Sanctioning Environmental Crime (WG4)

Prosecution and judicial practices

2016/17

LIFE-ENPE Project
LIFE14 GIE/UK/000043
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Contents

List of abbreviations

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJEU	Court of Justice of the EU
GMO	genetically modified organism
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EEZ	exclusive economic zone
EU	European Union
EW	England & Wales
J	judge
JJ	judges
LPO	French League for the Protection of Birds
LRE	Environmental Liability Act (France)
MS	member states
OSPP	Organic Statute of Public Prosecutions (Spain)
P	prosecutor
PP	prosecutors
SEPRONA	Nature Protection Service (Spain)
WED	Economic Crimes Act (the Netherlands)
WG	working group

Introduction

The LIFE-ENPE project LIFE14 GIE/UK/000043 has formed four working groups to build capacity and consistency in implementing EU environmental law. The working groups facilitate meeting the LIFE-ENPE project aim: *"to improve compliance with EU environmental law by addressing uneven and incomplete implementation across Member States through improvements to the efficiency and effectiveness of prosecutors and judges in combatting environmental crime"*.

Working Group 4 on Sanctioning, Prosecution and Judicial Practice is an overarching working group which builds on recent European studies that look into the range of criminal and administrative enforcement responses used in tackling environmental crime. The working group aims to explore the effectiveness of different methods of securing compliance with environmental law and to assess the circumstances in which each type of sanction best meets the test of being proportionate, effective and dissuasive. It also considers how prosecutors seek to apply different sanctions, what routes to criminal penalties are available and how judges actually apply sanctions in criminal and administrative contexts. Finally, it examines the ongoing practical implications for prosecutors and judges of the Eco-crime Directive 2008/99/EC.

Working Group 4 comprises 11 members including both prosecutors and judges, from 8 countries.

Working Group member	**Country**	**Role**
Carole M. Billiet	Belgium	Academic/Judge
Sara Boogers	Belgium	Prosecutor
Ksenija Dimec	Croatia	Judge
Katerina Weissová	Czech Republic	Prosecutor
Marc Clément	France	Judge
Françoise Nési	France	Judge
Wanja Welke	Germany	Prosecutor
Anja Wuest	Germany	Prosecutor
Jegors Cekanovskis	Latvia	Prosecutor
Els Van Die	Netherlands	Judge
Lucia Girón	Spain	Prosecutor

This report provides the findings from the working group's activity between December 2016 and December 2017, its first working year: a questionnaire survey of difficulties, trends and good practices in prosecution and sanctioning (Part 1); an analysis of proportionality in prosecution and sentencing (Part 2); and proposals for training and guidance for prosecutors and judges in the form of a training matrix adapted from the DOTCOM Waste project[1] (Part 3), to meet its objectives and the project aim. The group has met on three occasions (kick-off meeting in Brussels on 2 December 2016, teleconference meeting on Friday 9 June 2017 and meeting in Oxford on 20 September 2017). The cycle of the first working year was completed by a meeting in Brussels on 8 December 2017, which also saw the kick-off of the second working year.

[1] DOTCOM Waste – a project improving the capabilities of all actors, including enforcement agencies and prosecutors in the fight against cross-border waste crime, http://www.dotcomwaste.eu/.

Summary

Part 1. Questionnaire survey on difficulties, trends and good practices in prosecution and sanctioning

During the working group kick-off meeting in December 2016, the group members noticed certain common difficulties and trends. Formalisation of these discussions was later provided by the group through a questionnaire survey, which was carried out in early 2017.

The survey sought to explore these difficulties and trends, as well as good practices observed in the different countries. The idea was to try to get a flavour of issues that appear to matter in each country with regard to prosecution practice and judicial sanctioning practice.

The questionnaire comprised the following set of questions:

Box 1. Questionnaire

A. Prosecution practice

(1) Are there *specific problems* for the prosecution of environmental offences in your country?

(2) Do you observe *trends* in the prosecution of environmental offences in your country?

(3) Did you notice *good practices* in the prosecution of environmental offences in your country?

B. Judicial practice

(1) What are *in practice* the *sanctions* for environmental offences in your country?

(2) Are there *specific problems* you are aware of with regard to the existing sanctioning practice?

(3) Do you observe *trends* in the sanctioning of environmental offences in your country?

(4) Did you notice *good practices* in the sanctioning of environmental offences in your country?

The formal recommendations stemming from this work are the following:

(1) Further training of prosecutors and judges remains crucial.

The training must above all aim to create knowledge and understanding of environmental crime and the harm it causes/can cause. Such knowledge and understanding are essential for commitment to the prosecution and sanctioning of environmental offences.

The training must also foster and develop knowledge of environmental law, including its EU dimension, e.g. the sanctioning obligations under ECJ case law and specific provisions in regulations and directives.

Finally, it must communicate the important illegal benefits environmental crimes generate.

Training policy should be aware of its limitations in the absence of structural specialisation of prosecutors and judges.

(2) Environmental law enforcement policy at EU level and in the member states (MS) has to build on a public law enforcement vision, namely a vision that encompasses the criminal as well as the administrative sanctioning tracks and approaches them as one enforcement system, creating systemic coherence.

(3) Comprehensive EU guidelines must be developed on good practices regarding the design of environmental law enforcement legislation in the MS. These guidelines have to cover the full enforcement chain, from the monitoring of compliance to the implementation of sanctions imposed. The guidelines also have to cover the sanctioning toolkits to be provided.

(4) It would be helpful if EU guidelines could be developed with regard to the use of vague concepts such as are present in the Eco-crime directive.

Part 2. Proportionality in prosecution and sentencing: an exploration through gravity factors

The working group, through its overarching focus on sanctioning, prosecution and judicial practice, has also been looking at the proportionality issue. Proportionality is a crucial issue at the heart of prosecution and sentencing policies. Aggravating and mitigating factors taken into account in national legal systems to evaluate the seriousness of environmental offences, when deciding whether to prosecute and/or deciding on sentencing, were chosen as an angle to study and discuss the proportionality issue, following discussion at the kick-off meeting in December 2016.

The scope of this proportionality assessment was recognised as wide open as it includes the manoeuvring between the administrative and the criminal sanctioning track, the different sanctioning options prosecutors have, the eventual prosecution decision, the judicial options, and prosecution and sanctioning practices.

The discussion of gravity factors used two touchstone documents:

(1) Recommendation No. 177(2015) on the gravity factors and sentencing principles for the evaluation of offences against birds, and in particular the illegal killing, trapping and trade of wild birds, prepared under the Bern Convention on the conservation of European wildlife and natural habitats at its Standing Committee 35th meeting in Strasbourg, 1-4 December 2015; and

(2) the England & Wales Sentencing Guidelines for environmental offences of 2014.

The formal recommendations based on this work are the following:

(1) The impact of the culpability factor on prosecution and sentencing practice – that it contributes significantly to shaping prosecution and sentencing practice and will continue doing so – has to be acknowledged adequately in EU policy development with regard to environmental law enforcement through criminal law.

(2) The working group suggests developing gravity factors for each type of environmental crime, such as those developed in Recommendation No. 177(2015) for offences against birds. The backbone of this approach, especially the formulation of harm criteria closely fitting the environmental offences at stake, is fit for generalisation, even if some adaptations are required. Harm criteria have to include explicitly the risk of harm (potential harm).

(3) Training for prosecutors and judges on the harm (potentially) caused by environmental offences has to be furthered. Knowledge and understanding of that harm are fundamental to creating commitment in prosecution and sentencing. The training also has to communicate the important illegal gains that environmental crimes generate.

Part 3. Training prosecutors and judges for the prosecution and sentencing of environmental crimes: topics and tools

In addition to the questionnaire survey and analysis of gravity factors, the working group worked on the identification of training needs for prosecutors and judges with regard to the processing of environmental crimes in general. The working group members organised their views using the training matrix developed by the DOTCOM Waste project (this opportunity is fully acknowledged).

The training matrix was developed by the group between November 2016 and June 2017 following input given via teleconference discussion and email from group members.

The identification of the main topics requiring training, with the identification of subtopics, is a first important outcome of the work of the working group. Two key findings are: (1) the importance of training to raise the awareness and understanding of environmental crimes; and (2) certain training topics should definitely involve inspectorates and police, e.g. the forfeiture of illegal benefits.

In terms of training methods, it is noted that workshops with practice-oriented case studies are considered to be the most effective and useful ways to learn. Yet, the complementarity between training methods is stressed. Webinars/e-learning, for instance, are an excellent preparation for a workshop and easily accessible for all. Another recommendation is for an EU manual (e-book) for prosecutors and judges, practice-oriented, including scientific information on the ecological and socio-economic impact of environmental crime, to be made available as a basic working tool.

Part 1. Questionnaire survey on difficulties, trends and good practices in prosecution and sanctioning

First draft, 2 December 2016 – 5 April 2017

Evaluated spring 2017, with written feedback from Croatia (emails 14 and 19 May), France (email 8 June) and The Netherlands (email 6 June) and with feedback communicated at the teleconference meeting of 9 June (Czech Republic and Germany).

Second draft, 1 September 2017

Evaluated September 2017, with discussion at a WG meeting in Oxford on 21 September 2017 and discussion at the EUFJE Annual Conference in Oxford on 23 September 2017.

Final draft, 25 November 2017

Evaluated 25 November – 8 December 2017, with discussion at the WG meeting in Brussels on 8 December 2017.

Definitive version 11 December 2017, for the LIFE+ interim report

I. Introduction

1. The four working groups of the LIFE-ENPE project aim to work on EU-wide topics relevant to tackling environmental crime.

The LIFE-ENPE project board ordered a Cap & Gap study for a view on what we do and do not know with regard to the prosecution and sanctioning practice of environmental offences throughout the member states (MS), with a focus on wildlife crime, transfrontier waste shipments and chemical (air) pollution. The study, which was nearly finished when this working group (WG4) became operational in early December 2016, gives information on *criminal practices* and on *the sanctions available*.

2. When discussing prosecution and judicial practices regarding environmental offences at the WG4 kick-off meeting on 2 December 2016, we observed that each of us noticed *difficulties and trends*. Jegors Cekanovskis (Latvia), for instance, mentioned the difficulty in proving environmental offences when the phrasing of the offence in law required "substantial damage" to be proven, a requirement inspired by Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law (OJ L328, 6 December 2008) (Eco-crime Directive). In her country (Croatia), Ksenija Dimec observed an increasing amount of environmental cases where citizens argued breaches of rights granted by the ECHR. Françoise Nési (France) mentioned the frequency of procedural problems, creating severe barriers to timely case management.

3. Consequently the group agreed to circulate and respond to a questionnaire (see Box 1). It sought to explore the difficulties, trends and good practices we, the working group members, observe in our countries. Our aim was to try to get a flavour of the issues that appear to matter most in our own countries with regard to prosecution practice and judicial sanctioning practice.

4. The questionnaire was sent out on 19 December 2016, asking for feedback by 1 February 2017. A first analysis of the answers provided was made, resulting in a first draft of this report in early April 2017. From there on, the WG started a discussion of and reflection on the questions raised that, as detailed above, lasted until December 2017.

Here follows: first, an overview of the answers to the questionnaire, as refined throughout our working year; second, a global analysis; and finally, our observations and considerations.

Box 1. Questionnaire

Prosecution practice

(1) Are there specific problems for the prosecution of environmental offences in your country?

(2) Do you observe trends in the prosecution of environmental offences in your country?

(3) Did you notice good practices in the prosecution of environmental offences in your country?

Judicial practice

(1) What are in practice the sanctions for environmental offences in your country?

(2) Are there specific problems you are aware of with regard to the existing sanctioning practice?

(3) Do you observe trends in the sanctioning of environmental offences in your country?

(4) Did you notice good practices in the sanctioning of environmental offences in your country?

II. Answers to the questionnaire: an overview

5. We had answers to the questionnaire from the following countries: Croatia (J), the Czech Republic (P), France (JJ), Germany (PP), Latvia (P), the Netherlands (J, former P) and Spain (P).[2]

Some countries answered all the questions, namely the Czech Republic, Latvia, the Netherlands and Spain. The other countries – Croatia, France and Germany – answered some of the questions, which explains their absence on some points in the overview. For two of the countries, the Netherlands and Spain, the answers were completed by email to clarify a few points.

Answers were completed and refined throughout the spring of 2017, with written additions from Croatia, France and the Netherlands, and additions made during the teleconference meeting of 9 June by the Czech Republic and Germany.

Answers were also completed and fine-tuned at the WG meeting on 21 September 2017 in Oxford (Croatia, Germany, Spain and the Netherlands) (draft 1 September 2017) and at the WG meeting of 8 December 2017 (Belgium, Croatia, the Czech Republic, Germany, Spain and the Netherlands) (draft 25 November 2017). France gave additional written input on proportional sanctioning by email on 6 December.

[2] We excuse Belgium, whose representative has been on leave due to illness.

A. Prosecution practice

(1) Are there specific problems for the prosecution of environmental offences in your country?

6. This question was answered by all seven countries.

Croatia

The Criminal Code has a special chapter called “Criminal offences against the environment”, which encompasses the following criminal offences: environmental pollution, discharge of pollutants from a vessel, endangerment of the ozone layer, endangerment of the environment with waste, endangerment of the environment with a plant, endangerment of the environment with radioactive substances, endangerment with noise, vibrations or non-ionising radiation, destruction of protected natural values, habitat destruction, trade in protected natural values, illegal introduction of wild species or GMOs into the environment, unlawful hunting and fishing, killing or torture of animals, transmission of infectious animal diseases and of organisms harmful to plants, production and marketing of harmful products for the treatment of animals, unconscientious provision of veterinary assistance, forest devastation, change in the water regime, unlawful exploitation of mineral resources, unlawful construction, active remorse. However, aside from the fact that the country has very good codification, in reality prosecution of these offences is very rare and there are many criminal judges who have never dealt with any criminal offences against the environment. The reasons are that we are in transition, we have a lot of corruption and all the energy is put into prosecuting these offences. As Mr Lars Magnusson said during our meeting in Brussels, when society has to cope with corruption and similar offences, there is no time to cope with environmental offences, which are not a priority. The other reason for the lack of prosecution and sanctioning of criminal offences against the environment is lack of knowledge and experience concerning these types of criminal offences. We have prosecutors and judges who are well trained in respect of other groups of criminal offences, but they have never had training on offences against the environment.

Yes....prosecutors need training on environmental offences because prosecutors very rarely prosecute environmental offences (it does not mean that we do not have environmental offences, but that our prosecutors are not trained for that group of criminal offences).

<u>May 2017</u>

With regard to air pollution, Croatia has, like Latvia, a proof issue regarding causality.

<u>Oxford meeting September 2017</u>

As in Spain, the prosecution of environmental offences meets with a lack of resources (manpower, material resources, informatics resources).

Czech Republic

Problems can arise when rapid international cooperation is needed (e.g. in custodial cases).

<u>Teleconference June 2017</u>

Lack of specialisation is an issue.

France

(a) A problem of resources: not enough specialised officers (and with the necessary technical skills) to make the necessary inspections; see the recent case law of the French Council of State in the AZF affair – the question of inspections of the plant where the blast occurred.

The AZF blast occurred on 21 September 2001 inside Building 221. An inspection had taken place on 18 October 2000, but it had not been possible to find out whether the inspection specifically concerned that building. Inside the building, over 600 tonnes of industrial ammonium nitrate produced by the company were stored in bulk. On the day of the blast, the contents of a several-hundred-kilo skip, in which chlorine and ammonium nitrate derivatives from another building had been mingled the previous day, were dumped on other products piled up in the first building. The interaction of these products, and the fact of their being heaped up on degraded flooring in a damp environment, led to their spontaneous decomposition and combustion in the space of 20 minutes and to the massive production of nitrogen trichloride, which triggered the explosion.

