

The ENPE/EUFJE work on prosecution and sanctioning practice (EU LIFE project)

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prosecution and judicial practice*

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ECA Workshop on Combatting Environmental
Crime

LIFE14 GIE/UK/000043



1. The 4th Working Group (WG)

1.1. A slightly different WG

1.2. Team and issues to discuss

1.3. Outputs to deliver and in progress

[<https://www.environmentalprosecutors.eu/eu-life-project>]



1.1. A slightly different WG

$\frac{3}{4}$ are subject-focused

$\frac{1}{4}$ looks at overarching practice

WG 1 Wildlife

WG 2 Waste

WG 3 Chemicals (Air)

WG 4 Sanctioning:
prosecution and judicial
practice

- Issues hindering efficient and effective prosecution and adjudication
 - ENPE

- Sanctioning
- ENPE & EUFJE

1.2. Team and issues to discuss

Team

Belgium – P/J

Croatia – J

Czech Republic – P

France – J & J

Germany – P & P

Latvia – P

The Netherlands – J(P)

Spain – P

Issues to discuss

“Proportionate, effective & dissuasive” sanctioning

1/ Administrative >< criminal sanctioning - *What best when?*

2/ How prosecutors seek to apply sanctions, how judges apply sanctions in criminal *and administrative* contexts

3/ Ongoing *practical implications* Eco-crime Directive. Extent to which *differences in sanctioning practices* undermine enforcement and other EU policies (cohesion common market)

1.3. Outputs to deliver and in progress

Contents - Guidance

Late 2017: interim findings and report

Late 2018: idem

Late 2019: final findings and report

Training materials

Challenges regarding the development and 'canning' of training materials

Strategy development: in progress (all 4 WG together)

2. Prosecution and sanctioning practice: the work of Dec. 2016 - Dec. 2017

2.1. Problems, trends and good practices in
prosecution and sanctioning

2.2. Proportionality in prosecution and
sanctioning



2.1. Problems, trends and good practices

- Questionnaire > input > analysis > discussion and additional input > analysis > draft recommendations > discussion and additional input > final recommendations
- Some findings
 - 1/ The absence of level playing field in environmental law enforcement appears in the criminal sanctioning track as a whole and, more importantly, the system-wide organisation of the public law enforcement (PLE) (the coexistence of the administrative and criminal sanctioning tracks (><sanctions used))
 - 2/ Trends tend to be positive trends

3/ Difficulties point to *the lack of legislative quality at different crucial levels*:

- lack of legislative policy in general
- communication of information throughout the enforcement chain
- incoherence in the PLE system
- lack of care for the enforceability of standards
- lack of care for the phrasing of offenses on prosecution chances
- underequipped sanctioning toolboxes
- insufficient attention paid to general criminal law

➤ Recommendations

- Further training of prosecutors & judges remains crucial
 - Knowledge & understanding of environmental crime and the harm it causes; essential for commitment
 - Environmental law, including its EU-dimension (e.g. sanctioning obligations under ECJ case law and specific regulations & directives)
 - The important illegal benefits environmental crime generates
- Environmental law enforcement policy at EU & MS level based on a public law enforcement vision, + the criminal & administrative sanctioning tracks as 1 enforcement system, creating systemic coherence
- EU guidelines on good practices for the design of environmental law enforcement legislation in the MS
 - Covering the full enforcement chain and the toolkits to be provided
- EU guidelines on use vague concepts as in Eco-crime directive

2.2. Proportionality in prosecution and sanctioning

2.2.1. *Why* work on proportionality?

Proportionality is a key issue for prosecutors as well as judges

Prosecutors: ~ in “the prosecutors kitchen”

- prosecutors range of options
- prosecution decisions
- prosecution sentencing claims

Judges: ~ in sentencing

2.2.2. *How tackling ~?*

An approach through gravity factors

- Gravity factors >< sentencing guidelines
 - Useful for prosecutors and judges
 - An easy access to a complicated and abstract issue
 - Fit to inform a wide range of proportionality issues and allows to explore the co-existence of the administrative and criminal sanctioning tracks

- Two touch-base documents
 - England & Wales Sentencing Guidelines (2014)
 - Recommendation n° 177 (2015) under Bern Convention, on the gravity factors and sentencing principles for the evaluation of offences against birds

➤ First findings, to investigate

1/ The balance between harm and culpability

2/ The knowledge of harm

➤ Recommendations

1/ the impact of the culpability factor on prosecution and sentencing practice, besides harm

2/ Develop gravity factors for each type of environmental crime – harm criteria closely fitting the offences at stake; // Recommendation No.177(2015) for offences against birds

3/ Training prosecutors & judges on harm (potentially) caused; fundamental to creating commitment. Include gains.

ENPE

Thank you

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