Sanctioning Environmental Crime (WG4)

Final report
Key observations and recommendations

2016–2020

LIFE-ENPE Project
LIFE14 GIE/UK/000043

Action B2: Working groups to improve consistency and capacity

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List of abbreviations

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EAW	European arrest warrant
ECJ	European Court of Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EFO	European freezing order
EIO	European investigation order
EJN	European Judicial Network
EJTN	European Judicial Training Network
ENPE	European Network of Prosecutors for the Environment
ERA	Academy of European Law
EU	European Union
EUFJE	European Union Forum of Judges for the Environment
EUROPOL	European Police Office
EUTR	EU Timber Regulation
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
INECE	International Network for Environmental Compliance and Enforcement
JIT	joint investigation team
LIFE NT	LIFE Natura Themis
LIFE RfH	LIFE Reason for Hope
MLA	mutual legal assistance
MS	member state or member states
NGO	non-governmental organisation
NHMC	Natural History Museum of Crete
WG	Working Group

I. Introduction

A. LIFE-ENPE Project Working Groups

1. The LIFE-ENPE project LIFE14 GIE/UK/000043 has formed four working groups (WGs) to build capacity and consistency in implementing EU environmental law. The working groups are facilitating achievement of 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 combating environmental crime"*.

The role of the WGs is to build capacity and consistency in implementing EU environmental law, with their activities forming a key project preparatory Action (Action B2: Working groups to improve consistency and capacity). The WGs comprise specialists in each area of focus, the majority of whom are prosecutors, although some judges and technical specialists (non-legal) were also invited to contribute.

Over three and a half years, from December 2016 to June 2020,[1] the LIFE-ENPE WG activity has resulted in a series of awareness-raising, training and guidance outputs comprising events (e.g. workshops), training packs and webinars for onward sharing and promulgation amongst all LIFE-ENPE stakeholders.

The LIFE-ENPE project proposal sets out the methods[2] the WGs would need to employ to achieve this, including the convening of three workshops or meetings a year, with one coinciding with the annual conference. At each, the participants would:

- *"Explore where prosecutor and judicial capacity-building is most needed and how this can be best achieved;*
- *Examine current practices across Europe;*
- *Gather practitioner views and practical examples of the management of serious and complex cases; and*
- *Identify best practice."*

[1] Activity extended by six months due to the Covid-19 pandemic.
[2] LIFE14 GIE/UK 000043 Technical Application Forms Part B – technical summary and overall context of the project, p. 60.

B. Working Group 4

2. Working Group 4 on Sanctioning, Prosecution and Judicial Practice (WG4) 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. It 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.

WG4 started its activities in December 2016 and concluded them in July 2020. At the offset of its activities, the group comprised 11 members, including both prosecutors and judges, from 8 countries. Not all of them could participate in the WG activities to the very end: three of them (*) left between mid-2017 and mid-2018.

WG member	**Country**	**Role**
Carole M. Billiet	Belgium	Academic/Judge
Sara Boogers	Belgium	Prosecutor
Ksenija Dimec	Croatia	Judge
Kateřina Weissová	Czech Republic	Prosecutor
Marc Clément*	France	Judge
Françoise Nési	France	Judge
Wanja Welke*	Germany	Prosecutor
Anja Wüst	Germany	Prosecutor
Jegors Cekanovskis*	Latvia	Prosecutor
Els van Die	Netherlands	Judge
Lucía Girón Conde	Spain	Prosecutor

3. The findings of the WG's activity in its first (December 2016–December 2017), second (December 2017–December 2018) and third (December 2018–March 2020) working years, have been published:[3]

- C.M. Billiet (ed.), K. Dimec, K. Weissová, M. Clément, F. Nési, W. Welke, A. Wüst, J. Cekanovskis, E. van Die and L. Girón Conde, *Sanctioning environmental crime: prosecution and judicial practices*, LIFE-ENPE Project LIFE14 GIE/UK/000043, March 2018, 80 pp.

- C.M. Billiet (ed.), S. Boogers, K. Dimec, K. Weissová, F. Nési, A. Wüst, E. van Die and L. Girón Conde, *Sanctioning environmental crime: international cooperation and specialisation of the judiciary*, LIFE-ENPE Project LIFE14 GIE/UK/000043, March 2019, 67 pp.

- C.M. Billiet (ed.), S. Boogers, K. Dimec, K. Weissová, F. Nési, A. Wüst, E. van Die and L. Girón Conde, *Sanctioning environmental crime: tools and strategies for remedial action at the pre-trial and trial stages*, LIFE-ENPE Project LIFE14 GIE/UK/000043, April 2020, 70 pp.

All three interim reports are the outcome of a collaborative writing process and allow the reader to follow the development of the analysis as it unfolds. Each of them results in observations and recommendations for policy and law makers at EU and national level.

4. This final synthesis report builds on the three previous reports. Its starting point is the observations and recommendations for policy and law makers from December 2017, December 2018 and March 2020. Reflecting on those as a whole, WG4 deepened the analysis one step further to draw final key observations and recommendations for policy and law makers at EU and national level. The synthesis report was discussed for the first time at a meeting in Brussels on 6 March 2020 and for a second time at a videoconference meeting on 19 June 2020. It was finalised at a videoconference meeting on 17 July 2020.

5. The structure of the report is as follows:

In its second, third and fourth parts, it provides the observations and recommendations that resulted from the three interim reports. As a rule, these observations and recommendations are fully reproduced, without changes or omissions, because the WG consistently endorsed them. Only one recommendation was dropped, for lack of continued WG support.[4]

The next part, the fifth, moves on to final key observations and recommendations based on all those previously made. As befits such a synthesis and final analysis, only the points that the WG felt to matter most where selected.

[3] The reports are also available online from the ENPE website: www.environmentalprosecutors.eu/cross-cutting.

[4] Recommendation 10 regarding *ad hoc* judicial structures fit to handle exceptional cases – Second interim report, p. 51. The WG members felt, on second sight, that the courts simply had to organise themselves to be able to cope with such cases, as they do in other types of cases.

A final part gives a view on the outreach of the WG's work and on possible next steps.

An annex contains information on the WG members, their professional expertise and positions (CVs as per July 2020, unless mentioned otherwise).

II. First interim report: December 2016– December 2017

A. Difficulties, trends and good practices in prosecution and sanctioning

6. The feedback on prosecution and sanctioning practice from the WG members 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, 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.

7. 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 (drugs, human trafficking etc.) and corruption on prosecution capacity is being felt. Those other issues take priority (e.g. Croatia, Germany, Spain and the Netherlands).

8. 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;[5]
- insufficient attention paid to general criminal law (e.g. impact of the classification of offences on investigation tools, mentioned by Germany and France).[6]

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?

[5] See also the Third interim report.
[6] See also the Second interim report, with regard to international cooperation.

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.

9. 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 2017 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.[7] 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. Other topics comparable with CITES crimes could benefit from a similar approach, for instance criminality related to the EU Timber Regulation (EUTR).

10. 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.

11. 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.

12. 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.

[7] See also the Second interim report, with regard to specialisation of the judiciary.

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.[8]

(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.[9]

(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.

B. Proportionality in prosecution and sentencing: an exploration of gravity factors

13. All active members of our working group[10] gave information of varying detail on gravity factors (aggravating and mitigating factors): Croatia, the Czech Republic, France, Germany, Latvia, the Netherlands and Spain.

14. 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.

[8] See also the Third interim report.
[9] See also the Third interim report.
[10] We excuse Belgium, whose representative has been on leave due to illness.

15. 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.

16. When turning to the gravity criteria identified by the England & Wales 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.

17. 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.[11]

18. 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.

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] 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%.

19. 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. Second interim report: December 2017– December 2018

A. Good practices in prosecution and adjudication – focus on international cooperation

20. What prosecutors most need regarding international cooperation is accurate information delivered in a reasonable time and the swift execution of requests for investigative measures.

