



**TWINNING Light Project
HR/2011/IB/EN/01 TWL**

Capacity building of the environmental inspection and other relevant authorities and institutions for preventing, recognizing, investigating and prosecuting offences against the environment (CRO ENOFFENCE)

„Assessment Report with recommendations for improvement of prevention, recognition, investigation, prosecution and sentencing of offences against the environment through better cooperation and coordination of all involved stakeholders“

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Introduction

As this project is a follow up project of the IPA 2008 Twinning project on „Enforcement of the new Environmental Protection Act harmonized with EU legislation in cases of criminal offences against the environment” it aims – also in its assessment and recommendation component – to build upon the results of the mentioned IPA 2008 project.

While in the course of the previous project full legal compliance with the Environmental Crimes Directive 2008/99/EC could be achieved, the matter of practical implementation naturally had to remain partly open. - The new Criminal Act entered into force on 1 January 2013, which was already after the end of the project.

The assessment and recommendation report of the above mentioned IPA 2008 project was finalized in May 2011 – four years ago. Some of the recommendations mentioned there are not valid any more, some of them because they have been implemented in the meantime, some of them because the legal framework has changed since then. Other like the need to increase staff for inspections are still valid.

This report starts with an overview on new developments in international arena and in the EU since the end of the IPA 2008 project, continues with an overview on most important legal and organisational changes in Croatia (with a strong focus on the import modifications to the Croatian Misdemeanour Act) and continues with a chapter on practical aspects in the fights against environmental crimes, based on information from meetings with stakeholders and available material. The report concludes with a recommendations section.

Due to the preparation for the EU-Accession the reform of the legal framework in Croatia has been very dynamic in recent years. Since the end of the IPA 2008 project not only the Environmental Protection Act and other environmental legislation has been fundamentally changed, but also the legal framework of the Justice sector. In the course of the project it became clear that one of the most relevant changes, with high demand for information and education from the side of inspectors, was the reform of the Misdemeanour Act. Its amendments are substantial and affect the work of each and every environmental and other line inspector, as well as the work of Police and Customs. This is why this report provides a set with suggestions for improvements (see recommendation no 5 of the recommendations part of this report).

In this context it should be mentioned that the high number of changes in the legal framework in Croatia create uncertainties among inspectors and other stakeholders. This is why in this report we suggest to increase efforts regarding trainings, both inside individual institutions, and in the form of inter-institutional trainings (see recommendations no 2 and 3).

In order to avoid that joint trainings are just an ad hoc event without sustainable results inter-agency co-operation needs to be based on solid grounds. This is why we strongly recommend to further develop and sign the already prepared co-operation Agreement (“Memorandum of Understanding on co-operation between

stakeholders relevant for environmental Crime recognition, detection, investigation and prosecution”, see recommendation no 1).

Environmental Crimes do not know borders and since Croatia’s EU accession Croatia has become even more vulnerable as regards cross-border environmental crimes. Systematic controls of goods have already been abolished since the EU accession and with the planned accession of Croatia to the Schengen system also systematic border controls for persons will be abolished. This is why the focus on recognition and detection of cross-border crime should be further strengthened in Croatia. We suggest more intensive participation in international fora dedicated to cooperation in the field of environmental Crime. Such fora exist for Customs, Police and Justice co-operation, as well – of course – for co-operation among environmental inspectors. We have highlighted the specific international fora in this report and suggest participation of representatives of the respective Croatian stakeholders in their meetings (see recommendation no. 4).

We hope that this report, in combination with the training – component of this Twinning light project, can contribute to put the topic of environmental crimes higher in the list of priorities of the individual Ministries in charge and of the Croatian Government and that adequate resources for implementation of the recommendations will be made available in the future.

Part one – New developments in the international and EU cooperation framework since the end of the IPA 2008 Twinning project

On international level several approaches are ongoing to push the enforcement of environmental crimes legislation. These efforts also concern Croatia and can have a supporting positive influence in raising awareness of the topic and in building up efficient capacity.

INTERPOL published recently a *Pollution Crime Investigation Forensic Manual* which consists of two volumes. The manual describes consequentially in detail necessary steps of investigation in all forms of pollution crime as well as sampling and analysing.

EUROPOL identified in the actual SOCTA (Serious and Organized Crime Threat Assessment) report Environmental Crime as an emerging threat, in particular waste shipments, use of counterfeit pesticides and trade with protected flora and fauna. Throughout Europe there is a lack on concrete data concerning threats, impacts, reports, prosecution and convictions. Therefore the ENVICRIMENET (informal network of enforcement agencies on environmental crime) initiated a project called IPEC (Intelligence Project on Environmental Crime) to get more data on these issues. This project is finished and the final report is available.

On behalf of the IPEC report and the SOCTA of EUROPOL the *Standing committee for the EU internal security* (COSI) just recently put Environmental Crime on their “watch list” within the Policy Cycle.

ENVICRIMENET held the annual general meeting (AGM) in October 2014. The meeting clearly showed that the enforcement within the European Union is very diverse on knowledge, capacity, co-operation and the recognition of environmental crimes. In the last Steering group meeting of ENVICRIMENET in April 2015, where Austria is member in, it was identified that a reasonable number of MS still lack of experience in the field of environmental crime and are possible threatened by diverse forms of Environmental Crime. Therefore the Steering group decided that in the course of the next AGM, 21. – 22.10.2015 in Milano, Italy, several work shops will be organized to highlight, discuss and conclude from the practical point of view on diverse Environmental Crime forms like pollution, waste management, endangered species and industrial incidents. Participants may decide on their own in which workshop they contribute depending on their national necessity.

