecutor has resources to handle all the cases that are reported to us. And this causes case back logs which hinder a swift investigation as we all know. If a case takes too long time to investigate, evidence is lost or witnesses don't remember important observations and the result is that we have to close the investigation.

And if we don't have time for these crimes, will we find time/resources for the important serious organised crimes, pointed out in the preamble (see slide 2)

We must find a solution for this problem.

In my opinion the criminal law enforcement in Sweden are dealing with too many cases that are of no public interest, cases that instead could be solved by the Supervisory Authorities. And we have to start find clear, uniform criteria for finding cases of NO public interest that we can close down and send back to the administration.

Sanctions/measures of the Environmental Code



But that doesn't mean that there will be no reaction to a violation, there are other alternative.

So just a short view over the sanction system of the Swedish Environmental Code.

The sanction system is divided into

- administrative sanctions which is a fee. It is handled by the administration (chapter 30)
- criminal sanctions (handled by the criminal law enforcement authorities and you find them in chapter 29 complemented by the Swedish Penal Law).
 - Imprisonment

- Alternative to imprisonment such as conditional imprisonment, probation, community service
- Fines

-
- Corporate fines (if a crime is committed in a business activity).

The aim of the legislation is that no infringements shall be sanctioned by both an administrative sanction (30) and a criminal sanction (29). This is of course because of the ban of double sanctioning.

In 2007 there was a review of chapter 29 and 30 with the aim to ensure that violations didn't have two sanctions and now it is quite clear and pointed out in the legislation which violation that will lead to one or the other. So I as a prosecutor never – almost – will receive a report of a violation that is sanctioned with an administrative sanction – if I do, I send it back because there are no criminal sanction for the violation.

It is either or – *animation*.

Although the legislature has chosen the criminal system for certain offenses, such an offence can be more or less serious.

Let us take an example. If you have privatized the beach by building a new big house without a permit, then it is the public interests to start an criminal investigation. But if you have privatized an area by the beach by putting out tables and chairs and it is the first time and your purpose was not to prohibit people to use the area, it may not in the public

interest to prosecute that persons, although it is a crime. It should probably be better solved by the supervisory authority using other administrative measures to ensure compliance with the objectives of The Environmental Code, such as ordering the property owner to remove it – *animering*

So we have measures that can be imposed by the administration. Examples of such measures are:

- Injunctions with or without a conditional fine
- A possibility for the administration to withdraw a permit entirely or partially or prohibit further activity

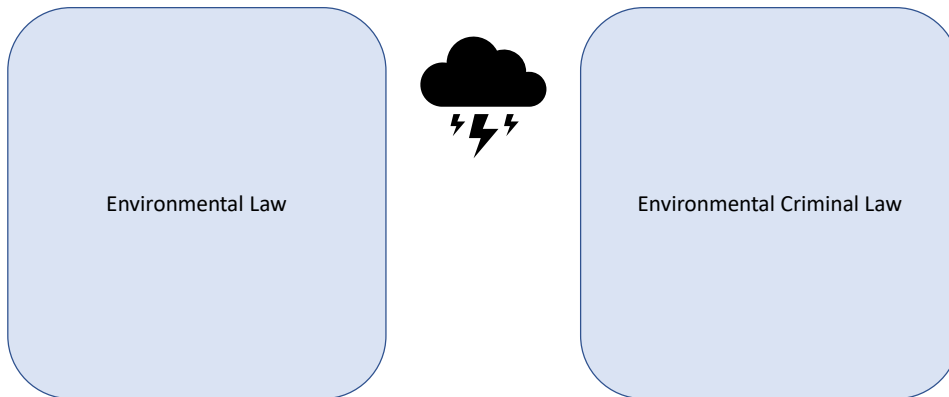
– and these measures can be take even if a criminal/administrative sanction has been imposed or can be imposed. That is of course ok and necessary for an sufficient enforcement and nothing that – with one exeption - could be a breach of the double sanction prohibition in the European Convention of Human Rights.