21. Nowadays, a distinction has to be made between international cooperation within the EU and international cooperation reaching out to non-EU countries.

(a) Within the EU, the toolkit available today contains three main tools: the European arrest warrant (EAW) (2002), the European freezing order (EFO) (transposition as per 4 October 2015) and the European investigation order (EIO) (transposition as per 22 May 2017). For environmental offences, the tool most used in daily practice is the most recent one: the EIO.

Combined with the option of support offered by Eurojust and the EJN, and also considering the possibility of setting up joint investigation teams (JITs) (discussed below), the current toolkit is sufficient to meet the needs of prosecution practice; no additional tool is required.[12]

In terms of policy development, international cooperation within the EU is a matter of consolidation (see **23.** and **24.** below).

On a daily basis, the practical need for international cooperation regarding environmental crimes mostly involves EU MS only.

This pattern, however, does not apply as a rule in areas of environmental crime involving illegal trafficking, such as wildlife and waste trafficking, and trafficking-related money laundering. Even

[12] Mutual legal assistance (MLA) procedures remain applicable to evidence falling outside the scope of the EIO. Previously existing instruments also continue to apply for the gathering of evidence within a JIT and for cross-border surveillance with Denmark and Ireland. See also Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters, cons. (4) in fine, (8) and (9). Finally, MLA requests remain useful for specific requests. The Czech Republic, for instance, continues to use them to serve documents in other countries.

in such criminal cases, however, the specifics of the case and the means available to investigate it can reduce the investigation to local (national, EU) aspects only.

(b) International cooperation involving non-EU countries is very much a different matter, raising huge and complex challenges.

The available toolkit, mainly involving mutual legal assistance (MLA) requests, does not compare to the EU toolkit. Additional tools need to be developed.

In terms of policy efforts, international cooperation beyond the EU borders is still an issue in need of progress. A true handicap is the disparity in bilateral agreements to support international cooperation, insofar as they exist. It would be very useful if the EU could develop a common policy and framework for the conclusion of such bilateral agreements with non-EU countries.

On a daily basis, international cooperation involving non-EU countries is less frequently needed than international cooperation within the EU. When needed, however, it most often involves big cases with big money and therefore is key. The experience is that practical circumstances limit the extent of such cooperation. As a prosecutor, you make cost-effectiveness assessments. Investigations happen to be limited to local aspects only because of the difficulty of the international approach, in terms of practical feasibility and time to invest.

If a better and more easy-to-use toolkit were available, international cooperation would happen much more often.

(c) To complete the picture, mention has to be made of the JIT, a cooperation tool prosecutors use in association with Eurojust and EUROPOL. Depending on national rules, JITs are used for cooperation between EU MS and also for cooperation with non-EU states. It is appreciated as a good tool to have in investigations involving two countries where a lot is going on, as well as most certainly in investigations involving more than two countries.[13]

22. Whether involving EU MS or non-EU countries, efficient and effective international cooperation is best served on the one hand by a combination of structural support at the national and European levels (Eurojust), and individual, one-to-one contacts on the other hand. Prosecutors handling a case involving international cooperation need both those support and communication options.

To establish individual contacts, meeting and networking possibilities are most welcome. Lists of specialist environmental prosecutors are also helpful. Some EU MS have such lists, most often on secure parts of official websites (e.g. Belgium and the Czech Republic), which makes them inaccessible to prosecutors from other countries, but sometimes with open access (e.g. Spain),[14] allowing them to be consulted by anyone. ENPE could help by providing a list of

[13] See also Council Resolution 2017/C 18/01 on a model agreement for setting up a JIT.

[14] www.fiscal.es/fiscal/publico/ciudadano/fiscal_especialista/medio_ambiente/organigrama/!ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcfSzcDBzdPYOdTD08jE28DIEKIoEKDHAARwN8-

specialist environmental prosecutors for the whole of the EU, with details of their location and area of expertise and with contact information, on a secure part of the ENPE website. Eurojust already has such a list, without open access. It is not clear how complete it is.

23. As regards international cooperation within the EU, it has to be stressed that the legal classification of the offence makes a difference. Using the EIO, for instance, works a lot more easily when the double incrimination requirement is not a concern and this requirement only falls away for environmental offences punishable by a prison sentence of three years or more ("at least three years").

In the interim report regarding our work in 2017–2018, we stressed the crucial importance of qualitative legislative policies at MS level for the effective prosecution and sanctioning of environmental crime. The point made here relates to that very same concern. When drafting environmental offences and choosing sanctions for those offences, MS should be aware of the consequences under criminal law sanctioning of (not) choosing sufficiently severe penalties, especially prison sentences of three years or more.

24. As mentioned above, the current EU toolkit offers the EIO, the EFO and the EAW. Those three tools involve the use of standardised forms. Each tool has its own form.

In practice, prosecutors feel the need, in a limited number of cases, to combine an EIO and an EFO. It would be an improvement if, somehow, the forms would allow for this combined use of both tools, for instance by creating a combined form that allows a unified procedure.

25. With regard to international cooperation within the EU and beyond its borders, it is an asset that the tools for cooperation in environmental cases are the very same as those for cooperation in all types of cross-border crime. Indeed, cross-border environmental crime is very often intertwined with other types of crime, such as money laundering and forgery. This overlap in crime strands is a feature that has to be taken into account whenever developing and consolidating international cooperation mechanisms and tools.

26. Environmental crime, however, does need a specific tool enabling evidence to be secured in CITES-related cases (birds' eggs, animals, lab analyses etc.).

B. Good practices in prosecution and adjudication – focus on environmental specialisation among prosecutors and courts/judges

27. Environmental specialisation is needed throughout the enforcement chain, from monitoring to judgment.

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28. Environmental specialisation should be available for each and all environmental offences (no distinction in the judicial system between "less" and "more" serious offences, where only the latter ones would benefit from specialist prosecutors and judges).

29. Environmental specialisation in the judiciary does not stand for green courts. Specialisation can exist at chamber level within courts.

30. When discussing environmental specialisation of prosecutors and judges, a clear distinction should be made between what would ideally exist and what is, in reality, the best solution to strive for.

31. Ideally, the model embodied by the Land and Environment Court of New South Wales, which handles civil, criminal and administrative environmental cases, is the model preferred by the Working Group.

One of the many assets of this model is that it guarantees consistency in the interpretation of environmental law.

32. In reality, thinking about specialisation of the judiciary requires the acknowledgment of the following facts:

(a) The vast majority of EU MS have a dual judicial system, with general courts on the one hand and administrative courts on the other. Hoping to change this is not realistic. As a rule, the organisation of the judiciary is embedded in the constitution of the MS.[15]

(b) Supreme administrative courts tend to specialise at chamber level. Their typical caseload includes a concentration of environmental cases, partially linked to administrative authorisations of all kinds (environmental permits, building permits, etc.), which makes that specialisation tends to develop naturally. They have enough environmental cases for such unprompted evolution.

(c) The caseload of the general courts does not see such a concentration of environmental cases. As a result, there is no system-bound impulse to specialise. Environmental specialisation in the general courts, therefore, necessarily presents a more demanding challenge than environmental specialisation in the administrative courts. As it cannot develop spontaneously, an active policy, that willingly and knowingly organises specialisation, is needed.

33. When thinking about the organisation of environmental specialisation in the general courts, the specialisation has to be understood in a broad sense, encompassing cases involving environmental law *senso strictu* (e.g. pollution control and biodiversity conservation), planning and land-use law (including building permit-related issues), energy law, and environment-related health law (e.g. pesticides).

[15] Exceptions to this dual system include Denmark, England and Wales, and Ireland.

The core issue behind this recommendation is a simple one: specialisation asks for numbers; there must be a sufficient volume of environmental cases in the caseload.

34. The model to pursue in the general courts is one of specialised chambers within the general courts. The format of specialisation should not be based on exclusivity, that is, allowing the environmental chamber to handle environmental cases only. On the contrary, the format should be that all environmental cases from the judicial resort(s) involved come to the environmental chamber, but that this chamber additionally handles other cases whenever the environmental caseload does not fill the docket.

