Sanctioning Environmental Crime (WG4)

Third-stage Interim Report:
Tools and strategies for remedial action at the pre-trial and trial stages

2018/20

LIFE-ENPE Project
LIFE14 GIE/UK/000043

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List of abbreviations

CCP	Code of Criminal Procedure
CEI	Czech Environmental Inspectorate
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
ECHR	European Charter of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ICPE	facility classified for the protection of the environment (France)
NGO	non-governmental organisation
Onema	National Office for Water and Aquatic Environments (France)
PO	Prosecutor's Office
WED	Economic Crimes Act (the Netherlands)
WG	working group

I. Background

The LIFE-ENPE project LIFE14 GIE/UK/000043 has formed four working groups to build capacity and consistency in implementing EU environmental law. The working groups 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"*.

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. The working group aims to explore the effectiveness of different methods of securing compliance with environmental law and to assess the circumstances in which each type of sanction best meets the test of being proportionate, effective and dissuasive. It also considers how prosecutors seek to apply different sanctions, what routes to criminal penalties are available and how judges actually apply sanctions in criminal and administrative contexts. Finally, it examines the ongoing practical implications for prosecutors and judges of the Eco-crime Directive 2008/99/EC.

In its third working year (December 2018–March 2020) WG4 comprised 8 members, including both prosecutors and judges, from 7 countries.

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

This report provides the findings from the working group's activity between December 2018 and March 2020, its third working year, during which the working group analysed and discussed one

topic: the tools and strategies for remedial action at the pre-trial and trial stages. The group met on four occasions: a kick-off meeting in Brussels on 7 December 2018, a meeting in Helsinki on 14 September 2019 (judges only), a meeting in The Hague on 29 October 2019 (mostly prosecutors) and another meeting in Brussels on 7 December 2019. The cycle of the third working year was completed by a meeting in Brussels on 6 March 2020, which also saw the kick-off of a synthesis report of all the work achieved since December 2016.

This report is the third of its kind. The findings of the working group's activity in its first and second working years, from December 2016 to December 2017 and from December 2017 to December 2018, have been published: 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.[1] As for both previous reports, this third report is the outcome of a collaborative writing process and is intended to allow the reader to follow the development of the analysis as it unfolds.

These efforts result in observations and recommendations for policy and law makers at EU and national level.

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

II. Introduction

Kick-off meeting: Brussels, 7 December 2018

1. At our December meeting in 2018, Sara Boogers gave an overview of the options for remedial action against harm caused by environmental crime in Flanders (Belgium) (see Annex 1: S. Boogers, *Restoration and safety measures in environmental enforcement – Is this a concern for prosecutors and criminal judges?*, December 2018). Sara started by stressing the uniqueness of environmental crime with regard to remedial action. The extension of enforcement action to restorative action, which implies more than merely paying compensation to the direct victims of the crime, is common for crime in general. Unique to environmental crime is that sanctioning goals can include the restoration of harm by appropriate remedial action on the environment.

It appeared throughout Sara's presentation, and our discussion of it, that remedial action can be taken by the administration, civil courts and criminal courts in all the EU countries present at the meeting (Belgium, Croatia, the Czech Republic, the Netherlands and Spain).

Civil courts have the specific task of acting on emergencies through the use of interim measures.

In criminal courts, remedial action is an annex to punishment.

2. Insofar as remedial action is pursued in criminal cases, the Flemish prosecutor has an important role.

At the pre-trial stage, he/she can use strategies to stimulate 'spontaneous' remedial action by the offender, for instance give time to see if the offender will voluntarily restore the damage and make clear that (a) an eventual prosecution decision depends on it (the situation where an administrative remedial sanction was imposed and is being carried out as well as the situation where no such sanction was imposed) or (b) the level of the fine requested depends on it (the situation where an administrative remedial sanction was imposed and is being implemented).

At the trial stage, he/she can shape the sanctioning request so as to promote effective remedial action (e.g. requesting partial suspension under conditions linked to remedial action) and is one of the parties to the case entitled to request remedial measures.

After the trial, he/she is in charge of following up on the implementation of remedial measures imposed on his/her request.

Criminal court judges also have strategies available to stimulate remedial action. In cases where the offender admits guilt, the judge can, for instance, delay sentencing for a couple of months,

making clear that he/she will check the implementation of remedial measures on the day of sentencing and that positive action will induce a milder penalty.

3. This topic was adopted as the working topic for the year 2018/19.

When, by law, the detection of an offence is a prerequisite to be competent, as a judge or administrative authority, to impose a remedial measure and the remedial measure has to be imposed, by law too, on the offender, the measure is a sanction. In this report, this is more specifically our topic: remedial sanctions and remedial sanctioning practice, tools and strategies.

The topic is connected with the requirement for effective sanctioning, present in the Eco-crime Directive 2008/99/EC and in the well-established enforcement obligation developed by the European Court of Justice (milestone judgment, the Greek Maize case of 1989).

4. During our kick-off discussion, it appeared that there are significant differences between the represented countries as regards the tools available for remedial sanctioning.

Further issues discussed relate to the status of 'victim', entitled to redress; the monetary valuation of environmental harm; the requirements of the *non bis in idem* principle when combining criminal punitive sanctions (penalties) and administrative fines; the time needed to achieve remedial sanctions by administrative action as opposed to the time needed for the same when going to court; the impact of a lack of remedial action by the offender on future permitting decisions; the relationship between administrative remedial sanctioning and a simultaneous criminal case; the reluctance of some courts to allow damages (money), even when backed by solid expert reports; the usefulness of suspended penalties under conditions aimed at remedial action.

Questions for each WG member to explore for their country

1. In your country, what tools for remedial action against environmental crimes are available to (a) the administration, (b) civil courts and (c) criminal courts?

What are “old tools” and what are, potentially, “new tools”?

2. What strategies to stimulate effective remedial action are used by (a) prosecutors and (b) criminal court judges?

3. What is the relationship between sanctioning tracks? Is it, for instance, possible to have the administration imposing remedial sanctions while a criminal procedure is ongoing? Are prosecutors working with administrative authorities to fine-tune their case management and eventual sanctioning requests?

4. Who can claim remedial sanctions?
Who can claim damages and how are damages assessed?
Can NGOs do so?

III. Winter 2018/19: First input of the WG members

All working group members answered the abovementioned questions: Belgium, Croatia, the Czech Republic, France, Germany, the Netherlands and Spain. Their answers follow here.

A. Belgium

Author's note: this answer represents the personal opinion of the author, and is in no way an official contribution of the Belgian Justice Department or the Belgian Prosecutor's Office.

1. In your country, what tools for remedial action against environmental crimes are available to (a) the administration, (b) civil courts and (c) criminal courts?

What are "old tools" and what are, potentially, "new tools"?

(a) Administrative tools

In Flanders the environmental enforcement law gives the administrative authorities – local or regional – a wide range of possible measures to stop the illegal conduct and/or to repair the damage caused to the environment, starting with "soft tools" and then proceeding on to more severe actions.

(1) At first, the competent authority can issue a "reminder" (waarschuwing) when they notice that an environmental offence is likely to occur (Article 16.3.22 Decreet Algemene Bepalingen Milieubeleid)

(2) When they see that the offence is being/has been committed, the administrative competent authority can start by issuing a formal "warning" (aanmaning) to the offender, giving him time to stop the illicit actions, to adjust the operating method, to get the right regulatory permission or licence, to stop the operation if needed or to repair the damage. Such a warning can be issued even without formally making a notice of violation ("proces-verbaal") of the offence. The offender gets a reasonable period of time. If the offender does not respond correctly to the warning, then a notice of violation will certainly be made and sent to the prosecutor's office for further sanctioning (Article 16.3.27 Decreet Algemene Bepalingen Milieubeleid).

(3) Finally the competent authority can impose "administrative sanctions" (bestuurlijke maatregelen) on the offender, and can combine this with an administrative penalty payment (bestuurlijke dwangsom) in case the offender fails to execute these sanctions after a certain given period of time. An administrative appeal is possible, both against the imposed sanctions as against the imposed penalty payment (Article 16.4.5 and next in the Decreet Algemene Bepalingen Milieubeleid).

The administrative sanctions can exist as:

- an order to take the necessary measures to end the environmental offence, to (partly) undo the consequences of the offence (i.e. repair the damage), or to prevent repeat of the offence;
- an order to stop certain activities, actions or use of goods;
- an action being taken by the competent authorities themselves to end the environmental offence, to (partly) undo the consequences of the offence, or to prevent repeat of the offence, the costs of those actions to be paid by the offender;
- a combination of the abovementioned measures.

The Decreet also gives some examples of possible administrative sanctions (not exhaustive):

- The stopping or the execution of certain activities or actions.
- The prohibition of the use of certain infrastructure, installations or machinery, including their formal closure (sealing) by the authorities.
- The closing of (a part) of the facility.
- The seizure of certain goods, including waste, of which the possession or use is illicit according to the environmental legislation.
- The immediate destruction of certain illicit goods, the cost of which is charged to the offender. Live animals that are illegally possessed can be handed over (definitively) to an official shelter or can be released immediately back into nature.

Important: if the administration wants to impose such administrative sanctions, a formal notice of violation has to be made by the competent authorities (environmental inspector or police). Since this notice of violation has to be sent by law to the public prosecutor, this means that a criminal investigation/procedure is also started automatically. So then we have the administrative remedial procedure running together with the criminal judicial procedure.

Who can impose these administrative sanctioning tools (warnings or administrative sanctions)?

- Special inspection agencies (environmental inspection, nature and forest inspection, etc.).

- Local competent authorities (toezichthouders).

- The mayor of the municipality or the governor of the province, but only for a limited list of offences.

The Decreet also has a procedure for "third parties" to demand that the competent authorities impose administrative sanctions (Article 16.4.18 Decreet Algemene Bepalingen Milieubeleid). This is, of course, very interesting if the administration (for whatever reason) does not take the necessary action against an environmental offender.

Such a demand can be made by any person (natural or legal) who is directly harmed by an environmental offence, by any person who has an interest in the offence being restrained, or by an environmental NGO if the offence concerns the environmental interest that the NGO is protecting.

The competent authority has a period of 45 days to respond to such a demand for action. If the demand is rejected, an administrative appeal to the minister of environment is possible.

(b) Tools for civil judges

(1) The civil judge can act upon request of a victim of an environmental offence. This victim can also be an environmental NGO.

The civil judge can impose safety measures in urgent cases when there is a threat that substantial damage is likely to occur (milieustakingsvordering).

The civil judge can impose the restoration of damage on the basis of the general rule on liability (e.g. if a neighbour suffers damage caused by noise from a factory, or if his animals get sick because of waste being dumped in the water they drink from).