The Directive 2008/99/EC (Environmental Crimes Directive) is implemented in all Member States, but still the enforcement is not harmonized. In this context EU’s DG Home Affairs reported that currently there is a call for projects on environmental crime, which will be funded. The Slovak Republic actually already prepared a related project proposal and presented it during the ENVICRIMENET AGM in October 2014. The suggested project’s name is ENVI CRIME OFF and it focuses on assessment of the environmental crime situation within the EU, creation of training programs and material, conducting of trainings and development of support tools. The target groups are Police bodies in the EU MS. Slovak Republic asked for possible support from experienced MS as co-partners and the Austrian Criminal Intelligence Service will be a co-partner.

INTERPOL and EUROPOL regularly run international operations especially in the field of transboundary movements of waste and illegal trade in endangered species.

MS are always invited and requested to join into these operations on behalf of their national responsibilities and jurisdiction. In general participation of more administrations in a country is necessary to secure efficient approach. The INTERPOL National central bureau (NCB) or the national EUROPOL office acts as a national contact (SPOC – Single point of contact) and coordinates the national approach. It is recommended to join into these operations.

EUROJUST as the organisation within the EU to support jurisdiction on European Level published the report on the so called *strategic project on environmental crime* in November 2014. The project highlights the phenomenon Environmental Crime from the jurisdiction point of view. The related report is available at www.eurojust.europa.eu portal.

EU LEWP (Law Enforcement Working Party) is observing and discussing the initiatives of the European Commission, of EUROPOL and of other relevant European bodies in the field of environmental crimes. The Member States (MS) have influence and possibility of contributions to these efforts, since every MS is member of the LEWP.

Part two – legal and organisational changes in Croatia since the IPA 2008 Twinning project

1. Environmental Crimes as defined in the Croatian Criminal Code

The new Criminal Code was published with NN 125/11 and slightly amended (corrected) with NN 144/12. With these amendments also two Articles of the chapter on environmental crimes were amended (Art. 198 = threat of the environment by radioactive substances, and Art. 214 = severe crimes against the environment).

In Art. 198 par 1 the expression “threat of the environment in larger scale” was replaced by “threat of the environment in significant scale” and the expression “community of animals, plants and mushrooms” was deleted, as animals, plants and mushrooms in their individual existence are mentioned in the text of the law anyway.¹

¹ Original text (in Croatian language): U članku 198. stavku 1. iza riječi: »trajnije ili u« riječ: »većoj« zamjenjuje se riječju: »znatnoj«, a iza riječi: »bilje ili gljive« zarez i riječi: »zajednice životinja, biljaka ili gljiva,« brišu se.

In Art. 214 par 3 before (i.e. in the old version) injury of more than one person was required for fining the perpetrator, now already injury of a single person is sufficient for fining the perpetrator.²

After these amendments which did not change the substance of the provisions no further changes were enacted.

2. The Croatian Criminal Procedures Act – relevant provisions for environmental crime prosecution

As mentioned in the assessment and recommendations report of the IPA 2008 Twinning project the investigator is a new subject in the newly regulated criminal procedure, which fully entered into force 1 September 2011 for all relevant subjects. In this form the role of the investigator did not exist before. The State Attorney appoints an investigator, from the annual list of investigators, by issuing a warrant, in which the State Attorney orders the investigator to perform certain actions. Also environmental inspectors can be appointed as investigators in the frame of their jurisdiction and competence.

MENP's representatives reported that until now they are not aware of any cases where environmental inspectors were called upon as investigators by state attorneys.

After the end of the IPA 2008 Twinning project there were 5 amendments of the Criminal Procedure Act (NN 91/12, 143/12, 56/13, 145/13, 152/14). The amendments do not have any specific connection to environmental crimes but

² Original text (in Croatian language): U članku 214. stavku 3. iza riječi: »ozljeda« dodaju se riječi: »jedne ili«.

concern criminal proceedings in general. Due to lack of specific relevance for environmental crimes prosecution they were not analysed in detail.

3. The Croatian Misdemeanour Act – new elements relevant for prosecution of environmental misdemeanour offences

Systematic changes and amendments of the Misdemeanour Act were published in Official Gazette no. 39 of 3 April 2013. With few exceptions the changes entered into force on 1 June 2013. Changes introduced - among others - have the following goals:

1. Reduce number of misdemeanour court cases, in particular High Misdemeanour Court
2. Reinforce activities of authorised prosecutors
3. Accelerate and simplify the misdemeanour procedure
Harmonize the misdemeanour procedure with the standards of EU Directives, decisions of the European Court on Human Rights.

Provisions that substantially change the future procedure:

- Introduction of petty misdemeanour (article 24a)
- Introduction of the opportunity principle and conditional opportunity (article 109b, 109c, 226)
- Agreement between the defendant and the prosecutor (article 109.e)

1. Petty misdemeanour

4. Collection of money fines at the place of Misdemeanour

The amended paragraphs 1 and 2 of Article 254 prescribe that the authorised prosecutor may collect money fines at the place of misdemeanour in half amount of the prescribed minimum, or half amount of the fixed amount provided that only money fine is prescribed up to 2.000 kn for natural and responsible person in legal person, up to 5,000 for natural person - craftsman and natural person - self-employed person and up to 15,000 for legal person and the subjects equivalent to it, where the official person of the authorised prosecutor, apart from the victim, identified the misdemeanour by:

- 1) Performing inspection as part of regular competencies
- 2) Direct observation
- 3) Using technical devices
- 4) Checking reliable documents.

It is also prescribed that according to the mentioned rules money fine can be collected from legal and responsible person in situations where only the conditions relevant for legal persons are met.

Collection of money fine in half amount at the place of misdemeanour should be motivating for the perpetrator, by this instrument it is also intended to put fewer burdens on bodies in charge of procedure and increase efficiency of money fines collection at the place of misdemeanour.