The Administrative Court of Appeal of Bordeaux ruled that the culpable failings of the state services had contributed to the damage that occurred and had cost the victims any serious chance of escape.

In particular, the Court of Appeal found the culpable failing of the state services in the inspection of the storage methods of industrial and agricultural ammonium nitrate in Building 221. It criticised the inspectors for not having detected, or of having failed to sanction, visible and sustained failings by the owner of the site, costing the victims "any serious chance of escape from the risk of an explosion such as occurred and of avoiding all or part of the injuries they personally suffered from that explosion". It considered that, if the administrative authority had performed its inspections properly, the contact of the volatile mix with products stored in lawful conditions would not have had the same consequences.

It also ruled that the state cannot be absolved by claiming that the owner was at fault: "The state cannot, in order to be absolved of its liability arising from its own failure to identify or sanction detectable and lasting failings having a very serious impact in the operation of Installations Classified for the Protection of the Environment which it authorised, claim that there are failings of that kind attributable to the owner, precisely because its services should have the purpose and effect of avoiding them being committed."

Such an analysis effectively challenged the practice of inspection programmes that focus on those installations considered most dangerous on a site and not on the site taken as a whole, and it made it compulsory for the state services to ensure there is a full and regular inspection of all the installations on an industrial site.

That analysis was not shared by the French Council of State, which, in a ruling of 17 December 2014 No. 367202 Ministry of Ecology, definitively ruled against the state's liability in the blast at the AZF factory 13 years earlier. On the basis of those facts, the Council found "that, in deeming the mere existence of unlawful storage of hazardous products in major quantities and for an extended period in Building 221 of the AZF plant to reveal that the administrative authority had failed in its duty to check the installations, when such a failing must be assessed in the light of information available to it [the administrative authority] about the existence of specific risk factors or the owner's potential breaches, the Administrative Court of Appeal in Bordeaux committed an error of law".

The Council firstly sets limits to the inspection duty: inside the AZF plant, consisting of 82 installations over 70 hectares (but classified overall as “high-threshold Seveso” with public utility easements), it considered that the inspections (11 inspections between 1995 and 2001) could only have focused on the installations identified as being inherently the most hazardous.

The question therefore arises how the administrative authority identifies the existence of a particularly serious installation. The administrative authority can be expected to make the necessary investigations, either, as the French Council of State appears to say, by relying on the information presented by third parties, or of course on the basis of the impact assessment made by the owner to obtain the operating permit.

In this case, the Council of State specifically referred to the risk assessment made by the owner in 1990, which ruled out the risk of the ammonium nitrate storage premises blowing up, adding that the administrative authority had not been alerted to a breach of the regulatory requirements in that installation.

Some people consider that this amounts to expecting the safeguard of third parties (!) to start with paid employees and, in particular, protected employees, who may, what is more, know about practices of which their managers themselves are unaware. Those people cite the alert procedure, highlighting that it functions firstly and above all within the company.

The analysis may also mask the inadequacy of resources and staff in the state’s inspection bodies (as is also found in workplace inspections). The ruling does seem to confirm a very minimalistic approach to the inspection and supervision duties required of the state.

A stopgap in the absence of resources … or of political commitment: the involvement of “civil society” (principally associations or other entities entitled by the legislature to implement public policy).

(b) Problem of dual administrative and legal proceedings, which also require the coordination of the administrative authority (prefect) and the legal authority (prosecutor) in the definition of criminal policies (also defined nationally, inter alia, in criminal policy circulars) and also according to specific local conditions (specific environment, specific crimes, etc.), and then in terms of the legal proceedings: what method will be chosen? Administrative (then the case is dropped by the prosecution service) or criminal (often with initial penalties imposed administratively, whether temporary or otherwise).

In French law, the administrative authority issues permits, monitors compliance with standards (prevention aspect) and, where there are breaches, applies penalties under the supervision of the administrative court. However, often the same charges also incur criminal penalties, or else the violation of an administrative regulation or authorisation is what determines a charge under criminal law specific to the environment or under common criminal law (for example, putting lives at risk by, for instance, lead pollution from an industrial plant). Thus, a single inspection may involve both the administrative police and the criminal police, and the criminal police investigation and prosecution bodies involve both criminal police officials and officers (including some experts, such as the maritime police and customs officials) and administrative functionaries and officials (water and forest experts, national park wardens, agents from the Office of Wild Flora and Fauna, etc.), to whom the law assigns some duties of the criminal police.

One of the major difficulties is that, once an offence has been reported, there are specific procedural rules for the criminal proceedings. There is also a high demand from factory owners to know when an Inspector of Classified Installations is coming to assess the factory, whether he is coming as an administrative officer or as a criminal investigation police officer (which shows the very different perception, by the person in breach of the law, of administrative penalties or criminal penalties). However, it is sometimes only after the investigation that the procedural method will be definitively selected.

Also, for some violations (for instance, fishing in fresh water) the Code of the Environment gives the administrative authorities the possibility of activating and implementing a public prosecution; but that is not an exclusive competence – it is shared with the public prosecution service.

Inevitably, one ends up listing the difficulties inherent in this "double jeopardy and penalty" principle: the *non (or ne) bis in idem* principle, on which the ECHR and the ECJ have both ruled, regularly arises, notably in France by way of constitutionality review (priority preliminary ruling regarding constitutionality).

Cass Criminelle [Criminal Chamber of the French Court of Cassation] 5 August 2015, Appeal 15-90007: the skipper of a fishing vessel was prosecuted for fishing for scallops in a prohibited area because of the extremely high levels of contamination of scallops in that area and thus the risks to consumer health. The inspection was carried out by sworn public functionaries as well as by the maritime police. The administrative authority forwarded the report of the offence to the Public Prosecutor, telling him that an administrative sanctioning procedure was in progress. An administrative sanction was imposed on the fisherman, suspending his European fishing permit and his permit to fish for scallops, under articles in the Rural and Maritime Fishing Code (L.946-1 and L.946-2).

The fisherman appealed the decision in the administrative court in accordance with the methods provided for. He was also summoned to the criminal court for the same offences. He then raised a priority preliminary question about constitutionality in the criminal court, claiming that, insofar as they provided for both administrative sanctions and criminal sanctions, the provisions of the Rural and Maritime Fishing Code were not compatible with Article 8 of the Declaration of the Rights of Man and of the Citizen, which forbids a person being punished twice for the same crime (the *ne bis in idem* rule). The party concerned claimed, inter alia, that, apart from imprisonment which is exclusively the reserve of the criminal court, the other sanctions (fine and fishing ban) were of the same nature, and that the administrative fine (calculated on the basis of the value of the harm caused to the fishing resources and the marine environment at issue) could, according to the type and quantity of the products fished illegally, be higher than the maximum criminal fine incurred.

The question was not forwarded to the Constitutional Council for the following reason: "Given that the question raised is not serious because, firstly, the rule of necessity of offences and punishments should not preclude the same crimes committed by one person entailing different proceedings for the purpose of administrative or criminal sanctions, under distinct sets of rules in their own kind of courts; that, in this case, the sanctioning of prohibited or unlawful fishing, according to whether it comes under the administrative authority or legal authority, has not been placed under the supervision of one kind of court examining the same interests and according to the same procedures; and secondly, the constitutional requirement for proportionality means that, in any case, the overall amount of the penalties that may be delivered shall not exceed the highest amount of one of the penalties incurred."

In case law, the principle according to which the court that rules last must respect the principle according to which the overall amount of the penalties handed down should not exceed the highest amount of one of the penalties incurred, ensures that there is no double punishment. The possibility of two sets of proceedings may be justified, as in this case, by the fact that the administrative sanction, most often immediate, often has a purpose that is not only repressive; here, for example, one may think that the administrative fine, fixed according to the quantity fished, also serves a preventive purpose with regard to the protection and management of maritime resources.

This dual system creates difficulties after offences have been reported. Indeed, the administrative inspections are intended to prevent offences by making sure that environmental rules are properly complied with, whereas the criminal police investigate the offences which such inspections have been unable to prevent being committed, and they identify the perpetrators and gather the evidence with the aim of a criminal conviction. However, when a visit to private premises, and which is in principle administrative, results in the discovery of an offence, the validity of the inspector's report can be problematic.

(c) Difficulties associated with the criminal classification:

- Choice of charge: this is often made highly sensitive by the co-existence of countless regulations governing the same activities from different perspectives. For example, a leak in a tank of waste oil held by a garage and which spread into a watercourse, destroying fish and poisoning livestock, can involve at least four offences: the offence of removing waste oil by any method other than sending it to a registered disposer; the breach of or non-compliance with the technical requirements laid down under the policing of classified installations; pollution of a watercourse having caused damage to animals other than fish; pollution of a watercourse having adversely affected fishing interests.

- Determining the instantaneous or continuous nature of the offence: a continuous offence goes on as long as the perpetrator does not bring an end to his criminal behaviour, which implies the deliberate repetition of the perpetrator. For instance, pursuing without authorisation an activity involving classified installations requiring authorisation. An instantaneous offence happens at a single moment; for example, the destruction of an animal belonging to a protected species. The continuous or instantaneous nature of an offence does not always clearly flow from the wording of the charge, although it has decisive consequences for legal requirements, for the application of the law over time and for the potential for initiating new proceedings: where there is a continuous offence, new proceedings may be initiated if the crimes persist after a first conviction.

- Technicality of certain charges ("with drawers" [nested in layers]), inter alia, when the national legislature refers to the provisions of community law; that difficulty then has to be reconciled with the constitutional principle in French law under the "clear and precise" rule.

  Example: Cass crim [Criminal Chamber of the French Court of Cassation] 22 March 2016, appeal No. 15-80.944: two people were prosecuted for having deliberately exported waste classified as hazardous to Belgium for the purpose of its conversion without the prior consent of the French and Belgian authorities, the summons referring to two articles from the Code of the Environment and Article 3(1) of European Regulation 1013/2006. They were sentenced by the court, but acquitted by the Court of Appeal, which considered that,

"Article L.541-40, I, of the Code of the Environment refers to the whole of Regulation 1013/2006; that it is only after its provisions have been read that Article 3 should be declared applicable to this case to observe that this instrument uses extremely technical language and makes numerous references, all of which makes the applicable regulation hard to understand; that those legal instruments, making countless references that cross-reference and overlap to the point of constituting a tangled web, do not enable the defendant to know exactly what crimes he is being accused of, and they do not fulfil the constitutional requirement of clarity and precision of the wording of a criminal charge."

The French Court of Cassation overturned this decision on appeal by the Public Prosecutor of the Court of Appeal, claiming that,

"Article L.541-40 of the Code of the Environment refers, for its application, to a Community regulation that is directly applicable, whose technical nature is integral to its aim and which clearly and precisely determines, on the basis of the kind of waste, the key elements of the offence being prosecuted."

It is true that the texts that ultimately led to the definition and classification of the waste could be found in the European regulation (European regulation and its annexes), but that highlights the need for trained judges and for tools (guides and leaflets, for instance) to make the regulations more accessible. In this case, the defendants were professionals with knowledge of waste transfer and they deliberately used the complexity of the law to evade the required authorisation. But that shows the difficulties (inter alia, for the Prosecution Service, of drafting well-written summonses so that they do not risk being declared null) in technical matters that are subject to technological developments. The law needs to adapt to developments in standards if it is to act in the best interests of public health and environmental protection; the difficulty lies in updating documents that also have to be applied by non-experts. Waste is a highly relevant example because we see that, for a product whose composition is already problematic, as in this case (involving tin-lead slag), it should be "labelled" according to the route it has to take (origin, destination and transit country), how dangerous it is (orange list or green list) and the treatment envisaged (disposal or recycling).

(d) Difficulties associated with establishing proof of:

- the objective element (*actus reus*) of the offence, which has to be reconciled with the fundamental procedural principles, inter alia, the principle that both sides must be heard and the rights of the defence.

  Example: marine pollution offence by a discharge of oil, crime 18/03/2014 No. 13-81/921, offence defined in Article L.218-11 of the Code of the Environment. The pilot of a French customs aircraft reported that a vessel sailing under the St Kitts and Nevis flag was in the French EEZ and was leaving trails of oil in its wake for seven kilometres over a breadth of about 100 metres. After those observations, the captain three times received the order to divert to Brest, which he refused to do, continuing on his way to Santander where he was inspected. The captain and the Latvian charter company were summoned to the Criminal Court of Brest for a deliberate discharge of oil, on the basis of Articles L.218-11 and L.218-13 of the Code of the Environment.

The Court returned a “guilty” verdict in respect of the captain, even though no sampling had been conducted on board the vessel to corroborate the observations of the pilot of the customs aircraft. It sentenced him to pay a fine of 1,500,000 euros, 95% of which to be paid by the charterer, a decision upheld on appeal. In particular, the appeal raised the question of the proof of the offence.

The marine pollution offence of deliberately discharging oil requires that evidence be produced of a discharge of oil into the sea from a vessel whose captain has been charged. The proof of the objective elements of the offence therefore firstly needs to be produced. In this case, that element was deemed to be established by the visual observations of the pilot and by the photographs taken, and by their analysis by an expert in marine pollution, without any samples being taken. The presence of oil was deduced from the colour of the trail seen in the wake of the vessel, which differed from the colour of the rest of the surface of the sea and which displayed 60% rainbow, 25% sheen and 15% metallic, being a combination, according to the Bonn Agreement Oil Appearance Code, characteristic of an oil slick of more than 100 milligrams per litre of water. The discharge by the vessel was established, firstly, from certain defects noted in Santander (inter alia, a water ingress due to the hull valve not being watertight) and, secondly, from the absence of pollution visible around the bow of the vessel (which would have suggested that it had crossed an existing oil slick) and from the absence of elements such as to link the observed pollution with the occurrence of an external and unforeseen element.

The Criminal Chamber of the Court of Cassation approved the decision of the Court of Appeal, ruling that the judges could base their belief on a body of evidence, without needing to take samples. That is based on the rule in French criminal law of evidence by all means, and it was stressed that, with regard to the appearance of the polluted water, the criminal court used the Appearance Code whose validity has international recognition.

In French criminal law, the principle is the rule of evidence by all means in criminal courts. The value of the aforementioned decision is twofold: the use of a body of evidence and, for the technical matters, the use of technical elements with international approval.

- the *mens rea* (intentional element) of the offence. Same judgment (Article 121-3(1) of the Criminal Code): a discharge of oil must be deliberate; in this case, the Court of Appeal had deduced the intentional element from the evidence used to establish the *actus reus* (objective element). In this field, where the Marpol Agreement is applicable, the case law considers that any deliberate discharge is known by the captain who can only be absolved by the proof, which lies with him, of one of the supporting documents listed by the Agreement (Annex 1). Also, it has already been ruled that the captain must directly bring pressure to bear on his subordinates to make them stop a prohibited discharge and that he must provide proof of his efforts to that effect (Crim 18/03/2008 No. 07-84.030)

- the causal link. Cass crim, 31 May 2016, appeal No. 14-87.678: at issue is toxic waste discharged into the rainwater network and found in the stream. Two companies were using the same chemical products and their polluted water ended up in the network through a common manhole. The trial judges acquitted both companies because they could not determine which one had caused the pollution, referring, in particular, to the principle.

  The decision of the Court of Appeal was overturned when the Criminal Chamber criticised it for having ruled in that way, “although it transpired from all its reports that the pollutants

found in the watercourse were identical to those found in the drains and run-offs from the non-compliant facilities of both companies, ending up, via a shared rainwater network, in the stream called Le Thurieux, such that the pollution was directly linked to the offending drains or run-offs of each of them."