In these civil procedures, of course, the victim/plaintiff carries the burden of proof, not only of his own damage, but also of the illegal conduct of the defender. The latter will be extremely difficult when there has been no (criminal) investigation at all, or when the prosecutor decided not to prosecute the case because of lack of evidence.

The civil judge is not entitled to order an investigation by environmental inspectors or police officers, and nor is he/she entitled to ask the competent authorities for more information about a particular case.

(2) The civil judge can also impose remedial measures on request of "the authorised official" (gemachtigd ambtenaar). (Article 16.6.7 Decreet Algemene Bepalingen Milieubeleid). Those remedial measures can exist as the restoration of a place to its original state, a prohibition on the illicit use of land or a building, or the execution of specific adaptive measures by the defendant/offender. It is the "authorised official" who has to describe the actions needed. He/she

can also request that the judge impose a penalty payment (dwangsom) to make sure that the measures are carried out correctly.

However, to date, only inspectors from the Nature and Forest Agency have been appointed as authorised officials in Flanders, so only they can start such a civil procedure concerning damage to nature and forests.

(c) Tools for criminal judges

When environmental offences are being prosecuted in a criminal court, the criminal judge also has some options to impose safety measures and/or remedial sanctions (maatregelen).

(1) Safety measures

After hearing all parties, the criminal judge can decide to prohibit the further operation of the facility (or a part of it) where the environmental offence was committed, for a period of time he determines (Article 16.6.5 Decreet Algemene Bepalingen Milieubeleid).

In practice, this period of time can also be combined with specific conditions, e.g. no further operation until the proper licence has been granted. In application of the general rules of Belgian judicial law, the judge can impose a penalty payment (dwangsom) in case of violation of the safety measures.

The criminal judge can decide him/herself to impose such safety measures, but in practice it is mostly the prosecutor who explicitly requests this from the judge.

The option of imposing such general safety measures gives the criminal judge a highly effective tool to intervene “in the field”, to effectively stop an ongoing crime and/or to avoid further damage to the environment.

(2) Remedial sanctions

Specifically for waste offences

In case of a conviction for the illicit dumping of waste, the (criminal) judge will also order the offender to remove the dumped waste and take it to a licensed waste facility. This is written in the Decree not as an option for the judge, but as a mandatory remedial sanction imposed next to the punitive sanction. The judge can also order the defendant to compensate the costs incurred by the authorities in removing the waste themselves (Article 16.6.4 Decreet Algemene Bepalingen Milieubeleid).

Again, the judge can apply the general rules of Belgian judicial law to impose a penalty payment (dwangsom) in case the offender does not execute the imposed remedial sanction.

Generally for all kinds of environmental offence

In case of a conviction for an environmental offence, the criminal judge may – apart from the punitive sanction – also decide to impose remedial sanctions (maatregelen) upon the defendant (Article 16.6.6 Decreet Algemene Bepalingen Milieubeleid).

These sanctions can take the form of the restoration of a place to its original state, the prohibition of the illicit use of land or a building, or the execution of specific adaptive actions by the defendant. Since the Decree only gives a general description of the three kinds of possible sanctions, the judge has a wide range of possibilities to select the right sanction for each specific case.

The judge can him/herself take the initiative to impose remedial sanctions, or can be requested to do so by the "authorised official" (gemachtigd ambtenaar), by the public prosecutor, or by the victim of the offence. This request can be made simply in writing, without any procedural demands.

If the request is made by the "authorised official", then this is called a "remedial demand" and the judge will have to rule on this demand. Of course, it makes sense that the Decree puts the demand from the authorised official first in line, as we might expect the official to know best which measures are necessary to remedy the environmental damage. As mentioned above, in Flanders only the inspectors of the Nature and Forest Agency are appointed as authorised officials.

Here again, of course, a penalty payment (dwangsom) will be imposed to make sure the sanctions are executed by the defendant.

(d) Penalties for ignoring remedial sanctions and safety measures

Flemish law, of course, wants to make sure that offenders respect the remedial sanctions and safety measures imposed by administrative authorities or courts. Therefore, a separate crime has been written into environmental enforcement legislation.

If the offender willingly ignores or does not execute the imposed safety measure or remedial sanction, this behaviour forms a new separate act of crime, punishable by up to 1 year's imprisonment and/or a fine of up to €100,000 (Article 16.6.1.§2.1° Decreet Algemene Bepalingen Milieubeleid).

This concerns all kinds of safety measures or remedial sanctions, whether imposed by the administrative competent authority, by the civil judge or by the criminal judge. Of course, a new notice of violation has to be made by the environmental inspectors or the police, and has to be sent to the prosecutor's office.

So, the offender might end up being prosecuted in court only for not executing a safety measure or remedial sanction (e.g. when the environmental offence itself, such as illegal dumping of waste, has already been punished by an administrative fine or an earlier court sentence).

2. What strategies to stimulate effective remedial action are used by (a) prosecutors and (b) criminal court judges?

The "strategies" are not written down in any law or guideline. Every prosecutor or judge is free to handle a case in the way he or she thinks is best. But, of course, since environmental prosecutors and judges meet each other from time to time, they exchange best practices and most of them apply similar strategies to achieve the best results, not only in punishing (straffen) but also in imposing effective remedial sanctions (maatregelen).

(a) Strategies for prosecutors

During the (criminal) investigation a prosecutor in environmental cases always has to pay attention to the environmental damage: Is there already damage or is it likely to occur? Is it only "general" damage or are there individual victims as well? How can the damage be restored? How can the consequences of the environmental offence be undone for the environment? Is there a need to impose safety measures to stop an ongoing offence?

As a prosecutor, however, we cannot impose safety measures or remedial sanctions ourselves. We can only ask the (criminal) judge to do so, but this means of course that we have to wait until the end of the investigation, until the case is finally pleaded in court. And this can take several months, or even years, depending on the extent of the case.

So, during the investigation (pre-trial stage) the prosecutor will stay in touch with the competent administrative authorities to consider which is the best procedure to obtain restoration: administrative or criminal. Often an administrative remedial action will be going on (by warnings or administrative sanctions) at the same time as and alongside the criminal investigation. The administrative authority sends a copy of remedial sanctions it imposed to the prosecutor, to keep him/her informed, and the prosecutor will use the criminal procedure as a way to push the defendant to carry out those sanctions. For example, when interrogated by the police at the request of the prosecutor, the defendant will be asked if he/she has the intention of carrying out the imposed administrative sanctions, and in what time period he/she intends to do so.

The willingness of the offender to remedy the damage and/or to regularise his/her activities within a limited period of time, will influence the outcome of the criminal procedure (whether or not prosecution before criminal court is due to take place) and the imposed sanction.

When administrative remedial sanctions fail and the case is to be prosecuted in the criminal court, the prosecutor will request that the criminal judge imposes those same remedial sanctions, of course with a penalty payment.

(b) Strategies for criminal judges

When a case comes before the criminal court and remedial sanctions or safety measures are being requested (by the prosecutor or by the authorised official), the defendant (or his/her lawyer) often asks for a postponement in order to get additional time to take the necessary action. Most judges will grant them such a postponement (sometimes even more than once) and will follow up on the repair of the damage (or the regularisation of the operation) during the criminal proceedings. The defendant has to give proof of the restoration/regularisation. Sometimes the prosecutor will ask the police or the competent authority to check if the defendant is telling the truth.

Restoration or regularisation during the criminal proceedings can (and will mostly) have a positive effect on the sanctioning severity and will enhance the chance of suspended penalties.

3. What is the relationship between sanctioning tracks? Is it, for instance, possible to have the administration imposing remedial sanctions while a criminal procedure is ongoing? Are prosecutors working with administrative authorities to fine-tune their case management and eventual sanctioning requests?

This question has already been answered under **2.** above. Administrative remedial action and criminal proceedings can exist in parallel, and can even reinforce each other.

In Flemish legislation there are no specific rules on the relationship between the two tracks, nor on the way the administrative authorities and the prosecutors can or must communicate. The only thing that is written in law is that when the prosecutor decides that a case has to be sanctioned by administrative fines (punitive administrative action), the criminal investigation and procedure immediately come to an end and neither the prosecutor nor the criminal judge is competent any longer (non bis in idem). In that instance, of course, there will be no co-existence of administrative and criminal remedial actions.

But when the prosecutor decides to have the case investigated and sanctioned under the criminal procedure, then the administrative authority still remains competent to take the necessary safety measures or remedial action (warnings and remedial sanctions) to remedy the damage. And in that case, there are no fixed rules on how the remedial competences in the administrative and the criminal tracks relate to each other, or how the criminal and administrative authorities have to work together.

However, representatives of the (environmental) prosecutors and the administrative authorities meet each other on a regular basis in the “Vlaamse Hoge Handhavingsraad voor Ruimte en Milieu”, a council for environmental enforcement, and in the prosecutor’s “Expertisenetwerk Leefmilieu”, an expert network. Here we have come to some practical agreements on how to work together, how to exchange information and how to keep each other informed about the progress in specific cases. So, for instance, the administrative authority will always send a copy of their administrative remedial sanctions to the prosecutor’s office, just to keep him/her informed.

4. Who can claim remedial sanctions?
Who can claim damages and how are damages assessed?
Can NGOs do so?

The first question has already been answered above, under question **1.**

Damages can be claimed in a civil procedure (burden of proof on the plaintiff) or in a criminal procedure. Under the criminal procedure, the plaintiff does not have to prove the existence of the environmental offence itself (that is the prosecutor's job), only the existence and the extent of the damage he/she has suffered because of the offence.

Damages can, of course, be claimed by direct victims (natural or legal persons). A direct victim can also be the public authority (for instance a municipality) that has incurred costs to clean up an illicit dumping of waste, for example.

Damages can also be claimed by NGOs concerning offences relating to the interests that the specific NGO represents.

For instance, the NGO Bird Protection Flanders often intervenes before the criminal court to claim damages during the prosecution of cases for illegal catching of birds or illegal killing of wildlife. Recently the Flemish prosecutors even received a (binding) guideline from the College of Prosecutors General that in every prosecution of a wildlife crime we have to inform the NGO Bird Protection of the docket number of the case, the name of the defendant and the date of the court hearings, so that they can have knowledge of the case and claim damages if they want to. The important role of NGOs in protecting the environment is apparently being acknowledged by the judicial authorities.

There are no rules or guidelines about the monetary valuation (assessment) of environmental damage. It is up to the judge to make a fair assessment. Some (good) judges will refer to (international) precedents or jurisprudence, some (most) judges will just rely on their own feeling of what is right and fair.

One can only decide that, on the matter of the monetary valuation of environmental damage, there is still a lot of work to be done by the scientists and specialists. And since nature and environment are a common good to all of us, it might be good if the EU DG Environment took the lead on this issue.