More specifically, the working group recommends that the handling by criminal courts of civil claims for harm caused by the environmental offence be facilitated, strengthened and expanded. This approach fuses the two main strands of case law in the regular courts: civil law work and criminal law work.[16]

When addressing civil claims, the working group refers to harm suffered by citizens, NGOs and public authorities (e.g. clean-up costs incurred by a municipality as a result of the environmental offence). Victims of harm should have access to the criminal court as a party to the case (not, for instance, as a witness). Their status as a party matters. The most common option in actual legal systems, an option to generalise,[17] is that they can become a so-called “civil party” to the case.

In EU MS where the legal system offers the possibility for victims of damage to participate in the criminal trial as a civil party, but where in practice criminal courts as a rule avoid deciding on the damages and leave the issue to be settled by civil courts,[18] support should be given to the criminal courts to handle the damages too.

Generally speaking, the recommended approach will:

- Bring a more important environmental caseload to a single chamber, sustaining its claim to specialisation and its aptitude to achieve it.
- Be less expensive for the state (when merging the criminal case and the civil one, there is only one case to bring).
- Be less expensive for civil society (the prosecution carries the burden of proof; eventual expertise costs are not for civil society to prepay).
- Result in a court that is more completely and better informed on the issues raised by the offences committed (e.g. the damage and suffering caused) and thus will lead to better judgments.

[16] See also the Third interim report.
[17] See also the Third interim report.
[18] As in, for instance, Croatia and Germany.

- Speed up the case handling (less time needed to handle cases).

The recommended approach need not slow down criminal justice. The decision on civil damages can be deferred to a later judgment whenever its complexity requires it.[19]

As an aside to the issue of the deciding on civil redress, the working group points out that the possibility of determining the amount of monetary compensation *ex aequo et bono*, wherever appropriate, is a very workable approach that deserves to be included in legal systems where it is lacking.

These environmental criminal chambers should favour grouping together the hearing of environmental cases, which would support specialisation at the level of the prosecutors' offices, as well as consistency in sentencing requests and actual sentencing.

35. The specialisation of prosecutors could be developed by creating specialised units or by designating specific prosecutors for the environment. The specialisation model should be anchored in legal texts to avoid being dependent on individuals (e.g. the chief prosecutor) and their views, priorities and goodwill.

36. With regard to technically complex issues, it would be good to build a database at EU level, which judges and prosecutors can consult when needed.

[19] See also the Third interim report.

IV. Third interim report: December 2018–March 2020

37. The observations and recommendations regarding the tools and strategies for remedial action at the pre-trial and trial stages of criminal proceedings, relate to three issues:

- tools, strategies and actors;
- the co-existence of the administrative and the criminal sanctioning tracks;
- the design of the relevant law.

Those issues and their scope were only partially identified at the very outset of the working year; some emerged during the WG discussions.

A. Remedial action at the pre-trial and trial stages: tools, strategies and actors

38. Remedial action allows the ultimate goal of environmental law and policy to be achieved. This matters a lot. It is a reason to favour remedial action whenever possible.

39. Trade-offs between remedial and punitive sanctioning are a reality. They are formally enshrined in legal tools and procedures provided by enforcement law as well as informally developed by practice in the use of the enforcement law. Such trade-offs can be a full trade-off (dropping punitive sanctioning) or a partial trade-off (moderating punitive sanctions imposed).

40. Remedial action boils down to the offender doing what he had to do. Therefore punitive sanctioning cannot be neglected: punish and whenever possible also go for remedial sanctioning.

41. More concretely:

(a) Approaches to sanctioning that combine punishment with effective remedial action have to be favoured. With “effective” remedial action, we mean remedial action that is duly implemented (in a timely fashion and in full scope).

(b) Remedial action should not exclude punishment, but can moderate punishment. In other words: only partial trade-offs between the remedial and the punitive are acceptable; full trade-offs are not acceptable.

One bottom line in the use of sanctioning tools and strategies should be the following: in all cases with a strong intentional element, any trade-off between punishment and remedial action should be excluded, partial trade-off included.

42. The possibilities for realising mixed sanctioning packages and to develop mixed sanctioning strategies, combining punishment with effective remedial action, differ between the criminal and the administrative sanctioning tracks and within each track some actors have more options than others to develop such mixed sanctioning. This is true, for instance and in most European criminal law and procedural systems, for the prosecutor as compared to the criminal court judge.

(a) In the criminal court, remedial sanctions systematically come as an annex to punitive sanctions. Indeed, remedial sanctions are an accessory to a conviction, with punitive sanctions as the principal sanction. Thus, the system is designed to exclude a full trade-off between punitive sanctions and remedial action at the court level. A partial trade-off, typically by imposing a lower fine in cases of timely and effective remedial action, remains possible.

(b) In the administrative sanctioning track, it is possible to find sanctioning systems with authorities competent for both punitive and remedial sanctioning, and sanctioning systems with authorities competent for remedial sanctioning only or for punitive sanctioning only. The competence for both types of sanction is not necessarily in the same hand. Yet balancing remedial action and administrative fines remains possible in a split setting too, for instance (again) by imposing a lower fine in cases of swift and effective remedial action.

43. Yet, the balancing of punitive and remedial sanctioning (action) is an issue in different stages of the sanctioning process, from its very start to implementation of sanctions, and different balancing options exist at each of the stages.

44. In some member states, criminal courts can only impose classical punitive sanctions, typically fines and imprisonment. This situation has to change. In all members states of the EU, criminal court judges should additionally be able to impose remedial sanctions and their remedial toolkit should be a good one (well-equipped). It should, for instance, become impossible to illegally kill a wolf without paying for it, *in natura* (e.g. by the introduction of another specimen) or by equivalent (money).

45. NGOs matter for effective environmental law enforcement and, specifically, a well-balanced mixed sanctioning (punitive and remedial) in the criminal track.

(a) NGOs are present in the field. They contribute in several respects to the information that the competent enforcement authorities have access to: they matter (i) for the detection of illegal acts, (ii) for the signal of illegal acts to public authorities, (iii) for providing help to public

authorities, including prosecutors, to build the proof of a case, (iv) for providing evidence as witnesses, and (v) as instigators themselves of criminal proceedings.

They detect illegal acts themselves, via their own members, and also with the help of local people giving them information. They transmit information that acts as the starting point of cases. They help build proof in various ways: by collecting information on websites (citizen science style), for instance regarding birdlife, orchids, spiders, that can help in the building of proof; by taking and transmitting pictures, in a local but also in a transnational crime context (in a transnational crime setting, NGOs present on the ground represent an additional way to gather proof, for instance by taking and transmitting pictures of old ships beached in Bangladesh). They can give evidence as witness in court, which matters more in some legal systems (e.g. Germany, where the Criminal Procedure Code requires witnesses in whatever case, large and small) than others (e.g. Belgium, where the notice of violation is the core of the file and witnesses are very seldom used). To a limited extent, they also transmit information by starting criminal court cases, a step that tends to involve the payment of a warrant (e.g. Spain and Belgium).

It has to be stressed that information is not the same thing as reliable evidence. NGOs are a source of information, which can become evidence.

(b) NGOs should have, in every EU member state, the ability to be a party in criminal proceedings. Right now, this is not the case. The WG adheres very strongly to this recommendation for three reasons. First, the environment cannot stand for itself. NGOs are a spokesperson for the real victim(s), to whom they give much-needed presence and representation. A second reason is that, as a party in a case, an NGO will enhance the visibility and knowledge of the harm done: raising awareness, as much within the court with the judges involved, as in the outside world. The third reason is that, as a party in a case, NGOs can contribute to the internalisation of externalities, thus impacting on the decision-making process of potential offenders. Indeed, when an NGO is allowed redress as a party, *in natura* or in equivalent (money), this redress reflects collective costs of the offence that offenders should be aware of and be held liable for. Without a victim to claim this category of costs, the offenders systematically dodge those costs, which remain externalities in their decision process.