The orally prescribed fine is collected at the place of misdemeanour and is confirmed by a proof of payment. Together with the fine it is possible to collect the money for the expenditures occurred while proving the misdemeanour.

In addition, the provision that regulates that the collected money fine at the place of misdemeanour is not entered into misdemeanour register and the perpetrator is not classified as person sentenced for the misdemeanour is still valid.

5. Misdemeanour Charge

Pursuant to article 111 of the Misdemeanour Act, line Ministry inspectors are authorised to submit misdemeanour charges for misdemeanours stipulated in the legal instruments that the respective line Ministry is in charge (controlling the law's implementation).

Misdemeanour charge is submitted in case:

- When authorised prosecutor proposes to pronounce sentence of imprisonment
- When authorise prosecutor proposes that together with the money fine also safeguard measures are pronounced
- Measure to confiscate goods
- When the perpetrator is juvenile
- When some of general requirements for issuing misdemeanour charge are missing.

Problem arising in practice is that it is not clear whether the Police has the right to submit Misdemeanour charges to court in the field of violations of the Nature Protection Law. In the meetings held stakeholders reported cases of illegal collection of snakes on Dalmatian islands where police support was provided in preparing Misdemeanour charges. In this case submission of Misdemeanour charges by the police was accepted by the Misdemeanour Court, but this is not the case in the whole of Croatia.

State attorneys have the right so submit Misdemeanour Charges in all matters.

6. Statute of limitation

Statute of limitation of misdemeanour prosecution is substantially changed. Namely, by prescribing the unified statute of limitation of four years, or three years for misdemeanours for which the authorised prosecutor must issue the mandatory misdemeanour charge, the so-called relative statute of limitation is revoked (statute of limitation for initiating misdemeanour procedure) and the possibility to prescribe via different law a longer period for initiation of misdemeanour procedure.

It is prescribed, that the statute of limitation is counted from the day the misdemeanour was committed and, by revoking the relative statute of limitation, the need to prescribe cessation and stoppage of statute of limitation was vanished.

It is also prescribed that barring of misdemeanour penalties by statute of limitation is counted from the day of validity of decision by which the misdemeanour penalty is pronounced and that it lasts three years. Implementation of the decision on confiscation of the property gain, confiscation of goods and expenditures of the misdemeanour procedure for which state of limitation applies after five years.

7. Art 109.a - requirement to notify the offender of the offence

Art. 109.a of the Misdemeanour Act defines the prosecutor's notification to the perpetrator of the misdemeanour on his rights and obligations.

In the trainings held this Article proved to be the most controversial one and many stakeholders expressed critics about it. It seems that interpretation and understanding of this article by the different Misdemeanour Courts throughout Croatia is not unified. The High Misdemeanour Court can only act if complaints are made against first instance decisions and inspectors were encouraged to mail such complaints in the case of unjustified decisions of first instance courts.

There is discussion about modifying the wording of this article regarding the notification requirements and MENP expressed readiness to collect proposals from other stakeholders and to forward them to the Ministry of Justice.

Below are some frequently asked questions and answers based on Mr. Raso's presentation held during the environmental crimes training programme:

- When the notification has to be delivered to the perpetrator? Answer: before submission of misdemeanour charge
- Why only in case of submission of misdemeanour charge? Answer: because the notification is a mandatory part of misdemeanour charge and the mandatory misdemeanour charge, not e.g. part of the misdemeanour warrant
- Who has to find out about the address of the perpetrator? Apart from the delivery of notification in a language that the perpetrator understands, authorised prosecutor is obliged to find out the address or the headquarters of the defendant
- What is the mode of delivery of the notification? It can be personal, signed by the perpetrator and the deliverer on behalf of the authorised prosecutor, in 2 copies, 1 copy for the perpetrator and 1 to be attached to the misdemeanour charge
- What to be done in case the perpetrator refuses to sign and accept the notification? Act in accordance with Art 148, para 4, last sentence of Misdemeanour Act.

Content of Notification - the following elements should be contained in the notification:

- a) Description of the misdemeanour - should contain facts and legal description,

- b) That during the procedure may, without restrictions; offender may defend himself or submit the defence in written form
- c) That offender has the right to read the file and get familiar with the evidence against him at premises of the body in charge,
- d) That during the procedure can opt for self-defence or can opt for a lawyer of his choice, but in case that the lawyer does not attend the hearing, or that the decision to have a lawyer is made during the hearing, the hearing will not be delayed or postponed,
- e) That during the procedure can submit proposals for the evidence in his favour,
- f) That the hearing can take place without the perpetrator's presence and decision on the misdemeanour made,
- g) That until the legal (valid) end of the procedure and end of execution procedure must inform the body where the procedure takes place about any change of the address, if he fails to do so, or he avoids delivery, all documents will be delivered through a bill-board of the body where the procedure takes place,
- h) That during the procedure is entitled to use his native language, or to ensure the court interpreter, if the procedure or some parts of it are not in the perpetrators native language, the perpetrator may waive this right if he is familiar with the language of the procedure or some parts of the procedure,
- i) That has the right of agreement in accordance with art. 109e of this Act.

Ministry of Environmental and Nature Protection has centralised approach – all police reports go to headquarters in Zagreb and send to offenders for confirming receipt (signing) notification

8. Organisational changes in Croatia since the end of the IPA 2008 project

With the introduction of regional Administrative Courts (Zagreb, Split, Rijeka and Osijek) as of 1 January 2012 the system of legal remedies available to challenge inspectors' and other administrative decisions, like permits, has substantially changed.