B. Croatia

1. In your country, what tools for remedial action against environmental crimes are available to (a) the administration, (b) civil courts and (c) criminal courts?

What are "old tools" and what are, potentially, "new tools"?

First of all, I would like to stress that in Croatia there are no specific measures/remedial actions for environmental crimes. We have general provisions for all types of crimes.

Remedial actions against environmental crime:

Administrative authorities (inspectors) have the power to act urgently and order different measures, for example:

- to stop ongoing illicit activity;
- to close part or all of the facility.

The *criminal court* may remit the punishment of the perpetrator of any of the criminal offences referred to in Articles 193, 194, 195, 197 and 198 of the Criminal Act if, before the occurrence of severe consequences, he/she voluntarily averts the danger or state of affairs which he/she has brought on (so-called "active remorse"). The criminal court also has the power to order the perpetrator, together with a conditional sentence, to restore the damage caused by the environmental offence (so-called "special obligations").

The *civil court* has the option, within the framework of proceedings for damages or proceedings for *restitutio in integrum* (to be understood as to restore *in natura*, restore to the original state), to impose interim measures (not *ex officio*) of different content; particularly to stop ongoing activity if there is a threat that substantial damage is likely to occur.

2. What strategies to stimulate effective remedial action are used by (a) prosecutors and (b) criminal court judges?

Prosecutors have the ability to postpone prosecution of any offence for which a prison sentence of up to 5 years is prescribed if the perpetrator undertakes an obligation to *restitutio in integrum* (restore to the original state, if possible) or to do any other act of restoration (pay damages caused by the criminal act, for example). If the perpetrator fulfils his/her undertaken obligations within the deadline, the prosecutor shall refrain from prosecution.

3. What is the relationship between sanctioning tracks? Is it, for instance, possible to have the administration imposing remedial sanctions while a criminal procedure is ongoing? Are prosecutors working with administrative authorities to fine-tune their case management and eventual sanctioning requests?

Concerning the relationship between sanctioning tracks, the *ne bis in idem* principle should be respected. Therefore, if there is an environmental offence at stake (not a misdemeanour), the criminal court is competent to deal with the case. While the criminal procedure is ongoing, the administration only has the option to impose urgent measures (to stop ongoing activity, to close part or all of the facility), but cannot do anything else (impose an administrative fine, for example). Prosecutors collaborate with administrative authorities because it is mainly

administrative authorities (inspectors) who initiate prosecutions for environmental offences by filing criminal charges.

4. Who can claim remedial sanctions?
Who can claim damages and how are damages assessed?
Can NGOs do so?

Damages caused by an environmental crime can be claimed by victims. A NGO can claim damages only if it is a victim or if it represents a victim. If an environmental crime has caused damage to a public good (sea, forests etc.), the state is entitled to seek damages from the perpetrator.

The monetary valuation of damage resulting from environmental crime is a big problem because sometimes it is very difficult to assess (air pollution and the damage caused by it, for example) and sometimes an assessment is very expensive because it requires the joint work of many different experts. Sometimes it is difficult to find suitable experts.

C. Czech Republic

1. In your country, what tools for remedial action against environmental crimes are available to (a) the administration, (b) civil courts and (c) criminal courts?

What are "old tools" and what are, potentially, "new tools"?

(a) The administration

In the Czech Republic there is no general administrative substantive law. (There is only an administrative procedural code, which applies to the majority of administrative procedures.) To implement EU Directive No. 2004/35/EC, the Act on Environmental Harm and its Restoration was adopted in 2008 (No. 167/2008 Coll.). This law provides definitions of environmental harm, the rights and obligations of natural and legal persons, remedial actions, their aims and procedure. Nevertheless, specification of the authority that can impose remedial action and its specific powers and duties are stated in special laws concerning specific parts of the environment and its protection (water, forests, habitats, waste management, etc.). Due to this fact, I have chosen the area of waste as an example to describe the remedial action available to administrative bodies.

According to the Waste Law (No. 185/2001 Collection of Laws), remedial action can be ordered by the Ministry of Environment in the course of supervision of certain types of operators. In the instance that the ministry finds non-compliance with the law or the conditions of the operator's activities, it is entitled to: (i) decide on the responsibility of the operator to take remedial action; (ii) report the non-compliance to the CEI (Czech Environmental Inspectorate) for them to start administrative proceedings; and, should the operator not take the remedial action mentioned in point (i) within the specified time limit, (iii) revoke the operator's permit. Other authorities are

entitled to impose remedial action too, such as customs in the case of transboundary shipments of waste, and the CEI or municipalities for specific breaches of the Waste Law. According to the Waste Law and the practice of the CEI, remedial action can be ordered by the CEI only on the basis of a conviction, that means only as an addition to a decision establishing that a certain person has committed an administrative offence.

By contrast, according to the Water Protection Law remedial action can be ordered without a basis of conviction. Thus the specific law determines which administrative authority may impose remedial action and under what conditions it is entitled to do so. In all cases the authority has to identify the person obliged to take the remedial action (usually the operator or other person who breached the law or permit conditions, or caused the damage) and prove causality (previous and unlawful action or another legal reason to establish liability, for instance possession of the land). If the authority is not able to prove these elements (which is not easy without the powers of police or customs), no remedial action can be ordered and it falls to the owner or the state to take care for it.

In practice, administrative authorities take remedial action "voluntarily" undertaken by the operator during the course of administrative proceedings into account while deciding on the size of the administrative fine. This practice encourages the operator to take remedial action in order to incur lower punishment.

(b) Civil courts

Civil courts do not impose remedial action *in natura* upon the demand of a claimant in civil environmental law cases in the Czech Republic, but have the ability to order compensation (the payment of damages in money) (if possible, always *restitutio in integrum*). There are administrative courts that, among other matters, are entitled to decide on appeals of natural or legal persons (the claimant) against the decisions of an administrative authority (the defendant) in environmental matters. These courts do not decide on remedial action either.

(c) Criminal courts

Remedial action can be imposed by a criminal court only when imposing a suspended sentence on a natural person as a so-called "adequate duty", requiring the convicted person to lead a proper life during the probation period. The court can also impose on the offender the duty to pay damages during the probation period according to his/her financial situation.

The possibility of remedying environmental damage, as such, is limited by the concept of damage as (1) damage to property belonging to a certain person valued in money or (2) other non-property losses (e.g. compensation for a victim who suffered pain or personal loss). As it is not easy to link the costs of the remedial action taken by the state, municipality or a third party to the environmental crime (establish the causality soundly), it is not easy to convince the court in criminal proceedings to order the accused to pay damages.

As an example, I refer to a certain court decision where the damage to the environment was caused by illegal waste dumping and the remedial action ordered by the CEI was to clean up and dispose of the waste. The costs of that measure were valued at CZK 1,300,000. The remedial action was imposed on the municipality as the owner of the land and not on the perpetrator (the damage was caused by the mayor of the municipality who allowed the operators to dump the waste on a closed landfill). The court dismissed the claim for damages by the municipality because the remedial action was not taken at the date of the judgment, with the argument that the damage was not yet caused. The appellate court dismissed the appeal of the municipality saying that the municipality (of which the perpetrator was the mayor) failed to fulfil its preventive and controlling duties. Thus the extent of the damage caused only by the perpetrator and the extent of the damage caused with the contribution of the municipality could not be specified. These decisions both illustrate that criminal courts in this case were not sure how to handle the damages.

2. What strategies to stimulate effective remedial action are used by (a) prosecutors and (b) criminal court judges?

The Criminal Procedure Code provides for several types of conditional dismissal (dismissal with probation time or so-called praetorian probation) that are based mostly on confession and repairing of the damage. In view of the problems with the concept of damage, it is dubious whether repairing the damage could be a condition of a conditional dismissal in environmental cases. In CITES cases (e.g. illicit trafficking of endangered species) no damage (for example by taking the specimen from its habitat or endangering a species population) is required as a constitutive element of the crime and also no repair of the damage caused is required for conditional dismissal. It would, however, be useful to allow the prosecutors to impose a duty on the offender to pay an amount of money to an NGO or State Environmental Fund as a condition for conditional dismissal. Such a duty is already established for conditional dismissal in the realm of domestic violence and traffic offences. Thus, for instance, the duty to pay an amount to be used, according to a special law, for monetary help to the victims of domestic violence (e.g. payment to an NGO helping victims of domestic violence). Prosecutors can decide on conditional dismissal with or without a duty to pay into the special fund for victims.

Generally, there are no specific strategies used by prosecutors or criminal judges to stimulate effective remedial action by the perpetrators. The issue is tackled on a case-by-case basis and depends on the personality of the respective judge or prosecutor. It can involve bargaining with the accused or his/her lawyer, and, in court, also postponing a hearing to give the accused the opportunity to take remedial action.

As there are very few cases involving environmental damage to land, water or other aspects of the environment (besides CITES cases) in criminal proceedings in the Czech Republic, it is impossible for me to identify specific strategies with respect to environmental cases only.

3. What is the relationship between sanctioning tracks? Is it, for instance, possible to have the administration imposing remedial sanctions while a criminal procedure is ongoing? Are prosecutors working with administrative authorities to fine-tune their case management and eventual sanctioning requests?

As I mentioned in **1.**, it depends on the particular law whether the ability to impose remedial action is based on a conviction or not. In cases where imposing remedial action depends on the administrative authority's decision on culpability of an administrative offence, the *ne bis in idem* principle must be respected in the relationship between the administrative and the criminal sanctioning tracks. The prosecutors usually cooperate with the CEI, as its inspectors are either expert witnesses or the person who reported the crime. The case file has to carry all the information about sanctions, confiscations and other measures taken by administrative authorities for prosecutors and judges to decide on sanctioning and seizures.

4. Who can claim remedial sanctions?
Who can claim damages and how are damages assessed?
Can NGOs do so?

The need for remedial administrative action is considered by the administrative authorities. There are no private persons entitled to claim remedial administrative action.

The person entitled to claim damages in criminal proceedings is the injured party or its successors. The injured party has rights in criminal proceedings and can claim damages. So-called "collateral proceedings" help her claim for reparation of damage (in administrative proceedings there are similar provisions on collateral proceedings). The injured party does not have to prove anything with respect to the crime or the perpetrator; he or she has only to provide the police, prosecution service or court with a statement containing the amount of the damages requested and the grounds (explanation) on which the damages are claimed. In the course of the investigation the injured party can be asked to deliver relevant documents proving the amount of damages (e.g. purchase agreement). In the instance that the damage is one of the facts of the crime, expert opinion is needed for criminal proceedings to prove the amount of the damages, and then the injured party usually receives the amount stated by the expert witness. The court can dismiss the claim for damages if it would require wide-ranging and time-consuming evidence beyond the needs of criminal proceedings.