The exception is if the administration has combined the prohibiton/injunction with a **conditional fine**. If so – *animation*- it is not possible to impose either an administrative sanction or an criminal sanction for an offence to which the injunction relates.

And it is in this area – in my point of view – that Sweden has to start

finding clear, uniform criteras for what could be of NO public interest an have those cases sent back to administration for appropriate actions. If so, we could, with our limited resources, focus on the most important criminal offences and on the same time avoid case back logs.

Challanges in law



Lets go to challanges in law.

Environmental Criminal Law is often diffrent from other types of criminal law. The laws often directly criminalises environmental laws – which causes som obsticals.

Let ut take the Swedish system again as an example.

The Swedish Environmental Code

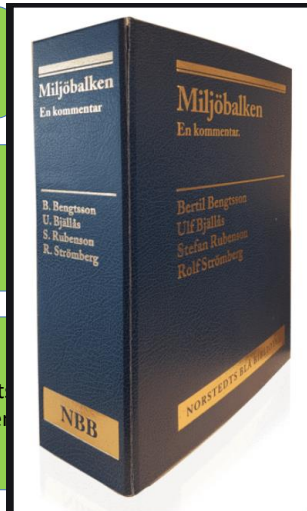
Environmental Law
Supervisory
Enforcement/Adm

The Administrative
Authorities

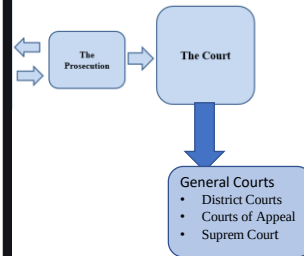
- Local
- Regional
- Central

Special Courts

- Land and
Environmental Court
- Land and Environmen
Court of Appeal

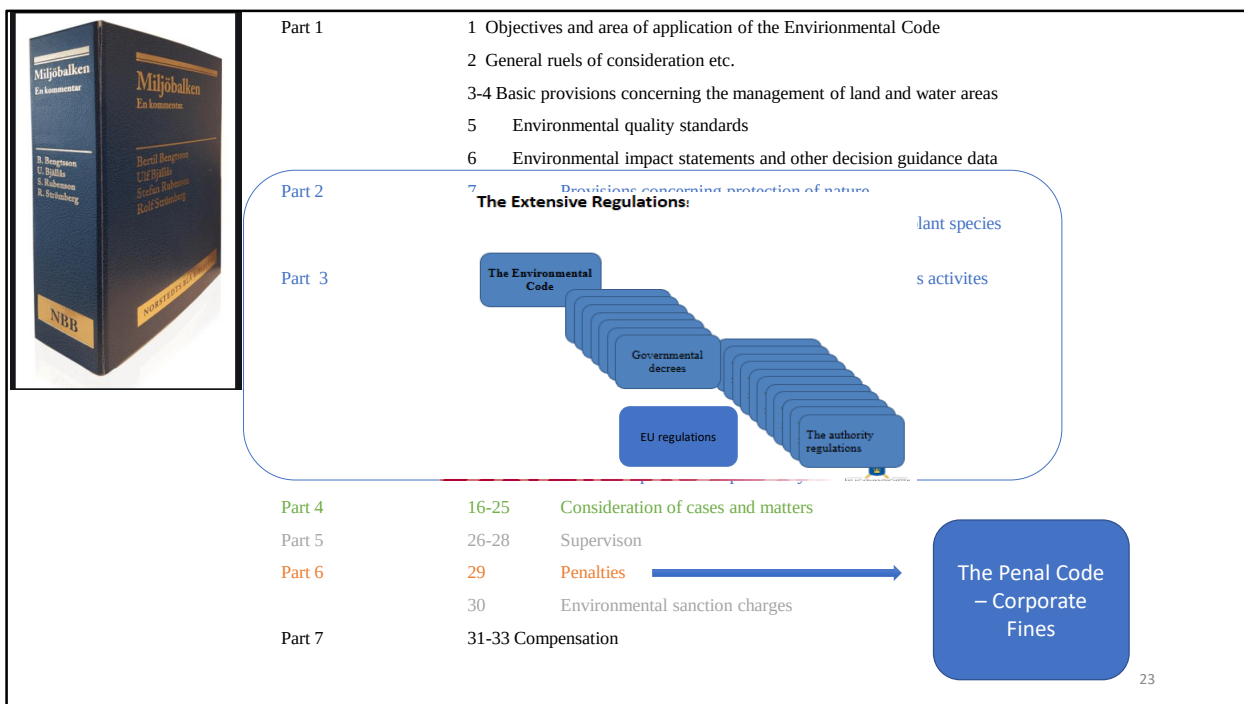


Environmental **Crimes** Law –
Criminal Enforcement



<http://www.swedishepa.se/Guidance/Laws-and-regulations/The-Swedish-Environmental-Code/>

The Swedish Environmental legislation is seen 1999 collected into almost one single legislation the Environmental Code.



In Part chapter 1-6

You find the General Provisions such as:

In the different chapters in part 2-3 you find the provisions in different areas.

It is provisions concerning protection of nature, of animals and plant species, of environmentally hazardous activities, water operations, chemical products and waste.