As concerns court organisation there is a general tendency to reduce number of courts. While there is still a high number of (small) Misdemeanour Courts the overall number of Municipal courts has already substantially been reduced. Reforms in court organisation are ongoing. During interviews with court representatives Twinning experts learnt that reduction of number of Misdemeanour courts is planned in the near future.

As regards changes in Line-Ministries no changes in the overall architecture have occurred, but some competences have been shifted between Ministries following elections and new organisation of Government.

The abolition of the State Inspectorate can be considered as a major change, showing that the former plan of centralising majority of inspection functions in one body is given up. The former State Inspectorate was in charge of mining, labour, electro-technical and economic inspections as well as inspection of pressure vessels. All these topics now fall under the responsibility of the sectoral Ministries, which carry out controls with their own inspection bodies.

Part three – New practical aspects regarding prevention, recognition, investigation and prosecution of offences against the environment since the IPA 2008 project

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This section is written based on information BC experts gave regarding the current situation in the field of environmental crime and misdemeanour prosecution in the MENP, and about situation in other stakeholder institutions, with focus on changes since the end of the IPA 2008 Twinning on Enforcement of the new Environmental Protection Act.

For collection of information the following meetings were held:

- Meetings between MS PL and the project team (Anita Pokrovac Patekar, Vlasta Pasalic, Jelena Manenica, Brigitte Mrvelj Čečatka) in the week 1 – 5 December, 2014
- Meeting with representatives of water management inspection, sanitary inspection, environmental protection inspectors and nature protection inspectors on 16 December, 2014
- Meeting with representatives of State Directorate for Protection and Rescuing, Ministry of Interior (Crime Police), Ministry of Finance (Customs Administration) on 16 December, 2014
- Meeting with representatives of Ministry of Justice, Courts (misdemeanour, criminal, administrative), State Attorney and Judicial Academy on 17 December, 2014
- Meeting with the police department in charge of Misdemeanour offences and environmental inspectors on 14 January, 2015
- Meetings with High Administrative Court representatives and representatives of the Misdemeanour Court Zagreb on 16 January, 2015.

During these meetings the following aspects were highlighted by the different stakeholders:

- Regarding inter-institutional co-operation inside Croatia

From the point of view of the Environmental Inspection (EI):

A strategic cooperation is not implemented yet, although a draft of a Memorandum of Understanding concerning co-operation of the Environmental Inspections (EI) and relevant stakeholders exists. On practical level in concrete individual cases the cooperation is functioning well.

The Police get more and more active and submits rising number of reports of detected environmental infringements to the EI in order to be forwarded to the Misdemeanour Court.

The Customs report their detected cases directly to the specific Misdemeanour Council within the Ministry of Finance. This concerns mainly cases of illegal shipments of waste and endangered species.

Coordinated regular inspections of companies are prepared and conducted involving all relevant inspections. This might show non-compliance with environmental law and lead to criminal or misdemeanour prosecution.

The Environmental Inspectors proactively contact other relevant stakeholders if need be, mainly in the course of verifying complaints, e.g. in an ongoing waste landfill case where in a permitted waste disposal site for household waste all kinds of waste have been landfilled. The EI jointly investigated together with the Health Administration and Criminal Police.

When having concrete assumption or evidence of Criminal Law relevance of specific incidents EI submit a report to the State Attorney/Criminal Court. In case the State Attorney/Criminal Court does not feel responsible, i.e. thinks that the case does not meet the requirements of the Criminal Law the EI expects that the case is submitted to the competent Court (Misdemeanour Court). Also vice versa it is expected that the case is forwarded to the State attorney by the Misdemeanour court in case it finds that there are good reasons for criminal prosecution. However, no parallel prosecution must take place (ne bis in idem).

The Nature Protecting Inspectors either report to the Prosecutors Office in case of Criminal Law relevance or to the Misdemeanour Court in case of Misdemeanour Law or to the Police when assistance and more investigation is needed, or sometimes they even issue a fining ticket on their own.

A similar approach is reported from the Sanitary-Health Inspectors and Water Inspectors.

According to the Nature Protection Act Police and Customs have the power to initiate Misdemeanour Proceedings on their own on behalf of the Nature Protecting Inspectors who suffer from lack of staff resources.

According to the Misdemeanour Act (Art. 109a) the accused person must sign having knowledge (having been informed) of the administrative procedure against him, otherwise the case will not be handled by the Misdemeanour Court when receiving the report from the EI. This leads to practical problems when the accused person refuses to sign even when knowing about the administrative procedure. This issue and potential solutions for its improvement were subject of discussion at the trainings of the project. Recommendations were made by participants (see recommendations part of this report):

From the Police point of view:

In general the cooperation is well on case to case basis. When getting a call (e.g. information from citizens) to check possible infringements or potential criminal acts the uniformed units estimate the further action needed after arriving on the spot and call the Police Coordination Center which calls in other relevant stakeholders.

The Police assist in environmental matters when requested by the respective Administrative Authorities and investigates on their own or on behalf of the Prosecutor in case of Criminal Law relevance.

The Center for Rescue and Protection:

In case of any civil endangerment, which includes risk of human life, environment or culture goods due to disasters or similar catastrophes there are standard operational procedures to call in necessary stakeholders, like fire brigades, Red

Cross, etc. In general first of all a Police Patrol is ordered to check and respond. Clarification connected to possible investigation in case of Criminal Law relevance is not within the responsibility of the Center for Rescue and Protection but within the Police.

From the Custom Service point of view:

In cases of detected possible environmental infringements and/or crime, which concerns mostly illegal shipments of waste and endangered species, the Customs operate on their own and report to the specific Court (Council) within the Ministry of Finance. In case of need of further cooperation the Operative Center of the Custom would call in other relevant stakeholders.