As mentioned already in **1.**, the concept of damage in Czech criminal law is restricted. In environmental crime as in all crime, the first problem is that the existence of an injured party is a pre-condition of claiming damages. There is no law saying that any particular person is entitled to claim damages where damage to the environment has occurred. At the same time, there is usually no damage to a natural or legal person in direct causality with the crime. The Criminal Code states that the damages can be assessed as the amount of money equal to the actual cost for the restitution of a thing to its original state. That can apply, in my opinion, to cases where parties other than the offender have had to take remedial action and are able to prove the costs for such remedial action. These costs can be claimed as damages in criminal

proceedings against the offender. However, I found only one criminal case really deciding on damages this way, from 2009.

There are no special guidelines in Czech criminal law that would help the police, prosecutors and judges to assess the damages in environmental cases. Due to this fact and to the problems mentioned above, claims for damages in environmental cases can be problematic and successful claims scarce. Only the injured party can claim damages, thus NGOs are excluded.

D. France

(a) On the respective roles of the administration and the judiciary

In France 27 existing environmental regulations were reformed by the ordinance dated 11 January 2012, applicable since 1 July 2013.

In purely administrative terms, the difficulty of the French system is that the administrative authority (prefect and administrations under his/her supervision (DREAL, DDPP, DDT etc.)) has the power simultaneously to issue permits, in particular to operate, and to monitor and prosecute, noting that the transaction is current practice, which allows it to take into account the objective of economic development and not to disclose to the public the illegal environmental practices of certain economic actors; the administrative authority, which has no functional independence, will have a tendency to concentrate on the administrative sanction even though the faulty behaviour would equally constitute a criminal offence.

By the same account, with particular regard to the oversight of classified facilities for the protection of the environment (industrial or agricultural facilities, and also facilities such as dry cleaners, petrol stations, etc.), the emphasis in the guidelines given to the administration's agents is, above all, on playing a preventative role; the emphasis is on "dialogue with the operator", the idea being to perform an educational role before anything else, and to retain a sense of progressiveness in sanctioning because of the local human and economic context.

The administration equally holds onto the notion of "the right to make mistakes".

The administrative authority has five types of administrative sanctions: consignment;[2] administrative coercion;[3] suspension of operations at the facility; fine and penalty payment; and the option, if necessary, to close the facility. All sanctions must be preceded by a formal notice.

When a problem is identified during an inspection, the prefect may issue a formal notice decree; according to an administrative report from 2017, only 10% of these decrees (numbering on

[2] Where a sum of money is taken in consignation to pay for administrative coercion, if necessary, at a later stage.
[3] Administrative coercion means administrative security measures at the expense of the offender.

average 2,000 per year) were effectively followed by a sanction such as consignment, a fine or penalty payment. Is this evidence of effectiveness, or of a form of impunity?

The figures revealed in the report prepared in November 2017 on the use of the administrative sanctions introduced by the ordinance of 11 January 2012 indicate a 100% increase in administrative fines between 2015 and 2016, which should be seen in the context of the number of procedures initiated, being 42 in 2016. The penalties announced were similarly up by 65%, but on only 66 procedures.

Besides the inadequacy, reported in all the cases, of the staff in charge of inspection, it should equally be noted that the frequency of inspections is set according to the hazardousness or toxicity of the classified facility, such that it results objectively from its classification in the official list. The result is an unsatisfactory situation for small or illegal ICPEs (installations classées pour la protection de l'environnement: facilities classified for the protection of the environment).

Finally, in the context of classified facilities, the desire (very much encouraged by manufacturers, who are particularly hostile to criminal prosecution) to limit prosecutions and criminal sanctions to the most serious misconduct, and cases which need to be made an example of, is increasingly evident.

As regards the farming sector, the emphasis is on the need to adjust the administration's intervention in instances where the facility is in serious difficulty (farmers facing serious hardship).

With respect to environmental policing, the administrative structure is complex and difficult to simplify in the short term. Nonetheless, reorganisation has started very recently under the French Agency for Biodiversity, created by the law on the restoration of biodiversity of 8 August 2016. It corresponds with the desire for administrative pooling and simplification. It consolidates Onema (National Office for Water and Aquatic Environments), the Public Body for National Parks, the Agency for Protected Marine Areas and the public interest group ATEN, totalling about 1,200 staff (of which 900 are from Onema). The new agency is a public body under the Environment Ministry. Its duty is to support the implementation of public policy in the fields of knowledge, preservation, management and restoration of land-based, aquatic and marine biodiversity.

On the subject of protected spaces, notably, it manages the natural marine parks and the Agoa marine mammal sanctuary in the Antilles. It is the operator and organiser of the Nature 2000 marine sites. The national parks are attached to the agency, realising strong synergies between them.

Judicial authority: the criminal justice response only relates to a limited portion of offences at classified facilities (normally the most serious); by contrast, it predominates in offences concerning nature and water, offences essentially committed by physical persons.

But it appears, generally speaking, to be glaringly inadequate for various reasons:

- Lack of organisation of prosecutors and lack of personnel; specialised sections need to be created with specially trained magistrates (this interacts with the more general issue of environmental courts); at the moment everything still rests on the willingness of prosecutors or judges who are motivated by the subject; an eagerness to put in place “best practices”, for lack of genuine institutional responses.

- Lack of data for a general and global picture of environmental offences and their impact; we need data returns and pooling to evaluate the effectiveness of criminal justice and in turn to fine-tune criminal policy.

- Lack of willingness at the highest levels of authority to give environmental affairs the importance that they deserve; in terms of treatment time, environmental cases (which already often require long investigations, perhaps experience) are not heard in court as a priority (they take place after crimes against the person or property: assault, murder, burglary etc.) and only benefit from a reduced timescale, even when useful clarifications for the judge can be complex.

- With regard to the judgment on the criminal sanction, this becomes all the less important when a long delay has elapsed since the committing of the deeds, and the argument about the local economic situation is always put forward, particularly with respect to the jobs the perpetrator of the crime is providing.

- Many important and varied interests are at stake that can paralyse attempts at improving the situation in the absence of a strong and determined political will in this sense; hence a working group set up in 2015 to look at the list of crimes, among other matters, has not yielded results.

(b) Positive changes

- The recognition by case law, and then by the legislature, of ecological harm as such: the law of 8 August 2016 on the restoration of biodiversity, nature and landscapes, Article 1246 of the Civil Code. For example, the Court of Cassation, criminal chamber, judgment of 19 March 2019, appeal No. 18-80.869; regarding two houses and a swimming pool built in an exceptional natural area in violation of the planning rules, the criminal chamber of the Court of Cassation judged that the imposition, by the criminal court, of a not-insubstantial fine (€1 million) does not relieve it from compensating for the full amount of the damage claimed by an approved environmental protection association, and particularly the environmental damage, once its existence has been recorded (even if reduced by the growth of vegetation and the rehabilitation of the landscape financed by the perpetrator of the crime).

- The creation of the French Agency for Biodiversity (same law): in the course of implementation, it should allow for improvement in the organisation of administrative monitoring.

- The opening-up of action to civil society and competent actors: approved associations, extended under case law to associations when the interests of the social objective that is their mission to defend are violated; with regard to ecological damage, Article 1248 of the Civil Code: “Action for the remedy of ecological harm is open to all persons with the capacity and interest to act, such as the State, the French Agency for Biodiversity, local authorities and their groupings whose areas are affected, as well as public bodies [for example the Coastal Protection Agency] and associations approved or created at least five years before the date of the start of proceedings, which have as their objective the protection of nature and the defence of the environment.” Similarly see the abovementioned judgment of the criminal chamber of the Court of Cassation dated 19 March 2019, and also Crim., 22 March 2016, Appeal No. 13-87.650, Bull. crim. 2016, No. 87: “The restoration laid down by Article L. 162-9 of the environmental code does not preclude compensation under common law, which approved associations may apply for, as referred to in Article L. 142-2 of the same code, in particular under ecological damage, which comprises direct or indirect harm to the environment and arising from the offence. Thus, a court of appeal does not justify its decision, which – following an incident of pollution with fuel oil attributable to a company found guilty of offences under provisions of the environmental code – disallows the application of an association with the social objective of protecting birds, on the grounds of the lack or inappropriateness of the evaluation method of ecological harm that it has proposed, while it had the responsibility to quantify, using expertise if necessary, the ecological damage that it knew was in existence, and consisting of the notable impairment of bird fauna and its habitat for a period of two years, as a result of the pollution of the Loire estuary.”

- The law on whistleblowers: a whistleblower is “a physical person who selflessly and honestly exposes or reports a crime or an offence, a serious and clear infringement of an international commitment duly ratified or approved by France, a unilateral act by an international organisation on the basis of such a commitment, the law or regulation, a threat or serious harm to the public interest, of which he or she has personal knowledge.” (Article 6 of the law of 9 December 2016.)

- The establishment of group action: law No. 2016-1547 of 18 November 2016 on the modernisation of justice for the 21st century and its implementing decree No. 2017-888 of 6 May 2017 extend the group action procedure to environmental law. The group action mechanism basically allows one or several claimants to begin a judicial application for the benefit of a group of people who have suffered serial harm, and who present similar questions of law and of fact that may be determined in a consistent manner in a single procedure; certain actions of this type are currently planned, notably on the issue of air pollution.

- The principle of priority redress in kind: case law and Article 1249 of the Civil Code; if redress in kind is not possible, the allocation of damages (money) paid by the responsible person for the restoration of the environment (as well as penalty payments when settled).

- Recognition of preventative action for environmental harm: Article 1252 of the biodiversity law; the court may prescribe reasonable appropriate measures to prevent or halt the damage.

- Recognition of the aggravating circumstance of organised crime in the suppression of protected species trafficking (doubling of prison sentences from one to two years and increase in fines from €150,000 to €750,000), waste (Article L. 541-46 of the environmental code), plant protection products (L.253-15 and L.253-16 of the rural code).

- The circular relating to the criminal policy guidelines on the subject of environmental offences dated 23 April 2015 stipulates that a contact judge (i.e. one more specifically involved in the environment) be designated in each Prosecutor's Office (court of first instance) and General Prosecutor's Office (appeal court); but, in practice, it does not appear that this has allowed more sustainable activity to develop in this domain.

- Criminal transaction: presented as being more flexible and quicker than criminal prosecution, this sanctioning tool allows the administration, where legal proceedings have not been initiated, to propose to physical persons or legal entities the payment of a transactional fine, the amount not to exceed one third of the amount of the applicable fine, as well as, where appropriate, measures to stop the infringement, prevent its repetition, and repair the damage or make the premises compliant. The transaction is proposed by the administrative authority (prefect), whether it relates to a contravention or an offence. It has to be approved by the state prosecutor.