Here you find what you can do or not do.

What I said about one single piece of environmental regulation is of course not the whole picture

The Environmental Code provides the basic provisions but is filled out by a **second** and a **third level** of governmental decrees and provisions by authorities.

And of course – we have the EU regulations also, such as The EU regulation of transfrontier shipment of waste, cites regulation, the EU chemical regulations and so on.

All these provisions - telling you what you can do or not do – are environmental law not criminal law.

Part 6 - You find the sanctions for violations the Code

- administrative sanctions in chapter 30, and
- criminal sanctions in chapter 29. The criminal sanctions are completed by the Penal code where you find the legislation of corporate fines.

Part 7 – compensation for damages.

Chapter 29

-  § 1 Environmental offence and Serious Environmental Offence
- § 2 Infringements of provisions concerning protection of nature, protected animals
- § 3 Environmentally hazardous handling of chemicals
-  § 4 Unauthorized environmental activity
-  § 4 a Unauthorized transport of waste (EU 1013/2006)
- § 5 Obstruction of environmental control
- § 6 Incomplete environmental information
- § 7 Littering
- § 8-9 Violation of the Environmental Code
-
- § 12 + Swedish Penal Code Forfeiture

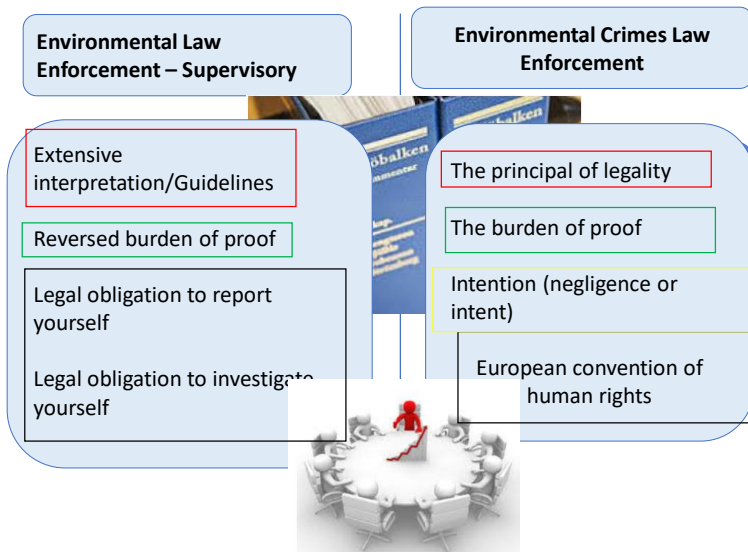
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Criminal provisions.

Section 2-9 are all criminalising the provisions in part 2-3, the governmental decrees, authority provisions and EU-regulations.

Problem?

Challenges in law



In criminal law there is the very strong and important **principal of legality** meaning that a regulations must be cleary, understandable and foreseeable.

