
**ENFORCEMENT OF INTERNATIONAL ENVIRONMENTAL AGREEMENTS,
E.G., HAZARDOUS WASTE AND OZONE DEPLETING SUBSTANCES**

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SUMMARY

This article presents a vision and recommendations for increased cooperation in the enforcement of international environmental agreements, particularly those relating to Hazardous Waste and Ozone Depleting Substances.

This vision is partly derived from our own experiences in the Netherlands in recent years in cooperating in the enforcement of regulations in this area within Europe in particular. In addition, use has been made of previously presented results on the enforcement of other (non-environmental) international agreements.

A structure is presented for enforcement cooperation on these environmental regulations, and recommendations are made for its three component parts, namely the joint enforcement strategy, cooperation on its implementation, and the provision of information.

1 INTRODUCTION

Enforcement is still one of the most relevant steps in the implementation of environmental policy. Particularly for international environmental agreements such as the Basle Convention (hazardous waste) and the Montreal Protocol (ozone depleting substances), where there are large-scale cross-border movements of the substances concerned, adequate enforcement still proves to be an essential precondition to achieve the desired compliance with these agreements.

The subject has already received a great deal of attention at the last four international conferences on environmental enforcement. The necessary steps in the right direction have since been taken, but at the same time it can also be noted that an adequate level of enforcement has not yet been achieved worldwide.

This article attempts to show what positive developments have been achieved and what weak links, as seen from a Dutch viewpoint, there still are in the enforcement system. Thus the question is how the effectiveness and efficiency of the enforcement of these environmental agreements can be further improved and particularly how the cooperation between the relevant official bodies in different countries can be reinforced to achieve this.

In order to answer this question, a comparison has also been made with enforcement in some other (non-environmental) international agreements. The article investigates what can be learned from these for the enforcement of the Basle Convention and the Montreal Protocol.

First of all, a structure is given for enforcement cooperation. This enforcement strategy is used throughout as a frame of reference for the present actual situation and the desired situation as regards the enforcement of regulations on hazardous waste and ozone depleting substances.

2 STRUCTURE FOR COOPERATION IN ENVIRONMENTAL LAW ENFORCEMENT

In the Netherlands, where a large number of partners are involved in the enforcement of environmental legislation, the Ministers for Housing, Spatial Planning and the Environment, Transport, Public Works and Water Management, and Justice presented a structure to parliament last year for improving cooperation on environmental law enforcement¹.

This structure, based on practical experiences in recent years, is made up of three component parts:

2.1 The joint enforcement strategy

It is important that the enforcement partners determine a joint strategy. This relates for instance to the following matters:

- the enforcement objectives to be aimed at jointly (priorities, intended compliance behavior)
- the use made of the enforcement instruments (criteria for sanctions, administrative or criminal sanctions).

2.2 Structural cooperation on implementation

It is very important to have a properly formalized structural international cooperation in the sphere of enforcement of environmental agreements. This is the only way to enforce rules on internationally linked issues such as hazardous waste and ozone depleting substances. Here the question of the different areas of competence regarding the various links in the chain (companies, transport) is also a major factor.

In addition, both qualitative aspects (such as knowledge, expertise) and quantitative aspects (such as the efficient deployment of government resources in enforcement) call for coordination.

This applies to the following areas:

- the joint programming
- the arrangements for the distribution of tasks among the partners
- the guidance and control of implementation
- the deployment of manpower (quality, quantity)
- the buildup of expertise (education, training courses).

2.3 Provision of information

The third point in the structure is the provision of information and communication between the authorities involved in the enforcement. This is crucially important, particularly in the case of internationally linked issues as mentioned above. This applies to the following areas:

- the method of exchanging information
- the establishment of separate and joint information centres and databases
- arrangements for reporting on (joint or separate) implementation by the participating enforcement bodies.

3 THE ENFORCEMENT OF OTHER INTERNATIONAL (ENVIRONMENTAL) AGREEMENTS

At the previous International Conferences on Environmental Enforcement and elsewhere reports have been presented on experiences with the enforcement of other international agreements. These may provide useful examples for enforcing environmental agreements such as the Basle Convention and the Montreal Protocol.