  Once the offender has met all the obligations set by the transaction within the time limit, the state action is extinguished definitively, which means that the prosecutions cannot be resumed if the infringement is repeated or if new elements related to it are discovered.

  The implementing circular limits its usage to less-serious infringements, and excludes it for acts committed in a manifestly deliberate way, repeatedly or causing serious damage to the environment or victims.

  A criminal transaction is also excluded in cases where the victim brings a complaint, demanding compensation for harm (a ruling on his/her civil action is needed).

  Note that the court does not intervene in the criminal transaction procedure: it takes place between the prefect and the prosecutor.

  There is little implementation at the current time; it is favoured by industrial companies and the agricultural profession.

- Criminal hearing by the inspectors of classified facilities; this should make it possible to:

  - gather all the necessary information on the person being heard;

- notify them fully of their rights;
- describe important contextual elements – responsibilities assumed by this person, competences, knowledge of regulation, practices etc.;
- record their remarks or those of their lawyer, where appropriate.

This criminal hearing therefore adopted the essential principle of the right to a fair hearing, which is not applied through the simple taking down of a statement or observation – often the first action following recognition of an infringement.

The criminal hearing can only be conducted by environmental inspectors granted powers of judicial police, but they have to be trained in this and have experience in the techniques and procedures of a hearing, which can be complex. It is therefore up to the prosecutor to decide whether he intends to have a hearing held by an official or an officer of a specialised supervisory unit.

In view of this complexity and the reluctance of the relevant units, which consider themselves technicians above all, do not have sufficient experience and worry about technicalities, this novel procedure is struggling to take off.

- Implementation of certain "specialisations", some of which function better than others: "public health" hubs (although notably ineffective in cases relating to asbestos); specialised coastal courts (JULIS) created to fight the dumping of pollutants by seagoing vessels, which are high courts with an extended territorial competence, with specialisation of prosecutors and judges with the objective of promoting better knowledge of forms of evidence specific to maritime pollution as well as environmental issues, to ensure the adjustment and consistency of the sentences passed and punishments given.

- Introduction of protocols between prosecutor and the administration: hence a protocol "ICPE agriculture" has been signed with prosecutors in the Brittany region; they determine general guidelines and put forward a classification of offences and criminal responses; a progress sheet has been set up between the administration and the prosecutor and a summary is prepared every year and jointly discussed by the administration and the prosecutor's office.

- Development of international cooperation: recently (article in Le Monde on 27 March 2019) an eel trafficking ring (eel fry) was dismantled as a result of cooperation between the Central Office for the Prevention of Harm to the Environment and Public Health (OCLAESP) and the nature protection service of the Guardia Civil (Spain), thanks to transfrontier information on the channels used by fishermen and collectors illegally exporting elvers from the Gironde (south west France) to Spain, destined for Asia, being a protected native species banned from export since 2009. The case was handled under the remit of JIRS (specialised interregional court) in Bordeaux as it involved a large-scale trafficking operation. This allowed the seizure of accounts and vehicles belonging to the implicated people, yielding close to €150,000 in criminal assets.

(c) The obstacles most frequently criticised

- The lack of funding for the investigation and prosecution of offences: this is related to the fact that environmental offences are not a priority issue in criminal policy. In France, there are close to 500,000 classified facilities and only 1,200 inspectors; in criminal cases, the majority of complaints result in the case being dropped. The acquittal rate is 30% on criminal cases relating to the environment, as against 6% for other litigation.

- The ambiguity in the "double-hatted" role of the officers of the specialised competent authority (inspectors of classified facilities, gamekeeper, etc.) who are principally under the authority of the prefect (administration) but at the same time under that of the prosecutor of the Republic when they decide to raise a criminal offence.

- The absence of a political and social willingness or conscience: certain offences are not made known to the prosecutor's office in an effort to spare economic actors, or for fear of political weight of certain categories, right down to the local level. For example, a colleague practising in a somewhat rural setting indicates that mayors hold back from reporting small-scale illegal garages that do not respect a single waste management rule.

- The excess of technicality in environmental law; for example, the definition of waste.

The most effective actions are most often those led by NGOs, who at the same time use their access to the courts, given to them by the legislature and case law, and also bring the most visible and serious offences into the public domain using the media, for example Greenpeace for nuclear and France Nature Environnement.

At the local level, note the effective role of local associations, recognised or representing victims, in referrals to the criminal court.

(d) What actions appear to be priorities for improving the prosecution and sanctioning of (remedies against) environmental offences?

- Revisit the list of offences; in a general sense, there are too many "environmental infringements" (punished with a simple fixed penalty, or for the more serious cases, a fine not exceeding €1,500 for physical persons and €7,500 for legal entities) and no genuine environmental offences. Notably, consideration is being given in legal theory to the creation of a general environmental offence with differentiation according to the seriousness of the harm and its potential repair, as well as an offence of endangerment of the environment (currently, breaches of the regulations relating to classified facilities, for example, are prosecuted and sanctioned on the basis of qualifying as endangering other people's lives) (Court of Cassation, criminal chamber 21 September 2010, appeal No. 09-86.258: breach of permit conditions by a classified facility and lead pollution), even the crime of ecocide.

- Note that this evolution, which would put in train more systematic criminal prosecutions than the current system where many offences are "processed" at the administrative level, is predominantly generating opposition from certain industrial and agricultural lobby groups.

- Significantly improve the issue of the management of evidence: we need more investigators, a better methodology and coherence in the data and analysis provided, whatever the level of intervention, databases that are shared and up to date, including at the European level, so that we do not have to start all over again every time, and resolve the endless question of the independence of experts, particularly in very new and technical areas where they are few in number and have often worked for the large industrial companies, having developed these products or technologies (this also relates to the question of the "technical judge" in a specialised court).

- Adopt a rigorous statistical approach to environmental litigation in order to structure it better.

Currently, it has to be noted that, while there have been advances in environmental legislation (recognition of ecological harm, new principles issued under the biodiversity law, law relating to the energy transition for green growth dated 27 August 2015 etc.), the judicial treatment of environmental offences has not evolved, even though, according to a 2016 report by the UN Environment Programme and Interpol, environmental crime constitutes the fourth-largest criminal activity being fought against in the world after the drugs trade, counterfeiting and human trafficking.

- Be vigilant about the many simplification and modernisation laws (see the non-regression principle now enshrined in Article L.110-1, II, 9e of the environmental code). For example:

    - The creation of the registration regime for classified facilities for the protection of the environment, streamlined in comparison with the permitting regime requiring an impact study, has led to the lowering of certain thresholds; thus, until January 2010 any rearing of more than 100 cows required a permit; now it is only needed from 400 cows; similarly, the storage and sorting of electronic waste are not subject to permitting, as was the case for the largest sites, but only to registration.

    - A decree of 31 December 2017 allows the prefect in a certain number of départements to derogate from certain environmental and urban planning regulations for an experimental project lasting two years.

- Improve the transposition and the application of EU law (particularly for the status of water bodies and courses, air pollution) and its effective implementation in the field: insufficient numbers of classified facility inspectors (for example: regarding the water quality law, small treatment works are less closely monitored even though there is a notable risk of shortcomings, small communes having less technical competence).

- The need for a more specific summary procedure for environmental matters, which can intervene rapidly (expedited emergency) and prevent any destruction before the trial

judgment, and which takes into consideration not only the harm as an individual case, but in the collective interest (bringing it close to pure ecological harm).

- Better use of environmental law by parties to proceedings (notably in civil matters).

- Take account of the general tendency for dematerialisation: documents are filled in on line, without necessarily having to submit the supporting documents. For example, the manure land-spreading plans, for the rearing of less than 150 cows.

- Provide the means, at every level; making polluters bear these additional costs by sanctioning them more heavily.

(e) Opportunities for improvement

Opportunities for improvement were notably proposed in the report (Report No. 1) of the General Council on the Environment and Sustainable Development in February 2015 evaluating the policing of the environment, established jointly with the General Inspectorate of Judicial Services, General Inspectorate of the Administration, the General Council of Food, Agriculture and Rural Areas, as well as in a report (Report No. 2) for the Ministry of Environment (No. 011110-21) in November 2017 on the use of administrative sanctions introduced by ordinance No. 2012-34 in the area of classified installations.

Some of these opportunities appear of interest to deepen the discussions of our WG.

(1) Opportunities particularly concerning the organisation of administrative services and sanctions:

- Define the performance indicators for various policies, enabling measurement of their effectiveness, locally and in the context of national monitoring of services involved in environmental policy (recommendation 1 of Report No. 1).

- Propose to the European Commission development of a common methodology for evaluation of the methods applied to issues of environmental policy (or a number of them) in different member states (recommendation 2 of Report No. 1).

- Provide helpful references to the services, namely records describing “successful experiences”, as well as model case file materials (recommendation 3 of Report No. 2).

- Publish in due course these references, study the feasibility of and procedures for a “forum” and an offer of a “digital professional network” (see recommendation 7 of Report No. 2).

- Establish and systematically circulate (except local evaluation of opportunity) an annual review of environmental policy actions and their effectiveness, based as far as possible on performance indicators (recommendation 7 of Report No. 1).

- Better use environmental monitoring data and develop a culture of area-based evaluation of risk, which takes into account all regulated activities, in order to define priorities for environmental policy (recommendation 12 of Report No. 1).

- Harmonise the maximum amount of fines under environmental policies applicable to a single classified facility and make the fine proportionate to the turnover of the operator (recommendation 1 of Report No. 2).

(2) Opportunities particularly concerning relations between administration and justice

- Support the development of local protocols [between the prefect (administration) and the prosecutor] to meet the inspectors' need for precise guidance (particularly on the ICPE) for the implementation and monitoring of criminal procedures, including the transaction, as well as the handling of the criminal hearing (recommendation No. 4 of Report No. 2).

- Create at the level of the département an operational structure to coordinate the actions of judicial investigators and environmental police officers, under the authority of the prosecutor.

- Organise joint technical training courses open to judges and agents of the different monitoring and investigation services.

(3) Opportunities particularly concerning justice

- Evaluate the criminal channel "Cassiopée" (criminal IT) so that courts can rapidly produce reliable statistics on their activity regarding the fight against environmental harm (recommendation 5 of Report No. 1).

More generally, several major points emerge to allow greater effectiveness in prosecuting and sanctioning (including remedial action) environmental offences:

- Improve evaluation for better definition of priorities: develop a culture of area-based evaluation of risk.

- Develop cross-sectoral thinking on policies and strategies to implement.