From the point of view of the Prosecutor's Office:

Rather rare cases of environmental crime with Criminal Law relevance appeared recently. Most cases are in the field of illegal construction and illegal activities in protected habitats, torturing of animals, illegal fishing and hunting.

A crucial problem is the low quality of received reports from diverse authorities. This makes further procedures and prosecution of offences difficult. Often the circumstances of the case are quite widely and broadly described but without any key data or concrete facts.

As regards wording of the environmental crimes provisions of the Criminal Code from the point of view of the state attorneys articles and specific terms are not well described, e.g. concrete and abstract threat. There also is an issue with vague notions.

When recognizing a possible crime, e.g. Media reports, the Prosecutors Office act on their own and initiate investigations.

- Regional and international co-operation in specific cases

There is case related diverse experience in matter of cooperation, e.g. ongoing case concerning illegal shipment of hazardous medical waste from Croatia to Bosnia & Herzegovina. From the waste authorities perspective the illegal shipment was returned to the country of origin in accordance with the EC Regulation on Shipments of Waste, although the further Criminal Law procedure is unknown.

- Statistical developments

In general the figures on detected, investigated and prosecuted cases are low. Specific forms of environmental crime are on the rise, especially visual forms, e.g. misuse of habitats, illegal construction. To detect, investigate and sufficiently prosecute other forms of environmental crime most probably there is lack of capacity and knowledge.

- Education

Stakeholders had not conducted any internal further training on the topic environmental crimes since the last twinning project.

- Legal support

Environmental inspectors do not have legal support in carrying out their tasks. While MENP has a legal department this department currently does not have sufficient staff resources to support inspectors in criminal and misdemeanour cases, but focuses, among others, on law drafting-, contract- and procurement functions. See recommendation on availability of legal support in the recommendations part of this report.

- Other issues

The Police, the Custom, the Prosecutors as well as the Judges have low expertise and experience in order to tackle efficient forms of environmental crime. This includes the first approach of detecting possible infringements and crime, effective and target-oriented investigation, highlighting the elements of crime and successful prosecution.

Part four – Recommendations

The recommendations section of this report is based on

- The outcomes of the IPA 2008 Twinning project „Enforcement of the new Environmental Protection Act harmonized with EU legislation in cases of criminal offences against the environment”
- Existing legislation, court decisions, reports and other available material
- Information collected during interviews and meetings with stakeholders and experts
- Results of discussions during trainings held in the course of the project
- Input from the project team

As a general recommendation we suggest to focus in the future on practical application of the new legislation related to environmental crimes and misdemeanour offences. As outlined in the assessment part of this report Croatian legislation has successfully been harmonized with the EU Environmental Crimes Directive 2008/99/EC. Now there is a need to come “from words to action” and to identify potential cases. This identification (recognition) of cases is difficult in many countries, not only in Croatia, as it requires awareness of all relevant stakeholders.

Environmental and other inspectors who are well trained to recognise potential non-compliance with air-, waste- and other sectoral environmental legislation cannot be everywhere. They need the customs and the police who are “on the road” much more frequently to help them with the two most important groups of environmental crimes, namely smuggling of protected species and illegal shipment of waste. Both of these types of crimes are to a large extent “transit crimes”. Transit crime means that the perpetrator only crosses Croatia without modifying the illegal load. But cases are not limited to transit crimes: In both of the mentioned two types of environmental crimes the shipment also often starts or ends in Croatia, as have shown e.g. the numerous cases on illegal shipment of waste that were discussed in the course of the trainings of this project.

A second group of stakeholders who are crucial for successful handling of environmental crime cases are state attorneys and judges. Without interest and understanding of state attorneys concerning the complexity of potential environmental crime cases files get stuck and cannot be further processed. State attorneys have a key role in deciding whether information forwarded to them contains sufficient grounds for further investigation with a view to file criminal charges to the court. For their successful work state attorney need support of environmental and other inspectors, as well as of police and customs. These institutions are “close” to the potential crimes scene: While police and customs often are, as mentioned “on the road”, which is important for the recognition of smuggling crimes, environmental and other inspectors know the facilities, such as industrial production sites or waste disposal sites which is important for detection of crimes linked to those installations. They know the “history” of the installations, have a track record of the behaviour of the operator and can tell about the “weak points” of the facilities from potential incidents in the past, all being information which can be of utmost importance for the state attorney to carry out his work.

Successful co-operation between the mentioned stakeholders requires constant information flow between these institutions. This is why a joint basis for exchange of

information is so important. This importance should be underlined by our first recommendation.

A larger number of suggestions (compiled under recommendation no 5) relates to environmental misdemeanour offences. This is justified by the high practical importance of misdemeanour legislation as a tool to handle, in a resource efficient manner, the potentially high number of smaller offences, such as violation of permit conditions and other administrative provisions.

➤ Recommendation no. 1:

Signature of a Memorandum of Understanding on co-operation between stakeholders relevant for environmental Crime recognition, detection, investigation and prosecution.

To achieve successful fight against environmental crimes and improved compliance with environmental legislation co-operation among a large number of stakeholders is required:

- Inspection services in the Ministries in charge of air protection, nature protection, waste management, water management, chemicals management, protection from noise and, last but not least, protection of the sea
- When it comes to follow up of criminal cases and other cases of non-compliance with environmental legislation further public bodies come into the picture, such as the police, the state attorneys and different courts (Administrative Courts, Misdemeanour Courts and Criminal Courts)

Assessments of the effectiveness of the environmental enforcement system in Croatia, such as the UN ECE environmental performance reviews, indicate that the legal framework in Croatia is well developed but its implementation is sometimes weak.