3.1 The EU Directive on the notification of new substances

Under EU Directive 92/32/EEC, new chemical substances must be registered with the government before they are marketed. The objective is to give Member States the possibility to assess the risks of the registered substance for human beings and the environment and where necessary to introduce measures to reduce this risk. It emerged that in practice there were major divergences in the way Member States were enforcing the Directive. For that reason, a first European enforcement project for the Notification of New Substances (NONS) was implemented in 1995 and 1996.²

As a first step, a manual was prepared in advance by an EU working party to support the enforcing authorities in their enforcement activities in this area. A second project within this framework (SENSE: Solid Enforcement of Substances in Europe) was carried out in 1996 and 1997 to further improve the European enforcement network.

Practically all the EU countries participated in both projects. The object of the projects was to share enforcement experiences and promote the exchange of information. This was achieved by carrying out coordinated inspections of a selected group of companies in the relevant countries. The inspections applied a standardized working method based on the manual, and joint training courses and educational programs were provided. The positive outcome of this project has been:

- the creation of a European enforcement network
- the exchange and building up of knowledge and experience
- the raising of the information level.

3.2 The Chemical Weapons Convention³

The central objective of the Chemical Weapons Convention is a total ban on the development, production, storage, transport and use of chemical weapons. The most important inspection objects under this agreement are chemical companies which produce chemical weapons or have the capacity to do so.

The following aspects of the approach taken to enforcement are instructive for our comparison:

- The inspections under this agreement are carried out by inspection teams from the Technical Secretariat of the CW convention.
- A verification regime has been developed to supervise compliance, and under it the chemical substances and companies are divided into three risk classes. For considerations of efficiency, the regular inspections focus on the highest-risk classes.
- In addition to the regular inspections, random inspections are also carried out on chemical companies which are not on the lists.

- All the inspections are carried out according to a predetermined inspection protocol (control procedures).
- The control procedures were first tested in practice, also for the purpose of strengthening the political will (by “showing that it works”).
- It was pointed out that up till then it had been difficult for political reasons to reach a jointly (internationally) agreed sanctions policy, despite its necessity for an effective enforcement.

Accordingly another effective method of sanction in these cases is the publication of the results of the inspection, that is, the use of publicity and public opinion (making violations known publicly).

3.3. Ocean dumping⁴

The International Convention for the Prevention of Pollution from Ships (MARPOL) prohibits the dumping of hazardous substances, waste and other materials into the sea from ships. The problem in achieving compliance with this agreement is that it is very costly for ships to deliver their waste, sludge, washing water etc. to collection installations legally. There was a great temptation to carry out illegal dumping. Enforcement of MARPOL is running successfully in Western European waters thanks to the following approach:

- An agreement was reached between European countries making it possible to carry out regular inspections on ships regarding the provision made for waste prevention (as laid down in MARPOL); in other words, not just detecting illegal behavior after the event but preventative inspections too.
- Harmonized inspection procedures have been agreed in this context.
- A manual with technical and legal information has been produced to aid the detection and legal prosecution of violations.
- Ships suspected of violations are subject to intensive inspection on arrival in harbor, involving a considerable period of immobilization for the ship (and therefore high costs); inspections of this kind are then given wide publicity in the shipping press. This approach has a very preventive effect.

4 EXPERIENCE OF ENFORCEMENT WITH REGARD TO HAZARDOUS WASTE AND OZONE DEPLETING SUBSTANCES

In summary, the essence of the regulations on the import, export and transit of hazardous waste and on the trade in ozone depleting substances (CFCs) is that movement of these substances is permitted only with the written permission of the competent authorities in all the countries concerned (import country, export country, and for hazardous waste also transit country). These notification documents must accompany the transport. This inspection regime with notifications from the participating countries is the cornerstone of the enforcement of the relevant international agreements.

Practical experiences (problem areas, developments) relating to the enforcement of these regulations, particularly in Europe, and the cooperation involved are presented from the Dutch viewpoint.

These experiences are illustrated with two examples from enforcement practice (see annexes 1 and 2) and are placed within the frame of reference of the enforcement structure as described in section 2.

4.1 Problem areas

The enforcement of cross-border movements involving hazardous waste and CFCs is being made more difficult by a number of problem areas. These include:

4.1.1 Enforcement strategy

There are still major differences in interpretation between the different countries on the definition of (hazardous) waste (the categorization of hazardous substances) and on the question of base materials or waste materials. Thus it may be the case that a particular waste material falls into different categories in different countries, with different notification documents. The secretariat of the Basle Convention does, however, play a facilitating role in response to questions regarding the lists with the various categories of waste. At the moment an OECD working party is also dealing with the operational issue of the classes of waste materials and base materials. As for the Montreal Protocol, it appears that here too the participating countries have implemented this agreement in different manners in their national regulations. What is more, the last EU country only included this agreement in its own legislation this year.

