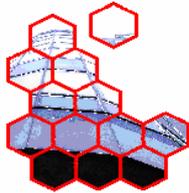


SPF Justice

POLITIQUE SCIENTIFIQUE FEDERALE



Service de la
Politique criminelle

AGORA PROGRAM

Research Contracts AG/02/124-AG/02/125

« ECOLEX » DATABASE

FINAL REPORT

November 2006



1. Description and context of the project

The implementation of environmental criminal law falls within various jurisdictions. The European Commission has thus enacted a large number of Directives that focus specifically on the issue of waste. In Belgium, if the policy on the issue of waste falls in principle within the jurisdiction of the Regions, there are nevertheless a certain number of exceptions. Thus, in various domains (radioactive waste, transport of waste, product standards, imposing these, control and investigation by Federal government officials and curbing offences in environmental matters), it is the federal level that, either exclusively or working with the Regions, has jurisdiction. Similarly, the communal level also has jurisdiction by virtue of Article 119*bis*, § 2 of the new communal law, included to allow the communes to impose administrative sanctions for environmental offences (environmental pollution).

The existence of these various levels of jurisdiction leads to diverse regulations and crimes. The consequence of this diversity, along with the increase in the number of regulations and the absence of uniformity in the policy of legal proceedings, is, in particular, the creation of broad discrepancies in application. These encourage in part the behaviour of enterprises and of potential offenders to start 'shopping'. For example, one company might prefer to establish itself in a part of the country where it is known that the sanctions are more lenient. In addition to this phenomenon, it is not always easy for companies to determine which legislation applies.

On the part both of enforcement authorities and of natural and legal persons faced with this diversity and lack of transparency, there is a high demand for a database that compiles the various regulations and allows viewing their differences and their applications. In 2003, the Commission for the policy on legal proceedings had already underlined the need for a system that would allow measuring the commission of environmental offences. Moreover, it emerged from the report on the implementation of environmental law that this same Commission would like to have more studies carried out on the manner in which the public prosecutors process statements from inspection services.

It is for these reasons that the 'Environmental Crime' sub-group sought the present research that would result in creation of a database of environmental crime, limited though to waste. The objectives of this working group comprise managing the most urgent issues in all countries and updating a policy to fight organised environmental crime. A decision was taken that it would devote itself, within the framework of these actions, to drawing up a general survey of the offences and penalties in environmental matters contained in the various regulatory provisions enacted by the various levels of jurisdiction.

2. Objectives

Creation of this database pursues multiple objectives:

- forming an invaluable instrument within the framework of executing tasks for which the 'Environmental Crime' sub-group is responsible;
- creating a useful aid for all users, professional or not, interested in waste-related legislation;
- allowing in particular any person responsible for applying environmental legislation to function with more efficiently;
- putting together useful information in view of creating and defining a criminal policy for public prosecutors and administrations;
- offering a working basis for policy cabinets that would allow them to identify any problematic conflicts between the various regulations;

- serving as a basis for drafting protocols of 'trans-regional' cooperation, for the purpose of consistency in environmental legislation; and
- meeting the goal proposed by the cooperation protocol of 27 March 2003 providing for creation of a cross-reference database of legislation to make legislation passed at all levels known to the public at large.

3. Development of the research

The research and its outcome, the database, are the fruit of collaboration between the University of Ghent and the University of Liege (hereafter the scientific team),¹ under the direction of a programme committee created for this purpose and bringing together various public actors that specialise in the area. The criminal policy service of the SPF Justice (hereafter the public institution) actively supported the research activities throughout the various stages of research.

Development of the research was divided into 5 phases.

Phase 1: Study of existing legislation and creation of an analytical concept

The scientific team and the public institution worked together to make a list of relevant existing legislation. The research team at the ULg studied the legislation in the Walloon and Brussels Regions, and the cooperation agreements between these Regions and the Federal government. It also took into consideration European legislation that applies directly in Belgium. The UGhent research team studied the legislation from the Flemish Regions and the Federal State. The communal regulations were the subject of a limited study to analyse future possibilities of entering of these regulations into the database.

The list of relevant legislation to be researched was submitted to the programme committee for approval.

During this same phase, the scientific team developed the analytical concept that would allow future categorisation of the material studied.

Phase 2: Structuring the data in the light of the analytical concept

The scientific team endeavoured to structure the data on the basis of a common analytical model, and more precisely to develop records of results.

Phase 3: Conceptualising the databank

The scientific team conceptualised the databank. At the time, it worked with the public institution to develop keywords and the nomenclature intended for the tree-structure research method. It also established a single structure of records of results.

These elements were submitted for approval to the programme committee.

¹ Research coordinator: Professor Paul PONSAERS.

Promoters:

- for the University of Ghent: professors Paul PONSAERS and Tom VANDER BEKEN;
- for the University of Liege: professors Ann JACOBS, Adrien MASSET and Michel PAQUES.