The offence at issue was Article L.216-6 of the Code of the Environment, which punishes intentional or unintentional discharges into surface water or groundwater causing damage to the flora or fauna, with the exception of the destruction of fish punishable under Article L.432-2 of the same code. This is a "result-of-conduct" offence: there should be no doubt about the causal link between the contaminating discharge and the damage to the flora and fauna, but the offence has occurred even if the substances are already present in the water, or if the discharge is not the only and exclusive cause of pollution. Any act that contributes, be it only partially, to the occurrence of the damage, entails the criminal liability of its perpetrator; in this case, both companies were responsible.

This notion of a "result-of-conduct" offence avoids the possibility of immunity associated with several potential polluters.

- the damage. Apart from ecological damage itself, there are offences for which the proof of actual damage seems much too restrictive, as is the case with pollution. As in the aforementioned judgment, the Court of Cassation accepts that the existence of damage is established when the pollution was such as to cause damage to the flora and fauna (Crim 26/11/2013 Appeal 12-87.701; 12/06/2012 Appeal 11-83.657).

(e) Difficulty regarding the responsibility of the legal entity: in French law, a fine for a legal entity is five times the amount incurred by a natural person for the same offence and the legal entity may be subject to penalties specifically suited to the environment:

- ban on pursuing certain professional activities;
- closure of the business used to commit the implicated acts, definitively or for a five-year period;
- exclusion from public procurement;
- confiscation of the things used to commit the offence or which are the product of it;
- display and disclosure of the decision.

The criminal liability of the legal entity and of the natural person it employs may be cumulated (at the choice of the prosecuting entity: public prosecutor or civil party).

The difficulty comes from the fact that it is a requirement for the natural person who acted as a representative or instrument of the legal entity and on its behalf to be identified. The summons can sometimes cause confusion: the defendant thinks he is not being prosecuted personally and that the legal entity is the target, or else the summons does in fact name the legal entity but the investigations have not adequately identified the natural person (or his job title or duties at the time of the offence) responsible for an offence or for non-compliance with a regulation.

Difficulties regarding the effectiveness of a sanction: weakness of the sentences handed down – stopgaps with notions of instantaneous or continuous offence, offence by sampling animals illegally.

Additional notes of 8 June 2017, provided in response to the first version of the document

Lack of legislative quality. About the difficulty generally highlighted regarding the readability of offences: it seems that some effort needs to be focused on drafting the charges, and this concerns all the members of the group.

(a) The readability of charges appears to be the cornerstone for the effective and efficient sanctioning of environmental harm, because the starting point of a case is a well-written official report and summons. Furthermore, in the case of a criminal penalty (punitive and possibly involving deprivation of liberty) or a proper measure that jeopardises a fundamental right (right of ownership, for instance, where there is an additional measure of confiscation or demolition or a ban on pursuing an activity), the wording of the charge, like the summons to the court, must be sufficiently clear and precise for the defendant to know exactly what offence he is being accused of, as well as the punishments incurred, so that he can prepare his defence properly.

Note that, in French law, case law accepts that an incorrect citation of the applicable criminal text does not invalidate the summons if the wording of the offence is sufficiently clear and precise in the summons, and that the summons may be supplemented by particulars from the minutes of the investigation proceedings if they enable the accused to have full knowledge of the acts of which he has been accused and of the charge applicable, and if he has apparently been able to respond and defend himself in such a way that the inaccuracy has not adversely affected him.

Legal proceedings can only be precise and complete if the charge is well posed and known by the investigators, and if investigations have been carried out in the light of that charge and of all the allegations, allowing the court to arrive at a guilty verdict with all the more certainty because the search for proof and the interview with the defendants and witnesses or experts have been conducted by investigators with a thorough understanding of the applicable law (need to train investigators … and prosecutors, at this stage).

Note, too, that in French law the court is required to examine the facts in the light of all the charges applicable, subject to having advised the defendant of a change of charge and to having given him the chance to explain himself and present his methods of defence against the new charge under consideration (by an appeal of the case at a later hearing, if needs be).

(b) Note, however, that the precision of a charge does not preclude the intervention of the judge to define the situations involved in a charge (for example, to define a “watercourse”), provided the definition is sufficiently intelligible as to leave the judge no room for arbitrariness. The content and limits of a notion such as specified by case law are, as it were, included in the legal text and subsequently binding on the offenders.

It seems essential to allow some flexibility and margin for assessment so that, without jeopardising the rights of the defence, a charge can be adapted to the diversity of situations it may cover and allow for certain developments in science and technology.

An example of the definition of a watercourse:

"Given that, to overturn the ruling and find the defendant guilty, the judgment states, inter alia, that the watercourse called 'Le Pré de la Palu et de la Prairie' appears on the map of the National Geographic Institute; that although its course has been channelled since 1966, the flow-path remains natural; that although the flow varies from season to season, the flow is there, subject possibly to periods of serious drought; that the bed is permanent and perpetually covered by water near to the Dordogne as well as in some deeper and wider parts; that the judges add that the defendant, who acknowledged that he removed fish before carrying out the work, has not produced evidence to refute the presence of aquatic flora and fauna established by the investigations of the expert administrative department; that they deduce from this that the waterway must be a watercourse.

Given that, in the case of these particulars which stem from its authoritative observations, which show the presence of a flow of water sufficient to ensure the existence of aquatic flora and fauna typical of a watercourse, the Court of Appeal justified its decision."

Ruled by Cass crim [Criminal Chamber of the French Court of Cassation], 31 May 2016, appeal 15-81.872, about the offence of carrying on an unauthorised activity harmful to the flow of water or to the aquatic environment: dredging the bed of a waterway being a tributary of the Dordogne River, which is protected by the Habitats Directive with a Natura 2000 listing and home to eels covered by a European protection plan. The defendant claimed that the features of a watercourse were not represented in this case (case law makes distinctions between a watercourse, a body of water, canal, ditch, and so on). The definition of a watercourse comes from case law: the Court of Cassation approved the *actus reus* of the offence (the watercourse) on the basis of the observations of the appeal decision to which it was responding, and it then specified the determining factors that made it possible to rule that it was indeed a watercourse at issue.

Note, in French criminal law, the special importance given to the official reports of offences falling within the category of "contraventions" (minor offences): if the report is drawn up properly by a competent authority, it is used as evidence until there is proof to the contrary, which can only be introduced in writing or by witnesses.

(c) I think that, for technical offences which cannot be oversimplified, there should be a technical guide, possibly in the form of a table showing clearly the various legal instruments applicable and how they fit together (for example, for waste where you have to "juggle" with the categories of waste, their destination, method of treatment and then the annexes with different sorts of waste according to their composition … grrr!!! …) – tables or guides that should be regularly updated. There could also be training tools for the various persons involved.

Approval of other information gathered in the first version of this document

(a) Germany's comment about minor offences not enjoying the option of highly useful investigation methods (such as phone tapping) is also true for France, in particular because investigations cannot be opened for simple contraventions; hence the idea of adapting the range of offences according to developments in environmental criminology (decriminalisation of some offences and making others more serious, with better use of enforcement methods, for example, by including aggravating factors, such as organised gangs).

(b) Latvia's comment about the lack of exchange of information between administrative and legal bodies, and even between the different environmental police forces involved, also applies to France. The separation of data is particularly counterproductive in this area.

(c) Need for a strategic approach. In my opinion, increasing the effectiveness of criminal punishments also requires a concentration of resources on carefully targeted actions, possibly at European level, according to specific threats that have been identified, in order to fight them at every stage of their development at all sensitive points, regardless of the place where they are dealt with.

(d) Range of charges provided for by the law. I also think it essential (this only came out at the end of the conference at the Court of Cassation on 1–2 June) not to overlook the preventive role of environmental criminal law. It would be singularly reductive to look only at its repressive and possibly remedial mission: if a charge like endangering the environment is brought, there should be an intervention before serious damage is done. But again, there still needs to be a degree of adequate precision to comply with the principle of legality, and this is especially important in criminal law in the light of the nature and seriousness of the penalties incurred.

Germany

We found that administrative sanctions are much harsher in some areas (for example CITES violations sanctioned by the competent federal administrative authority in Bonn). The criminal law often seems ponderous due to the many safeguards of the criminal procedure code/constitution (burden of proof…). Therefore, if you allow this remark, the criminal law seems sometimes not the right means by which to ensure the sanctioning of environmental problems.

A major problem seems to be that environmental cases fall within the “minor category” of offences. This entails that some tools of investigation like bugging measures (unlike in Italy, for example) are not available. However, if the offence against the environment falls within the scope of serious fraud because of aggravating circumstances, the tools of investigation might be broader.

Regarding emission cases (even though we have had only a few in the last five years), there are causality problems.

In Germany punishable acts in some areas must meet the accessoriness requirement. For example, the requirement of “waste” has to be classified by the administration authorities.

Teleconference June 2017, as fine-tuned on 8 December 2017

The quality of legislation, with many (often four to five) cross-references from act to act to act, is a problem. The cross-referencing extends to EU regulations, e.g. the CITES regulations. The changing of one law, which happens commonly, alters the structure of the law and makes it hard to apply. This problem of cross-referencing is highly prevalent in the law regarding wildlife crime, because of recurrent changes to EU CITES regulations, but it exists in other areas too, e.g. chemicals. One year you know the law, the next you no longer know it.

Another problem is the need for specialisation, which can be specific. See, for instance, CITES. It is so distinct as a field that many prosecutors do not know it. They rarely see CITES cases. When a prosecutor has only one or two such cases in five years, it is not easy, indeed it is impossible, to handle such cases properly. In Frankfurt, on the other hand, prosecutors handle CITES each week because of the airport. It is a problem that there is no specialised CITES body in the country. Experience matters.

Oxford meeting September 2017

Terrorism is taking a lot of capacity.

Latvia

The determination of substantial damage. Almost in all articles of criminal law (except (a) unauthorised disposal of hazardous waste or substances to water and soil, or (b) unlawful actions relating to ozone-depleting substances) there must be evidence validating the existence of consequences, so called (a) substantial harm or (b) serious consequences. Maybe we could share information with each other on how the other MS assess if the committed offence is a criminal or administrative violation, as well as what substantial damage means under national legislation, if their law contains corresponding legal categories.

Disadvantages of legislation on air pollution. The existing requirements for polluting activities, which affect ambient air, are not effective at all. For example, according to national law the odour target value is determined for a period of an hour and is 5 ouE/m3. In performing polluting activities that cause odour nuisance, the odour target value may not be exceeded for more than 168 hours per calendar year. Hence if the competent authority detects the exceedance of the odour target value (5 ouE/m3), it does not mean that the law has been broken; the main thing is compliance with the established annual limit (840 ouE/m3), which in practice makes it very difficult to prove violation of the legal regulation.

The limited power to improve the circulation of information on all pollution accidents.

Public prosecutors applying criminal law are not usually informed of each case of environmental pollution. We have no power to request and check an administrative case as long as we have no basis to do this. By “basis” I mean information which can take the form of a complaint, a submission, a report or information provided by mass media.

We cannot carry out an examination of an administrative case on our own initiative without any reason and other law enforcement institutions have no obligation to inform us (if there is no criminal case). In my opinion, expanding the power of supervision in this area would support environmental compliance.

The Netherlands

Problems (can) be: (substantive law): complex standards, the person at whom a standard is aimed, technical nature of environmental criminal law, vague standards in duty-of-care regulations.

Procedural law: technical investigations, border control/detection, border criminal/administrative law, quality of investigation services with, as a result, potential problems with tracing perpetrators, hearing the parties concerned/witnesses.

Oxford meeting September 2017

Environmental law is strongly rooted in administrative law (see permitting and authorisation systems). In its concepts, administrative law has another logic than criminal law (it “thinks” differently). This is a source of problems too.

Guilt needs to be established when it is established that you did it, committed the offence (low-level issue).

Last but no least: the lack of interest and priority is a major problem (for instance, the removal of capacity for environmental files to give priority to mafia files).

Spain

In the Spanish legal system, administrative law and criminal environmental law coexist. The criterion according to which the legislator differentiates between administrative and criminal sanctions is the seriousness or gravity of the attack and the degree of damage or endangerment. Criminal law has jurisdiction where the conduct is administratively unlawful and also exceeds the limits of such offence because of its seriousness. This necessary relationship with the administrative regulations requires oversight of the activity of the administration. Lack of action or inappropriate behaviour may constitute an administrative or criminal offence, depending on the seriousness of the legal infraction or the environmental damage. This failure to act generates impunity. Cases of so-called “active tolerance” by the administration that in some instances lead to corruption are of particular concern.

There is no specific act containing all the sanctioning environmental regulations: administrative sanctions are fragmented and laid down in different environmental laws from three different administrations; and criminal infractions only appear in the Criminal Code that has transposed all the offences set out in Directive 2008/99/CE. Each crime has different levels of completion (presumed endangerment, demonstrated endangerment, damage) and also different objects affected (environment, water, etc., flora and fauna). This creates a very complicated system that lacks clarity when establishing the moment at which the crime is committed. Greater uniformity is needed to determine the protected object and the level of injury required for completion.

Oxford meeting September 2017 as fine-tuned 8 December 2017

In Spain also, as in Latvia, open notions in provisions that define offences are a problem.

Another problem with regard to the quality of the law is the lack of proper legislative policy. Thus, for instance, the law changes too often on an ad hoc basis, when problems arise. This kind of legislative approach, lacking a long-term view, is not fit for criminal law. This is all the more so because of the interlinkages between criminal and administrative law. Criminal law enforcement requires the infringement of a rule of administrative law. If, for instance, there is a very severe case of pollution, but that level of pollution is not forbidden under administrative law, a prosecutor cannot act on it.

Last but not least: there is a lack of resources in terms of manpower, material resources and informatics resources. Terrorism is taking a lot of capacity.

(2) Do you observe trends in the prosecution of environmental offences in your country?

7. This question too was answered by all seven countries.

Croatia

The trend is that we prosecute environmental offences very rarely.

Czech Republic

Yes. The trend goes from underestimating environmental crime and its consequences, to proper investigation; law enforcement bodies are more aware of how to investigate and prosecute and why it is important.

France

(a) I would like to indicate one recent trend in the prosecution of small offences in France. There are now possibilities to use "transaction pénale" (Article L.173-2 of the Code of the Environment (law 11 January 2012) and Decree 2014-368 of 24 March 2014). This is a capacity for the administration to propose a negotiated sanction which is to be validated by prosecutors. It is interesting to note that the French Council of State explicitly judged (case No. 380652 of 27 May 2015) that this approach is in conformity with the EU law (Directive 2008/99 and 2012/13/EU).

Discussing this issue with Gilles Proisy (prosecutor in Lyon in charge of environmental issues), he indicates a very positive effect of this option (commitment of police officers in charge of environmental policing, more sanctions and fast response to small offences).

(b):

- at a national level, the trends result from the criminal policy circulars establishing the principal guidelines.

- at the legislative level, an effort at unification and simplification of the applicable law. In French administrative law, dedicated policies (waste, classified installations, etc.) are independent of each other and liable to be applied simultaneously to the same situation or activity (hence the difficulty in the choice of charges for the proceedings). An order of 12 January 2012 improved this problem as regards the investigative powers of public functionaries: their scope is not linked to the administrative body to which they belong (environmental inspectors, customs inspectors, and so on) but to the regulations with which they are checking compliance.

- they [the trends] are often linked to the public prosecutor's interest in and commitment to environmental issues; too dependent on the individual.