(c) When NGOs can be a party in criminal cases, this will also energise their potential for information gathering and transmission. Indeed, when you know that the information you transmit can get results, you will be more motivated to transmit it. This is the effect of empowerment.

B. Remedial action: the co-existence of the administrative and the criminal sanctioning tracks

46. The prosecutor's office should be informed of every offence. In some member states, the law provides a legal obligation to do so, without exception. All member states should have such a legal obligation. The decision to inform prosecutors cannot be left to environmental inspectorates and administrations. Those actors are not trained in criminal law, do not

distinguish well enough between what is a crime and what is not. Next to this issue of expertise, there is an issue of perspective: prosecutors have access to the bigger picture, which can imply other crimes such as, for instance, bankruptcy, money laundering and labour law offences. They have access to all previous records too, regardless of the type of crime. A first appreciation by the civil servants and other public officers (inspectors, police etc.) who report the facts is, however, an unavoidable and necessary safeguard. This appreciation is preferably exercised in accordance with an inspectorate policy as expressed in inspectorate/police guidelines.

47. Remedial action is often forgotten in criminal investigations. More generally, remedial action tends to be neglected in the interaction between the criminal and the administrative sanctioning tracks. In the criminal sanctioning track the idea often is that the administrative sanctioning track will take care of it ("*They will do it*."). The administration, on the other hand, often has a passive attitude when criminal proceedings are ongoing ("*Let's wait to see what it will come up with.*"). More focus on remedial action is needed, as well as better coordination between the prosecutor and the administration, starting at an early stage of case management. An obligation to take along the remedial side, specifically to detect and document the need for remedial action, including estimates of the costs of adequate remedial action, should be considered.

Regarding the criminal sanctioning track, this recommendation pleading for greater focus and better coordination is connected with the recommendation under **44.** above, where it is stated that in each EU member state, criminal courts should be able to impose remedial sanctions in addition to punitive sanctions. It is also connected to the recommendation under **45.** above, which asks for the ability for environmental NGOs in each EU member state to be a party in criminal court proceedings and as such ask for redress *in natura* or by equivalent (money).

Finally, it bears a link with the environmental specialisation of prosecutors and judges, discussed in a previous report, as specialisation will help to manage this sanctioning dimension. Regarding the administrative sanctioning track, proper coordination will counter inertia and will stimulate quick and appropriate remedial action.

48. Whenever remedial action *in natura* is possible, time is an issue. This observation holds a strong argument for the coexistence of a criminal and an administrative sanctioning track. The administrative track can act much more quickly than the criminal sanctioning track because its sanctioning procedures are less time-consuming: remedial orders can be imposed within days or weeks after the detection of the offence,[20] whereas it easily takes a year to have a criminal court judgment imposing a sentence including remedial action. The administration also has the additional asset of specialised expertise, which supports quick and effective decision making

[20] According to empirical research in Flanders (Belgium) on local biodiversity offences detected in 2015 and 2016, some **85%** of all administrative regularisation orders were issued **within one month** after the recording of the offence in a notice of violation, and some **25% even within one week** after that notice of violation. S. Vereycken, "Remediërende bestuurlijke sanctionering inzake natuurbehoud: het herstelbeleid voor kleine landschapselementen toegelicht", in C.M. Billiet, *Biodiversiteitsmisdrijven in eigen land: in Vlaamse savannes en Waalse regenwouden – La criminalité en matière de biodiversité chez nous: des savanes flamandes et forêts pluviales wallonnes*, Brugge, die Keure, 2018, (365) No. 22.

on remedial action. A prerequisite is a well-designed remedial toolkit, allowing proportional measures.

49. For timely remedial action, money can be an issue too. In each EU member state, there should be a fund for emergency clean-ups. Each person convicted of an environmental crime should contribute to that fund. Offenders punished by an administrative fine could contribute too. Whenever it is used for an emergency clean-up, the authorities should then join the criminal case or go to the civil courts to secure compensation.

C. The design of the law

50. Remedial sanctioning by equivalent (as opposed to remedial sanctioning *in natura*) raises the issue of the monetary valuation of biodiversity (habitats, fauna and flora). When remedial action is imposed *in natura*, the budget is, or should be, the offender's problem. The monetary valuation of biodiversity and, more generally, of remedial action to clean up environmental costs is a complex issue. It asks for legal systems where (a) a valuation of damages *ex aequo et bono* is possible, and (b) where the criminal court can, in its judgment on the criminal case at stake, postpone its verdict on the civil damages it involves.

51. As stressed in previous interim reports, a well-designed enforcement law is key. In this interim report, a properly designed legal system is needed for the implementation of several of our recommendations: the remedial toolkit of criminal court judges, the capacity of NGOs to be a party in criminal proceedings, the systematic forwarding of information to prosecutors about environmental offences, the integration of remedial sanctioning in case management at an early stage through information obligations, optimal handling of the time issue in remedial sanctioning, and the availability of an emergency clean-up fund.

V. Final key observations and recommendations

52. The WG started its analysis of prosecution and sanctioning practice regarding environmental offences by considering the current state of the subject matter, including actual difficulties, trends and good practices. Next, it studied and discussed specific topics that it selected: proportionality in prosecution and sentencing, international cooperation, environmental specialisation among prosecutors and judges, and the tools and strategies for remedial action at the pre-trial and trial stages.

Throughout those discussions, some points of interest kept reappearing:

- the necessity of an integrated public law enforcement approach
- the critical importance of the quality of environmental enforcement law
- that both sanctioning tracks, the criminal and the administrative, should allow for punitive and remedial sanctioning
- that specialisation is needed throughout the enforcement chain
- that NGOs contribute to every stage of the enforcement chain and that it is important to strengthen their position in court, especially criminal courts
- that training of prosecutors and judges is key, but comes with specialisation.

During the WG's discussions in March and June 2020, these observations and related recommendations were judged to be of such importance that they had to have a place in our final key observations and recommendations.

53. Additionally, two other points were deemed to deserve a place in the WG's final key observations and recommendations:

- a "war chest" for remedial action funded by convicted offenders
- tools for international cooperation beyond European borders.

A. An integrated public law enforcement approach

1. What the interim reports observed and recommended

54. At the EU level, the actual lack of a level playing field regarding environmental law enforcement is considered to be a very problematic issue.

1/ The WG's first interim report confirmed abundantly that there is no level playing field in the EU regarding the enforcement of environmental law. The WG observed that the absence of a level playing field mostly appeared 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.

The WG concluded that it is 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.

This same interim report also detected a lack of legislative quality at different crucial levels in the MS enforcement law. Weaknesses in legislative policy and quality related to an array of foundation stones of law enforcement, including inadequacy in the organisation of a coherent public law enforcement system in a number of MS (e.g. France and Spain).

The WG therefore recommended environmental law enforcement policy at EU level and in the MS 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.

2/ The third interim report, analysing the issue of effective remedial action, detected difficulties in the coexistence of both sanctioning tracks as regards remedial sanctioning. Remedial action tends to be neglected in the interaction between the criminal and the administrative sanctioning tracks. In the criminal sanctioning track the idea often is that the administrative sanctioning track will take care of it ("*They will do it*."). The administration, on the other hand, often has a passive attitude when criminal proceedings are ongoing ("*Let's wait to see what it will come up with.*").

The WG recommended more focus on remedial action, as well as better coordination between the prosecutor and the administration, starting at an early stage of case management.

2. Final key observations and recommendations

55. 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. The WG very strongly supports this recommendation. Some of its members consider it to be the most important final recommendation.

This public law system should provide punitive and remedial sanctioning possibilities in both the criminal and the administrative sanctioning track.

