

INTERNATIONAL ENVIRONMENTAL ENFORCEMENT INITIATIVE: LESSONS LEARNED FROM U.S.-BELGIAN DIALOGUE REGARDING ENVIRONMENTAL CRIMINAL ENFORCEMENT

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SUMMARY

In mid-November 2004, three senior U.S. Department of Justice prosecutors and an experienced criminal investigator from the U.S. Environmental Protection Agency traveled to Brussels, Belgium for a two-day workshop on environmental criminal enforcement. The successful workshop marks the beginning of what officials from both countries hope will become an on-going exchange of ideas and information amongst rank-and-file environmental law enforcement officials from the U.S., Belgium, and other European Union member countries. The program touched on virtually every aspect of environmental criminal enforcement, from goals and objectives, through investigative techniques and prosecution, all the way to the determination of appropriate fines and sentences. One of the most noteworthy aspects of the conference was the ease with which participants were able to recognize and then move beyond the differences between legal and judicial systems in order to identify, compare, and consider the many significant similarities in goals, methods, and procedures. Another important feature of the program was how it drew together officials from both countries over an extended period of time before, during, and after the workshop. The exchange of information and experiences during this period laid the foundation for a long-lasting relationship, and provides a model for building enforcement networks worldwide.

1 BACKGROUND OF THE WORKSHOP

1.1 How it All Began

The environmental crimes work-

shop was the product of sustained and high level contact between the United States and Belgian governments. That contact was initiated by a visit to Belgian national

environmental and judicial authorities by Thomas Sansonetti, Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice. Environment and Natural Resources Division, comprised of more than 400 attorneys, is responsible for judicial enforcement of all federal environmental and natural resource laws in the United States and works with a variety of agencies, including the Environmental Protection Agency. During Assistant Attorney General Sansonetti's initial visit to Belgium, the U.S. Embassy in Brussels and the Belgian Justice Ministry developed a seminar that brought together for the first time all federal Belgian prosecutors who worked on environmental matters, along with police and environmental officials. Belgian judicial officials, spurred on by the seminar and visit, then came to the U.S. for a brief but intensive study tour organized by the U.S. Embassy to see firsthand how the various U.S. federal and state enforcement agencies and courts operate. In June, 2004, Assistant Attorney General Sansonetti visited Belgium a second time while conducting other work in Europe and, again with the assistance of the U.S. Embassy and Belgian national officials, gave a presentation to a gathering of prosecutors, judges, and police officials on more specific issues relating to environmental crimes that had been selected by the Belgians in advance.

Seeing the success and interest generated by these seminars, Belgian and U.S. Embassy officials met with Assistant Attorney General Sansonetti during his second visit to begin planning a workshop that would elaborate on some of the topics briefly discussed at the earlier seminars. U.S. and Belgian officials then commenced a detailed planning process, including several video conferences, to share perspectives on each country's legal systems and criminal law practice. Planners from both countries reached out to other agencies and officials outside their particular areas of expertise to ensure broad coverage of topics. For example, an Environmental Protection Agency criminal investigative agent was brought into the process to discuss

investigative matters.

These regular contacts allowed the workshop planners to focus on those issues most relevant to a Belgian audience. In the course of preparation, both sides learned about the other's legal regimes and environmental authorities. The sustained contact ensured not only that the workshop would be interesting and useful, but that it would have sufficient government support from both countries. The planning process generated working relationships between U.S. and Belgian enforcement officials that have continued beyond the conclusion of the conference.

1.2 Primary Participants and Objectives

A key ingredient in the success of the program was the inclusion in the planning process of high level, highly experienced representatives of each major component of the environmental law enforcement community in Belgium. Christian G.F. Vandewal, Deputy Prosecutor General in the Brussels Court of Appeals, identified subjects of interest to prosecutors who would be attending; Frans J.E. Geysels, Head of the Environmental Service and Chief Commissioner in the Belgian Federal Police, articulated Belgian police interests in the program; and Judge Jan Van den Berghe, Vice President of the Court of First Instance, Ghent and president of the environmental law training program for judges and prosecutors, represented the views of Belgian judges. All three are influential in their respective spheres and have demonstrated a long-standing commitment to the investigation and prosecution of environmental crimes in Belgium.

All three Belgian officials involved in planning the program, as well as the Belgian High Counsel of Justice, viewed it as an opportunity to bring together law enforcement officials from jurisdictions across the country to generate interest in environmental crimes prosecution in general and to provoke discussion on ways to improve enforcement in Belgium.

As noted above, three of Depart-

ment of Justice's most experienced environmental crimes prosecutors attended the conference to describe the U.S. program in detail. These included John Webb, an Assistant Chief in the Environmental Crimes Section and the foremost authority on U.S. criminal cases involving wildlife smuggling and unlawful takings of endangered species and other wildlife. Eileen Gleason, the Principal Assistant Chief in the Environmental Crimes Section, and James Morgulec, Senior Counsel in that same section, are authorities in the prosecution of offenses involving pollution, including their statutory and regulatory underpinnings, and in building and coordinating a national multi-agency enforcement program. The U.S. Team also included David M. Dillon, Assistant Special Agent in Charge, Environmental Protection Agency Criminal Investigative Division, to share his considerable expertise in investigative techniques and procedures.

The U.S. team, which enjoyed substantive and logistic support from the U.S. Embassy in Brussels, also saw the program as an excellent opportunity to generate interest in environmental criminal enforcement in Belgium and – potentially – other European Union countries, and to demonstrate both the commitment by the U.S. to vigorous environmental enforcement and the program's successes. Finally, it was believed that such an exchange would bolster the relationship between the U.S. and EU countries on environmental matters.