Most of the regulations in the environmental area are much wider and often there is a lack of clarity and precision. This is a big problem in the criminal cases. A problem the supervisory authorities don't have, they can use the same provisions but they have the possibility to interpretet the legislation in a much wider way and can use guidelines for interpretation which sometimes expandend the rules. This means that

sometimes the law it self is the obstical and can be impossible to use in a criminal case.

Sometimes the environmental provisions are written in a way that almost makes it impossible to proove. That is not a problem for the administration because they can practise the reversed burden of proof. The prosecutor on the other hand has the burden of proof.

This is maybe not upsetting – it is what we find necessary in a democratic socity. But the problem is the way that the environmental law is written. And the result is that sometimes penal law is not possible to use.

Chapter 29

- ➡ § 1 Environmental offence and Serious Environmental Offence
- § 2 Infringements of provisions concerning protection of nature, protected animals
- § 3 Environmentally hazardous handling of chemicals
- ➡ § 4 Unauthorized environmental activity
- ➡ § 4 a Unauthorized transport of waste (EU 1013/2006)
- § 5 Obstruction of environmental control
- § 6 Incomplete environmental information
- § 7 Littering
- § 8-9 Violation of the Environmental Code
-
- § 12 + Swedish Penal Code Forfeiture

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§ 1 is one of the few directly environmental crime provisions in Sweden. It is NOT referring back to any "unclear" environmental law. But, unfortunately also this § is a school example of an unclear provision. It has been given us a lot of problems during the years (impossible to prove).

Environmental Crimes

The environmental offence p. 1

Any person who **emit** to land, water or air a **substance** that causes or may cause a pollution **that is considerable harmful** to human health, animals or plants or other **significant detriment** to the environment shall be liable to a fine or a term of imprisonment not exceeding two years.