56. As regards punitive sanctioning, the system design has to allow for respect of the *Non bis in idem* – principle enshrined in the 7th additional protocol of the European Convention on Human Rights (ECHR), as detailed by the case law of the European Court on Human Rights (ECtHR). In this respect, the WG recommends providing in the law a binding point in time when the file goes forward in the criminal or the administrative track for punitive sanctioning, for all those offences that can be punished in the criminal as well as in the administrative track. Such organisation of the public law enforcement system exists, for instance, in Belgium, where at some point in time prosecutors have the legal duty to decide if the case remains in the criminal sanctioning track or goes to the administrative fining authority. The neatness of this coordination mechanism is a major asset for the efficient performance of the public law enforcement systems as a whole in the country (Flemish Region, but also Walloon and Brussels Regions and the Federal State level, which all use very similar coordination mechanisms).

57. The system design has to recognise the crucial importance of information transmission and communication between both sanctioning tracks, and between punitive and remedial sanctioning actors wherever the administrative sanctioning track has such split competences. It has to organise this communication by means of formal rules. These formal communication rules have to be provided at the operational level, where the case handling takes place. Communication lines should be short.

While organising this communication, the secrecy of some information that prevents its exchange has to be respected. The formal communication rules must be duly attentive to this point, in accordance to the law of each MS, so as not to jeopardise cases.

B. The critical importance of the legal quality of environmental enforcement law

1. What the interim reports observed and recommended

58. Interim reports stumbled time and again upon flaws and gaps in the environmental enforcement legislation. Here follows an overview of the flaws and gaps that were identified.

Regarding difficulties in prosecution and sanctioning

1/ 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:

(a) Lack of adequate legislative policy in general (e.g. Spain).

(b) 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).

(c) Inadequacy in the organisation of a coherent public law enforcement system (e.g. France and Spain).

(d) 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).

(e) 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).

(f) Underequipped sanctioning toolboxes, in the criminal court (e.g. the Netherlands) and in other components of the system.

(g) 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), the Ecocrime Directive and specific sanctioning obligations, offer the beginning of a solution for these weak legislative policies? The WG recommends such action. 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.

Regarding international cooperation

2*l* As regards international cooperation within the EU, it has to be stressed that the legal classification of the offence makes a difference. Using the EIO, for instance, works a lot more easily when the double incrimination requirement is not a concern and this requirement only falls away for environmental offences punishable by a prison sentence of three years or more ("at least three years").

In the interim report regarding our work in 2017–2018, we stressed the crucial importance of qualitative legislative policies at MS level for the effective prosecution and sanctioning of environmental crime. The point made here relates to that very same concern. When drafting environmental offences and choosing sanctions for those offences, MS should be aware of the consequences under criminal law sanctioning of (not) choosing sufficiently severe penalties, especially prison sentences of three years or more.

Regarding specialisation among prosecutors and courts/judges

3/ The model to pursue in the general courts is one of specialised chambers within the general courts. The format of specialisation should not be based on exclusivity, that is, allowing the environmental chamber to handle environmental cases only. On the contrary, the format should be that all environmental cases from the judicial resort(s) involved come to the environmental chamber, but that this chamber additionally handles other cases whenever the environmental caseload does not fill the docket.

More specifically, the working group recommends that the handling by criminal courts of civil claims for harm caused by the environmental offence be facilitated, strengthened and expanded. This approach fuses the two main strands of case law in the regular courts: civil law work and criminal law work.

When addressing civil claims, the working group refers to harm suffered by citizens, NGOs and public authorities (e.g. clean-up costs incurred by a municipality as a result of the environmental offence). Victims of harm should have access to the criminal court as a party to the case (not, for instance, as a witness). Their status as a party matters. The most common option in actual legal systems, an option to generalise, is that they can become a so-called “civil party” to the case.

In EU MS where the legal system offers the possibility for victims of damage to participate in the criminal trial as a civil party, but where in practice criminal courts as a rule avoid deciding on the damages and leave the issue to be settled by civil courts,[21] support should be given to the criminal courts to handle the damages too.

Generally speaking, the recommended approach will:

(a) Bring a more important environmental caseload to a single chamber, sustaining its claim to specialisation and its aptitude to achieve it.

(b) Be less expensive for the state (when merging the criminal case and the civil one, there is only one case to bring).

(c) Be less expensive for civil society (the prosecution carries the burden of proof; eventual expertise costs are not for civil society to prepay).

(d) Result in a court that is more completely and better informed on the issues raised by the offences committed (e.g. the damage and suffering caused) and thus will lead to better judgments.

(e) Speed up the case handling (less time needed to handle cases).

[21] As in, for instance, Croatia and Germany.

The recommended approach need not slow down criminal justice. The decision on civil damages can be deferred to a later judgment whenever its complexity requires it.

As an aside to the issue of the deciding on civil redress, the working group points out that the possibility of determining the amount of monetary compensation *ex aequo et bono*, wherever appropriate, is a very workable approach that deserves to be included in legal systems where it is lacking.

These environmental criminal chambers should favour grouping together the hearing of environmental cases, which would support specialisation at the level of the prosecutors' offices, as well as consistency in sentencing requests and actual sentencing.

Three aspects of these recommendation require law-making in all MS where the legal system does not yet provide them: the creation of specialised chambers not based on exclusivity; the possibility for victims (citizens, NGOs and public authorities) to participate in the criminal trial as a civil party; the possibility to determine the amount of monetary compensation *ex aequo et bono*.

4/ The specialisation of prosecutors could be developed by creating specialised units or by designating specific prosecutors for the environment. The specialisation model should be anchored in legal texts to avoid being dependent on individuals (e.g. the chief prosecutor) and their views, priorities and goodwill.

Regarding tools and actors for remedial action

5/ In some member states, criminal courts can only impose classical punitive sanctions, typically fines and imprisonment. This situation has to change. In all members states of the EU, criminal court judges should additionally be able to impose remedial sanctions and their remedial toolkit should be a good one (well-equipped). It should, for instance, become impossible to illegally kill a wolf without paying for it, *in natura* (e.g. by the introduction of another specimen) or by equivalent (money).

6/ NGOs should have, in every EU member state, the ability to be a party in criminal proceedings. Right now, this is not the case. The WG adheres very strongly to this recommendation for three reasons. First, the environment cannot stand for itself. NGOs are a spokesperson for the real victim(s), to whom they give much-needed presence and representation. A second reason is that, as a party in a case, an NGO will enhance the visibility and knowledge of the harm done: raising awareness, as much within the court with the judges involved, as in the outside world. The third reason is that, as a party in a case, NGOs can contribute to the internalisation of externalities, thus impacting on the decision-making process of potential offenders. Indeed, when an NGO is allowed redress as a party, *in natura* or in equivalent (money), this redress reflects collective costs of the offence that offenders should be aware of and be held liable for. Without a victim to claim this category of costs, the offenders systematically dodge those costs, which remain externalities in their decision process.

Regarding the coexistence of the administrative and criminal sanctioning tracks

7/ The prosecutor's office should be informed of every offence. In some member states, the law provides a legal obligation to do so, without exception. All member states should have such a legal obligation. The decision to inform prosecutors cannot be left to environmental inspectorates and administrations. Those actors are not trained in criminal law, do not distinguish well enough between what is a crime and what is not. Next to this issue of expertise, there is an issue of perspective: prosecutors have access to the bigger picture, which can imply other crimes such as, for instance, bankruptcy, money laundering and labour law offences. They have access to all previous records too, regardless of the type of crime. A first appreciation by the civil servants and other public officers (inspectors, police etc.) who report the facts is, however, an unavoidable and necessary safeguard. This appreciation is preferably exercised in accordance with an inspectorate policy as expressed in inspectorate/police guidelines.

8/ Whenever remedial action *in natura* is possible, time is an issue. This observation holds a strong argument for the coexistence of a criminal and an administrative sanctioning track. The administrative track can act much more quickly than the criminal sanctioning track because its sanctioning procedures are less time-consuming: remedial orders can be imposed within days or weeks after the detection of the offence,[22] whereas it easily takes a year to have a criminal court judgment imposing a sentence including remedial action. The administration also has the additional asset of specialised expertise, which supports quick and effective decision making on remedial action. A prerequisite is a well-designed remedial toolkit, allowing proportional measures.