- Ensure better coordination of actors involved (administration and justice), which implies a clear definition, at the national and regional level, of the issues and objectives being pursued in the given period. It involves defining a strategy on the basis of coherent evaluation of the issues, particularly based on the analysis of results obtained so far, satisfactory or not; put in place, as it were, an operational synergy at every level, calling on clearly identified competences (according to the technical and specific problem to be solved), with the sharing of services if necessary.

- Strengthen the workforce while providing them with the necessary training to meet their mission; this is valid at all levels, for field officers, prosecutors, judges, both criminal and civil.

- Improve information tools, particularly via databases: these are valuable as much for "technical" services as for prosecutors and judges; development and dissemination of case sheets for the most complex offences (particularly allowing better recognition of offences redressing a legal void, which may build up from this stage), publishing a "good practice" guide; for example, a digital forum or professional network, such as that envisaged in recommendation 7 of Report No. 2.

- Better communicate with the relevant actors on the goals being pursued, the constituent elements of an offence and the means to remedy a breach and prevent it; aim of prevention.

- Attention should be paid in particular to a finding noted in Report No. 1: the differences between member states in their approaches to environmental issues, according to national institutional arrangements and cultures: on the choice between prevention and suppression, administrative/judicial relationships, national regulation (clarity, precision, explanation), the methods of monitoring. An exhaustive comparative study should allow the opportunities to emerge, in a general and homogeneous way, of ensuring greater effectiveness in the prosecution and sanctioning of environmental offences at the EU level.

The triptych of prevention/communication/monitoring is put forward as a key factor in the effectiveness and legitimacy of environmental policy in Report No. 1.

E. Germany

1. In your country, what tools for remedial action against environmental crimes are available to (a) the administration, (b) civil courts and (c) criminal courts?

What are "old tools" and what are, potentially, "new tools"?

(a) Administration

The administrative tool would be an administrative act that orders the polluter to remediate the environmental damage.

If the polluter does not act in the given time limit, the administration can proceed to authorise the necessary measures. The administration can then (and for budgetary reasons is regularly obliged to) claim the costs from the polluter. This is called execution by substitution (Ersatzvornahme) and has to be announced within the administrative act that orders the polluter to remediate the damage.

The polluter has the right to object to the administrative act by bringing a suit against it to the administrative court.

(b) Civil courts

The civil courts can order remedial action if there is a breach of contract or if the owner of a site claims that his property has suffered substantial damage. Remedial action boils down to the payment of damages (money). Civil cases relate to health, property and contractual relationships, and thus are about money. There exists no specific competence to impose remedial action in environment-related cases.

(c) Criminal courts

(1) Remedial action is not part of the system of sanctions in the criminal code or other laws relating to environmental offences. The criminal court cannot oblige the convicted offender to take remedial action. The available sanctions are only fines or imprisonment.

(2) In case of the suspension of the execution of penalties: when the execution of the penalty is suspended, the court can determine obligations for the offender to fulfil within the probation time. "Remedial action" *in natura* is not part of the catalogue of possible obligations. These are only: reparation to be paid to the victim of the crime, a payment to a non-profit organisation serving the public good, community service or a payment to the state.

The offender himself can offer services to compensate the legal wrong committed, and in that case the court can refrain from imposing other obligations.[4] It is therefore conceivable that the judge stresses this as a way to avoid other obligations, but it is not common and far from being an efficient tool, as it depends on the decision of the convicted offender.

(3) In the German Criminal Code, Section 330b stipulates especially for certain environmental crimes that when the offender voluntarily repairs the harm he/she caused before substantial damage occurs, the court can mitigate the sanction or discharge the accused. This provision specifies for the environmental crimes the provisions regarding the abandonment of an attempt to offend. Of course, it aims to prevent further damage by letting the suspect know that he/she will received a lesser sentence if he/she eliminates the damage. But in the context of our discussion, it is no "tool" in the hands of the prosecutor.

(4) Pre-trial stage: The prosecution has the option to dismiss the proceedings when suitable instructions are imposed upon the perpetrator that are of "such a nature as to eliminate the public interest in criminal prosecution" (Section 153a German Code of Criminal Procedure). As explained below, such opportunity dismissal is at first provisional and then final. Here, repairing

[4] Section 56b of the German Criminal Code stipulates: "If the convicted person offers to perform appropriate services for the purpose of repairing the harm caused, the court shall typically preliminarily refrain from imposing conditions if it is to be expected that the offer will be fulfilled."

the damage is, of course, a possible instruction. (In most cases a payment to a non-profit-organisation will be chosen as the instruction.)

Provisional dismissal can take place either before the suspect is summoned in court or after summons with formal accusations were issued. These are the conditions:

- Consent of the suspect or accused – he/she has to accept the instructions.
- Consent of the prosecutor.
- Consent of the court (if summons with formal accusation were issued).
- The degree of guilt must not present an obstacle.
- Instructions must be of such nature as to eliminate the public interest in a criminal prosecution.

When proceedings are provisionally dismissed, then a time limit of a maximum of six months has to be set, which can be extended only once for a further three months. Instructions have to be very precise. After six months the prosecutor/court has to evaluate if the accused has complied with the conditions and instructions – then there is final dismissal of the proceedings and the offence can no longer be prosecuted. If there is no full compliance, the court can extend the time limit once or revert to the regular procedure, i.e. the summons/continuing the court session until the verdict.

This procedure applies to less serious criminal offences (Vergehen) only, i.e. criminal offences punishable by a fine or imprisonment. As regards environmental criminality, the vast majority of cases concern criminal acts classified as less serious criminal offences (Vergehen). The procedure cannot be applied to serious criminal offences (Verbrechen), i.e. unlawful acts punishable by a minimum term of one year. It is also impossible to use it when the perpetrator has been convicted of environmental crimes before (no repeat offenders).

2. What strategies to stimulate effective remedial action are used by (a) prosecutors and (b) criminal court judges?

(a) The procedure of provisional dismissal of proceedings (Section 153a) can be an effective strategy, which is especially likely to be applied when environmental crimes have occurred in the context of a company. As this procedure can take place without public hearings in court, regular companies that want to avoid having a bad reputation are usually very interested in this procedural solution and are willing to accept the instruction of restoring the damage. So, the strategy would be to offer this at an early stage of the procedure and to limit the time of this offer.

The suspect, if also liable in administrative terms, would similarly but independently be obliged by the administrative authority to repair the damage (sooner or later), but probably within a

longer time limit and also with the possibility of appealing against the administrative decision. So, the acceptance of the prosecutors' obligation to repair environmental damage definitely puts more "pressure" on the perpetrator, because it is about avoiding the public court session and the verdict.

This strategy can be used by prosecutors and judges, and the cases have to be suitable.

(b) Problems

In my experience, there is no effective strategy in those cases were either (i) the suspect is not willing to accept an obligation to repair the damage, or (ii) does not have the financial means necessary for the remediation measures. The problem is: there are no tools to overcome these obstacles in our criminal procedure. For the defendant, there is no real "risk" in not accepting such obligations. If he/she is indifferent about the public court session and a regular verdict, he/she need not fear facing a punishment markedly more severe, especially as the fines must not go beyond someone's financial abilities. So, for the suspects, it may turn out to be much "cheaper" not to accept obligations from the prosecutor to repair the damage, appeal at the same time against the administrative order, and be convicted with a fine (which is, in most cases, less than the cost of the remedial action).

(c) Further restrictions

Of course, this provisional dismissal of proceedings (and obligation to repair the damage) is not possible when a person commits an environmental crime for the second or third time. Then we have to follow the regular procedure.

Furthermore, in cases of "big polluters" this is also not a possible strategy, because then the public interest in criminal prosecution cannot be eliminated by the obligation to repair the damage.

3. What is the relationship between sanctioning tracks? Is it, for instance, possible to have the administration imposing remedial sanctions while a criminal procedure is ongoing? Are prosecutors working with administrative authorities to fine-tune their case management and eventual sanctioning requests?

The administrative and the criminal tracks are separate. Each actor follows their legal tasks. The administration can impose remedial measures while the criminal procedure is ongoing, when the investigative measures have taken place, when the necessary evidence is secure and when there is no risk of evidence being lost or damaged.

The administrative order to shut down a facility often takes place during the investigation, right after the necessary investigative measures have been executed, as a consequence of detecting the illegal practice.

In my experience, it is not very common, however, for an administrative order to repair the damage/take remedial action to be issued while the criminal procedure is still ongoing.

An order to repair the damage should regularly be issued – regardless of the status of the criminal investigation – when the illegal situation or the results of the illegal practice pose an actual threat to the health of individuals or animal populations/plants. But in cases where there is no actual danger, the administrative authority tends to wait for the results of the criminal procedure. I do not know the exact reasons for this. Maybe the criminal conviction is helpful when the polluter appeals against the order made by the administrative authority.

If an administrative order to repair the damage is issued and the perpetrator actually takes full remedial action, this fact has to be considered by the court and has an impact on the level of the punishment. This is even more the case when the perpetrator takes remedial action on his own initiative without an administrative order.

As to coordination and fine-tuning between prosecutors and administrative authorities:

In my experience, cooperation between prosecutors and administrative authorities is necessary in all environmental cases. In Germany, however, we cannot coordinate the sanctioning requests aimed at remedial action, as there is no legal possibility for the prosecutor (apart from in the case of a dismissal of proceedings) to claim for remedial action as a sanction (see **1.(c)** above).

In a case that is suitable for the provisional dismissal of proceedings (above **1.(c)(iv)** and **2.**), I think it is advisable for the prosecutor to coordinate the nature of the restoration instructions and the exact wording so as (a) not to exceed the limits of what – according to administrative law – can be demanded from the suspect, and (b) to be able to control compliance from a technical/scientific point of view. In simple cases, this might not be necessary.

4. Who can claim remedial sanctions?
Who can claim damages and how are damages assessed?
Can NGOs do so?

No answer.

F. The Netherlands

1. In your country, what tools for remedial action against environmental crimes are available to (a) the administration, (b) civil courts and (c) criminal courts?

What are “old tools” and what are, potentially, “new tools”?

(a) Administration

Regulators are required to enforce environmental regulations (handhavingsplicht), unless exceptional circumstances justify that environmental regulations are not enforced (for example, if there is a legitimate expectation that the violation can be legalised). Enforcement proceedings are usually commenced with a formal warning. Regulators can subsequently adopt different administrative enforcement sanctions, which include the following:

- Order to end the violation of environmental regulations, subject to remedial measures taken by the regulator to end the non-compliance (*bestuursdwang*).
- Order to end the violation of environmental regulations, subject to a non-compliance penalty payment (*dwangsom*).
- Revocation or amendment of a permit.
- Decision to impose administrative fines (*bestuurlijke boete*).