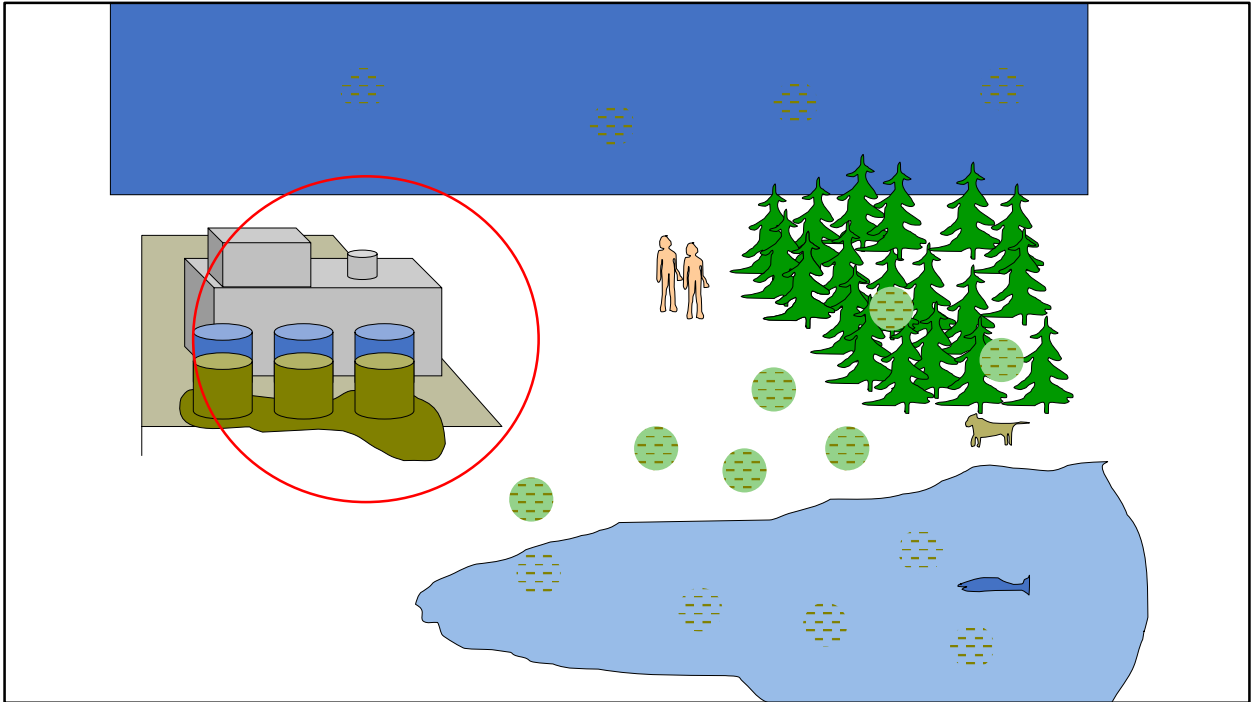


The environmental offence under section 1, paragraph 1

Considerable harmful/significant detriment ????

This definition was adopted in the law in 2007. When it was introduced it made an important improvement for the possibility to prosecute cases of discard.

Before, we had to prove that the specific pollution was harmful and dangerous for animals/humans/nature – we needed dead fishes. We all know that some emissions are harmful although we don't see the result directly. The effect could be seen years later.



So in 2007 it changed and now the prosecutor basically just need to prove two objective conditions

- That there has been an unpermitted emission of a substance
- The substance is or are scientifically recognized to be environmental hazardous.

Focus has now on the substances and what they in general can do – NOT the actual effect/harm in the specific case.

Environmental crimes

The Environmental Offence p. 2

Any person who **stores a subject or handle waste** in a way that may cause a pollution that is **considerable harmful** to human health, animals or plants or other **significant detriment** to the environmental shall be liable for a fine or a term of imprisonment not exceeding two years.



§ 2 - is about storing waste and other waste management not acceptable from an environmental point of view.

This part of the environmental crime does not require any emission but there must be a risk of such an emission.

Environmental crimes

Serious environmental offence

Particular consideration must be given to

- whether it has caused or has been able to cause lasting damage of a large scale,
- if the act has otherwise been of a particularly dangerous nature or
- has included a conscious risk-taking of a serious nature or
- if the offender, when special attention or skill was required , has been guilty of a serious blow.

The penalty shall be a term of imprisonment of not less than six months no more than six years.

If certain circumstances exists the environmental crime can be asessed as a serious crime and the penalty shall be a term of imprisonment of not less than six months no more than six years.

When assessing whether the crime is serious, particular consideration must be given to

- whether it has caused or has been able to cause lasting damage of a large scale,
- if the act has otherwise been of a particularly dangerous nature or
- has included a conscious risk-taking of a serious nature or

- if the offender, when special attention or skill was required , has been guilty of a serious blow.

According to court verdicts also circumstances such as

- If it is a systematic or organised illegal activity
- High profits

Can be important.

This criterias are important – but not so clear and we have not much cases to brings a light over this. The case later is one example.

BUT it is important – because this criterias gives us the key to use important investigations tools such as wire tapping.

(se Evalutation page 55-59).

Corporate Fines

- Corporate fines were introduced in Sweden in 1981
- Reform 2006
 - No condition to prove a person responsible for the crime
 - Primary and, under certain conditions, the only sanction for criminal activity

Pursuant to the Directive 2008/99/EC on the protection of the Environment through criminal law, member states must ensure that legal persons can be liable for the environmental offences mentioned in the directive, waste crime is one.

I mentioned before that – in Sweden - if a crime is committed in a business activity a corporate fine can be imposed

Corporate Fines were introduced in Sweden in 1981. The legal conditions to impose such a fine were at that time, however, strictly limited. The use of corporate fines was almost non-existent in the period

of 1981-2006.

The system with corporate fines was reformed in 2006 in order to broaden it's scope and to make sure that more environmental crimes were prosecuted.

Why was it so important with this review?

Let us have a look at some problems we were facing before the review of the law.

AT FIRST - there was a problem to find one or two persons criminal liable for failure in the company.

Failures are often very much about lack of cooperation between units/people in a company – at least when we talk about negligent crimes.