9/ For timely remedial action, money can be an issue too. In each EU member state, there should be a fund for emergency clean-ups. Each person convicted of an environmental crime should contribute to that fund. Offenders punished by an administrative fine could contribute too. Whenever it is used for an emergency clean-up, the authorities should then join the criminal case or go to the civil courts to secure compensation.

10/ Remedial sanctioning by equivalent (as opposed to remedial sanctioning *in natura*) raises the issue of the monetary valuation of biodiversity (habitats, fauna and flora). When remedial action is imposed *in natura*, the budget is, or should be, the offender's problem. The monetary valuation of biodiversity and, more generally, of remedial action to clean up environmental costs is a complex issue. It asks for legal systems where (a) a valuation of damages *ex aequo et bono* is possible, and (b) where the criminal court can, in its judgment on the criminal case at stake, postpone its verdict on the civil damages it involves.

[22] According to empirical research in Flanders (Belgium) on local biodiversity offences detected in 2015 and 2016, some **85%** of all administrative regularisation orders were issued **within one month** after the recording of the offence in a notice of violation, and some **25% even within one week** after that notice of violation. S. Vereycken, "Remediërende bestuurlijke sanctionering inzake natuurbehoud: het herstelbeleid voor kleine landschapselementen toegelicht", in C.M. Billiet, *Biodiversiteitsmisdrijven in eigen land: in Vlaamse savannes en Waalse regenwouden – La criminalité en matière de biodiversité chez nous: des savanes flamandes et forêts pluviales wallonnes*, Brugge, die Keure, 2018, (365) No. 22.

11/ As stressed in previous interim reports, a well-designed enforcement law is key. In this interim report, a properly designed legal system is needed for the implementation of several of our recommendations: the remedial toolkit of criminal court judges, the capacity of NGOs to be a party in criminal proceedings, the systematic forwarding of information to prosecutors about environmental offences, the integration of remedial sanctioning in case management at an early stage through information obligations, optimal handling of the time issue in remedial sanctioning, and the availability of an emergency clean-up fund.

2. Final key observations and recommendations

59. The extent to which identical or very similar flaws and gaps were identified when starting debates and analyses from different angles throughout the years, is remarkable and comforting.

The finding made at the very outset of the WG's work, mentioned at point 1/ above – that the **lack of legal quality** was **a major difficulty** for an effective, proportionate and deterrent prosecution and sanctioning practice – was amply confirmed in the following years, in many subsequent observations and recommendations:

- the finding sub 2/ connects with and confirms finding 1/ (g)
- the finding sub 5/ confirms finding 1/ (f)
- the finding sub 6/ confirms a finding sub 3/
- the finding sub 7/ confirms the findings sub 1/ (b) and (c)
- the findings sub 8/ and 9/ connect with and confirm finding 1/ (f)
- the finding sub 10/ connects with and confirms finding 1/ (f), but also finding 1/ (c).

The recommendation made in 2017 is repeated here, with consideration of all relevant observations and recommendations made from December 2016 to March 2020. 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.

60. A more specific, but nonetheless connected, issue pertains to proportionality in the prosecution and sanctioning of environmental offences: the help that gravity factors could offer, identified during the WG's first working year (2016-2017). The WG confirms the suggestion made in its first interim report. It suggests developing **gravity factors** for each type of environmental crime, such as those developed in Recommendation No. 177(2015) for offences

against birds,[23] **specifically the formulation of harm criteria**[24] closely fitting the environmental offences at stake. The backbone of the approach used in Recommendation No. 177(2015) for offences against birds, is fit for generalisation, even if some adaptations are required. The harm criteria have to include explicitly the risk of harm (potential harm). Such EU-wide gravity factors could have a major unifying influence on environmental law enforcement in the MS. They would not only help prosecutors to shape their prosecution policy and judges to shape their sentencing policy in a proportional way, they would also inform inspectorates about the information to integrate in their notices of violation and MS lawmakers about law-shaping choices to make in enforcement law, for instance regarding penalty levels (minimum levels, maximum levels).

C. Punitive and remedial sanctioning tools in both sanctioning tracks

61. In most EU member states, **the administrative sanctioning track** is **equipped with both** remedial and punitive sanctioning tools. The remedial sanctioning tools tend to have been available for the longest time, the punitive sanctioning tools being a rather recent addition.

The availability of such a mixed toolbox is **less customary** in **the criminal sanctioning track**, which primarily aims to punish. This is so much so that in some member states, criminal courts can only impose classical punitive sanctions, typically fines and imprisonment. This situation **has to change**. In all members states of the EU, criminal court judges should additionally be able to impose remedial sanctions and their remedial toolkit should be a good one (well-equipped, allowing for proportional remedial sanctioning). It should, for instance, become impossible to illegally kill a wolf without remediating for it, *in natura* (e.g. by the introduction of another specimen) or by equivalent (money).

This recommendation was formulated in the WG's third interim report. The WG stands strongly with it.

D. Environmental specialisation throughout the enforcement chain

62. Environmental specialisation is needed **throughout the enforcement chain**, from monitoring to judgment.

The WG wishes to stress this point. It feels it has to be highlighted that a prosecution file often stands or falls by the quality, or lack thereof, of the environmental inspectorate's or other monitoring official's work, especially the quality of the notice of violation and subsequent proof

[23] 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.
[24] As pointed out in the First interim report, culpability factors tend to be the same throughout all kinds of offences, environmental offences included.

finding. When recommending specialisation throughout the enforcement chain, the first stage of the chain is most certainly included.

The WG stands firmly with its analysis of specialisation in the general courts in the second interim report. The model to pursue in the generals courts is one of specialized chambers within the general courts. The format of specialization should not be based on exclusivity, that is allowing he environmental chamber to handle environmental cases only. On the contrary, the format should be that all environmental cases from the judicial resort(s) involved come to the environmental chamber, but that this chamber additionally handles other cases whenever the environmental caseload does not fill the docket. More specifically, the WG recommends that the handling of civil damages by criminal courts be facilitated, strengthened and expanded. This approach fuses the two main strands of case law in the regular courts: civil law work and criminal law work.

63. The WG considers it necessary to anchor the specialisation of the full enforcement chain **into the law**. It cannot be dependent of chance circumstances, such as a motivated inspector or a dedicated prosecutor, who is deemed to move to another non-environmental position in some years.

E. NGOs: acknowledge their contribution and strengthen their access to criminal courts

64. That environmental NGOs play a unique and tremendously important role in the implementation and enforcement of environmental law has been well established for decades. The WG, too, stumbled upon the importance of NGOs in the prosecution and sanctioning of environmental offences.

The contribution of the WG's analysis to this well-established observation relates to the extent of the NGOs' role in environmental law enforcement. The WG finds that environmental NGOs contribute to a better performance of **every stage** of the **enforcement chain**, from monitoring of compliance and detection of offences to sanctioning decisions and their implementation. This is a finding to stress. With their presence and contribution throughout the enforcement chain, NGOs hold a unique position. No other actor of the enforcement chain has a similar one. All other actors of the enforcement chain are confined to one specific link of the chain.

65. A recommendation with regard to NGOs, and to which the WG strongly adheres, was made in its third interim report:

NGOs should have, in every EU member state, the ability to be a party in criminal proceedings. Right now, this is not the case. The WG adheres very strongly to this recommendation for three reasons. First, the environment cannot stand for itself. NGOs are a spokesperson for the real victim(s), to whom they give much-needed presence and representation. A second reason is that, as a party in a case, an NGO will enhance the visibility and knowledge of the harm done: raising awareness, as much within the court with the judges involved, as in the outside world.

The third reason is that, as a party in a case, NGOs can contribute to the internalisation of externalities, thus impacting on the decision-making process of potential offenders. Indeed, when an NGO is allowed redress as a party, *in natura* or in equivalent (money), this redress reflects collective costs of the offence that offenders should be aware of and be held liable for. Without a victim to claim this category of costs, the offenders systematically dodge those costs, which remain externalities in their decision process.