Regulators can use general administrative enforcement mechanisms to ensure compliance with permit requirements.

(b) Civil law

Civil law can be used to obtain compensation for the damage resulting from the unlawfully caused pollution. By means of legal proceedings, a company or private individual can be ordered to pay damages or be ordered to cease the prohibited activities on pain of a penalty payment. The civil courts have no power to go beyond what has been requested by the claimant: a statement in law (confirming the qualification of the situation by the claimant), an order to pay a sum or an order to carry out a certain act or refrain from a certain act. Parties can ask the president of the civil court for provisional measures, as long as there is a sufficient degree of urgency. In civil matters, an order or a prohibition has to be requested by the claimant. A request for a statement by the court does not give standing in summary proceedings. To act by means of summary proceedings, no connectivity to a procedure on the merits is required.

A possible new strategy in proceeding is found in the so-called "Urgenda" case. On 9 October 2018, the Court of Appeal in The Hague upheld the historic judgement of the District Court in the Urgenda Climate Case of 2015. The judgment confirms the District Court's conclusion that the Netherlands must reduce its greenhouse gas emissions by 25% before 2020 to meet its obligations under national law.[5] On 20 December 2019 the Dutch Supreme Court (Hoge Raad der Nederlanden) confirmed this decision.[6]

[5] For the official English language translation of the Appeal Court judgment, see https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610.
[6] For the official English language translation of the Supreme Court judgment, see https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007. See also

This is a landmark victory. The original District Court case inspired a wave of climate lawsuits worldwide, initiated by citizens with the aim of holding their governments accountable for the lack of action against climate change. For the Court of Appeal to state in such clear language that the Dutch State had violated its international human rights obligations adds further motivation to climate defenders everywhere.

The judgment is also significant from an access to justice perspective. For one, the judgment provides an important precedent on how affected individuals and public interest organisations can use private law concepts, such as the civil law duty of care, to obtain remedies in the climate context. In the Netherlands, public organisations that have previously raised an issue with the responsible public authorities are permitted under the Civil Code to bring cases that pursue a general interest defined in their by-laws (in this case, working for a sustainable society). The Urgenda case demonstrates the value of such a provision.

Besides confirming the decision on the standing of the District Court, the Court of Appeal further broadened the standing before Dutch courts for public interest groups defending the rights attributed to European citizens under the European Charter for Human Rights (ECHR).

In the proceedings before the District Court, one of the grounds that the Urgenda Foundation had relied on was the State's violation of Articles 2 and 8 of the ECHR, respectively protecting a person's right to life and the right to private life and family life. While the District Court did use Articles 2 and 8 of the ECHR to define and interpret the national legal principles (civil law duty of care) with which the State was considered to be in non-compliance, the District Court did not consider whether the State had violated the ECHR itself.

This was because the District Court considered that Urgenda did not meet the criteria for the status of "potential victim" within the sense of Article 34 of the ECHR, and therefore could not directly rely on Articles 2 and 8 of the ECHR.

In an interesting turn, the Court of Appeal in The Hague dismissed this part of the District's Court judgment. It stated that "the district court fails to acknowledge that Article 34 of the ECHR [only] concerns access to the European Court of Human Rights (ECtHR)" and argues that the ECtHR has not ruled about access to the Dutch courts, as this falls to be decided by Dutch judges. It proceeds to state that: "This means that Article 34 of the ECHR cannot serve as a basis for denying Urgenda the possibility to rely on Articles 2 and 8 of the ECHR in these proceedings." The Court of Appeal then found Urgenda's ECHR grounds to be admissible, based on their rights as a public interest organisation under the Dutch Civil Code.

Not only does the Court of Appeal's judgment have the potential to open the door to further ECHR-based environmental litigation in the Netherlands, it will hopefully also persuade other

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:PHR:2019:1026, with the official translation of the fully researched advisory opinion of the Procurator General with the Supreme Court.

national courts not to dismiss challenges by environmental NGOs and other public interest groups based on Article 34 ECHR.

(c) Criminal law

Serious violations of environmental regulations are also subject to punitive sanctions.

The Economic Offences Act (Wet Economische Delicten [WED]) provides that it is a criminal offence to operate an installation without an environmental permit or in transgression of the permit requirements and also provides criminal law penalties for violation of many administrative environmental law provisions (violations of economic and environmental law are penalised in this act). It can be seen as a *lex specialis* in relation to the Dutch Criminal Code (Strafwetboek) and the Dutch Code of Criminal Procedure (CCP) (Wetboek van Strafvordering), Article 173a and b, concerning contamination that can endanger public health or the life of persons or goods.

2. What strategies to stimulate effective remedial action are used by (a) prosecutors and (b) criminal court judges?

Under (environmental) criminal law it is stated that criminal sanctions may be imposed by the court. The execution of the penalties is the responsibility of the Prosecutor's Office (PO) (Openbaar Ministerie).

Whether a case comes to court is a decision for the PO. The PO has a monopoly on prosecution and has the power to prosecute in criminal matters under Article 167 paragraph 2 of the CCP. The PO also has the power to waive prosecution. Furthermore, the law also gives the PO sanctioning powers.

The prosecutor can also settle a case extrajudicially by issuing (a) a criminal decision (strafbeschikking), (b) a transaction, (c) a settlement, or (d) a (conditional) dismissal of the case.

(a) Criminal decision (strafbeschikking)

On the basis of Article 257a of the CCP, the prosecutor has the option of issuing a criminal decision for an offence or offences that are punishable by no more than six years in prison. In this decision, the prosecutor can impose a fine up to the legally permitted maximum, a community service of up to 180 hours, a compensation measure, the confiscation of seized objects, and can give various instructions.

With regard to all environmental offences under the WED, included in Article 1a of the WED, a criminal decision can in principle be issued because a maximum of six years' imprisonment can be imposed for these offences on the basis of Article 6 of the WED. Article 36 of the WED stipulates that instructions may be given in the criminal decision as to what has been unlawfully omitted and performed, and what actions are to be performed to compensate for this, all at the expense of the suspect, unless otherwise determined. The suspect against whom the criminal decision is directed can lodge an objection within fourteen days. If an objection is lodged, the

case will be referred to the court. If the suspect does not respond, the sentence becomes irrevocable.

(b) Transaction (transactie)

Based on Article 74-74c of the Criminal Code, the PO can propose a transaction. In this transaction, the prosecutor may include one or more conditions. If the transaction offer is accepted and these conditions are met, this will in principle preclude prosecution.

The public prosecutor can offer a transaction for violations and crimes that, according to the legal description, are not punishable by more than six years in prison. In practice, the payment of a transaction sum on the basis of Article 74 paragraph 2 sub a of the Criminal Code is seen as the most important of the transaction terms. The transaction amount can go up to the maximum fine amount that the court is allowed to impose. The suspect is not obliged to accept the transaction offer, but can by accepting it avoid negative publicity for the company.

The prosecutor offers a transaction if he/she is of the opinion that evidence has been provided against the suspect and there can be no question of their being grounds for exclusion. In cases where high transaction sums can be offered (from €50,000), the policy is that in principle the case should be referred to the courts because in such a case a public hearing is desirable for social and judicial oversight. This also happens in special or significant matters that have led to social concern or unrest. An advantage of a transaction is that the prosecutor can act quickly and pursue a policy that focuses on confirming standards and awareness raising, discouraging illegal activity.

(c) Opportunity dismissal (opportuniteitssepot)

The prosecutor has the authority to dismiss a criminal case up to the beginning of the trial (Article 167 paragraph 2 and Article 244 paragraph 1 CCP), a so-called “sepot”. There are two types of “sepots”: the technical “sepot” and the opportunity “sepot”.

A technical dismissal means that the prosecutor will refrain from further prosecution, because the evidence is insufficient, or the offender unidentified, or there is a ground for exclusion. The prosecutor proceeds to an opportunity dismissal if he/she is of the opinion that, in the public interest, it is better to dismiss a case than to prosecute. This may, for example, concern a situation of tolerance (gedoogsituatie) or where the suspect has cleared up the environmental damage or terminated the illegal activity. This type of dismissal is a matter of prosecution policy.

On the basis of Article 244 paragraph 3 CCP the prosecutor has the option to impose a conditional opportunity dismissal. The purpose of a conditional dismissal is to make the suspect behave differently. In environmental cases the dismissal may, for example, be subject to the condition that the suspect must compensate for the environmental damage, must invest in environmental facilities, clean up pollution or have an environmental audit carried out at the company.

At trial

The Criminal Code provides for punitive sanctions (penalties) (straffen) as well as remedial sanctions (measures) (maatregelen).

The main penalties are the classical ones: prison sentences, fines and community service. The additional penalties are the following:

- Disqualification from certain rights (Article 7a and Article 28 WED) for a period of at least six months and maximum six years.
- Total or partial cessation of the business activities of the offender, by which the economic offence was committed, for a period not exceeding one year.
- Confiscation of the objects mentioned in Article 33a Criminal Code, such as the objects used to perpetrate the offence.
- Confiscation of property belonging to the company of the offender, by which the economic offence was committed.
- Partial or total withdrawal of the right to obtain permits and the right to subsidies for the offender's company, for a period not exceeding two years.
- Publication of the court decision.

Remedial sanctions (measures) (maatregelen) (Article 8 WED) include:

- the measures provided for in the Criminal Code, including forfeiture of illegal benefits understood as a forfeiture of net benefits;
- imposing administration procedures on the company of the offender by which the economic offence was committed, for a period not exceeding three years in the case of serious offences (misdrijven) and for a period not exceeding two years in case of less serious offences (overtredingen);
- the imposition of an obligation to do what has been omitted illegally, to undo what has been done illegally, and to perform actions to compensate for the former and the latter, all at the expense of the convicted person unless the court rules otherwise (Article 8c WED).

Furthermore, Articles 28 and 29 of the WED enable the prosecutor to impose (Article 28) or the prosecutor to request and the court to impose (Article 29) provisional measures (voorlopige maatregelen). The prosecutor may order certain actions, such as ceasing the discharge of certain substances or polluting production processes. He/she may also order certain objects, such as hazardous substances, to be stored in a certain way or be kept in a specific place. The court may in addition order the full or partial shutdown of the company (or order the company

to go into receivership), or express total or partial denial of certain rights or benefits, so for example, withdrawal of a permit if it appears its conditions are violated. The orders of the prosecutor are valid for a maximum six months and can be maintained throughout the proceedings in court if necessary. To order provisional measures, criteria to meet not only relate to the seriousness of the offence involved, but also to a necessity of immediate action. The responsibility to monitor compliance with the provisional measures rests with the PO. The infringement of a provisional measure is an offence in its own right and can be prosecuted as such.