The latest UN ECE performance review report from 2014 states that:

- The interaction between different authorities is more procedural than substantive, and therefore lacks cross-cutting integration.

Among other recommendations the report proposes to:

- Strengthen co-ordination mechanisms between various inspectorates
- Provide guidance to inspectors on the use of specific enforcement instruments
- Improve the calculation of administrative fines and to inform the regulated community of the basis for such calculations
- Provide environment-focused training to judicial authorities and to consider whether a specialized corps of environmental judges could be established.

Implementation of the above recommendations and, in general, all improvements in the inter-institutional co-operation require joint visions and joint action of all stakeholders. Therefore MENP has initiated the signature of a cooperation agreement among the relevant stakeholders.

A draft text of the co-operation agreement dated April 2014 is available in Croatian language. The draft makes reference to the NEST (National Environmental Task

Forces) initiative of Interpol which suggests the setting up of “National Operational Teams - NOTs” in all countries.

The draft foresees MENP, Ministry of Interior, Ministry of Finance, Ministry of Justice and State Attorney Office as signatories and contains the following main elements:

- Topics of co-operation: education, joint procedures, other joint activities (e.g. supervision)
- Organisation and working method of the NOT, including elaboration of working plan and reporting
- Provision on international co-operation
- Nomination of responsible persons

Until now this draft has not been finalized and signed, but at the kick-off event of this Twinning project high ranking representatives expressed their willingness to further treat the signature of this agreement as an issue of high priority. The project highly recommends signature of the agreement in the near future.

➤ Recommendation no. 2:

Specialisation on environmental crimes and related trainings inside the police

As stated above since the end of the previously implemented Twinning project stakeholders have not started to organize trainings on environmental crimes and environmental Misdemeanour offences themselves. Especially in the justice and police sectors regular trainings would be of high importance not only to pass on knowledge on new legislation and trends in the form of presentations, but also to provide a forum for discussion and exchange of experience among colleagues.

As was presented during the trainings in this project by the colleagues from the Austrian police the Austrian practice to provide basic trainings for the uniformed police has proven extremely successful. It is the uniformed police who is out on the streets and roads and has the possibility to quickly react on incidents they spot and on information they receive.

The project suggests setting up such basic trainings for the unfirmed police in Croatia. Based on the contents of the Austrian curriculum we suggest that trainings in Croatia would include the following elements:

Legal issues:

- Criminal Law, Chapter Environmental Crime
- Respective Administrative Laws, like the Environmental Protection Act, Air Protection Act, the Act on Sustainable Waste Management, Water Act, Nature Protecting Act and other relevant sectoral legislation
- Criminal Procedures Act and relevant Police legislation

Practical issues:

- Identification of possible environmental infringements and crime – in the frame of patrols and coordinated actions
- Crime scene management – what to take into consideration in order to secure proof of evidence

- Sampling – proper taking, storage and forwarding of samples
- Investigation techniques – identifying and collecting needs to proof the elements of crime
- Cooperation – identifying and cooperating with relevant administrations and stakeholders
- Reporting – setting up appropriate reports for internal reporting as well as to administrative authorities and prosecutors in Croatia

Basic training – follow up trainings

The training for the uniformed Police – respectively *Environmental Officers* (see next paragraph) – consists of a basic training and follow up trainings. The basic training which consists of the above mentioned inputs is a three day training. The follow trainings are performed yearly, last one to two days and consist of practical topics including such which have occurred recently, including legal and/or practical issues. The trainings should be organized at regional (county) level. This organisational solution has the benefit that the inputs and topics can very precisely highlight regional problems and challenges.

Focus on *Environmental Officers*:

The issue of environmental crimes needs specific, intensive training in order to be ready to act. Furthermore it needs ongoing experience and practise to act regularly and efficiently. Since all these efforts are time and budget consuming the Austrian Ministry of Interior decided to focus on so called *Environmental Officers*, and we recommend this approach also for Croatia as a first step. *Environmental Officers* are uniformed police officers selected a on voluntary basis, fulfilling their duty on specific Police stations all over the country with all tasks of these Police stations. Additionally they have the above mentioned environmental crimes training and are the ones responsible for the environmental matters in their region. Important is that countrywide such *Environmental Officers* are available and that they cover all regions. (Austria currently has 600 *Environmental Officers* on duty). We can recommend the *Environmental Officers* system as an efficient and - in terms of budget - affordable system.

As the above mentioned uniformed Police – respectively *Environmental Officers* – play a key role in detecting Environmental infringements and Crime as well as in investigating minor cases. For more complex cases at the Criminal Police level an even more specialised enforcement unit is required. For this the Austrian Ministry of Interior established specialized *Environmental Crime Units* within the Crime Departments of the Provinces. These units again have a specific training which in principle consists of the same topics as mentioned in the training for *Environmental Officers*, but getting much deeper into the chapters and topics. The basic training lasts three weeks and the follow up trainings every 2 years last one week each. Based on our positive experience we highly recommend setting up and training of such a specific enforcement unit within the Criminal Police.

For crime investigators in the field of Environmental Crime the organisation CEPOL (European Police Academy) regularly organizes trainings – on general and on specific topics – where participants from law enforcement bodies of the MS are invited to. It is recommended that the Criminal Police participates in these trainings as they are without any additional costs for the MS and have the benefit for the

participants to meet other colleagues in the same field to exchange experience and expertise.

➤ Recommendation no. 3:

Provide joint trainings for specific groups of stakeholders and start with joint trainings of the uniformed police and customs units

In addition to the trainings activities mentioned under recommendation no 2 and in order to build up effective sustainable capacity for tackling environmental crime it is recommended to organize joint trainings including more than one institution. We suggest starting with joint trainings of the customs and the police.