66. More generally speaking, the WG strongly recommends that the position of environmental NGOs in court be strengthened, especially in criminal courts. Environmental NGOs should be able, in each EU MS, to somehow start a criminal case, for instance by making a formal complaint that by law has to be brought to court. Environmental NGOs should also be able, in each EU MS, to act as a witness and as an expert in criminal proceedings. Finally, environmental NGOs should have the ability in each EU MS to be a party in criminal proceedings.

67. The third point demands additional comments.

Environmental NGOs should at the least be entitled to claim redress for damage to the environmental goal that, according to their bylaws, they pursue, e.g. the protection of birds or bumblebees, or forest conservation. The WG is not convinced that any environmental NGO should able to be a party claiming to be a victim of any ecological damage. A connection between their bylaws and the damage caused by the environmental offence appears to be needed. There is an issue of equality of access to court. Some measure of equality with citizens should be preserved. That being said, the criteria NGOs should meet to have standing should be easily attainable and have a low threshold, in accordance with the Aarhus Convention, allowing the convention's Article 9.3 to be met easily.

They should have the possibility to claim redress *in natura* and in terms of monetary compensation.

68. Considering the growing number of environmental offences that have a transnational dimension, the WG insists on the ability of international NGOs to be a party to national criminal proceedings, under the abovementioned condition that there is a link with their statutory goal.

69. The WG recommends that the EU consider issuing a directive shaping the procedural framework for NGO participation in criminal proceedings in environmental cases.

In this respect, the WG acknowledges that the abovementioned recommendations are only a first step, sketching out a general approach that needs to be refined in the details. Additional work has to be done on details that are of particular importance, specifically the definition of low-threshold criteria for standing.

F. Effective training comes with specialisation

70. For the WG, further training of prosecutors and judges remains crucial.

As concluded in the WG's first interim report, 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.

71. The WG stresses that training policy should be aware of its limitations in the absence of structural specialisation of prosecutors and judges. Truly effective training comes only with structural specialisation.

G. A "war chest" for remedial action funded by convicted offenders

72. In each EU MS, there should be **a fund for emergency clean-ups**. Each person convicted of an environmental crime should contribute to that fund. Offenders punished by an administrative fine could contribute too. Whenever it is used for an emergency clean-up, the authorities should then join the criminal case or go to the civil courts to secure compensation.

Timely remedial action matters. Money can be an issue to achieve it. This recommendation was formulated in the WG's third interim report. The WG stands firmly by it. It would offer **a tool** to counter a problem that frequently arises in all EU MS. That the idea also meets "the polluter pays" principle is, additionally, a convenient circumstance.

H. Tools for international judicial cooperation beyond European borders

73. In its second interim report, the WG observed that international judicial cooperation involving non-EU countries is far less developed than international judicial cooperation within the EU.

The WG's final recommendation is to strengthen tools and communication for international judicial cooperation beyond EU borders. Such development is necessary in view of the increasingly global dimension of environmental crime.

74. A first and major step could be the creation and development of a global network for environmental prosecutors and a global network for environmental judges. Taking the example

of INECE (the International Network for Environmental Compliance and Enforcement),[25] these global networks could be created from the coordination of regional networks. Their very first tool should be the building of a good website, to get in touch, share information and learn about each other's best practices. They would need structural funding, for instance by the UN Environment Programme and the EU.

The WG acknowledges and stresses that this idea is not a new one. Demand for such networks in the judicial world has existed for many years.

The recommendation to create a Global Network of Environmental Prosecutors was already made in 2011 at the INECE *Ninth International Conference on Environmental Compliance and Enforcement*, Whistler, British Columbia, Canada (20-24 June 2011) by a working group chaired by Sheila Abed (IUCN).[26]

A global network for environmental judges was created in 2018: the Global Judicial Institute on the Environment [27]. It is at an early stage of development and, as far as the WG can assess, in need of structural financial support.

The WG firmly stands by its recommendation to give those initiatives the structural support they need to develop with stability over time.

75. Additionally, the WG wonders if the privileged relationship of some EU MS with countries outside the EU could not somehow be opened up to the other MS as regards cooperation in environmental crime cases. The most obvious example in this regard is the privileged relationship between Spain and most countries of Latin and Central America. The WG feels this possibility deserves to be explored in a pragmatic way.

25 https://en.wikipedia.org/wiki/International_Network_for_Environmental_Compliance_and_Enforcement

26 Conference Proceedings, *Track G – Developing Effective Enforcement Networks*, 127-130.

27 https://www.iucn.org/commissions/world-commission-environmental-law/our-work-wcel/global-judicial-institute-environment

VI. Outreach and next steps

A. Outreach

76. As an Environmental Governance and Information project, a key activity of the LIFE-ENPE project is the sharing of information and best practice for dissemination. Developing the awareness-raising and training outputs from the four WGs and their onward promulgation through outreach activities to end users are key elements to the completion of LIFE-ENPE Core Action B2: *Working Groups to improve consistency and capacity.*

The table below lists the outreach activities undertaken by WG4 during its period of activities (Dec 2016–June 2020), with numerous delegates directly or indirectly in receipt of specialist guidance developed and promulgated by the group and its members.

In some cases, and where applicable, WG4 members have collaborated with and contributed to related but separate projects and initiatives, such as Dr Carole Billiet's presentations on the group's activities and outputs to the European Union Forum of Judges for the Environment (EUFJE) members at their annual conferences.

It is expected that ENPE aisbl will continue as a network beyond the end of the LIFE-ENPE project, with a similar format of specialist working groups involved in specific technical areas of environmental crime prosecution.[28] More widely, ENPE will be involved in the EU Zero Pollution Action Plan, part of the EU Green Deal,[29] which is a roadmap for making the EU's economy sustainable.

B. Next steps

77. As set out in the Network Sustainability Strategy, included in the LIFE-ENPE After-LIFE report, the role of WG4 is set to continue under ENPE aisbl beyond the end of the LIFE-ENPE project.

WG4 proposes to be available to present and discuss the observations and recommendations made in all four reports, especially this synthesis report, for EU and national policy makers, enforcement networks and training programmes for the judiciary (EJTN and ERA), aiming to further the realisation of the recommendations.

[28] LIFE-ENPE After-LIFE report, July 2020.
[29] https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

Furthermore, given the interest of EU policy makers in the observations and recommendations of the interim reports, the WG offers its expert opinions on policy developments concerning the topics it has been analysing and discussing, and related topics.

Additionally, at the end of 2021 the WG proposes to check the extent to which its recommendations have been used, especially the key recommendations made in this synthesis report. It proposes to investigate this question with regard to EU policy and at the MS level through the questioning of ENPE and EUFJE members via email.

78. The WG appreciates that the EU policy level has been attentive to practitioners' views on environmental law enforcement in response to this LIFE project. It very much hopes that EU policy makers will remain attentive to input from practitioners and will arrange to have access to their viewpoints and expertise on a permanent basis.

79. Last but not least, the LIFE-ENPE Project Board and team would like to express their sincere gratitude for the commitment, creativity and hard work put in by each and every WG member.

We look forward to working with them all in the future.