Germany

(a) Speaking for the Frankfurt region only, which has an important airport, we have a lot of investigations in the area of CITES violations. For a few years we have been applying a new approach on animal smuggling, which entails the custody/pretrial detention of offenders. The

courts have been playing along so far, and in most cases the sanctioning ranges from six to ten months of imprisonment.

(b) By far most convictions are based on the waste provision in the Criminal Code as it is easy to prove waste offences because there is no damage to prove; it is much easier to get a conviction than for other environmental provisions, which require proven pollution/damage. With waste offences, pollution/damage is not needed. The structure of the law is different and very easy to use as the transport of waste is always considered by law to be a danger.

Latvia

Every year the environmental crimes have become more complicated. Therefore it is difficult to investigate and prosecute this type of criminal offence. Time after time criminals use gaps and imperfections in environmental law, trying to avoid criminal liability in this way.

The Netherlands

Greater focus on seizure of illegal benefits, greater focus on wildlife crime, tendency in my opinion toward administrative enforcement.

Spain

Not especially.

(3) Did you notice good practices in the prosecution of environmental offences in your country?

8. With regard to this question, we found answers in the responses of four countries.

Czech Republic

We are currently running a WG for environmental crime dealing above all with legislation and cooperation between law enforcement bodies in the Czech Republic. Once a year we hold common training for customs, police, Czech Environmental Inspectorate, prosecutors and judges.

France

I cannot answer that question, as I only have a supreme court perspective on the question (too few cases to be able to identify general trends, not directly associated with the policies of the different public prosecutor's offices, generally extreme diversity of environmental disputes).

However, the development of alternative procedures to prosecutions can be observed:

(a) Conditional closure of a case [the prosecutor closes a case without further action on condition that the person performs a duty listed in the Code of Criminal Procedure] and mediation, in return for the compensation of the victims and accomplishment of remedial work, but this is subject to legal insecurity;

(b) The criminal settlement (Article 41-2 of the Code of Criminal Procedure): the criminal settlement extinguishes the public prosecution, but does not obstruct the plaintiff's right to summon the perpetrator of the offence directly to the criminal court, ruling with a single judge, only on the civil issues;

(c) The transaction: this can apply to all environmental offences, with the exception of breaches in the first four categories for which the public prosecution is extinguished by the payment of a one-off fine; the administrative authority has the choice of using the transaction, determining the amount of the transactional fine and the definition of the work imposed on the offender in order to stop the offence or avoid its repetition. Deciding on the time limit for performing the transactional duties is also the responsibility of the administrative authority. The proposal comes from the Prefect (in the year of the offence). If it is accepted by the offender, it is forwarded to the Public Prosecutor for approval. If that approval is granted, the offender is advised of the transaction, which extinguishes the public prosecution, but only after implementation of the agreement. In the 2012 criminal policy circular, prosecutors are invited to agree only where an offence is not intentional and on condition that no victim has lodged a complaint.

(d) The one-off fine: for offences in the first four categories listed by the legislature in Article R.48-1 of the Code of Criminal Procedure.

Moreover, the criminal judge, who also rules on civil issues, should remedy the "pure" ecological damage resulting from an environmental offence:

- new Article 1246 of the Civil Code: "Any person responsible for ecological damage must remedy it."

- case law: the Erika affair, but also Cass Crim 22 March 2016 No. 13-87.650: the District Court of Saint Nazaire ruled in a case involving the accidental dumping of 500m³ of heavy fuel oil in the estuary of the Loire after the rupture of a supply pipe on a vessel in the Donges refinery run by the company Total, which was found guilty of the crime of pollution on the grounds of "twofold recklessness and negligence by the refinery, firstly, for failing to maintain the pipes in the legal dispute, and secondly, for a lack of technical equipment that would have made it possible to detect the fall in pressure immediately".

  The plaintiff consisted of several local authorities and associations for the defence of the environment and they were compensated for personal injury, in particular, moral injury, but the court did not find that there was any "pure" ecological damage. It should be noted that Total did decontaminate the site, but note too that the decontamination of a site can only satisfy the principle of full remedy of the environmental damage if all the harmful consequences for the integrity and/or the quality of the natural environment and the negative consequences for people (including collective consequences insofar as they affect the services rendered by the environment) have been investigated in detail, which does not seem to have been the case in this instance, given the lack of tools and training specific to the particular environmental damage, which is characterised by a multitude of interactions.

  On the appeal of the French League for the Protection of Birds (LPO) regarding the question of civil issues, the Court of Appeal of Rennes (Order of 27 September 2013) acknowledged that there was such damage but it dismissed the LPO's application in this regard on the grounds that it was calculated on the basis of an estimate by species of the number of birds destroyed, whereas that destruction had not been proved and the estimate made by the

LPO of the damages with reference to its annual budget for managing the bay in which the pollution had produced its effects, was the result of a conflation of its personal injury and the ecological injury.

That order was condemned by the criminal chamber [of the Court of Cassation], which deemed that, because it had found there to be ecological injury, which "consists in the direct or indirect harm done to the environment and resulting from the offence", involving in this case a "marked deterioration in the birds and their habitat", the Court of Appeal had to remedy, to the extent of the findings of the parties, the damage whose principle it thus acknowledged and investigate the scope. It could not purely and simply dismiss the LPO merely on the grounds that the assessment criteria proposed by that association did not strike it as relevant.

- This is a classic principle of law, but, applied to the damage suffered by the natural world, it shows the full limits of the exercise. How should nature be assessed and remedied? The court seems ill-equipped, lacking expertise and without the assistance of experts when, as in the aforementioned order, it has to remedy "the interim losses of natural resources or services occurring between the damage and the date when the primary or supplementary remediation (within the meaning of the Environmental Liability Act [the LRE]) achieved its effect".

Latvia

Among other things, criminal law sets out the conditions under which the negative result is assessable as significant damage. One of the ways is that the environment or other protected interests have to suffer a significant threat. It is a remarkable fact that national legislation does not contain criteria or definitions, which would make clear exactly what is meant by "significant threat". According to the conclusion made by the Supreme Court, each court individually during a trial has to evaluate the importance of the inflicted threat. That is why at this moment we are striving to create a comprehensive case law regarding significant threats.

Spain

There is a specific police force (SEPRONA) and a public prosecutor (in each provincial headquarters) dedicated to the prosecution of environmental crimes. The Spanish Prosecutor's Office at the Supreme Court has a coordinator for environmental crime (Fiscal de Medio Ambiente y Urbanismo) who is responsible for the coordination and supervision of the activity of all public prosecutors in relation to environmental crimes.

Initially, there was no special prosecution office for environmental crimes. The Spanish prosecutor acted only with instructions and circulars (e.g. Instructions 1/86 and 4/90 in respect of forest fires and Circular 1/90 on the investigation and prosecution of crimes against the environment). However, the technical difficulty of the environment determined the need for specialisation. First a Prosecutor of the High Courts and Provincial Courts was appointed with special tasks in the field of the environment. Individual prosecutors specialising in this type of crime created the Environment Prosecution Network in 2002.

It was through Law 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence, which included the Art. 22 of Law 50/1981 of 30 December, regulating the

Organic Statute of Public Prosecutions (OSPP), that created a prosecutor in each headquarters for prosecution and coordination of crimes and offences against the environment.

Subsequently, Law 10/2006 of 28 April merged the position of attorney appointed under OSPP with the coordinator for offences relating to land use and to the protection of historical and artistic heritage of the environment and forest fires. It also established a prosecutor in each High Court and Provincial Court, and "Environment Sections" specialising in crimes related to land use, the protection of historical heritage, natural resources and the environment, protection of flora, domestic animals and wildlife and forest fires. The Law 24/2007 of October 9 consolidates this model (arts. 18.quinquies and 18.3 of Law 50/1981).

This specialisation within the Public Prosecutor's Office has markedly improved the prosecution of environmental crimes, but it would be very useful to have technical staff to improve the expertise and reports required in the investigation of these crimes. Numerous sections of environmental prosecutors have pointed out the need for specialist experts on environmental issues to be able to address the scientific aspects that the application of environmental criminal law entails.

B. Judicial practice

(1) What are in practice the sanctions for environmental offences in your country?

9. Five countries answered this question.

Croatia

Prescribed penalties are also jail sentences up to eight years, but in practice the majority of offences are treated as misdemeanours without high fines. For example, in the area where I live, many Italian hunters come and commit wildlife crime (birds), but criminal proceedings have never been instituted against them...only instant misdemeanour proceedings with fines.

Czech Republic

Mainly a suspended prison sentence for first offenders and/or a fine, sometimes combined with expulsion. Only in serious or organised crimes is there an effective prison sentence.

Latvia

Imprisonment, community service or fine.

None of the articles of criminal law prescribes confiscation (of property) as a penalty. According to criminal procedure law, the court is authorised to confiscate the instrument of a criminal offence. Hence, it is possible to apply for confiscation of the object (for instance, ship or vehicle) which had been used in the environmental crime.

Liability for legal persons: liquidation, restriction of rights, confiscation of property or fine.

More often than not, the applicable sanctions are not related to deprivation of liberty. Usually courts take a decision to punish defendants by applying community service, fines or a suspended sentence.

Comments on the England & Wales Sentencing Guideline (2014)

From my point of view, the provision of the England & Wales (EW) Sentencing Guideline is excellently developed. It very successfully defines culpability and harm categories. Adopted legal norms prescribe a criminal liability not only if there is real damage or harm, but also if the risk of harm has been established. This helps strive for achieving environmental compliance and is a good idea for specifying the definition provided by Article 3 of Directive 2008/99/EC.

Furthermore, it is obvious that, unlike the EW Sentencing Guideline, we have another kind of principle regarding degrees of responsibility. According to Latvian legislation, culpability is divided into two groups: deliberate (direct or indirect intent) and negligence (criminal self-reliance or criminal neglect).

It was interesting to find that EW law sets out criminal liability even for persons who commit an offence without culpability. Latvian criminal law excludes the possibility of prosecution if the person did not foresee, should not and could not have foreseen the possibility of harmful consequences caused by this person's act or failure to act.

As to sanctioning provided by relevant guidelines, I think the starting point of punitive sanctions is to sufficiently define a severe punishment policy, which must be quite effective. We have entirely different standards for calculating the amount of a fine. A fine as a basic punishment proportionate to the harmfulness of the criminal offence and the financial status of the offender shall be determined:

(a) For a criminal violation – as an amount of 3 and up to 100 minimum monthly wages prescribed in the Republic of Latvia;

(b) For a less serious crime – as an amount of 5 and up to 150 minimum monthly wages;

(c) For a serious crime for which deprivation of liberty for a term up to five years is provided for in this law – as an amount of 10 and up to 200 minimum monthly wages.

Comments on Recommendation No. 177 (2015) on the gravity factors and sentencing principles for the evaluation of offences against birds

Unfortunately, here I have no suggestions because everything is understandable without saying. The gravity factors and guiding principles listed in recommendation No. 177 are implemented in our state. These aspects are considered during the criminal procedure .

The Netherlands

Mainly fines: environmental crimes and also (potential) consequences for society vary considerably according to the crime. Fines are easier. Also many legal entities face charges. The amount of the fine depends on the dangerous nature of the conduct.

Spain

The Spanish Criminal Code establishes three kinds of sentences for crimes against the environment:

(a) Sentences involving loss of freedom: prison. Most environmental crimes are punished by prison sentences.

(b) Fines: normally additional to the prison sentences.

(c) Disqualification: also additional to 1 and 2 above.

The Criminal Code also foresees the possibility of imposing actions on the defendant which are different to the punishment; the guilty party, for instance, may be ordered to take adequate actions to restore the environment and protect goods (Art. 339).

Legal persons can also be convicted for committing an environmental crime.

In practice, environmental offenders are most often punished by a prison sentence plus a fine. However, there are a few crimes punished only by a fine.

(2) Are there specific problems you are aware of with regard to the existing sanctioning practice?

10. Six countries gave feedback on this question.

Croatia

Yes. Prosecutors and judges need training on environmental offences because prosecutors very rarely prosecute environmental offences (it does not mean that we do not have environmental offences, but that our prosecutors and judges are not trained for that group of criminal offences).

Concerning the civil aspect – we do not have common criteria concerning environmental damages and therefore no consistent case law, which does not contribute to legal certainty.

Czech Republic

Underestimating the impact of the criminal act of one perpetrator on the environment and of his/her role in the chain of perpetrators leading to devastation of environment and endangered species. Generally low sanctions (not in legislation, but in fact).

France

Avenues explored to improve the punishment and handling of environmental offences (in particular, in the context of an “environmental-damage” working group):

(a) Observation (but patchy statistics): weakness of the criminal response to environmental offences. In the Ile de France region 53% of cases closed with no further action and, where there are prosecutions, 73% alternative measures. One of the causes appears to lie in there

being far too many offences, including some that are virtually never applied, and in the overlap of criminal punishment and/or administrative punishment, in spite of the 2012 harmonisation ruling. Some inconsistencies and a disproportionate number of categories also noted.

(b) Decriminalisation of some offences, but difficulty of finding criteria for dividing up offences between the two jurisdictions (administrative/legal). One such criterion, which would involve placing under the administrative jurisdiction the provisions of the Code of the Environment establishing authorisation schemes (inter alia, for potentially polluting or hazardous industrial, agricultural or service activities), and placing under the legal jurisdiction the provisions governing prohibition schemes, has not met with general agreement (but was favoured by factory owners…). Most economic activities would evade the legal courts and remain "in the hands" of the administrative authorities, from the point when authorisation is issued until the sanction for the absence of authorisation or a breach of provisions having a preventive aim. The result would, in fact, be a separation between the different environmental areas: water and nature for the legal courts (prohibition scheme), industrial and agricultural economic activities for the administrative courts.

The officers of the environmental inspectorates are, furthermore, keen to preserve their legal powers, which give them much greater investigative possibilities, including enforcement powers (searches, custody, and so on), as well as the use of expert military and civil police bodies (scientific, technical, etc.).

We found that there is a need to come up with other separation criteria and noted that both types of sanction can also be complementary: using only an administrative instrument can prove ineffectual in some cases, for example, in the Synthron factory affair involving a factory that makes chemical products and that has, over the years, accumulated a series of breaches of the Codes of the Environment and Employment.

In this case, seven letters of formal notice for non-compliance with the safety rules of the plant, which is categorised as a "high" Seveso site and located at Auzouer-en-Touraine (Indre-et-Loire), where hundreds of chemical substances (some of them carcinogenic, toxic or inflammable) are handled, for chaotic storage, non-labelling of products, discharge into the River Brenne and into the atmosphere, lack of training of staff at risk from chemicals, abusive use of temporary workers exposed to dangerous substances, and so on, and those letters of formal notice proved ineffectual before application to the criminal court.

The considerable symbolic value of decriminalisation (a synonym for "minor offence") for some economic players was also highlighted.

Conversely, criminal sanctions take longer to implement than immediately enforceable administrative sanctions (but which now have to involve the same guarantees for the fundamental procedural rights as criminal sanctions; in particular, a preliminary letter of formal notice, listing the standards being contested, must now be sent to the offender so that he can remedy the situation, as the sanction may by appealed in the administrative courts).

It appeared that, in order to identify relevant criteria, a list of the existing offences should first be made and sorted according to the frequency of application and their usefulness, in order to distinguish those of interest for settling environmental disputes. But there is also a need for impact assessments on the consequences of decriminalising, declassifying or abolishing certain offences. All the consequences need to be assessed and both the direct and the indirect

challenges identified, as well as bridging punishments and resources assigned to investigating and prosecuting the new offence.