When carrying out these trainings we suggest including as many ground officers from the Police and Custom as possible since they have a high chance to come across and recognise environmental infringements and crime during their patrol duty.

Even though the legal and organisational backgrounds, as well as the focus of their work, of uniformed Police and Customs units are different, there are some similarities which are valid for both and underline the need of joint trainings. The Customs, more focused on the crime related to shipment, like in waste and endangered species or nuclear material and ozone depleting substances, and the Police with the complete range of Environmental crime within the criminal code, face equal challenges when it comes to proofing the elements of crime. For this further experts, either from other state administrations or external experts are needed and to be called in on behalf of the first operating Police or Customs unit. Therefore this field can be handled in joint trainings. Only when the officers of Police and Customs feel sufficiently trained and therefore “safe” in acting, a real proactive approach can be expected.

The trainings should consist of providing knowledge of the relevant legal frame, including Criminal Law, Criminal Procedures Act and for the fulfilment of the administrative accessoriness main issues of the Waste Act, Water Act and Nature Protection Act. Further issues should be how to build up a proper investigation with focus on the elements of crime according to the Criminal Code Articles and drafting a suitable report in order to enable further procedure by the prosecutor or Misdemeanour Court. Contents of the trainings should focus and include topics which are for both – Police and Custom – necessary and useful. Advantageously these joint trainings are the basis of further specific trainings within the organisations of Police and Customs focusing on more internal topics and organisational matters, like organizing effective patrols and reporting.

The second main pillar of the trainings should be practicing investigation in the form of working groups with description of different fictive cases (e.g. destroying of habitat, illegal waste shipment/landfilling, pollution of water..). The participants of the working groups should represent different competent authorities in order to identify specific responsibilities and practise cooperation. The results from the working groups should be discussed in plenary.

Even though a high number of trained Police and Custom officers in the field of Environmental Crime are desirable, it is also important to thoroughly train a core group of officers and to establish them as possible specialised “environmental

officers” (see above recommendation no 1.). Such specialised “environmental officers” would build up a pool of sustainable knowledge and expertise which is necessary, since environmental crimes are a demanding cross agency field which needs on a long term effective competence, experience and contacts. “Environmental officers” could also hold in-house trainings inside the police and – based on the train the trainers concept – pass on their knowledge to younger colleagues and to non-specialised police staff.

In the future inter-institutional trainings should also be held between the Police and inspectorates of line Ministries in charge of environmental issues. Trainings should include both legal and practical aspects, including work on case studies. Possibly a national “best practice team” consisting of most experience inspectors on the respective topic should be formed which can be contacted by the police. Following this approach also trainings of the police together with State Attorneys and judges should be carried out. In order to implement the training into daily working life it should be clear how to proceed when calling in certain required competent authorities as well as when forwarding the final report either to the prosecutor or the Misdemeanour Court.

➤ Recommendation no. 4:

Police, Customs and and Justice representatives to participate in international fora on environmental crimes, in addition to the current participation of MENP representatives.

Currently it is mainly representatives of MENP who participate in international fora, such as Europol and Interpol when it concerns the topic of environmental crimes, e.g. Croatian „EnviCrimeNet“ representative is Anita Pokrovac Patekar, Croatian Interpol representative is Brigitte Mrvelj Cecatka.

The project recommends a stronger involvement of representatives of the Ministry of Interior/the Police in Europol and Interpol working groups and projects related to environmental crimes, as well as Customs and Justice representatives in “their” related specialised for a (see below).

Environmental Crime is more and more often a transboundary, transnational and global issue. Depending on the type of crime either the threat or harm (pollution crime) caused is affecting other countries or the criminal action itself, like illegal shipments of waste or endangered species, is of cross-border nature.

Therefore a number of international organisations and networks got involved in tackling Environmental Crime. To highlight the most important:

- On Police level the organisations INTERPOL and EUROPOL and the network ENVICRIMENET (see also above part one of this report)
- On Custom level the World Custom Organisation (WCO)
- On Justice level the organisation EUROJUST and the network ENPE as well as the EU Forum of Judges for the Environment

In order to support own national investigations, to increase national expertise and to internationally exchange experience and information there is a high value in attending meetings of these organisations or networks depending on own tasks and jurisdiction.

The police are a key stakeholder in recognition of national and international environmental crimes and therefore constant knowledge transfer as regards international trends and activities should be ensured. Participation in international fora also has a strong educational effect and allows for exchange of experience between colleagues from different countries how to act in specific situations and cases.

For the Ministry of Interior, respectively the Police, attending INTERPOL and EUROPOL activities has the clear benefit of increasing the knowledge about the different types and phenomena of Environmental Crime within the organisation, which enables more efficient (future) exchange of information on the secure channels of INTERPOL and EUROPOL (access to the secure channels is restricted to law enforcement agencies only).

Within EUROJUST the *European Network on Prosecutors for Environmental Crime* (ENPE) was established. The network aims to support prosecutors in the topic of Environmental Crime and highlights the problems and challenges from the prosecutor point of view. Active involvement of as many countries as possible is highly appreciated and therefore recommended also to Croatia to join the network.

With slightly less priority but also with high importance we suggest state attorneys and judges to participate in related international fora. The “EU Forum of Judges for the Environment” was created in 2004 and focuses on exchanging views on the implementation and interpretation of EU legislation and providing training for judges. The conferences of the Forum so far have focused on specific areas of EU legislation, e.g. the implementation of Natura 2000 and waste legislation and are not limited to the topic of environmental crimes only.