LIFE-ENPE WG4 Summary of outreach activities 2017–2020

Key including number of delegates trained/ recipients of awareness raising or guidance

	Training/awareness-raising shared passively to stakeholders; number in receipt of training/ guidance: 500
	Training/awareness-raising delivered directly to delegates 'face to face': 784
	Training/awareness-raising delivered "virtually" e.g. by webinar; number in receipt of training: 40
	Meeting where WG4 training/awareness-raising outputs discussed or shared; number present: 5

Date of communication	Communication type	Nature of communication/event title	Who met with/ sent/spoke/ presented on behalf of the WG?	Who was present at the meeting/ event/received copies (include number of delegates)?	What was said/delivered on behalf of the WG?
12 and 13 May 2016	Workshops / Events/Media	ENPE Annual conference (Action B3) as part of EU Networks Conference, Utrecht	All ENPE Board	192 delegates - Environmental crime professionals from Europe and beyond	Presentation in plenary session outlining WG4 aims and objectives and future activity (Carole Billiet).
20 October 2016	Workshops / Events/Media	Workshop "Contribution of the Environmental Crime Directive to the fight against organised environmental crime" – 20 October 2016 in Brussels	Sara Boogers and Lars Magnusson	Workshop attendees including EU representatives; 30 (approx.)	Presentation on ENPE (Lars Magnusson).
18 November 2016	Workshops / Events/Media	Shaun Robinson and Carole Billiet presented on behalf of ENPE at the EUFJE annual conference in Bucharest	Shaun Robinson (SR)	Judges representing countries (approx. 25) attending the EUFJE annual conference	Presentation on ENPE with a focus on the LIFE-ENPE project.
05 December 2016	Workshops / Events/Media	THEMIS national training on "Environmental law enforcement and environmental crime", Macedonia	SR (Darko Blinkov presented on behalf of ENPE)	Multinational group of 40 representatives, judges, prosecutors, police	Summary ENPE presentation including all LIFE-ENPE project WG activity.

Date of communication	Communication type	Nature of communication/event title	Who met with/ sent/spoke/ presented on behalf of the WG?	Who was present at the meeting/ event/received copies (include number of delegates)?	What was said/delivered on behalf of the WG?
				officers, customs, academic experts, NGOs, environmental inspectors	
20 March 2017	Workshops / Events/Media	DG Environment (EU) Workshop on Waste and Wildlife Crime	Anne Brosnan (AB), Carole Billiet and Jan Van den Berghe	Major European Environmental Crime Enforcement Network representatives, DG Environment; 40 (approx.)	ENPE and LIFE-ENPE activities were described, objectives shared etc. Presentation by Carole Billiet on WG 4 Sanctioning and Judicial Practices.
28 March 2017	Meeting	ERA (Monika Zelinksi)	SR and AB	Monica Zelinski – training co-ordinator with ERA	Presentation on LIFE-ENPE WG activities including wider training opportunities in collaboration with ERA.
17–19 September 2017	Workshops / Events/Media	EUFJE annual conference; Merton College, Oxford, UK	EUFJE members, invited speakers and guests	30 delegates from around the world comprising judges, specialists and academics	Carole Billiet outlined ENPE and LIFE-ENPE WG4 activities.
20–21 September 2017	Workshops/ Events/Media	EU Environmental Crime Enforcement Networks Conference; Magdalen College, Oxford, UK	ENPE aisbl and LIFE-ENPE Board members; ENPE members and observers	155 delegates from around Europe and the world, comprising prosecutors, judges, police and other enforcement professionals	LIFE-ENPE Working Groups presented updates as required – Carole Billiet for WG4.

Date of communication	Communication type	Nature of communication/event title	Who met with/ sent/spoke/ presented on behalf of the WG?	Who was present at the meeting/ event/received copies (include number of delegates)?	What was said/delivered on behalf of the WG?
09 November 2017	Meeting	Joint EUFJE/ENPE meeting with ERA to discuss possibilities of joint training for LIFE-ENPE WG	Lars Magnusson, AB, Jan Van den Berghe, Carole Billiet, SR	Kleonike Pouliki and Jean-Philippe Reagarde of ERA	An overview of the organisation and in particular the LIFE-ENPE WGs was provided, with specific reference to the training objectives.
07 September 2018	Workshops/ Events/Media	Presentation by Carole Billiet to Mons Court of Appeal (Belgium)	Carole Billiet and Mons Court of Appeal	20 legal specialists including prosecutors and judges	Presentation from Carole Billiet on LIFE-ENPE WG4.
23-24 October 2018	Workshops/ Events/Media	ENPE annual conference – joint event with LIFE RfH; LIFE NT; IMPEL Water Crimes at NHMC, Heraklion	All ENPE Board, LIFE-ENPE Board, 17 members; 14 WG members	104 specialists including Water Crimes expert group	ENPE hosted (AB chaired), all WG chairs presented updates; presentation by Carole Billiet on WG4 activities.
18-19 November 2018	Workshops/ Events/Media	EUFJE Annual Conference; Sofia, Bulgaria	Carole Billiet and Peter Ashford	All EUFJE members in attendance (50 approx.)	Overview of LIFE-ENPE WG4 activities, including outputs so far and planned; general ENPE (wider) activities when requested.
13 September 2019	Workshops/ Events/Media	EUFJE annual conference	Carole Billiet	EUFJE members attending their annual conference 13–14 September 2019 in Helsinki, Finland	Carole Billiet provided an overview of the work of LIFE-ENPE WG4, including reports already produced and those due to be produced; hard copies of reports shared.
28-30 October 2019	Workshops/ Events/Media	ENPE annual conference in conjunction with Eurojust	All ENPE Board members apart from J-P Rivaud, SR and LIFE-ENPE Board members	100 delegates from all over Europe and beyond; 32 countries represented; 65 different organisations	All LIFE-ENPE WG updates and outputs (x4);Carole Billiet updated on WG4; general updating of all ENPE activities.

Date of communication	Communication type	Nature of communication/event title	Who met with/ sent/spoke/ presented on behalf of the WG?	Who was present at the meeting/ event/received copies (include number of delegates)?	What was said/delivered on behalf of the WG?
				involved in prosecuting environmental crimes	
29 January 2020	Meeting	ENPE (Sara Boogers, ENPE supporting member and WG4 member) attended EJTN Sixth Contact Point Lot 4 Follow-up meeting, Brussels Belgium	Sara Boogers	EJTN secretariat and members attending	Sara provided an overview presentation separately in document format, which included the welcoming of collaboration with EJTN particularly in and around the need for specialisation in the prosecution of environmental crimes.
28 April 2020	Articles/ Training shared	SR sent Stuart Murphy of NSW EPA WG4 reports (x2) followed by zoom call	SR and AB	SR, AB, NSW EPA employee Stuart Murphy	ENPE WGs were discussed, possibility of Stuart Murphy attending ENPE conference, workshops and other meetings for study tour under Churchill Fellowship in late 2021.
July 2020	Articles/ Training shared	WG4 3rd interim report forwarded to all ENPE members for onward sharing	All ENPE members, all WG4 members	All ENPE and WG4 contacts; confirmed, 1000+ recipients across 20 jurisdictions	WG4 3rd interim report

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 (inspectorates–prosecutors, administrations–criminal courts, NGOs–criminal courts) and the EU law dimension of the enforcement action against illegal logging and bushmeat trade. 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 served 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” (March 2017–March 2018).

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 and https://www.environmental-lawforce.ugent.be/articles/

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 the Environmental Law Team. In December 2016 she was promoted to Senior Deputy Public Prosecutor.

Sara started her specialisation in environmental law enforcement in 2005 and has continued to work in this field ever since. She was a member of the Flemish High Council of Environmental Enforcement from 2011 to 2017. During the last few years she has been a speaker and participant at different (international) conferences and workshops on EU Environmental Law (*inter alia* 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). She is also involved in the training programme on environmental law of the Belgian National Judicial Training Institute

Jegors CEKANOVSKIS, Latvia [30]
Public Prosecutor

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

[30] CV as per October 2017.

Marc CLEMENT, France [31]
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.

[31] CV as per March 2019.

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 an 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 2008 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 since 2009. 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, 2017, 2018 and 2019 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 (2014–2018) and then civil chamber.

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 (legal assistant) at the 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. Since January 2019 she has been a judge at the Court of Appeal in Amsterdam.

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 District 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 a 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 [32]
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, violation of the regulations on endangered species (wildlife crimes), food and pharmaceutical law, and violation 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.

[32] CV as per December 2018.

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 the pollution of air, water and 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).

Alternative format versions of this report are available on request.

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