We also found inadequate statistical data processing for assessing the efficiency of existing sanctioning instruments, in both criminal and administrative jurisdictions, and noted the need to identify potential gaps in the component parts of the offences (knowledge and technology developments).

Finally, we found that administrative and judicial measures need to be better coordinated and joined up and that there is scope for improving the operational management by developing and deploying an IT support tool for planning and monitoring inspections.

Given the complementarity of administrative and judicial sanctions, there were suggestions to create specific offences resulting from the violation of a decision by an administrative court ordering the suspension of an administrative authorisation or from non-compliance with a letter of formal notice from that court.

(c) Declassification and realignment of sanctions: creation of new general charges (crime of ecocide or offence of endangering the environment, for example), creation of aggravating circumstances consisting of organised crime, introduce repeat offending. Conversely, make other breaches a simple contravention.

New sanctions were also suggested, for instance, the possibility of a fine proportional to company turnover for crimes and offences that have made a direct or indirect profit, promote the seizure of assets, strengthen the quantum of punishments for harm to species, or for illegal fishing and fish sales (sturgeon, salmon and eels), double up punishments for offences committed in areas of major ecological importance, and so on.

<u>A few further points for consideration for the meeting of 8 December 2017:</u>

(a) On the necessity of a database with judicial decisions, with focus on the type of sanctioning decisions that would be the most useful to include in the database.

The need for a database including as many decisions from the different MS as possible is, indeed, essential to meet the objective assigned to the working group. I think it would be useful to focus on the decisive elements for this database to have its full impact.

Apart, of course, from the type of offence, details about the perpetrators (natural person, legal entity, several perpetrators, etc.), the sector of activity and the administrative sanctions and/or criminal measures (fine or imprisonment), I think it important also to know exactly what was done to implement them and the other measures delivered, regardless of their type (additional or ancillary punishment or actual measure without a punitive role).

These last measures (principally focused on remediation) are actual obligations (which can also be imposed on the offender's representative, insofar as they are associated with the thing that was damaged) and, although not punishments as such, they have the advantage of making it possible actually to remedy the damage (or efficiently to prevent a risk, if that falls within the scope of a charge) and they are often feared by the perpetrator of an offence more than the punishment itself (this excludes the possibility of just "paying" to continue a profitable criminal activity …)

They also have the dual advantage of being efficient and adaptable to the situation at issue. They are burdensome and dissuasive because they can also involve a penalty payment, most often flexible at the time of payment according to the personal situation of the party concerned: this is in the realm of the criterion of proportionality of the [Eco-crime] directive.

In this regard, the punishment itself could also be adapted in terms of the specific enforcement methods of the criminal sanction, for example, by deferring the punishment handed down, or by waiving it; the perpetrator's guilt is acknowledged and declared in a court decision, but the sanction itself is postponed or waived according to the offender's behaviour later on and to the efforts to remedy the potential or alleged environmental damage.

So it is particularly interesting to identify those decisions that used both the sanction mode and the remediation mode and that possibly combined both to achieve the optimal efficiency of the sanction and make the charge fully effective.

Therefore we need to insist on getting information as detailed and accurate as possible, not only about the main punishments (prison or fine) but also about additional and/or ancillary punishments or accompanying measures, as well as about how criminal punishments are being enforced (punishment deferred, punishment waived, etc.) and also about the various bans, which are both punitive and preventive.

In fact, disclosure strategies are also of interest (and feared by offenders: consumers, clients and competitors are informed about their poor ecological behaviour), as well as bans; however, their actual effect seems to me to be difficult to measure.

(b) On the impact of the financial means of the offender on "proportional" sanctioning:

Furthermore, the effective, dissuasive and proportional nature of the penalty seems to me to need to be envisaged both in the light of its impact on the environment and on the offender's financial and/or economic situation, especially when the offence is linked to the pursuit of an activity by a natural person or legal entity. This is the thorny question that comes up again and again (most often through the assessment of proportional sanctioning) of reconciling environmental protection with economic necessity: proportional sanctioning inevitably involves seeking a balance between those two pillars of sustainable development. The ideal would be to be able to demonstrate, on the basis of actual cases, that a penalty, even with a considerable immediate economic impact (such as the closure of a business or a change in the conditions of carrying on an activity) can, at a later date, have not only a positive effect on the environment but also positive economic and social effects for the business itself and even on a sector of activity, through the mechanisms inherent in our economic system itself, notably via free competition: ripple and valuation effect, in terms of the environment to which consumers are becoming increasingly sensitive, of a sector of activity.

This is even harder to assess and recover in a database. But it should still be possible to envisage the possibility of "surveillance", aside from the punishment, of the natural person or legal entity charged, possibly conducted by environmental inspectorates (inspectors of the environment) who would be responsible for regular checks on the activity at issue.

One could also envisage collecting this kind of information from prosecutors' reports about the enforcement of certain criminal actions or policies.

Latvia

At present, there are no specific problems.

The Netherlands

Problem for the injured party: the criterion that damage must be suffered directly and the scale of it are often problematic to establish in environmental cases.

Fine-tuning 8 December 2017

It should be possible to make the offender pay for the damages and costs (e.g. transport and destruction of waste or chemicals) his/her offence has caused.

Spain

The most important problems are directly related to the practical effectiveness of the law – restoration of the environment, to protect public goods and to cover the cost of all of it.

(3) Do you observe trends in the sanctioning of environmental offences in your country?

11. We received five reactions regarding this question.

Croatia

The trend is that we prosecute environmental offences very rarely.

As from the civil perspective, in the last few years we have faced growing number of cases in which environmental damages are sought. The problem is that it is a somewhat “new” field of damage law and we have not yet established common criteria for environmental damages and therefore our decisions differ a lot, which contributes to legal uncertainty.

Czech Republic

Preference for fines against suspended prison sentences.

Latvia

More often than not, the applicable sanctions are not related to deprivation of liberty. Usually courts take a decision to punish defendants by applying community service, fines or a suspended sentence.

The Netherlands

Since environmental criminal law tends to focus on the protection of the environment, it is more often possible to choose, instead of a fine or alongside a fine, the imposition of an additional penalty or remedial measure under the Economic Crimes Act (the “WED”) or the imposition of special conditions in a suspended sentence.

In practice, remediation in environmental crimes is not always possible and it can be difficult to identify the actual victims. Broadly speaking, in environmental criminal law, it mostly seems to be (low) fines that are imposed or the payment of a transaction fee. In practice, too, several penalties under the WED are imposed concurrently to augment the effectiveness of the enforcement.

Spain

The most important trends are directly related to the criminal responsibility of the legal persons.

(4) Did you notice good practices in the sanctioning of environmental offences in your country?

12. This question was answered, rather shortly, by five countries.

Croatia

No

Czech Republic

None that I am aware of.

Latvia

The answer on this question could be the same as on question about good practice in prosecution.

The Netherlands

In practice, remediation of environmental crimes is not always possible and it can be difficult to identify the actual victims. Broadly speaking, in environmental criminal law, it mostly seems to be (low) fines that are imposed or the payment of a transaction fee. In practice, too, several penalties under the WED are imposed concurrently to augment the effectiveness of the enforcement.

Spain

I think we can be rather satisfied with the results of our system, as it has led to increasing social concern and consciousness about the importance of environmental protection.

III. Analysis

13. In this part we try to structure the input given by the country reports in order to more easily understand the headlines and issues raised. The information regarding prosecution practice could be dissected into: (a) the general context in which the prosecution practice is operating; (b) the professional skills (expertise, knowledge etc.) of the prosecution actors; and (c) the legal setting, in which we distinguished between procedural law and substantive law issues. We

favoured tables to summarise this information. The information regarding sanctioning practice has been summarised as headlines that stood out.

A. Prosecution practice

(1) Are there specific problems for the prosecution of environmental offences in your country?

14. This table gives a first analysis of the information detailed under **6**.

Country	Problems			
	Context	Skills	The law	
			Procedural	Substantive
Croatia	Other priorities Lack of resources Insufficient access to information on environmental crime Lack of inspections	Lack of knowledge and experience	Air pollution: proof issue regarding causality	–
Czech Republic	–	Specialisation	Prompt international cooperation	–
France	1. Insufficient access to information on environmental crime: lack of inspections (civil society matters) 2. Lack of information sharing between the administration and the judiciary and between environmental police units/inspectorates 3. Coexistence of administrative and criminal sanctioning tracks: task division (communication) 4. Need for a strategic approach with priorities	–	1. Coexistence of administrative and criminal sanctioning tracks: (a) specific inspection/ investigation rules (b) *non bis in idem* 2. Gathering proof of the offence (importance of the ability to substantiate the offence "through all means") with regard to its substantive elements, its perpetrator (linking the facts to an offender) ("causality") and its intentional element; fraction of offences with problematic constitutive elements, such as damage or	1. The choice of the legal qualification of the facts 2. Determining the instantaneous vs. continuous character of the offence 3. Technical quality of some offences (e.g. regulations, such as EVOA, and "waste" definition) 4. Construction of the criminal liability of legal persons; the necessity to identify the acting natural person with his/her fault and capacity

	involving all enforcement actors		problematic intentional aspects	5. Lack of investigation tools for minor offences; necessity to rethink categories of offences 6. CRUCIAL: quality (clarity, accessibility) of the offences 7. Range of offences incorporating the preventive dimension of criminal law
Germany	1. Coexistence of administrative and criminal sanctioning tracks: the criminal track seems often less fit to achieve results (procedural burdens) 2. Other priorities (terrorism)	Wildlife law – CITES: access to experience to be able to get to know this very specific law; absence of a specialised body in the country	Air pollution: proof issue regarding causality (link to perpetrator)	1. Division between “minor” and “serious” categories of offences: their impact on the range of tools of investigation (e.g. bugging) 2. Structure of offences: the accessoriness requirement 3. Legislative technique with cross-references in laws/legal provisions (including EU regulations); change in one law alters the structure of the law 4. Structure of offences: requirement for proof pollution/damage
Latvia	Insufficient access to information on environmental crime: (a) prosecutor has no right of initiative to examine	–	Proof of “substantial harm”, “serious consequences” : too many offences with these problematic constitutive elements	Air legislation: problematic construction of standards, with annual limits

	administrative cases (b) authorities have no duty to report crime to prosecutors			
The Netherlands	Lack of priority	Possibly issues with the quality of the investigation services, leading to problems of identifying offenders	Possible issues with technical investigations, boundaries between monitoring and investigation, boundaries between criminal and administrative law	1. Possibility of complicated rules, complex identification of offender rules, technical character rules, vague character rules (duty of care) 2. Administrative law logic in environmental law does not match criminal law logic
Spain	1. Coexistence of administrative and criminal sanctioning tracks task division: need to monitor the administration 2. Lack of resources 3. Lack of proper legislative policy (e.g. too often *ad hoc* legislation), especially harmful in view of the dependence of criminal law on administrative law	–	–	1. Fragmented environmental sanctioning law, lacking simplicity and clarity; greater uniformity needed 2. Open notions

(2) Do you observe trends in the prosecution of environmental offences in your country?

15. This table builds on the information detailed under **7.**

Country	**Problems**			
	Context	**Skills**	**The law**	
			Procedural	Substantive
Croatia	Very little prosecution			

Czech Republic	–	Better insight into environmental crime and its impact and better knowledge of how to investigate and prosecute	–	–
France	Criminal policy guidelines give guidance at a national level	Too dependent on the will and commitment of individual prosecutors	–	1. Evolution of toolkit “transaction pénale” for small offences; successful 2. Efforts toward codification and simplification, e.g. environmental inspectorates
Germany	–	–	CITES violations in the Frankfurt region (with airport): pre-trial detention of offenders, upheld by courts	Most convictions are based on waste offences as a prosecution can relatively easily succeed (no pollution/damage requirement in the law, thus no pollution/damage to prove)
Latvia	–	–	Tendency toward increasing complexity hampering investigation and prosecution	Tendency toward increasing complexity
The Netherlands	More administrative enforcement	–	–	Toolkit: more forfeiture of illegal benefits Greater attention to wildlife crime
Spain	–	–	–	–

(3) Did you notice good practices in the prosecution of environmental offences in your country?

16. This third table builds on the information gathered under **8.**

Country	Problems			
	Context	Skills	The law	
			Procedural	Substantive
Croatia	–	–	–	–
Czech Republic	WG dealing with cooperation between law enforcement bodies. Once a year common training for customs, police, inspectorates, prosecutors, judges	–	–	–
France	–	–	Toolkit: development of procedural alternatives for prosecution: conditional dismissal and mediation, criminal transaction, administrative transaction, lump sum fine	Toolkit: damages now include purely ecological damage (new Art. 1246 of Civil Code); raises implementation issues (dependence on specialised expertise)
Germany	–	–	–	–
Latvia	–	–	Issue of “significant” damage/threat: tackled by the prosecutors; striving to make case law	–
The Netherlands	–	–	–	–
Spain	Specialisation: specific police force	Specialisation: environmental prosecutors at provincial level and Supreme Court level markedly improved the prosecution of environmental crimes; continuing need for technical staff and expertise	–	–

B. Judicial practice

(1) What are in practice the sanctions for environmental offences in your country?

17. The main points, reflecting the sum of the information gathered under **9.**, are in our opinion the following.

- First observation – sanctioning practices opting for very low sanctions still exist
- Second observation – pretrial sanctioning is used

Generally low sanctions

– Suspended sentences (prison sentences, fines) for first-time offenders / generally low sanctions: Croatia, Czech Republic

Pretrial sanctioning (eventually in the administrative track)

– Instant proceedings with fines: Croatia
– Regular use of transactions: the Netherlands

- Third observation – sanctioning practices are primarily focusing on punitive sanctioning
- Fourth observation – punitive sanctioning practices are subject to important disparities

Prison sentence

– Only harsh for organised crimes: Czech Republic
– Exceptional: Latvia
– Most often, together with a fine: Spain

Fines

– Usually used: Latvia
– Mainly used: the Netherlands
– A few (fine only): Spain

Community service

– Latvia

(2) Are there specific problems you are aware of with regard to existing sanctioning practice?

18. The information regarding this question, detailed under **10.**, can by summarised using the table applied to the analysis of information on prosecution practice.

Country	**Problems**			
	Context	**Skills**	**The law**	
			Procedural	Substantive
Croatia	–	Judges need training	–	1. Generally low sanctions 2. Environmental damages: no common criteria (prevents legal certainty)
Czech Republic	–	Knowledge of harm: underestimating the impact of offences on the environment and species	–	Generally low sanctions
France	–	–	–	1. Coexistence of administrative and criminal sanctioning tracks: (a) depenalisation debate: what criteria? (b) better articulation and coordination (i) lack of (use of) data (ii) range of offences – create new ones with general scope (e.g. ecocide) (iii) range of offences – create new offences backing administrative/ judicial/remedial sanctions or orders

				2. Toolkit: (a) create new penalties or penalty modalities, e.g. fines linked to business results and higher fines for wildlife crime (b) favour forfeiture of benefits (c) create new general aggravating circumstances, such as involvement in organised crime and offences committed in specially protected areas
Latvia	–	–	–	–
The Netherlands	–	–	–	1. Cases with civil parties: direct damages requirement 2. Impossibility to make the offender pay for the cost of his offence
Spain	–	–	–	Toolkit: practical effectiveness, restoration of the environment, protection of public goods, covering the cost of all of it

(3) Do you observe trends in the sanctioning of environmental offences in your country?

19. Trends mentioned, relate to:

- More effective sanctioning: Czech Republic (trend toward (effective) fines over suspended prison sentences), the Netherlands (trend toward a package of sanctions to enhance effectiveness in sanctioning).

- Sanctioning of legal persons: Spain.

