

# Administrative and judicial cooperation in the fight against environmental crime



## The Flemish approach



# Enforcement



The final step of a vigorous environmental policy.



Ensures a high-quality living environment for present and future generations.



Involves every link within the enforcement chain.



Aims at repairing damage as well as sanctioning in response to unlawful behaviour.



# Legislation – Flemish Enforcement Decree

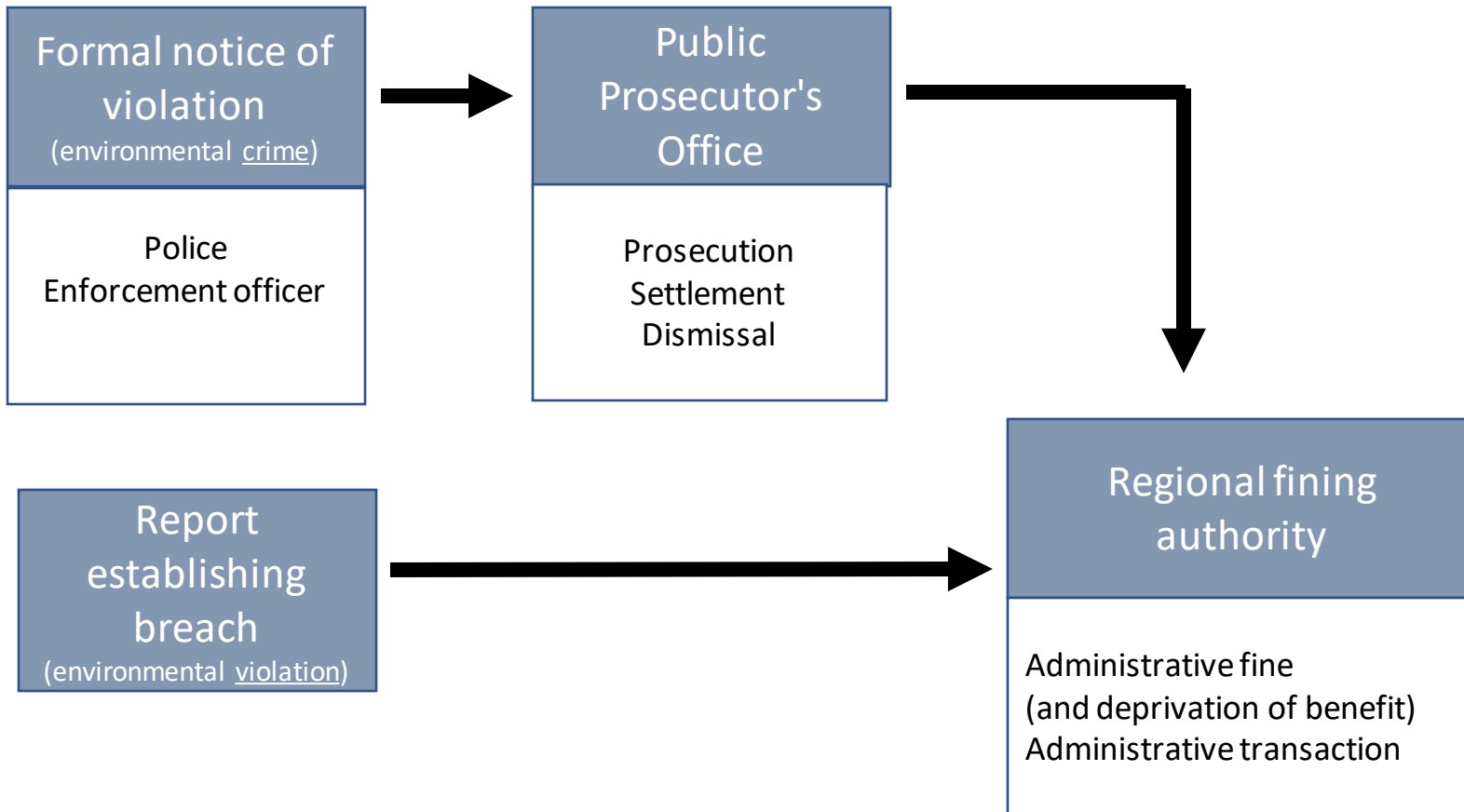
Title XVI of the Decree containing General Provisions on Environmental Policy (DABM)  
“Supervision, Enforcement and Safety Measures” (1 May 2009)


- One enforcement system for all environmental violations
- Harmonized rules regarding supervision, remedial action and sanctioning
- Strengthens administrative enforcement – and is complementary to criminal enforcement
- Distinction between environmental crimes and environmental violations
- Coordinates environmental enforcement policy
- Unites all enforcement actors: administrative/judicial, local/regional