Researchers:

- for the University of Ghent: Evelien DE PAUW and Tessa GOMBEER
- for the University of Liege: Catherine THIRY and Nadège VANCRAVEBECK

The databank (which should be available for consultation in the two language regions), the keywords and the sites in the databases will be provided in both Dutch and French. The legislation will nevertheless remain in its original language only. Clearly, it will be possible to consult the two linguistic versions where the legislation is available in both languages (i.e., the legislation in the Brussels-Capital Region, Federal legislation and European legislation).

This conceptualisation phase went on during the other phases of the research since it was not decisive for accomplishing phases 4 and 5.

Phase 4: Programming the databank

The scientific team, in collaboration with the programmer, programmed the database on the basis of the research results obtained during phases 1 to 3. Moreover, it developed a methodology in view of future updates to the databank.

The scientific team also compiled various useful texts for the website of the database (presentation of the site, dictionary, disclaimer, conversion of the fines). It also developed the list of keywords, by predefined keyword, intended for the research method.

Finally, a test phase was planned during which the public institution and the various programme committee members could test the database and request changes.

During this fourth phase, the scientific team looked ahead to phase 5. In this way, it developed the handbook, the user's manual for the database (available on line).

Moreover, during this phase the scientific team and the public institution started preparing the development phase, in particular by determining the target users.²

Finally, the CTI training service (the public institution's computer service) registered the domain name for the website. It also established, working with the programmer, the most appropriate computer recommendations for maintaining the database, disseminating it over the Internet and updating it.

Phase 5: Development

During this final phase, half-day information sessions³ for future databank users were organised by the public institution and the scientific team.

The handbook that had been put together beforehand and the accompanying document for updating the database were moreover used during the information session for the SPF Justice representatives responsible for updating the database.

The scientific team, working with the public institution, also drafted an article explaining the object of the Ecolex database. This was intended to be disseminated for information (in the form of a press release or newsletters) and placed on the website (the sites of the public

² The final target users are the following:

- police services,
- regional and federal inspection services,
- judges,
- the business world, and
- communal administrations.

³ These took the form of seminars intended for about 20 people; this approach allowed for training sessions that were better adapted and oriented to the desires of the various target users.

institutions involved in the programme committee and those of the scientific team, the Bar associations, the companies, etc.)

Outlook

The public institution, working with the Regions, will update the database. It will also manage the website and the database it contains.

4. Final result

A. The website

The main result of the research is the website with the database. Anyone may access this site at the following address: <http://ecolex.just.fgov.be>.

The site contains not only the database as such, but also other useful tools for the user:

- a choice of the language of consultation, Dutch or French (the consultation language can be changed at any time);
- the 'Dictionary': a collection of legal definitions;
- the 'Fine conversion': explanations allowing the user to convert the fines expressed in the legal texts in Belgian francs into euros;
- the 'Handbook': instruction manual for the databank;
- the 'Disclaimer'.

This last document stipulates the limits inherent in the database:

→ The database compiles only a list of European, Federal and regional legislation that is relevant in the field of waste. The records of results refer to consolidated legislation, accessible on the 'Juridat' databank.

→ The analysis of the communal sanctions is limited to the main regulation types enacted by the Union of towns and communes in each Region. For more information, the user is invited to contact the communal authorities concerned.

→ Legal provisions that do not create legal obligations do not appear in the databank.

→ The databank is neither a doctrinal tool nor a compilation of case law.

→ The databank may be used to support the description of a given set of facts amounting to an infringement regarding waste, but under no circumstances replace it.

→ Neither the SPF Justice (the public institution), nor the SPP Scientific Policy, nor the scientific team may be held responsible for any errors or defects in the database.

The site offers the user the opportunity to obtain one or several results either through a tree-structure search by keyword (predefined or entered by the user).

After having launched the search, the user obtains a page that displays the search criteria⁴ and lists the results. These results⁵ give the title of the legislation and a brief summary of the content of the record of results. The user may then select one of the displayed results. This operation allows the user to obtain a complete record of results that names the obligation connected to the waste, the holder, the penalties and the means of monitoring compliance. The user can learn about the legislative provisions that contemplate each element. A hypertext link to the Juridat site allows the user to consult the legislative provisions in full.

B. Methodology

⁴ This search may be refined by adding keywords to obtain results that include keywords that are not on the list of initial results.

⁵ The list of results may be printed or saved.

The scientific team has developed a manual, for SPF Justice, with the methodology to follow as regards encoding into the database sanctioned obligations in matters of waste. These obligations may thus be updated and amended according to the changes to the legislation concerned.

These subsequent amendments will be carried out in the database's back office.⁶ The manual will allow the person responsible for the progressive updates to the database to use a tool that explains the practical use of Ecolex's back office. It involves an administrator interface to which access is limited. A dual system of protection was provided to allow access only to those who are authorised.⁷

⁶ The back office is the administrator interface that contains the part of the database that can be adapted and adjusted. Only authorised database administrators have access to this part. The system is made up in such a way that all the data may be extended or adapted via a simple interface. The database may thus be updated without needing the intervention of third parties.

⁷ A password is combined with defined IP addresses.