An international enforcement strategy, in the sense of harmonized agreements on the sanctions regime (dependent for instance on the nature of the violations), is still widely lacking. Sanctions under administrative or criminal law may be applied, but publication of the violation and other ways in which the violator can be affected commercially are also very effective. The agreements themselves certainly include an inspection regime, but make no provision for a regime of sanctions for violations. The individual countries have widely varying legislation for this purpose, involving both administrative and criminal law.

In the Netherlands itself, an enforcement strategy is used both for regulations on hazardous waste and for CFCs. For instance, an enforcement protocol has been drawn up for checks on compliance with the CFC Decree (the Dutch regulations based on the Montreal Protocol), with operational targets for the compliance by the relevant target groups.⁵ For considerations of efficiency, this operational target is not automatically set at 100%. Certainly the target to be achieved for the target group "trade in CFCs" is 100%, but for instance it is set at 80% for users of refrigeration systems. Trade plays a crucial role in the chain and therefore has a high inspection priority. In addition, sanctions policy in the case of violations has been established, partly in consultation with the Public Prosecutions Department.

4.1.2 Cooperation on implementation

International cooperation is essential in the case of cross-border movements of hazardous waste and CFCs. Particularly for the detection of illegalities, it has proved effective to look closely at the whole chain from the disposer or producer over the transport to the processor. A problem area in this chain supervision, particularly with hazardous waste, is that different authorities (with different powers) are involved with the different links in the chain in the various countries. This calls for agreements, at least working agreements, on mutual arrangements and the controlling role; i.e. arrangements on the coordination of the enforcement, preferably in the form of joint chain supervisory activities planned in advance.

Checks on compliance are often still carried out on an ad hoc basis between the various competent bodies in the different countries, rather than as agreed programs aimed for instance at specific flows of waste materials. Particularly for the detection of illegalities, not only the supervisory bodies for transport should be involved, but also the authorities responsible for supervising and licensing the company disposing of the waste and the receiving company. They have an important role in drawing problems to the attention of the authority which is competent for the movement of waste and CFCs in countries where this is a different authority (as is the case in the Netherlands, where the provinces and municipalities are the competent authorities for environmental licensing of companies, whereas the Inspectorate for the Environment is responsible for the transport of waste and trade in CFCs).

Thus in "chain supervision" of this kind, not only inspection of the notification documents but also physical checks are called for (checks on transport, and for instance company visits with technical and administrative inspections). For the transport link in the chain, it is necessary to make working arrangements with the customs, police and port authorities.

In the Netherlands, specific arrangements in the form of voluntary agreements have been made for instance with customs on their deployment, education and training and the provision of information in respect of cross-border movements of hazardous waste and CFCs.

4.1.3. Provision of information

Communication and the provision of information remains a problem area in the inspection of international transport chains and trade in waste and CFCs, where a large number of official bodies are involved. In the Netherlands, a permanent reporting centre for enforcement information on hazardous waste and CFCs has been set up by the Inspectorate for the Environment. Within the EU, each Member State has recorded the address and appropriate body for its reporting centre for hazardous waste with the European Commission (DG XI). This remains a problem area at the global level, as these details are not known for many countries or it is unclear what the body's actual status is. In practice, as far as the Netherlands is concerned its embassies in such countries perform a useful facilitating role in these cases. To provide the communication and information facilities necessary for adequate enforcement, it would be useful to have central reporting and coordination agencies in each country together with a global centre, all with a clearly defined status and role.

Such reporting centres should collect information on companies, material flows, processing options and capacities for hazardous waste and CFCs in the individual countries. Apart from the launching of ad hoc enforcement campaigns, other possible applications for such information would be carrying out analyses and detecting trends. The resulting directed enforcement programs can improve effectiveness (enforcement campaigns aimed at selected target groups or links in the transportation chain for hazardous waste and CFCs). The secretariats of the Basle Convention and the Montreal Protocol could fulfil this expanded function internationally.

4.2 Developments

Due to the fact that illegalities are still being discovered in the transport of hazardous waste, a number of pilot projects have been organized in the EU in recent years in the context of IMPEL (Implementation and Enforcement of Environmental Law). The IMPEL network was set up to harmonize the enforcement of European environmental legislation. These Transfrontier Shipment (TFS) projects were launched in the EU in 1992 with the aim of learning to cooperate despite differences in organization, culture and language to achieve a more permanent network.⁶ All the EU Member States now participate in these TFS projects. The projects are

implemented by monitoring selected waste flows, visiting companies and carrying out transport inspections in a coordinated manner. The TFS projects represent a considerable strengthening of the European enforcement network for hazardous waste. Cooperation with the police and customs has been organized and improved in many countries. The secretariat of the Basle Convention is also involved, so that the link to worldwide activities is in place.