Thus, the objectives of U.S. and Belgian planners were complementary, inasmuch as both viewed a detailed description of the U.S. program as a way of generating interest, awareness, and discussion amongst Belgian attendees in enhancing and invigorating their own efforts. In addition, both countries hoped that the program could provide some training on specific enforcement techniques and best practices.

The audience consisted of approximately one hundred Belgian police officers, prosecutors, and judges from various jurisdictions around the country. The Envi-

ronmental Law Center of the Ghent University (Prof. L. Lavrysen) also participated in the program.

1.3 The Program

After initial introductory remarks by Deputy Prosecutor General Vandewal and Assistant Attorney General Sansonetti, the U.S. team embarked on an analysis of its national environmental crimes program that focused on topics that were of special relevance and interest to the Belgian audience. Major topics of discussion included the following, among others:

- Overview of U.S. environmental law and how environmental criminal prosecutions fit into the overall effort to protect health and the environment.
- Goals of environmental criminal enforcement.
- Roles of the various federal, state, and local environmental enforcement agencies in investigating and prosecuting cases, and the importance of interagency coordination and cooperation.
- Investigative methods and procedures, including the handling of cases involving releases of hazardous wastes into the environment.
- Prosecution techniques, including the prosecution of corporate entities as well as individuals.
- Resolving cases by trial or plea agreement; assessing the costs to the public of unlawful conduct; and determining the appropriate fine, sentence, restitution amount, compliance program, and other conditions and requirements.
- Investigation and prosecution of wildlife cases, including wildlife smuggling and unlawful takings.
- Using the news media as an aid to deterrence in environmental criminal cases.
- The status of the environmental crimes enforcement within the European Union.

The last topic was covered in a presentation by Françoise Comte, Principal Administrator, European Commission, Directorate General Environment. The final afternoon session of the conference was devoted to an open panel discussion of the various topics.

In this and other exchanges over the course of the two day program, participants readily acknowledged the many significant differences between the U.S. and Belgium in the structure of each country's legal and judicial system, in the geopolitical circumstances each country faces, and in the size and scope of each country's environmental criminal enforcement program.

2 OBSERVATIONS AND CONCLUSIONS

From the perspective of the participants, it was striking to see the remarkable similarities in perspectives shared by officials from both countries and the common challenges faced by both countries in their efforts to protect the environment. Among other things, U.S. and Belgian officials agreed that:

- The motives for environmental crime are largely the same everywhere – intentional failure to undertake appropriate environmental compliance efforts in order to save money and gain an advantage on competitors;
- Environmental law enforcement officials in each country must continue efforts to educate the general public and the law enforcement community at every level on the importance of vigorous environmental criminal enforcement and the real economic harm and threats to public health and the environment these crimes present;
- Interagency cooperation and coordination among the various levels of government (federal, state/regional, local and international) and across agencies (investigatory, prosecution, regulatory) – though difficult to establish and maintain – are essential components of a successful national environmental criminal enforcement program;
- Though the tools available to investigators and agents in each country differ somewhat, U.S. and Belgian law enforcement agents and officers use many of the same investigative techniques, especially with respect to the gathering of information about targets from all available sources;
- Both U.S. and Belgian law enforcement officials have struggled with similar questions involving the determination of appropriate sentences, fines, and restitution. The U.S. has had the benefit of federal sentencing guidelines to help courts determine prison sentences for individuals convicted of environmental crimes and other offenses.¹ Both Belgian and U.S. officials, however, continue to seek more effective ways of calculating and determining appropriate fines, restitution, and other remedies to impose on corporations. Such penalties and remedies should take into consideration the harm or potential harm the conduct has caused to the environment and to any victims, the benefit that the guilty received as a result of unlawful conduct, and the need to deter others from committing the same types of violations;
- The investigation and prosecution of wildlife offenses, including smuggling and unlawful takings, is an especially important area in need of more widespread enforcement and international cooperation;
- The news media, when used fairly and properly, can be an effective tool in enhancing the deterrent effect of environmental criminal prosecutions, and may therefore be useful in furthering the goals of environmental criminal enforcement.

In addition to the common themes discussed above, the Belgians considered a number of enforcement techniques and authorities that might deserve further attention in their country (not all of which are practiced in the U.S.), including: the use of

plea agreements, special investigation techniques, wire tapings, longer sentences for environmental violations, use of the recovered goods and fines for the benefit of law enforcement, compensation for environmental damages; and rewarding whistleblowers with a part of fines or monies recovered.

Thus, even though the U.S. and Belgium may have different judicial systems and different priorities in their environmental crimes policy, both programs share the same fundamental objectives, confront many of the same issues, and must overcome the same obstacles. There is, accordingly, far more room for the useful exchange of information and technology than anyone might have imagined. The course planners hope that the two-day conference will serve as springboard for future cooperative efforts between the two countries and with others in the region, and will strengthen the international network of environmental enforcement officials.

4 REFERENCE

¹ United States Sentencing Guidelines §§ 2Q1.1– 2Q2.1. The United States Supreme Court recently determined that federal sentencing guidelines that have guided U.S. federal courts for more than a decade are advisory in nature rather than mandatory. *United States v. Booker*; *United States v. Fanfan*, 2005 WL 50108 (Jan. 12, 2005). Significantly, the Court's ruling does not negate the guidelines as a useful source for determining an appropriate sentence.

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