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Ghent University

Vander Beken/Balcaen – Vulnerabilities of market sectors induced by legislation – Brussels, 26 June 2006

Vulnerabilities of specific market sectors induced by legislation

Tom Vander Beken & Annelies Balcaen

*Workshop Proofing EU legislation against crime.
Results from project MARC
Brussels, 26 June 2006*

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium Tom.VanderBeken@UGent.be T +32 (0)9 264 69 39, F +32 (0)9 264 84 93 1




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Overview

1. Purpose of the study
2. Mobile phone communication sector
3. Waste disposal sector
4. Banking sector
5. Pharmaceutical sector
6. Conclusions

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1. Purpose of the study (1)

- To provide for a review and systematisation of all the factors (variables) that influence the likelihood of (organised) crime occurring due to the regulation of specific market sectors

- Mobile phone communication, waste management, banking and pharmaceutical sector

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1. Purpose of the study (2)

- Literature review (Dutch and English) and interviews with sector and law enforcement representatives

- Based on contributions of Cardiff University (Dorn & Levi, 2004 – banking), University College of London (Armitage, Pease and Clarke, 2005 – mobile phone sector) and Ghent University (Vander Beken & Balcaen, 2005 – waste disposal sector and pharmaceutical sector)

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2. Mobile phone communication sector (1)

1) Pay-as-you-go: registration?

2) Cloned phones/sim cards:
choice for less secure algorithms for law enforcement purposes created opportunities for cloning

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2. Mobile phone communication sector (2)

3) Stealing and reprogramming for resale: choice to make IMEI non resistant to change

4) Missing trader or carroussel fraud:
law on intra-community transactions between EU businesses weakened VAT regulation

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3. Waste disposal sector (1)

1) General: very complex regulation, different ways of implementation in MS (Directive 259/93 EC)

2) Transfrontier shipment of waste: What is “hazardous”? The Italian legislation

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3. Waste disposal sector (2)

3) Illegal dumping of waste: Strict regulation on landfill in the UK and US provided incentives for criminals to dispose in “another way”.

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4. Banking sector (1)

- 1) Lack of clarity** over responsible regulators allows criminals to continue their activities (BCCI case)
- 2) Non regulation**
- 3) No independent guardians:** government bank examiners routinely take jobs at companies they have directly overseen

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4. Banking sector (2)

- 4) Over-regulation:** too many people obliged to report about money laundering
- 5) Lack of clarity of concepts:** meaning of the word 'Politically Exposed Person'

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5. Pharmaceutical sector

- 1) General:** complexity of regulation and implementation of EU regulation
- 2) Counterfeiting drugs:** no legislation or poor enforcement (US Prescription of Drug Marketing Act)
- 3) Conflict of interests:** supervisors payed by the sector

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6. Conclusions (1)

Two categories of risks:

- 1) Risks of non-compliance:** created by problems inherent to the legislation itself (regulatory gaps, lack of clarity, ...)
 - Non-regulation (counterfeiting, IMEI)
 - Poor or different implementation
 - Lack of coherence in legislation, dependent guardians

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6. Conclusions (2)

2) Side effects: legislation created with a certain purpose provides unwanted opportunities for crime

- deregulation,
- alleviation of an obligation
- too stringent legislation