(4) Did you notice good practices in the sanctioning of environmental offences in your country?

20. Good practices mentioned, relate to:

- Tackling the need for case law to clarify vague concepts (Latvia).
- Caring for sanctioning effectiveness (the Netherlands).
- Actual impact of enforcement practice on social concern and consciousness about the importance of environmental protection (Spain).

IV. Observations, considerations and recommendations

21. The feedback on prosecution and sanctioning practice confirms abundantly that in the EU there is no level playing field regarding the enforcement of environmental law.

The absence of a level playing field exists with regard to the sanctions used by the countries (**17.**), but this is only a tiny piece of the picture. A level playing field is equally absent at the level of the criminal sanctioning track as a whole, where important differences in maturity of the processing of environmental crime are evident. This is illustrated by the differences in maturity stages between Croatia, which is still starting up the practice of environmental law enforcement, countries such as France, where environmental law enforcement is clearly established but is meeting a major challenge in the difficult coexistence between administrative and criminal sanctioning tracks, and a country such as the Netherlands, where the remaining issues are a matter of fine-tuning.

Most importantly, the absence of a level playing field appears to have its roots in the system-wide organisation and operation of environmental public law enforcement at large: the coexistence of the administrative and criminal sanctioning tracks, with the gradual possibilities of sanctioning that exist or do not exist out of court, in the prosecutor's office or at the administrative level, and the intelligence with which this wider sanctioning system is embedded in classical criminal and administrative law, identifying or ignoring the possibilities to optimise the system's efficiency and efficacy.

It appears illusory to assume that an EU-wide level playing field in the enforcement of the environmental acquis can be furthered by advancing the criminal sanctioning track alone.

22. The trends in prosecution and sanctioning practice that were communicated tend to be positive trends (e.g., notably, the Czech Republic and Spain). Environmental law enforcement seems to be improving, making progress.

Yet, the impact of terrorism, organised crime and corruption on prosecution capacity is being felt. Those other issues take priority (e.g. Croatia, Germany, Spain and the Netherlands).

23. A surprisingly high number of the difficulties that were communicated point to the legislative policies of the MS, and more precisely to a lack of legislative quality at different crucial levels.

Weaknesses in legislative policy and quality relate to an array of foundation stones of law enforcement. We noted the following:

- lack of adequate legislative policy in general (e.g. Spain);
- inadequacy in addressing the communication of information on environmental crimes throughout the enforcement chain (e.g. Latvia and France, lack of access to what is happening in the inspectorates);
- inadequacy in the organisation of a coherent public law enforcement system (e.g. France and Spain);
- a lack of care for the applicability and enforceability of standards (e.g. air standards in Croatia and Latvia; repeated cross-referencing in Germany's environmental law);
- insufficient attention paid to the phrasing of offences, especially regarding the impact of constitutive elements of their phrasing on the possibility for efficient successful prosecution (e.g. France and Germany);
- underequipped sanctioning toolboxes, in the criminal court (e.g. the Netherlands) and in other components of the system;
- insufficient attention paid to general criminal law (e.g. impact of the classification of offences on investigation tools, mentioned by Germany and France).

This finding had strong support from the members of the working group when evaluating the first draft of this report late May–early June 2017. This strong level of support was expressed again at both the September and December 2017 meetings. The issue of legislative quality – at all levels that matter, from the design of the wider enforcement system, including care of communication issues, to the phrasing of offences – is key to opening up ways forward in prosecution and sanctioning practice. It is not possible to deliver proper work with a poorly designed system and with a poorly drafted tools.

Could EU guidelines backing the general enforcement obligation of member states (Greek Maize case, ECJ) offer the beginning of a solution for these weak legislative policies?

A guide with good practices regarding the legislative design of environmental law enforcement systems and enforcement codes, written to match the situations in the MS, would be a welcome tool to make headway.

24. The information gathered confirms the need for training of prosecutors and judges, at two levels: knowledge of environmental crime and the harm it causes/can cause; and knowledge of environmental law. Areas that seem to require particular attention in training efforts are the knowledge of harm (possibly) caused by environmental offences (e.g. Czech Republic, but also Croatia, France and the Netherlands) and the knowledge of the illicit benefits (illegal income and costs avoided) environmental offences generate/can generate.

When discussing this observation at the December meeting, an addition was made to the scope of the training deemed necessary: prosecutors and judges should also learn about the "big business" environmental crime can be.

Training meets its limits when confronted by a lack of structural specialisation. In the absence of structural specialisation, trained prosecutors and judges move to other positions with other caseloads; training efforts continuously have to start all over again. A proverbial Sisyphus task. The important added value of specialisation (Spain) is not only linked to the guarantee of capacity for prosecution, but also, obviously, to a guarantee of expertise in prosecution.

CITES criminality would benefit from specialisation through the creation of a specific unit competent for the whole country, which could build up expertise thanks to a sufficient number of cases. Experience matters for specialisation and CITES crimes tend to be concentrated at airports and other frontier places.

25. Vague concepts appear to be challenging for prosecution and sanctioning practice (Latvia, the Netherlands, Spain). Gravity factors regarding harm could perhaps provide useful support. We should pursue this issue when working on proportionality.

26. Finally, we were reminded of the educational value of actual environmental law enforcement: it brings the message to society of the importance of environmental protection and stimulates social concern and consciousness regarding the care for our environment (Spain). This result reaches wider than merely general prevention, often mentioned in criminal law analyses.

27. All the above-mentioned points lead us to the following formal recommendations:

(a) Further training of prosecutors and judges remains crucial.

The training must above all aim to create knowledge and understanding of environmental crime and the harm it causes/can cause. Such knowledge and understanding are essential for commitment to the prosecution and sanctioning of environmental offences.

The training must also foster and develop knowledge of environmental law, including its EU dimension, e.g. the sanctioning obligations under ECJ case law and specific provisions in regulations and directives.

Finally, it must inform about the important illegal benefits environmental crimes generate.

Training policy should be aware of its limitations in the absence of structural specialisation of prosecutors and judges.

(b) Environmental law enforcement policy at EU level and in the MS has to build on a public law enforcement vision, namely a vision that encompasses the criminal as well as the administrative sanctioning tracks and approaches them as one enforcement system, creating systemic coherence.

(c) Comprehensive EU guidelines must be developed on good practices regarding the design of environmental law enforcement legislation in the MS. These guidelines have to cover the full enforcement chain, from the monitoring of compliance to the implementation of sanctions imposed. The guidelines also have to cover the sanctioning toolkits to be provided.

(d) It would be helpful if EU guidelines could be developed with regard to the use of vague concepts such as are present in the Eco-crime directive.

Part 2. Proportionality in prosecution and sentencing: an exploration through gravity factors

First draft, 2 December 2016 – 28 February 2017

Evaluated spring 2017, with written feedback from France (email 8 June) and the Netherlands (email 6 June) and feedback communicated at the teleconference meeting of 9 June 2017 (Czech Republic and Germany).

Second draft, 1 September 2017

Evaluated September 2017, with discussion at a WG meeting in Oxford on 21 September 2017 and discussion at the EUFJE Annual Conference in Oxford on 23 September 2017.

Final draft, 25 November 2017

Evaluated 25 November – 8 December 2017, with discussion at the WG meeting in Brussels on 8 December 2017.

Definitive version 11 December 2017, for the LIFE+ interim report

I. Introduction

1. The members of WG4 communicated the aggravating and mitigating factors taken into account under their national legal systems to evaluate the seriousness of environmental offences when deciding whether to prosecute and/or deciding on sentencing.

At our kick-off meeting on 2 December 2016, we decided to use aggravating and mitigating factors as an angle from which to study and discuss the proportionality issue, an issue at the very heart of prosecution policy and sentencing policy. Pursuant to Action B.2 of the LIFE14 GIE/UK/0043 project, our working group has to assess proportionality in the sanctioning of environmental offences. The scope of this assessment is wide open. It includes the manoeuvring between the administrative and the criminal sanctioning tracks, the different sanctioning options prosecutors have, the eventual prosecution decision, the judicial options, and prosecution and sanctioning practices. The working group has to consider these issues in their implications for the implementation of the Eco-crime Directive in the MS's enforcement of environmental law (Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law) (Pb. L. No. 328 of 6 December 2008, to be transposed into national legislation by 26 December 2010).

We opted for this approach for three reasons:

(a) Gravity factors are useful for prosecutors (prosecution decision) as well as judges (sentencing decision).

(b) Gravity factors offer easy and concrete access to a complicated and abstract issue. They are very telling of what drives a criminal enforcement system.

(c) Gravity factors are fit to inform the wide scope of the proportionality assessment required by the project. They also allow exploration of the co-existence of the administrative and criminal sanctioning tracks.

2. We set out to discuss gravity factors by using two touchstone documents:

(a) Recommendation No. 177(2015) on the gravity factors and sentencing principles for the evaluation of offences against birds, and in particular the illegal killing, trapping and trade of wild birds, prepared under the Bern Convention on the conservation of European wildlife and natural habitats at its Standing Committee 35th meeting in Strasbourg, 1–4 December 2015 (hereafter Recommendation No. 177(2015) on gravity factors for the evaluation of offences against birds or Recommendation No. 177(2015)).

(b) The England & Wales Sentencing Guideline for environmental offences of 2014 (hereafter EW Sentencing Guideline).[3]

Recommendation No. 177(2015) contains a list of gravity factors to be used by prosecutors and judges to evaluate the wildlife offences it focuses on.

[3] www.sentencingcouncil.org.uk/wp-content/uploads/Final_Environmental_Offences_Definitive_Guideline_web1.pdf.

The EW Sentencing Guideline formulates criteria to establish categories of seriousness with regard to the infringement of two legal provisions protecting against illegal pollution of air, land and water, and against illegal waste deposit, treatment and disposal. Those seriousness criteria are complemented by gravity and mitigating factors. Aimed at sentencing, both sets of criteria are also fit to inform the prosecution decision.

3. The analysis is structured as follows.

Firstly, we give an overview of the most striking observations, with the issues they raise for further debate and then recommendations.

Next follows an overview of the gravity factors identified by the touchstone documents. We have structured the overview by classifying the gravity factors according to their functionality: taking into account harm (damage) (to humans and the environment), culpability, or both harm and culpability. Indeed, as far as proportionality in sanctioning is relating to the offence *per se* (as opposed to exogenous factors such as the excessive duration of criminal proceedings), (a) the gravity of the facts, mainly measured by their harmfulness, and (b) the culpability of the suspect/defendant/offender are the major beacons for prosecution and sentencing throughout most criminal law systems. The "flags" used to name the seriousness/gravity criteria/factors can be more elaborate;[4] however, it remains the case that it is possible to compare them using these two functionalities. The two functionalities are thus used as a tool to make comparison possible.

Thereafter we give an overview of the gravity factors/aggravating-mitigating circumstances present in the WG members' criminal law systems. Again, we classify those factors according to their functionality: taking into account harm (to humans and the environment), culpability, or both harm and culpability. This is done to be able to compare legal system to legal system.

4. We wrap up this introduction with some key specifics regarding the two major criteria informing prosecution and sentencing decisions: the gravity of the facts, mainly measured by their harmfulness, and the culpability of the suspect/defendant/offender.

(a) The harmfulness of the facts can be limited to actual harm or take into account risk of harm (potential harm) too.

(b) Culpability at the level of the gravity factors is to be distinguished from the *mens rea* issue. When (a level of) culpability is a constitutive element of the offence, necessary to be able to conclude the existence of an offence, we are at the level of the *mens rea* issue. It is possible to have offences where no *mens rea* is required to be able to conclude the existence of an offence fit for prosecution, yet to have culpability stepping in through gravity factors when assessing the seriousness of the file at hand. Take, for instance, the Netherlands: in this country it suffices to have committed an environmental offence to be criminally liable for it, yet guilt steps in for the sentencing decision, making sentences more or less severe according to scales of guilt.

[4] See for instance the Latvian system, described further in this note.

II. Observations, issues for further debate and recommendations

5. All active members of our working group[5] gave information of varying detail on gravity factors (aggravating and mitigating factors): Croatia, the Czech Republic, France, Germany, Latvia, the Netherlands and Spain.

6. When reading these factors, three observations stand out:

(a) The seriousness of environmental offences is mainly or exclusively evaluated using general evaluation criteria, used for all offences.

(b) The vast majority of these general evaluation criteria focus on culpability aspects. Harm aspects are far less prominent. Often, harm is taken into account in criteria that have a double functionality: assessing guilt as well as harm. Thus, for instance, efforts made to mitigate the harm caused by the offence.

(c) Many factors are designed to protect human life and dignity, presupposing a human victim.

7. When comparing with the gravity factors put forward in Recommendation No. 177(2015), designed to evaluate the gravity of offences against birds, one also finds factors relating to culpability and harm. There are, however, two striking differences:

(a) Harm is standardised in a way that closely fits the crimes at stake: wildlife crimes against birds. Such specific shaping of culpability is not present. Culpability is approached in classical, all-embracing terms.

(b) In sheer number, harm criteria dominate culpability criteria. Harm criteria explicitly include potential harm.

8. When turning to the gravity criteria identified by the EW Sentencing Guideline – which, once again, are certainly useful for prosecution decision making too – we observe that the culpability criteria are the basic determinants of sentencing severity. Harm categories operate as annexes to an initially determined culpability category. Risk of harm is not mentioned in the gravity factors but is a factor in the determination of the offence category.

9. At first blush, a conclusion is that proportionality in the criminal sanctioning track is primarily inspired by culpability, even if both harm and culpability matter. At the least, culpability is very strongly anchored in the prosecution and sentencing rationale.[6]

10. One wonders to what extent this feature of criminal law, with culpability "making" proportionality together with harm/harmfulness, has been properly assessed when developing the Eco-crime Directive.

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[5] We excuse Belgium, whose representative has been on leave due to illness.

[6] A recent empirical legal study of administrative fining decisions in serious wildlife cases in Flanders (89 files from 1 January 2015 to 30 June 2016) finds culpability matters in the sanctioning track too. In the cases studied, mitigating circumstances related to culpability can bring down fine levels as informed by harm by 50% to 60%.

Art. 5 of the directive states: "*Members States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive penalties*".

Art. 7 of the directive provides: "*Member States shall take the necessary measures to ensure that legal persons held liable pursuant to article 6 are punishable by effective, proportionate and dissuasive penalties*".

Consideration (5), which focuses on the penalties, puts forward the "*effective protection of the environment*" and sees "*a particular need for more dissuasive penalties for environmentally harmful activities*" (personal accents).

The directive's first motive for the use of criminal law seems to be the harm factor, more specifically environmental harm, not the culpability element.

11. Our formal recommendations are the following:

(a) The impact of the culpability factor on prosecution and sentencing practice – that it contributes significantly to shaping prosecution and sentencing practice and will continue doing so – has to be acknowledged adequately in EU policy development with regard to environmental law enforcement through criminal law. One cannot use a tool well without fully acknowledging what it is and how it operates.

(b) The working group suggests developing gravity factors for each type of environmental crime, such as those developed in Recommendation No. 177(2015) for offences against birds. The backbone of this approach, especially the formulation of harm criteria closely fitting the environmental offences at stake, is fit for generalisation, even if some adaptations are required. Harm criteria have to include explicitly the risk of harm (potential harm).

(c) Training for prosecutors and judges on the harm (potentially) caused by environmental offences has to be furthered. Knowledge and understanding of that harm are fundamental to creating commitment in prosecution and sentencing. The training also has to communicate the important illegal gains that environmental crimes generate.