The failure could also be a result of an attitude in the company that has been part of the company for many years – this makes it difficult to find just one or two responsible persons.

In addition, our experience was that it took a lot of efforts and resources to successfully investigate the personal liability in an organisation.

So, we often had to close down investigations because it was not possible to place the responsibility on one/two particular person.

With the review of the law we don't have to point out the individual person. For a corporate fine it is sufficient enough to establish that the

responsability lies in the area of management in a wide meaning. And of course, this makes the burden of proof easier.

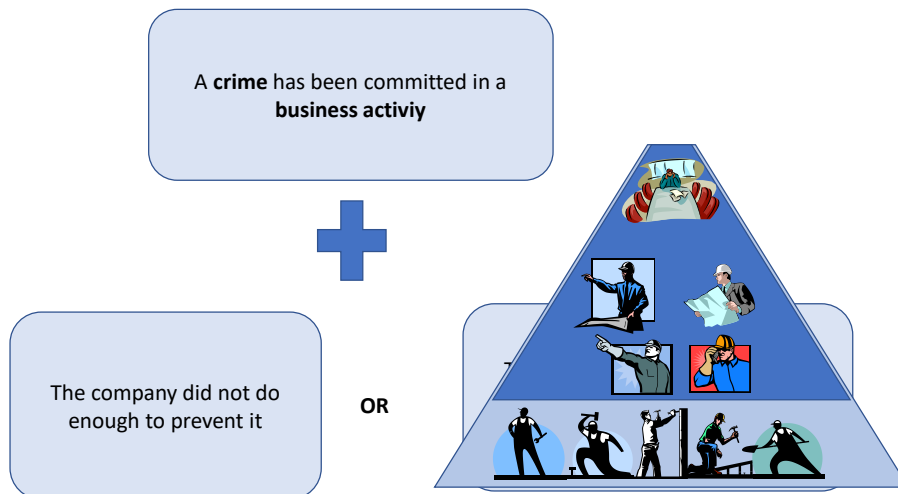
ANOTHER IMPORTANT CHANGE was that corporate fines was under certain circumstances supposed to be the only sanction for a crime in a business activity. If the crime is committed only by negligence and the penal value is only a fine the responsible individual will not be prosecuted - we only prosecute the company.

So with this new reform we don't have to put so much effort in finding the one person responsible, we can stop the investigation in a much earlier stage and save resources and still be able to impose a corporate fine. And we often feel that it is right that the companies should take the responsibility.

BUT – and that is important of course – we still have possibility to prosecute a physical person in the company. If the crime was committed by intent or if the penal value is on prison level, then we both prosecute the person and impose a corporate fine on the company.

So this reform of Corporate fines was a significant improvement for the efficiency of law enforcement in the field of environmental crimes committed in business activities.

Corporate Fine



The conditions for imposing a corporate fine was now with the reform-
first of all – *animation*

1) that a crime was committed in a business activity.

But the imposition of corporate fines also required – *animation* - either
that the company did not do what could reasonably be required to
prevent the offence

Animation

Or

animation

the offence was committed by

- a person with a leading position in the company
 - based on a power of representation of the company or
 - take decisions on its behalf or
- a person who otherwise had particular responsibility for supervision or control of the activities.

Animation:

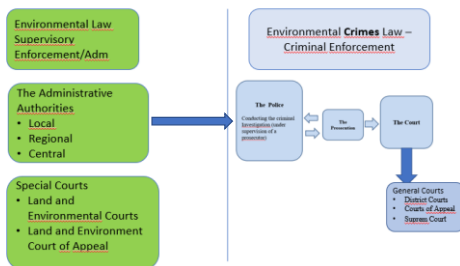
So for a corporate fine it is sufficient enough to establish that the responsibility lies in the area of management in a wide meaning not the workers. And of course this makes the burden of proof a bit easier.