The World Custom Organisation (WCO) is an international organisation with national Custom organisations as their members. The WCO regularly leads international operations under the umbrella “Green Customs” to target in illegal trade of waste, endangered species and other substances harmful for the environment or public safety. Often these operations are carried out in agreement and cooperation with INTERPOL, EUROPOL, UNEP and other relevant international organisations. To engage in these operations has the benefit for national administrations to more effectively cooperate with other competent national and international organisations. It is therefore recommended that the Croatian Custom engages in respective operations and to co-ordinate with the other national administrations where necessary.

➤ Recommendation no. 5:

Implement the following improvements related to Misdemeanour offences

Remark: Below suggestions include input from the meetings and from the discussions with participants during the trainings held.

- Decentralize notifying offences to the offender and preparation of Misdemeanour charges: Every branch office should perform these functions themselves – advantage: closer to offender and closer to Police who

reported, closer to local Misdemeanour Court, possess relevant information and knowledge

- Set up a training programme and templates on the new elements of the latest version of the Misdemeanour Act for all inspectors. During the trainings it became clear that inspectors of the different line Ministries are not yet sufficiently familiar with the changes. The project suggests development of a brochure (similar to the one developed inside the police), holding of trainings and provision of forms to be used by inspectors. We recommend that inspectors and lawyers of the Ministry together prepare forms and guidelines to be used by inspectors for the initiation of Misdemeanour proceedings. In this context develop criteria to be applied by all environmental inspectors how to use specific flexibility options offered by the new Misdemeanour Act and secure unified approach all over Croatia, i.e. in the various branch units and by the individual inspectors. Carry out education how to use these forms and how to apply the internal guidelines and unified criteria.
- Provide legal support for inspectors. Both in interviews carried out at the beginning of the project and during trainings the issue of legal support was raised by inspectors. The project recommends that inspectors can ask for legal support from Ministry lawyers when called upon by the court in Misdemeanour proceedings. Taking into account challenges of amended Misdemeanour Act, at least in the current transition phase in which inspectors still have to familiarize with the changes in the Misdemeanour Act, legal support should also be available for the preparation of Misdemeanour charges. Enhance capacity of legal service of Ministry to support inspectors.
- Create a platform of exchange of knowledge and experience between environmental inspectors of the various branch units – internet based in combination with regular meetings (once or twice a year). In the trainings it became clear that many inspectors have similar questions in the daily work and face similar challenges. The project suggest to set up an electronic discussion forum inside MENP where environment and nature protection inspectors can mention challenges they face and other colleagues can comment. Additionally regular meetings for exchange of experience are suggested.
- Networking at local level: Hold annual or half annual meetings at branch office/ county level (as appropriate) between line Ministries' inspections units, court and state attorney representatives and police experts to exchange experience in handling recent or current cases and in dealing with upcoming trends, e.g. raising number of non-compliance cases in specific fields, e.g. shipment of waste or smuggling of protected species.
- Use (new) instruments available under the new Misdemeanour Act where this makes sense, e.g. suggest amount of fine to the Misdemeanour Court, negotiate the fine with the perpetrator where appropriate, consider using of opportunity principle, etc.
- Establish 24 hours service in environmental inspections for urgent cases. At the moment environmental inspectors are on duty only during working hours. There is not around the clock service and no contact person, e.g. for the police or the state attorney, in cases where they would need the expert

knowledge of environmental inspectors. At least at central level (Ministry in Zagreb) there should be a 24 hours service available via phone, but we recommend to set up such service at all inspections branch units.

- Establish specialisation in State Attorney Offices, Criminal Courts and Misdemeanour Courts and special trainings for staff in charge. The project recommends setting up a specialised state attorney for environmental crimes at all State Attorney Offices as a first step. This does not necessarily require that the specialised state attorneys do not carry out other tasks, as the currently low number of environment cases probably does not justify state attorneys who only cover environment cases. State attorneys have a key function in decision making: They decide whether they find grounds for initiating Criminal Proceedings, and if they don't find sufficient grounds to prepare Misdemeanour charges (or forward the file to inspectors for their decision whether or not to prepare Misdemeanour charges). Therefore acting State Attorneys need proper training in both legal and technical aspects of environmental crime prosecution. They should have the ability to give rough estimations of potential risks of certain incidents, so they can decide whether to initiate investigations. A good example of such specialisation is the Netherlands with their specialised state attorney unit in charge of environmental crimes (see also presentation of Dutch state attorney Rob de Rijck given during trainings).
- Establish right of police in sectoral laws (e.g. Nature Protection Act), where necessary, to submit Misdemeanour Charges in case they detect potential offence. Currently police has the right to prepare Misdemeanour Charge only in case of violations of "their own" laws, e.g. traffic laws. In case they detect a violation of the Environmental Protection Act or the Act on Sustainable Waste Management they have to forward the information to MENP, as only MENP has the right to submit Misdemeanour Charges to the Misdemeanour Court. The project recommends introducing the right of the Police to directly submit Misdemeanour Charges to the Misdemeanour Court in the Environmental Protection Act, the Act on Sustainable Waste Management, the Air Protection Act, the Nature Protection Act and further acts as considered useful. This measure could contribute to making the system more effective and to increasing the rate of successfully prosecuting non-compliance cases.
- Regarding Art 109a of the Misdemeanour Act - notification of the offender of the Misdemeanour offence - participants of trainings suggested that improvements are necessary and identified the following concrete actions:
 - Collection of all court decisions regarding Art. 109a – notification of offender - which are considered problematic and sending them to the High Misdemeanour Court (Mr. Raso).
 - Collection of proposals from the various stakeholders for amendments of this part of Art. 109a by MENP who would send the proposals to the Ministry of Justice and/or High Misdemeanour Court, so proposals can be taken into account for future law amendments.

Annex 3: Proposal for a system for environmental protection inspection
and other relevant inspection services with regard to the implementation of Article
23 of IED