Aside from the fact that there is a platform for structural consultation and coordination on hazardous waste in the EU context (TFS: Standing Committee 2, IMPEL's Cluster 3) the following results of the projects for implementation practice are worth mentioning:

- awareness of the powers, responsibilities and contact persons in the various countries has been obtained
- awareness of the differences in interpreting the regulations has been obtained
- a manual of joint procedures on international enforcement projects has been produced
- a database of information on specific waste flows and relevant companies has been set up
- a multi-year program for enforcement activities has been drawn up.

In this context, work will continue in 1998 on the following activities, among others:

- the development of a European enforcement strategy
- the development of an electronic data network for exchanging information, and
- the establishment of new projects such as checks on the transport of hazardous waste in harbors along the Rhine, Main and Danube.

Reports mainly from southern Europe on the illegal trade in CFCs intended for air conditioning systems have led to consultations with representatives from all EU Member States being launched in 1998 on the initiative of the European Commission (DG XI). Here a structural enforcement network is still at a very early stage. The TFS projects can serve as an example for a coordinated approach to the enforcement of the Montreal Protocol in this case.

5 RECOMMENDATIONS

5.1 General

A large number of partners in different countries are involved in the enforcement of international rules for hazardous waste and ozone depleting substances. The effectiveness and efficiency of the enforcement can be improved by creating more structure in the cooperation between the various authorities. The three components of the enforcement structure can serve as a basis here. For this purpose, it is recommended that specific joint enforcement projects should be carried out, targeted for instance at specific chains of waste materials and/or specific target groups. Particularly in the initial phase, it is advisable to carry out these projects within existing international cooperative associations or networks (such as is done for instance in the context of IMPEL in Europe). The above-mentioned components of the enforcement structure can then take their place within the specific projects. The experiences of enforcement of other international agreements described in section 3 support this recommendation.

5.2 Enforcement strategy

It is recommended that a joint enforcement strategy should be set up:

- Formulate joint enforcement priorities and targets for such areas as the enforcement objects and the desired level of compliance. These can be determined from previously collected and analyzed enforcement information on material flows and companies.
- Formulate a unified approach to violations of regulations in the various countries concerned. As well as prosecution under administrative or criminal law, other creative sanctions such as the returning of exported waste or the publicizing of violations can also be effective, for environmental protection reasons too.
- Make agreements on the uniform interpretation of the regulations in the various countries.

5.3 Cooperation on implementation

It is recommended that the joint enforcement of international environmental agreements should be organized more systematically:

- Choose specific inspection projects which are relevant for all the countries involved.
- By preference, set up multi-year programs for enforcement activities.
- Do not focus efforts to detect illegalities solely on transport, but also check the companies in the chain (companies producing, disposing of, processing and/or using hazardous waste and CFCs) by carrying out technical and administrative inspections.
- Make working arrangements with the competent authorities in the chain in respect of their deployment and activities.
- Arrange for education and training for the relevant competent authorities in both the technical and legal/administrative areas.
- Set up harmonized inspection procedures (manual) and test them first in practice.

5.4 Information provision

The following steps are recommended to improve the collection and exchange of information still further:

- Set up central reporting and information agencies in each country (and internationally for some information) for activities involving hazardous waste and CFCs.
- As well as formal information such as the required notifications of trade in and export of hazardous waste and CFCs, enforcement information on material flows, companies and processing capacities in the individual countries should also be collected in these central reporting agencies.
- In addition to its use in individual cases, this information can also be used to gain insight into material flows and trends for both enforcement and policy purposes.

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ENDNOTES

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ANNEX 1**CASE STUDY: ILLEGAL TRADE IN CFC-11****1 SITUATION**

In an administrative inspection of a chemical company early in 1998, the Inspectorate for the Environment established that 20 tonnes of CFC-11 had been supplied illegally to a company in eastern Europe in 1997. Under the CFC Decree (the Dutch statutory regulation under the Montreal Protocol) the manufacture and use of and trade in CFCs is prohibited, except for a number of special applications by the purchaser.