III. Gravity factors in the touchstone documents: Recommendation No. 177(2015) and the EW Sentencing Guidelines

A. Wildlife crime: Recommendation No. 177(2015)

Table 1: Gravity factors for offences against birds

Harm	Harm/guilt	Guilt
Conservation status of the species	Commercial motivation	Illegal gain/quantum
Impact risk for ecosystem	–	Professional duty on defendant to avoid committing offence

Legal obligation to protect under international legislation	–	Intent and recklessness by defendant
Indiscriminate method used in committing offence	–	History/recidivism
Prevalence of offence and need for deterrence	–	–
Scale of offending (number of specimens involved, assessed in absolute or relative terms)	–	–

B. Illegal pollution: the EW Sentencing Guideline

Offence gravity categories and how they combine

Table 2: Offence gravity categories are a matter of harm and culpability

Harm	**Culpability**
Category 1 ▪ Polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects ▪ Major adverse effect or damage to air or water quality, amenity value, or property ▪ Polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health, or flora ▪ Major costs incurred through clean-up, site restoration or animal rehabilitation ▪ Major interference with, prevention or undermining of other lawful activities or regulatory regime due to offence	*Deliberate* *Where the offender intentionally breached, or flagrantly disregarded, the law °Intentional breach of or flagrant disregard for the law by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation OR Deliberate failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence
Category 2 ▪ Significant adverse effect or damage to air or water quality, amenity value, or property ▪ Significant adverse effect on human health or quality of life, animal health or flora ▪ Significant costs incurred through clean-up, site restoration or animal rehabilitation ▪ Significant interference with, prevention or undermining of other lawful activities or regulatory regime due to offence ▪ Risk of category 1 harm	*Reckless* *Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken °Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation

	OR Reckless failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence
Category 3 ▪ Minor, localised adverse effect or damage to air or water quality, amenity value, or property ▪ Minor adverse effect on human health or quality of life, animal health or flora ▪ Low costs incurred through clean-up, site restoration or animal rehabilitation ▪ Limited interference with, prevention or undermining of other lawful activities or regulatory regime due to offence ▪ Risk of category 2 harm	*Negligent* *Offence committed through act or omission which a person exercising reasonable care would not commit °Failure by the organisation as a whole to take reasonable care to put in pace and enforce proper systems for avoiding commission of the offence
Category 4 ▪ Risk of category 3 harm	*Low or no culpability* *Offence committed with little or no fault, for example by genuine accident despite the presence of proper preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events °Offence committed with little or no fault on the part of the organisation as a whole, for example by accident or the act of a rogue employee and despite the presence and due enforcement of all reasonably required preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events

*: Criteria pertaining to natural persons.
°: Criteria pertaining to legal persons.

Table 3: Offence gravity categories – culpability comes first

Deliberate *Highest punishment range*	Category 1 harm Category 2 harm Category 3 harm Category 4 harm
Reckless	Category 1 harm Category 2 harm Category 3 harm

	Category 4 harm
Negligent	Category 1 harm Category 2 harm Category 3 harm Category 4 harm
Low/no culpability *Lowest punishment range*	Category 1 harm Category 2 harm Category 3 harm Category 4 harm

Adjusting the sentencing: aggravating and mitigating factors

Table 4: Fine-tuning the sentence – aggravating and mitigating factors

Harm	Harm/guilt	Guilt
Aggravating Location of the offence, for example, near housing, schools, livestock or environmentally sensitive sites Established evidence of wider/community impact **Mitigating** –	**Aggravating** Repeated incidents of offending or offending over an extended period of time, where not charged separately Deliberate concealment of illegal nature of activity Ignoring risks identified by employees or others Breach of any order **Mitigating** Compensation paid voluntarily to remedy harm caused Evidence of steps taken to remedy problem One-off event not commercially motivated Effective compliance and ethics programme°	**Aggravating** Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction (S) Offence committed when on bail* (S) History of non-compliance with warnings by regulator Offence committed for financial gain Obstruction of justice Offence committed whilst on licence* **Mitigating** No previous convictions or no relevant/recent convictions Remorse

	Self-reporting, co-operation and acceptance of responsibility	Little or no financial gain Good character and/or exemplary conduct Mental disorder or learning disability, where linked to the commission of the offence* Serious medical conditions requiring urgent, intensive of long-term treatment* Age and/or lack of maturity where it affects the responsibility of the offender* Sole or primary carer for dependent relatives*

°: Factors pertaining to legal persons only.
*: Factors pertaining to natural persons only.
S: Statutory factors.
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IV. WG4 MS: aggravating and mitigating circumstances

Table 5: WG4 MS – aggravating and mitigating circumstances

Countries	Harm	Harm/Guilt	Guilt
Croatia *General*	Degree of threat to or violation of legally protected good Consequences of the criminal offence Efforts to repair the damage	Manner of commission His/her conduct following the commission of the criminal offence	Degree of guilt Motive for committing the criminal offence Degree to which the perpetrator's duties have been violated Perpetrator's prior life Relationship to the victim
Czech Republic *General* *Statutory* *Specific circumstances exist to some extent* *Statutory*	**Aggravating** Caused greater damage or another larger harmful effect by the criminal offence Committed the criminal offence to a larger extent, on more items or more persons Was committing the criminal offence or continued in its commission for a longer time **Mitigating** Caused lower damage or any other less harmful consequence	**Aggravating** Offence against a person participating in saving life and health or in protection of property Offence during an emergency situation, natural disaster or another event seriously threatening life, public order or property, or on territory where evacuation is in progress or has been carried out Committed other criminal offences Committed the criminal offence as an organiser, a member of an	**Aggravating** Offence with premeditation or after previous deliberation Offence out of greed, for revenge, due to hatred relating to nationality, ethnic, racial, religious, class or another similar hatred or out of another particularly condemnable motive Offence in a brutal or agonising manner, insidiously, with special deceit or in a similar manner Offence by exploiting another person's distress, duress,

Countries	Harm	Harm/Guilt	Guilt
	by committing the criminal offence	organised group or a member of a conspiracy **Mitigating** Participated in elimination of the harmful consequences of the criminal offence or voluntarily compensated the caused damage Reported his criminal offence to the authorities Assisted in clarification of his criminal activity or significantly contributed to clarification of a criminal offence committed by another Contributed as an accused accomplice to clarification of criminal activity committed by the members of an organised group, in connection with an organised group or for the benefit of an organised criminal group	vulnerability, dependence or subordination Breached a special duty by committing the criminal offence Abused his occupation, position or function when committing the criminal offence Offence to the harm of a child, close person, person pregnant, ill, disabled, of high age or impuissant Led another person, especially a child under the age of 15, a juvenile or a person of an age close to the legal age of juveniles, to commit an act otherwise criminal, into misconduct or to commit a criminal offence Acquired higher profit by the criminal offence Had already been sentenced for a criminal offence; the court is authorised not to consider such a fact as an aggravating circumstance according to the nature of the previous conviction, particularly in respect of the significance of a protected interest affected by such an act, the manner of commission of

Countries	Harm	Harm/Guilt	Guilt
			such an act and its consequences, the circumstances under which it was committed, the offender's personality, the extent of his culpability, his motives and the period which has passed since his last conviction; concerning an offender of the criminal offence committed in a state induced by a mental disorder, or an offender who indulges in abuse of an addictive substance and has committed the criminal offence under its influence or in connection with its abuse, also when he commenced treatment or took other necessary measures for its commencement **Mitigating** Offence for the first time and under conditions not dependent on him Offence under distraction, out of compassion or by lack of life experiences Offence under dependence or subordination Offence under duress or compulsion

Countries	Harm	Harm/Guilt	Guilt
			Offence under oppressive personal or family circumstances, which he did not cause himself Offence in the age close to the age of juveniles Offence by averting an attack or any other danger without meeting the conditions for necessary defence or extreme necessity or otherwise exceeding the limits of admissible risk or limits of other circumstance precluding the unlawfulness Offence in legal error, which could be avoided Regretted sincerely the criminal offence Led an upright life before committing the criminal offence
France	**Suggestion** Double punishments when the offence is committed in a special protection area	–	–
Germany *General*	The damage could be an aggravating/mitigating factor for the sentence	–	*Punishment* is determined only by the individual guilt of the offender

Countries	Harm	Harm/Guilt	Guilt
Section 46 Criminal Code (list of some 100 p.)			Seizing illegal profits is not a part of punishment
Latvia *General* *Statutory* In determining the *type* of punishment, the character (degree of danger, seriousness, culpability, reason etc.) of and *harm caused* by the criminal offence, as well as the personality of the offender shall be taken into account In determining *the amount of punishment*, the circumstances mitigating or aggravating the liability shall be taken into account Non-statutory mitigating circumstances related to the criminal offence can be taken into account	**Aggravating** Offence has caused serious consequences Offence was committed employing weapons or explosives, or in some other generally dangerous way **Mitigating** –	**Aggravating** Offence was committed while in a group of persons Offence was committed against a woman, knowing her to be pregnant Offence was committed against a person who has not attained 16 years of age or against a person taking advantage of his or her helpless condition or of infirmity due to old age Offence was committed taking advantage of the circumstances of a public disaster **Mitigating** The offender has actively furthered the disclosure and investigation of the criminal offence The offender has voluntarily compensated the harm caused by the criminal offence to the victim or has eliminated the harm caused	**Aggravating** Offence constitutes recidivism of criminal offences Offence was committed taking advantage in bad faith of an official position or the trust of another person Offence was committed against a person taking advantage of his or her official, financial or other dependence on the offender Offence was committed with particular cruelty or with humiliation of the victim Offence was committed out of a desire to acquire property Offence was committed under the influence of alcohol, narcotic, psychotropic, toxic or other intoxicating substances The person committing the criminal offence, for purposes of having his or her punishment reduced, has knowingly provided false information

Countries	Harm	Harm/Guilt	Guilt
		The offender has facilitated the disclosure of a crime of another person	regarding a criminal offence committed by another person Offence was committed due to racist, national, ethnic or religious motives Offence related to violence or threats of violence, or the criminal offence against morality and sexual inviolability was committed against a person to whom the perpetrator is related in the first or the second degree of kinship, against the spouse or former spouse, or against a person with whom the perpetrator is or has been in unregistered marital relationship, or against a person with whom the perpetrator has a joint (single) household **Mitigating** The offender has admitted his or her guilt, has freely confessed and has regretted the criminal offence committed The criminal offence was committed as a result of unlawful or immoral behaviour of the victim The criminal offence was committed exceeding the

Countries	Harm	Harm/Guilt	Guilt
			conditions regarding necessary self-defence, extreme necessity, detention of the person committing the criminal offence, justifiable professional risk, the legality of the execution of a command and order Offence was committed by a person in a state of diminished mental capacity
Netherlands *General* *Partly statutory, partly judicial policy (Landelijk overleg voorzitters strafkamers)* Other: Financial capacity of suspect Suspect is a legal or natural person Duration of the procedure/ undue delay Irregularities in the application of compulsory measures	**Aggravating/mitigating** The offence had an impact on market functioning/falsified competition Endangering offence	**Aggravating/mitigating** Duration of the offence The extent to which the negative results have been undone Type of collaboration during the preliminary investigation	**Aggravating/mitigating** Extent to which the suspect acquired benefits from the offence The suspect put an end to the offence by himself The role of the suspect as regards co-perpetrators (co-perpetrator, accomplice, instigator, …) Repeat offender Offence committed in professional context Extent of guilt (intentional or not) Type of victim (professional, non-professional, public authority) and the role of the victim in the offence

Countries	Harm	Harm/Guilt	Guilt
An administrative remedial sanction has already been imposed			
Spain *Statutory (Criminal Code)* *General* *One specific* Other factors: Delay, extraordinary and undue, in the processing of the procedure, whenever not attributable to the accused without proportion to the complexity of the case	**Aggravating** Higher penalties imposed when the conduct affects a protected natural site **Mitigating** –	**Aggravating** – **Mitigating** Confession of the crime to the authorities before knowing of the judicial procedure against the offender To have undertaken to repair the damage done to the victim, or to reduce its effects, at any time prior to the trial and the procedure	**Aggravating** Treachery, which is when the offender commits any of the offences against the persons using in the implementation means, ways or forms that tend directly or especially to secure it, without the risk that could come for your person from the defence of the victim To commit the offence through disguise, with abuse of superiority or taking advantage of the circumstances of time, place or assistance of other persons to weaken the defence of the offended or facilitate the impunity of offenders To commit the offence through price, reward or promise To commit the offence for racist, anti-semitic reasons or another kind of discrimination based on ideology, religion or beliefs of the victim, ethnicity, race or nation to which the victim belongs, their sexual orientation or identity, reasons of gender,

Countries	Harm	Harm/Guilt	Guilt
			the disease that they suffer or their disability To increase deliberate and inhumanely the suffering of the victim, causing them unnecessary suffering for the execution of the offence To act with abuse of trust To have taken advantage of being part of public staff (civil servant) Recidivism, when the offender has been convicted of an offence covered by the same title of this Code, as long as it is of the same nature. The strong condemnation of judges or courts imposed in other MS of the European Union will produce the effects of recidivism unless the criminal record has been cancelled or could be in accordance with Spanish law **Mitigating** Crime was committed because of the offender's serious addiction to substances Act by causes or stimuli so powerful that have produced

Countries	Harm	Harm/Guilt	Guilt
			outburst, obfuscation or another passionate or similar state

Part 3. Training prosecutors and judges for the prosecution and sanctioning of environmental offences: topics and tools

Training matrix

23 June 2017

I. Preliminary notes

1. This training matrix was adapted from a matrix developed by the DOTCOM Waste project. We want to acknowledge this source of inspiration.

2. The Working Group Sanctioning, Prosecution and Judicial Practices, hereafter "WG", brings together prosecutors and judges from Belgium, Croatia, the Czech Republic, France, Germany, Latvia, the Netherlands and Spain. The WG worked on this training matrix from late November 2016 to mid-June 2017. The matrix approach and a first draft of the matrix were discussed in Brussels on 2 December 2016. Following input given throughout December 2016 and January 2017, a second draft was developed in February. This draft was circulated again within the WG and was discussed at a WG teleconference on 9 June 2017. The actual document incorporates input by email and the teleconference discussion outputs.

3. The identification of the main topics requiring training and the identification of subtopics for each main topic (columns to the left of the matrix) are an initial important outcome of the work of the WG. Two remarks come with those topics and subtopics: (a) the importance is stressed of using training to raise the awareness and understanding of environmental crimes; and (b) some training topics should definitely involve inspectorates and police, such as for the forfeiture of illegal benefits (when investigating the cases, the financial dimension should be pursued in a way that fits the needs of the prosecution).

4. With regard to the training methods (columns in the centre of the training matrix), workshops with practice-oriented case studies are considered to be the most effective and useful ways to learn. However, the complementarity between training methods is to be stressed. Webinars/e-learning are, for instance, excellent at preparing delegates for a workshop; experience shows workshop attendance to be more fruitful when combined with a webinar beforehand. Easy and cheap accessibility to all is, of course, also an advantage of webinars as compared to workshops. In the same vein, an EU manual (e-book) for prosecutors and judges that is practice-oriented, including scientific information on the ecological and socio-economic impact of environmental crime, would also be a very welcome basic working tool.

5. The WG did not attempt to obtain a full overview of existing materials/initiatives/synergies, some of which are mentioned below.