# A simple system of criminalisation and criminal sanctions

- The 'catch-all' provision in Art. 16.6.1. paragraph 1 of the DABM:
  - Any violation of any enforced environmental regulation is, as a minimum, punishable under this penalty provision
  - No environmental damage required
  - Committed either intentionally or due to a lack of precaution or prudence (negligence)
  - Is punishable by imprisonment for 1 month to 2 years and/or a fine of 100 euros to 250,000 euros (x 8)
  - For legal entities: a fine of 500 euros to 500,000 euros (x 8)e.g. operating without a permit
- If the crime results in actual or impending damage to the environment or nature, more severe sanctioning is provided:
  - If committed due to a lack of precaution or prudence: imprisonment 1 month to 3 years and/or a fine of 100 euros to 350,000 euros (x8)
  - If committed intentionally: imprisonment for 1 month to 5 years and/or a fine of 100 euros to 500,000 euros (x8)
  - For legal entities: a fine of 500 euros to 700,000 euros (x 8) / 500 euros – 1,000,000 euros (x8)e.g. discharges or emissions, all offences involving waste, protected species offences, damage to habitat and nature areas, deforestation

# The key player: The Prosecutor's Office





# Guidelines for criminal sanctioning of environmental offences


- Guideline 4/2019: criteria for the prioritisation of cases preferably for judicial criminal investigation – prosecution – sanctioning
  - General criteria:
    - Organised crime/connection with other (non-environmental) crimes
    - Crimes generating significant financial profits
    - Severe nuisance and/or irreparable damage
    - Acts committed by local, regional or federal governments
    - Intentional violation of supervisory rights or non-compliance with imposed measures
  - Specific criteria:
    - Unlicensed operation without any steps towards regularisation initiated
    - Waste fraud, illegal management of hazardous waste or large quantities of waste with environmental damage, European Waste Shipment Regulation
    - Crimes involving the capture, killing or trafficking of significant quantities of protected species
    - Deforestation or vegetation changes in special protection areas
    - Large illegal discharges of manure

# Guidelines for the application of administrative sanctions

- Crimes that are not included among the criminal priorities but are socially relevant are transferred by the public prosecutor to the Flemish Enforcement Division so that an administrative fine can be applied.
- In some cases, the prosecutor will initially order limited further investigation (e.g. the interrogation of a suspect, review of regularisation).
- E.g. exceeding emission standards without an intent to commit fraud, abandoning non-hazardous waste, a change of operation without adjustment of the permit
- Half of environmental crimes committed in Flanders are referred onwards for administrative fines

## Evolution of number of crimes referred for administrative fine

| 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|------|------|------|------|------|------|------|------|------|------|------|
| 10%  | 17%  | 27%  | 31%  | 34%  | 34%  | 38%  | 43%  | 38%  | 48%  | 48%  |



## The benefits of this system of 'alternative sanctioning'

- Every environmental violation receives a suitable sanction!
- More time for prosecutors and specialised police departments to focus on large-scale environmental crimes involving fraud or organised crime
- A uniform and specialised system of administrative fines ensures legal certainty





# Remedial action - Reparation

## Deployment of enforcement tools

- Administrative track / competent authority :  
Wide range of tools : warning (voluntary) or  
by imposing administrative measures with  
possible penalty payment (enforced)
- Judicial track / criminal court :  
Judge can impose restorative measure or  
safety measure (e.g. operating ban)  
(disadvantage: slower, only after completion  
of criminal proceedings)





## Practice

Administrative remedial measures and ongoing criminal investigations frequently overlap.

- ✓ Information exchange: enforcement officer keeps the public prosecutor informed of the administrative process
- ✓ The offender's willingness to restore the situation can influence the prosecutor's decision regarding further follow-up under criminal law.
- ✓ Intentional failure to comply with imposed administrative measure = separate offence => prosecuted under criminal law as a matter of priority.

# Networking and coordination tools

Since 2009: structural periodic consultation between prosecutors and administration (inspectors and parties imposing fines)

- Expertise network and Environmental Enforcement forum
- Thematic consultation bodies (information exchange and know-how regarding certain phenomena)

Cooperation partnership 07/01/2014

- Input from administration on prosecution guidelines (see, for example, COL 04/2019)
- Security policy planning (Framework Memorandum on Integrated Security Policy).
- Administration involved in thematic networks of Public Prosecutor's Office at all times





# Monitoring and reporting

## Annual reporting on environmental enforcement

- 2009-2019: Annual Environmental Enforcement Reports
  - (Quantitative) evaluation of use of enforcement tools
  - General evaluation of (regional) environmental enforcement policy + recommendations
- From 2020 onwards:
  - Annual publication of data concerning enforcement implementation figures includes the implementation of both administrative and criminal enforcement
  - Periodic publication of an Environmental Enforcement Report evaluating the implementation of environmental enforcement policies.  
1<sup>st</sup> Environmental Enforcement Report 2020

# Challenges



Need for information sharing versus secrecy of criminal investigation

→ Information exchange agreements between the two tracks



No use of supervisory powers in the context of criminal investigations

→ Monitoring and detection agreements

→ Agreements on the use of technical expertise of the administration in criminal investigations