The company concerned in the east European country was using the CFC as a propellant in spray cans with medication for asthma sufferers (inhalers). Under the Montreal Protocol and the CFC Decree, such transactions have to be reported to and approved by the competent authorities in both the supplying and receiving countries.

Investigation showed that the Dutch company did not have approval from the Ministry of Housing, Spatial Planning and the Environment to manufacture or supply the CFC. No application for such approval had been submitted. If it had been, the Dutch Ministry would have had to present the application to the European Commission (DG XI). As the delivery was to a country outside the EU, the secretariat of the Montreal Protocol would also have been required to check the delivery against an agreed quota and give its assent. This application should also have been accompanied by a declaration of assent from the east European country showing that it had been checked there under the exception rule for a specific application. Further investigation brought to light the fact that the Dutch company did actually have a declaration of assent from the recipient country. This had previously been used for an application to manufacture and deliver the CFC which the Dutch company had submitted to the Dutch environmental ministry. However this previous application had been turned down by the UNEP Secretariat. Despite this previous refusal the delivery was still made subsequently. According to the company, it was made from old stocks; in other words, no more was produced. The company thought that this was permissible.

Despite the fact that the required documents were not present for the delivery from the Netherlands to the east European country, the batch was transported across the borders and processed. Criminal action is being taken against the Dutch company.

2 LESSONS FOR THE ENFORCEMENT STRUCTURE**2.1 Enforcement strategy**

Formally, both companies have violated the Montreal Protocol. There are no agreements on the sanctions against the two companies between the two enforcement bodies or countries concerned.

2.2 Cooperation on implementation

Inspection of all three stages in the chain of manufacture/sale, transport and use/processing is necessary, particularly to detect illegalities:

- inspection by the competent authority in the country of manufacture and/or sale (administrative inspection)

- inspection in the receiving company, also covering the assessment of the “exception rule” for the use of CFCs (physical and administrative inspection)
- inspection at the borders regarding transport of CFCs (physical and administrative inspection); working agreements with customs are indispensable for this purpose.

2.3 Provision of information

It is essential to have exchange of information between the competent authorities of the supplier country and the recipient country, if necessary via a central reporting and information agency. For instance, information on the UNEP Secretariat's rejection of the application for delivery is relevant in this case.

ANNEX 2**CASE STUDY: ILLEGAL EXPORT OF HAZARDOUS WASTE****1 SITUATION**

In 1996, the Inspectorate for the Environment received a report from Dutch customs on eight containers of chemical products imported from the Far East and bound for Greece. When checking the paperwork, customs officers had noticed that the stated value (800 US dollars) was very low in comparison to the description of the cargo. This gave rise to the suspicion that it was waste, in which case the international regulations for shipping waste materials were not being complied with. Further investigation by the Inspectorate for the Environment showed that since 1992 containers with polluted chemicals had been transported mainly from the Far East and from North and South America to a Dutch company.

This company, which manufactures and sells chemicals, also cleaned containers which had been used for transporting products to customers. The residues from the cleaning were stored in separate containers which were transported to Greece for processing along with the containers from abroad.

A total of 380 tonnes of hazardous waste from the Netherlands was involved. Export activities of this kind fall under the Basle Convention and the EU Waste Shipment Regulation (EVOA). Under these regulations, reports from the competent authorities in the countries of origin, destination and transit should have been present. However there were no reports. The company considered that this was a secondary raw material and not a waste material.

In Greece, lead was reclaimed from the waste to be used there for weighting rope (for example for fishing nets). Contacts between the Dutch and Greek authorities showed that those concerned were completely unaware of the import of this waste and the activities of the company there. The companies involved had no licenses to process waste of this kind.

The Dutch company was prosecuted under criminal law, resulting in an agreed fine of NLG 250,000 and the obligation to take back 300 tonnes of metal waste from the Greek company for legal processing.

2 LESSONS FOR THE ENFORCEMENT STRUCTURE**1 Enforcement strategy**

Through a transaction settlement with the Public Prosecution Department, the Dutch company was punished with a fine and also with the requirement to take back the waste. The latter is a very effective sanction, also from the point of view of environmental protection.

2 Cooperation on implementation

The function of the customs as eyes and ears is very important for the detection of illegalities in the transport of hazardous waste. Customs officers need to have sufficient expertise in this area to be able to recognize illegalities. Inspections carried out on the exporting or importing companies by the appropriate authority could have brought these illegal waste activities and transports to light much earlier.

3 Provision of information

It would be useful for such enforcement information on these worldwide waste flows and on the relevant companies in a number of countries, to be entered in a central database.