Corporate fines

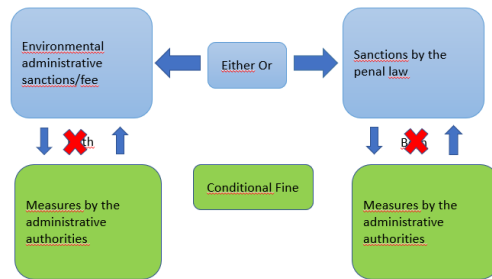
- 5000 SEK – 10 million SEK (500 Euro – 1 million Euro)
- An increased fine for larger companies for particularly culpable crimes; maximum 500 million SEK (50 million Euro)

National Cooperaton (Evaluation p. 45-49)

ENVIRONMENTAL ENFORCEMENT IN SWEDEN



Sanctions/measures of the Environmental Code



This is two slides – combined into one here -we have already looked at both of them.

But they describe that environmental enforcement involves several authorities at national level and a coordination and cooperation between the different actors are essential for the environmental system and enforcement action to function well.

This has been highlighted in the Evaluation (page 45-49) and you can read more about it there, next page.

RECOMMENDATIONS

- *Member States are encouraged to establish a formal and structured inter-institutional framework for cooperation at strategic and operational levels among all relevant stakeholders involved in the prevention of and the fight against environmental crime, including waste-related crime, based on a multidisciplinary approach, possibly through protocols or memoranda of understanding.*
- *Member States should consider designating a central body/entity or platform at national level in charge of coordinating the efforts of all the authorities involved in the fight against environmental crime, including waste-related crime, with a view to providing synergies, as well as maximising readiness and reaction capabilities.*
- *Member States are encouraged to ensure systematic exchanging of information and the establishment of shared databases with data on environmental crime, including waste-related crime, among all the competent authorities involved in countering such criminal activities.*

International Cooperation

- Europol
 - Eurojust
 - EJP (European Judicial Network in criminal matters)
-
- IMPEL (The European Union Network for the Implementation and Enforcement of Environmental Law)
 - EnviCrimeNet (informal network for countering environmental crime)
 - ENPE (the European Network of Prosecutors for the Environment)
 - EUFJE (the European Union Forum of Judges for the Environment)

JITs (Joint Investigation Teams)

<https://www.environmentalprosecutors.eu/waste-crime>

The Evaluation (page 67-72) highlights that Environmental crime, including waste-related crime, often has a cross-border dimension and that international cooperation therefore is essential to tackle these criminal phenomena effectively.

And in the evaluation it is described what kind of international cooperation that is available.

First of all is stressed the importance of using EU bodies and agencies such as Europol and Eurojust and European Judicial Network in criminal matters. The possibility to set up joint investigation teams if a case

concernes several member states is stressed as an important tool in the fight against environmental cross-boarder crime and the member states are recommended to use it.

Besides the EU bodies there are in EU a broad range of relevant networks for all the actors involved in the environmental field:

IMPEL:

IMPEL-TFS

EnviCrimeNet:

ENPE – involves prosecutors working in the environmental field.

There is also a useful website – link.

Activites – Waste –

Introduction movie

Webinar

Final report of the activites

HOME: highlights from the latest conferenses.

Database

How to become a member.

EUFJE – the European Union Forum of Judges for the Environment

And the Evalutaion recommends al member states to take part in these networks.

RECOMMENDATIONS

- *Member States are encouraged to participate actively in work carried out at EU and international levels to enhance cooperation in tackling environmental crime, including waste-related crime, in particular in the activities of EU agencies and bodies — Eurojust, Europol and EJNI — and of the European networks active in this area.*
- *Member States are encouraged to raise the awareness of practitioners of the possibilities and advantages of JITs and their use in environmental crime cases in order to make investigations more effective.*
- *Member States are encouraged to ensure or further develop cooperation with neighbouring countries, including third countries, and, where appropriate, to develop regional cooperation in fighting environmental crime.*
- *Member States are encouraged in particular to cooperate closely with EU and non-EU countries of destination or origin of shipments of waste, in order to coordinate efforts in combating illegal cross-border activities in this area, inter alia by establishing contact points/liaison officers with a view to information exchange and sharing of best practices.*

Summary:
Challenges in the
environmental criminal
enforcement