Importance of specialised actors

→ Provide training courses



Tendency towards seeking more & sooner legal advice



# Case examples

How can administrative and judicial procedures reinforce each other



## Illegal storage and trade in hazardous waste

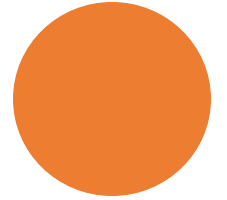
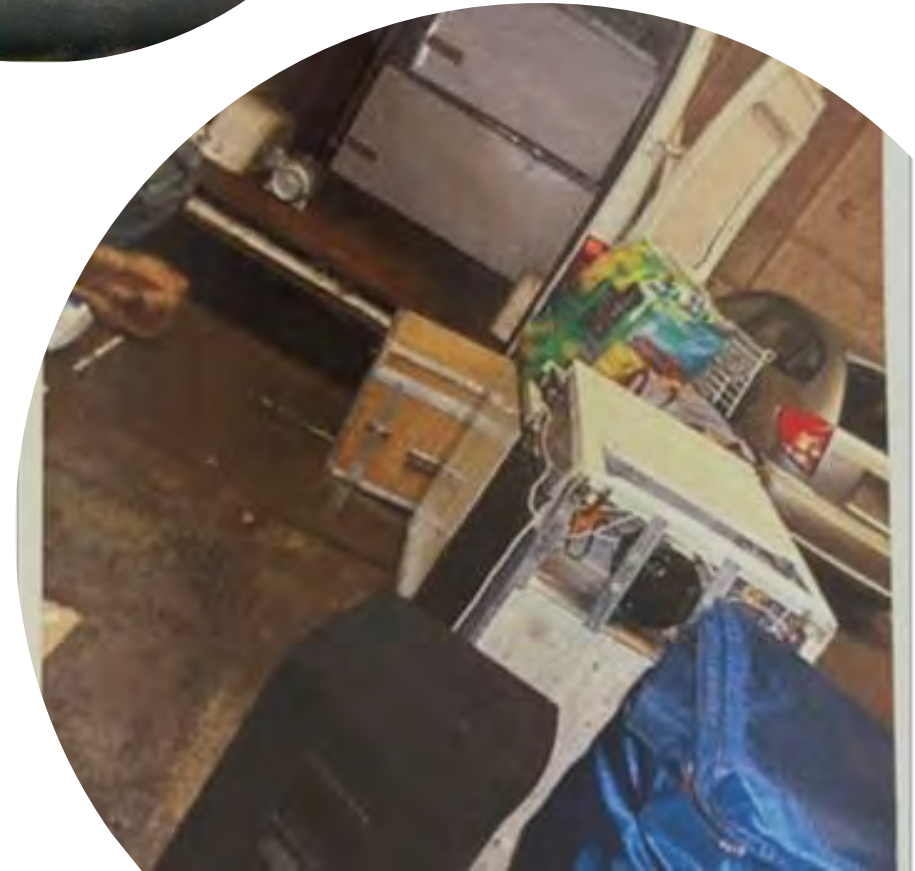
- Start of investigation: optimal use of powers → supervisory powers (competent authority) / investigative criminal powers (police)
- Administrative measures imposed by enforcement officer (operating ban and removal of waste) were repeatedly ignored by the suspect → investigating judge decided to arrest the suspect (remained in custody for 1,5 month)
- During and after this detention, the suspect did regularize the business and sanitize the site
- Judgment 24/11/2017:
  - owner / manager : imprisonment of 1 year + fine of 60,000 euros – company fined 180,000 euros
  - company : fine 180,000 euros
  - illegal benefit : 60,850 euros





- **Export of stuffed cars to Africa**

- 01/06/2016 : Used car stuffed with WEEE ready for departure to Nigeria - stopped in the Port of Antwerp by Customs – Official notice of violation (WSR) made up by Environmental Inspectorate
- Criminal judicial investigation is initiated
- Further investigation at shipper's storage facility in Antwerp – carried out by criminal police, with technical assistance from local enforcement officers - Apparently voluntary remediation by the suspect
- 1 year later (01/09/2017) : suspect is caught red-handed while loading a vehicle with drums of chromic acid for shipment to Nigeria + warehouse once again full of vehicles and waste → suspect arrested – conditional release ordered by the investigating judge
- Administrative measure is imposed and implemented by local authority
- 06/12/2018 : the site and the warehouse are once more found to be full of cars and WEEE → UDUMA arrested – again released on conditions
- Remediation (removal of waste and cars) followed up by local authority
- Meanwhile prosecution in criminal court:
  - Owner / manager : imprisonment of 1 year + fine 40,000 euros,
  - Company: fine 120,000 euros
  - Illegal benefits : 25,000 euros (90,600 euros claimed)



# Conclusion



Together we are stronger.  
Work and legislation in progress



The importance of official networking.  
Consultation and coordination

# Contact

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