II. The training matrix

A. Prosecution

Main topics	Subtopics	Self-learning	Webinar/ e-learning	Workshop/case study/exercise	Existing materials/ initiatives/ synergies
Types of environmental crime	Awareness of environmental crimes Organised vs. non-organised, local vs. international, etc. Differences in prosecution for the different types	EU manual for prosecutors, practice-oriented, including scientific information on the ecological and socio-economic impact of environmental crime	–	–	–
Knowledge of environmental law	Environmental law in general Knowledge and understanding of the relationship between the administrative authorities and the law	–	–	–	–
Coexistence of the criminal and the	General: How is the coexistence organised? Who	–	–	–	–

Main topics	Subtopics	Self-learning	Webinar/ e-learning	Workshop/case study/exercise	Existing materials/ initiatives/ synergies
administrative sanctioning tracks	decides what track to use for what type of sanctioning? What are the possible interactions when handling a case?				
	Communication with administrative enforcement actors				
Prosecution strategy	An option for prosecutors to apply criteria to dispatch a case along the administrative sanctioning track	–	–	–	The Flemish *Prioriteitennota Vervolgingsbeleid* 2012
	Alternatives to prosecution on the criminal sanctioning track (options instead of going to court)	–	Webinar	Case studies	–
	Optimising the choice of the charge	–	Webinar	Case studies	–
	Gravity factors as relating to (specific types of)	–	Webinar	–	England & Wales Sentencing Guideline

Main topics	Subtopics	Self-learning	Webinar/ e-learning	Workshop/case study/exercise	Existing materials/ initiatives/ synergies
	environmental offences				Bern Convention, recommendation No. 177 (2015) on gravity factors for the evaluation of offences against birds
	Broader perspectives: looking beyond environmental law (health, social security, etc.)	–	Webinar	Case studies	–
Criminal trial procedure in environmental cases	The law regarding the gathering and adduction of evidence Investigation (evidence gathering) Coordinating evidence gathering Best practices with regard to efficient collection of relevant and effective evidence	–	–	Case studies Failed cases – dos and don'ts Sample of successful and failed prosecutions	–

Main topics	Subtopics	Self-learning	Webinar/ e-learning	Workshop/case study/exercise	Existing materials/ initiatives/ synergies
Cross-border crime	International cooperation Law ruling cross-border crime management How to handle such cases	–	Webinar	Case studies	–
Sentencing request	Optimising the full range of sanctioning options	–	Webinar	–	ENPE-LIFE+ database
Forfeiture of illegal benefits	How to handle this sanctioning option, including evidence issues and the valuation of benefits	–	Webinar	Case studies	–

B. Sentencing

Main topics	Subtopics	Self-learning	Webinar/ e-learning	Workshop/case study/exercise	Existing materials/ initiatives/ synergies
Types of environmental crime	Awareness of environmental crimes Organised vs. non-organised, local vs. international, …	EU manual for judges, practice-oriented, including scientific information on the ecological and socio-economic impact of environmental crime	Webinar on waste crime for judges Webinar on wildlife crime for judges	–	DOTCOM project MIKT project UNEP manual
Knowledge of environmental law	Environmental law in general Knowledge and understanding of the relationship between the administrative authorities and the law	–	–	Case studies: Explaining definitions by giving examples from cases Demonstrating different interpretations, comparison of cases	–
Convicting (or not)	Ruling on the evidence presented	–	–	–	–
	Techniques for appreciating facts regarding the offence and criminal liability	–	Webinar	Case studies	–

Main topics	Subtopics	Self-learning	Webinar/ e-learning	Workshop/case study/exercise	Existing materials/ initiatives/ synergies
Sentencing	"Effective, proportionate and dissuasive penalties" as per EU legislation	–	–	–	England & Wales Sentencing Guideline ENPE-LIFE+ database
	Developing common criteria regarding environmental damage	–	–	–	–
	Gravity factors as relating to (specific types of) environmental offences	–	Webinar	Case law sample	Bern Convention, recommendation No. 177 (2015) on gravity factors for the evaluation of offences against birds
	Optimising the full range of sentencing options	–	Webinar	Case law sample	–
	Best practices in motivating sentences	–	Webinar	Case law sample	–
Forfeiture of illegal benefits	How to handle this sanctioning option, including evidence	–	Webinar	Case law sample	–

Main topics	Subtopics	Self-learning	Webinar/ e-learning	Workshop/case study/exercise	Existing materials/ initiatives/ synergies
	issues and the valuation of benefits				

Annex. Working Group members

Dr. Carole M. BILLIET, Belgium
Academic/Judge

Education
Master in Law
Master in Anthropology
Ph.D. in Law

Carole Billiet is Research Director Environmental Law at the Center for Environmental and Energy Law (CM&ER) at Ghent University. For many years her research has focused on public law enforcement, especially the administrative enforcement of environmental law. Her theoretical work is complemented by empirical research on, for instance, inspection policies, criminal and administrative fining, and criminal and administrative remedial sanctioning. She is currently working on public law enforcement systems for collaborative policy fields (national heritage, child care), the relations between enforcement actors (inspections – prosecutors, administrations – criminal courts, NGOs – criminal courts) and the EU law dimension of environmental law enforcement. She is chair of the working group *Sanctioning, Prosecution and Judicial Practice* of the EU LIFE+ project LIFE14 GIE/UK/000043 (2015–20) aiming to improve capacity and effectiveness in the prosecution of environmental crime throughout the EU (www.environmentalprosecutors.eu/eu-life-project). She also serves as a member of the Technical Advisory Committee for the UN Environment and UNICRI project “Combating crimes that have serious impact on the environment: state of knowledge on approaches” (2017).

Carole Billiet is also a lawyer at the Brussels Bar. She has served as vice-president and acting president of the Environmental Enforcement Court of Flanders, an administrative high court created to support the enforcement of environmental law in the Flemish Region (2009–15), and as a member of the Environmental College of the Brussels Capital Region, an independent body deciding on appeals against environmental permitting decisions and administrative sanctions imposed for environmental offences (2000–09).

Publications

See website: https://biblio.ugent.be/person/801001589241

Sara BOOGERS, Belgium
Public Prosecutor

Graduating in 1997 as a Master of Law at Antwerp University, Sara started her professional career as a lawyer in a general practice law office.

In 2002 she passed her exams for the Justice Department and started working as a magistrate in the Public Prosecutor's Office in Antwerp (in the Flemish Region of Belgium), where she continues to work today. In December 2016 she was promoted to First (or Senior) Deputy Public Prosecutor.

Sara started her specialisation in environmental law enforcement in 2005 and has continued to work in this field ever since. Sara has also been a member of the Flemish High Council of Environmental Enforcement since February 2011. During the last few years she has been a speaker and participant at different (international) conferences and workshops on EU Environmental Law (a.o. Inece, Efface, Eurojust Strategic Meeting Environmental Crime, EU Workshop on the Contribution of the Environmental Crime Directive to the fight against organised environmental crime, EU Expert meeting on the enforcement-related elements of the future EU Action Plan against wildlife trafficking).

Jegors CEKANOVSKIS, Latvia
Public Prosecutor

Prosecutor in the Specialised Multifield Prosecution Office, Riga, Latvia.
Promoted District Prosecutor in October 2017.

Marc CLEMENT, France
Judge

Since 2012 Marc Clément has been an administrative judge at the Administrative Court of Appeal of Lyon (France). He is a judge in a chamber dealing with environmental cases. In addition, he has since 2014 been a member of the French Environmental Authority (*Autorité environnementale*, French national committee providing opinions on the quality of impact assessments in the context of public participation) and from 2015 a member of the Deontological Committee of the *Institut de Radioprotection et de Sûreté Nucléaire* (nuclear safety). He was appointed Member of the Aarhus Convention Compliance Committee (UNECE) by the Meeting of the Parties of the Convention in September 2017.

He was, from 2006 to 2012, lawyer at the Directorate General Environment of the European Commission in charge of infringements. From 2004 to 2006, Marc was legal adviser to the European Environment Agency (Copenhagen). He was previously a judge at the Administrative Court of Lyon and started his career as researcher for private companies (Lyonnaise des Eaux, EDF).

In 2010 he published *Environment European Law* (Editions Larcier, third edition published in 2016) and contributed to the books *Waste Management in European Law* (Eleven International Publishing, 2014) and *The Habitats Directive in its EU Environmental Law Context* (Routledge, November 2014*)*, in which he authored "Global objectives and scope of the Habitats Directive: What does the obligation of result mean in practice?" He recently published for Telos "Jurisprudence 2.0" (www.telos-eu.com/fr/societe/justice-et-police/jurisprudence-20.html), for *Recueil Dalloz* in January 2017 "Do judges need to fear Artificial Intelligence?" and in the *Paris Innovation Review* in October 2017 "Blockchain, smart contracts: what else ?"

Marc has been invited to speak at many international conferences in the domain of the environment and, as a recognised expert in environmental law, has participated in many international cooperation projects (Beijing, June 2011 "Codification of Chinese environmental law", cooperative action between France and the Chinese Ministry of Environment; Belgrade, December 2011, OSCE "Challenges to better implementation of environmental legislation in the West Balkan Region"; Indonesia, October 2015, "Support for Reform of the Justice Sector in Indonesia (SUSTAIN)", project managed by UNDP).

He is a member of the Environment Working Group of the Association of European Administrative Judges (www.aeaj.org) and a founding member of the Council of the European Law Institute (www.europeanlawinstitute.eu). He was member of expert groups at the European Commission in the domains of Access to Justice and the Training of Judges in the Environment.

Ksenija DIMEC, Croatia
Judge

Graduating in 1993 as a Master of Law at the University of Rijeka, Ksenija Dimec started her professional career as an apprentice in attorney's office. In 1996 she passed her bar exams and in 1998 she was appointed as a judge of the Rijeka Municipal Court, civil division. In 2003 she spent seven months working as a lawyer before the European Court for Human Rights in Strasbourg. In 2009 she was appointed as a judge of the Rijeka County Court (Court of Appeal), civil division.

She has been involved in many EU-funded projects as an expert or collaborator: "Support to the Judicial Academy: Developing a training system for future judges and prosecutors"; "Professional development of judicial advisors and future judges and state attorneys through the establishment of a self-sustainable training system"; European Judicial Cooperation in Fundamental Rights – practice of national courts (JUST/2012/FRAC/AG/2755); "Protecting the civil rights of European citizens – a multidisciplinary approach" (JUST/2015/JTRA/AG/EJTR/8646); Actiones Project (Active Charter Training through Interaction of National Experiences).

Ksenija is also a trainer at the Croatian Judicial Academy and to date has held more than 70 workshops for judges, prosecutors and trainees in all fields of civil and EU law. In June 2015 she was a member of the jury in the semi-finals of the THEMIS competition in International Cooperation in Civil Matters –European Civil Procedure, held in Luxembourg and organised by EJTN.

M. Lucia GIRÓN CONDE, Spain
Public Prosecutor

Lucia Girón Conde graduated in law in 1993 at the University of Santiago de Compostela. In 2003 she passed her law exams and, after a training period in Madrid, started work as a Public Prosecutor at the Public Prosecutor's Office in Bilbao. Since 2005 she has worked at the Public Prosecutor's Office in Lugo where she still works today. In January 2016 she was promoted to Senior Public Prosecutor.

Since 2007 Lucia has been the Lugo delegate to the Spanish Network of Prosecutors for the Environment and she has participated in several EJTN European seminars and ERA workshops, especially in the field of environmental law. In 2008 she participated in the EJTN Exchange Programme for Prosecutors and Judges in Belgium at the Public Prosecutor's Office in Tournai.

In 2015, 2016 and 2017 she collaborated as a lecturer with the Spanish Open University in several conferences on criminal law subjects.

Françoise NESI, France
Judge

Françoise Nési has a Master's in private law and a degree in political science from the University of Bordeaux. She is a Knight of the National Order of Merit (chevalier de l'Ordre du Mérite).

She has been a magistrate since 1978, dealing with environmental cases under civil law as a legal secretary in the Court of Cassation, third civil chamber, from 2001 to 2011, and under criminal law as a judge in the Court of Cassation, criminal chamber, since 2014.

As a member of the EUFJE, Françoise has been its secretary general and, since 2008, vice president. She is a member of various multidisciplinary working groups established by the ministries of justice, ecology and sustainable development and the Court of Cassation on the themes of ecological governance, environmental responsibility, the nomenclature of environmental damage, redress for ecological damage, and the prevention and control of environmental offences.

Françoise is a lecturer at the University of Paris Descartes responsible for teaching on the sustainable development Master's: sustainable development and health, environmental responsibility, contaminated soils and sites.

Els van DIE, The Netherlands
Judge

After graduating in History of Art and Archaeology at Utrecht University in 1987, in 1991 Els van Die graduated as a Master in Law (civil and criminal) at the same university. She was then a lecturer in criminal law at the University of Leiden, before becoming a clerk (scientific assistant) at Scientific Bureau of the Dutch Supreme Court. In 2000 she became a prosecutor at the district court of the Hague. In 2007 Els was appointed as a prosecutor at the Court of Appeal in the Hague, becoming a judge at the same court in 2014.

Els specialised in economic and environmental criminal law at university and has continued to work in these fields ever since, as a scientist, prosecutor and judge. In July 2016 she became a member of EUFJE. Since her studies, she has participated in many international conferences and workshops on international criminal law, EU fraud and environmental law.

Kateřina WEISSOVÁ, Czech Republic
Public Prosecutor at the High Prosecutor's Office, Prague

Kateřina Weissová joined the Czech prosecution service in 2002 after law studies at Charles University in Prague. She started as a trainee and became a prosecutor at the Regional Prosecutor's Office for Prague 6 and focused mainly on economic crime and mutual legal assistance. As part of her work Kateřina also prosecuted cases of illegal trafficking in endangered species, including export and import of endangered species via Prague airport. Since 2015 she has worked as member of the national working group for CITES, which was established to facilitate mutual cooperation among law enforcement agencies in this area, to train their employees and observe and react to new trends in environmental crime.

Since 2016 she has represented Czech prosecutors in the European Network of Prosecutors for the Environment. In her current position she particularly focuses on coordinating activities related to environmental crime within the prosecution service in the Czech Republic, enabling exchange of know-how among prosecutors, training colleagues and establishing new contacts for better cooperation.

Wanja WELKE, Germany
Public Prosecutor

Wanja Welke studied law in Frankfurt/Main, Geneva (Switzerland) and Perth (Australia). He has been a prosecutor since 2003. Between 2006 and 2011 he worked in the department responsible for combatting fraud and corruption in the healthcare system at the General Prosecution Office in Frankfurt. He is currently a member of the Department for Environmental Crime and Consumer Protection at the Public Prosecutor's Office in Frankfurt. He is in charge of investigations and court trials concerning pollution (water or soil), illegal shipment and

treatment of waste, violations of the regulations on endangered species (wildlife crimes), food and pharmaceutical law, and violations of the Foreign Trade and Payments Act.

Since 2012 Wanja has participated in various international seminars and workshops in the field of environmental law, particularly on waste and wildlife crime.

Anja WÜST, Germany
Public Prosecutor

Anja Wüst studied law in Frankfurt/Main and Paris and passed her state examination in the federal state of Hesse. She has been a public prosecutor since 2005.

Since 2008 she has worked full time in the Department for Environmental Crime and Consumer Protection at the Public Prosecutor's Office in Frankfurt. She is in charge of investigations and court trials concerning pollution of air, water or soil, illegal shipment and treatment of waste, violations of the regulations on endangered species, violations of the Chemicals Act, cases of cruelty to animals, further investigations concerning the illegal trade of pharmaceuticals, cases of food fraud and offences against food security laws, and finally violations of the Foreign Trade and Payments Act. She is also in charge of international legal assistance in environmental cases.

Since 2012 she has participated in a number of international workshops in the field of the prosecution of environmental crime and has attended several further training courses concerning waste and wildlife crime, organised by the European Institute of Public Administration (EIPA) and the Academy of European Law (ERA).

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