Based on Articles 6 of the WED, the court may impose the following penalties: a term of imprisonment never exceeding six years, community service or a fine (in the WED a distinction is made according to the seriousness of the offence; four categories are distinguished; the more serious the offence, the heavier the maximum prison sentence and fine).

3. What is the relationship between sanctioning tracks? Is it, for instance, possible to have the administration imposing remedial sanctions while a criminal procedure is ongoing? Are prosecutors working with administrative authorities to fine-tune their case management and eventual sanctioning requests?

The most serious violations of environmental regulations are subject to criminal prosecution.

Environmental criminal law enforcement in the Netherlands is complicated by the situation that the legislator has built up two different environmental law enforcement systems: a criminal one and an administrative one. No distribution of offences between these systems has been made. Both enforcement tracks apply to the whole range of environmental regulations. This implies that in almost all violations of environmental law, both an administrative authority and the environmental prosecutor are competent to enforce.

While environmental prosecutors are part of one organisation – the national office – that acts under the political responsibility of the Minister of Safety and Justice, there are almost 500 competent authorities on the administrative side. All municipalities (431), provinces (12), water boards (26) and some ministries are in charge of the inspection and administrative enforcement of parts of the environmental legislation. All are political bodies with an autonomy-based attitude and are not exclusively focused on enforcement tasks. No single governmental organ has the power to instruct or coordinate the various administrative competent authorities. So both environmental law enforcement systems differ fundamentally on the legal as well as the institutional side.

4. Who can claim remedial sanctions?
Who can claim damages and how are damages assessed?
Can NGOs do so?

(a) Administrative/civil law

Environmental NGOs are very active in the Netherlands. NGOs often file appeals against the decisions of Dutch regulators to award permits for the construction and operation of, for example, industrial facilities, energy installations and intensive farming activities. Furthermore, NGOs often file requests to enforce environmental regulations and permit conditions.

(b) Criminal law

Private persons, including NGOs, and public persons may intervene in criminal cases as an injured party (burgerlijke partij). The injured party may file its claim prior to the court session by the so-called joinder. The claim may aim for compensation for damage suffered. Only compensation for direct damage may be requested; no recovery actions.

The criterion that there must be direct damage, and the need to identify how great it is, mean that it is often difficult to determine compensation in an environmental case.

G. Spain

1. In your country, what tools for remedial action against environmental crimes are available to (a) the administration, (b) civil courts and (c) criminal courts?

What are “old tools” and what are, potentially, “new tools”?

Remedial action can be claimed in Spain before the civil courts and the administrative courts, so if the civil/administrative judgment appreciates the existence of environmental damage, it must sentence the restoration of the damage or the payment of indemnification for this damage.

Law 26/2007 of 23 October 2007 on Environmental Responsibility, which incorporates Directive 2004/35/EC of the European Parliament and of the Council of 21 April 21 2004, has established an administrative liability regime with an environmental objective and unlimited damage claims, based on the principles of the “prevention of damage” and that “the polluter pays”.

This law, partially developed by means of Royal Decree 2090/2008, establishes a new regime for repairing environmental damage according to which operators who cause damage to natural resources or threaten to cause it, must take the necessary measures to prevent it, or, when the damage has occurred, to limit or prevent further environmental damage, as well as to return the damaged natural resources to the state in which they were before the damage occurred.

The natural resources protected by this law are those that are included in the concept of environmental damage, that is to say: damage to waters, damage to the soil, damage to the shore of the sea and estuaries, and damage to natural resources, species of flora and fauna present permanently or temporarily in Spain, as well as the habitats of all native wild species.

Spanish criminal courts can order the repair of the damage perpetrated in environmental crimes.

The **Spanish Criminal Code** provides a specific provision on the subject of urban planning crimes in **Article 319. 3**, establishing that, in any case, the judge or court, on a reasoned basis, may order, at the expense of the perpetrator of the act, the demolition of the works and the reinstatement of the site to its original state, without prejudice to the indemnities owed to third parties. The court has the option to require the offender to provide monetary guarantees to ensure that the cost of demolition is covered. The decision to impose such guarantees will depend on the integrity of the offender, an assessment of the case circumstances and the opinion of the competent Administration (which is gathered at a hearing). In any case, the earnings derived from the crime will be seized regardless of the transformations that may have occurred.

There is also a more general provision for repairing damage committed by environmental crime in **Article 339** of the Spanish Criminal Code, which establishes that judges or courts shall order the performance, by the perpetrator of the act, of the measures necessary for restoring the disturbed ecological equilibrium, as well as any other precautionary measure necessary for the protection of the goods protected in the title.

Therefore, in practice, all convictions in environmental crimes must order the repair of the damage.

2. What strategies to stimulate effective remedial action are used by (a) prosecutors and (b) criminal court judges?

Repairing the damage is a mitigating circumstance under the Spanish Criminal Code. Therefore, if the offender does so, the penalty will be lower, and a plea bargain can be reached between prosecutor and defendant under this condition.

Article 80 of the Criminal Code also gives judges or courts, by means of a reasoned decision, the option to suspend the execution of custodial sentences not exceeding two years when it is reasonable to expect that the execution of the penalty is not necessary to avoid the future commission of new crimes by the offender.

To adopt this sentencing option, the judge or court will assess the circumstances of the crime committed, the personal circumstances of the offenders, their background, conduct subsequent to the act, in particular their effort to repair the damage caused, their family and social circumstances, and compliance with the measures that were imposed.

The following are necessary conditions for the suspension of the execution of the sentence:

- That the convicted person has committed a crime for the first time. For this purpose, previous convictions for misdemeanours and criminal records that have been cancelled shall not be taken into account. Nor shall criminal records be taken into account for crimes that, due to their nature or circumstances, are not relevant for assessing the probability of committing future crimes.

- That the penalty of imprisonment or the sum of the penalties of imprisonment may not exceed two years, but the imprisonment that sanctions the non-payment of the fine cannot be included when assessing this condition.

- That the civil liabilities that have arisen have been satisfied and that the seizure agreed upon in accordance with Article 127 has been made effective.

This requirement shall be deemed fulfilled when the offender accepts the commitment to satisfy the civil liabilities according to their economic capacity and to facilitate the agreed confiscation, and it is reasonable to expect that the same will be fulfilled within the prudential period that the judge or court determines. The judge or court, in consideration of the scope of civil liability and the social impact of the crime, may request the guarantees that it deems appropriate to ensure compliance.

Exceptionally, the suspension of prison sentences that individually do not exceed two years may be agreed upon when personal circumstances of the offender, the nature of the act, their behaviour and, in particular, the effort to repair the damage caused can be accepted.

In these cases, the suspension will always be conditional on the effective repair of the damage or the compensation for the damage caused according to the offender's physical and economic ability, or to the fulfilment of the agreement referred to before.

Prosecutors can usually also reach a plea bargain with no opposition to the suspension of prison sentences if the environmental damage is repaired or if the offender assumes the commitment to satisfy the amount of money to do so.

However, what is not so easy in practice is the evaluation and determination of the cost of repair of the damage caused by environmental crimes to water, air, fields, habitats, fauna and to society, and there are no general rules to establish the criteria to do so.

3. What is the relationship between sanctioning tracks? Is it, for instance, possible to have the administration imposing remedial sanctions while a criminal procedure is ongoing?

It is not possible for administrative and criminal procedures to be ongoing at the same time, but if an administrative fine has been imposed before the criminal procedure, the administrative fine can be taken into account when deciding on the amount of the criminal fine, reducing it.

There is coordination between administrative and criminal measures that complement each other: administrative law has a preventive and sanctioning role of the first degree, reserving criminal law, in accordance with the law (minimum intervention principle), for the most serious infractions.

This complementarity determines that on numerous occasions the criminal complaint of an environmental crime is preceded by an administrative action, from which the "guilt" is deduced when the seriousness of a criminal offence is appreciated. The fact that during those previous

administrative proceedings – from which the blame needed in the criminal courts is deduced – the implicated party has not been specifically informed of the fact that a criminal complaint could eventually derive from them, does not imply in itself violation of the constitutional rights of the affected party, nor determines the annulment of the actions taken to be used as a probative source in criminal proceedings, provided that the basic requirements and guarantees of the corresponding administrative procedure have been respected.

What is truly relevant is that in the criminal proceedings the defendant enjoys all possibilities of defence and that in the trial the evidence is introduced in a procedurally correct manner, through the personal appearance of the acting officials, if appropriate, and practised with all guarantees (STS 2184/2001 of 23 November 2001).

STC 2/2003 of 16 January 2003, among other arguments, considers the institution of *res judicata* to be effective only in respect of judicial orders. At most, what is appropriate, when there is a prior sanctioning resolution of an administrative nature, is to take into account in the criminal sanction the one previously imposed by the administration to make the appropriate discount (STS 654/2004 of 25 May 2004). This matter was addressed in the Non-Jurisdictional Plenary of the Second Chamber of the Supreme Court, held on 29 May 2003.

Are prosecutors working with administrative authorities to fine-tune their case management and eventual sanctioning requests?

For the reasons explained before, this is not possible.

4. Who can claim remedial sanctions? Who can claim damages and how are damages assessed? Can NGOs do so?

Prosecutors as well as private accusers using an *actio popularis* and victims, can claim remedial action before Spanish Criminal Courts.

Article 110 of the Spanish Criminal Code establishes that the performance of an act described by law as a crime requires the reparation, in the terms provided in the laws, for the damages and losses caused by it. The injured party may choose, in any case, to demand civil liability before the Civil Jurisdiction.

On the other hand, the Criminal Procedure Code regulates that criminal action, and civil action can be claimed before the Criminal Court.

Criminal action is public. So any Spanish citizen or NGO may exercise it in accordance with the provisions of the law. There are two options. Firstly, they can join the case as a victim. If you are a victim, your claim is limited to your own damage. Next, they can use an *actio popularis*. When doing so, you need to pay a warrant and are allowed to apply for remedial action as well as criminal prosecution.

Officials of the Public Prosecutor's Office have the obligation to exercise, in accordance with the provisions of the law, all criminal prosecutions that they deem appropriate, whether or not there is a particular claimant in the cases, except those that the Criminal Code reserves exclusively for private prosecution.

The civil action must be brought together with the criminal case by the public prosecutor, not by the private claimant (victim); but if the private claimant (victim) expressly renounces his or her right to restitution, reparation or compensation, the public prosecutor will limit himself or herself to requesting the punishment of the guilty parties.

The victims must be informed of their right to be a part of the court case and to renounce or reject the restitution of the thing and compensation of the damage caused by the punishable act. They must also be informed of their rights in the current legislation, and may delegate this function to staff specialising in victim assistance. Minors or people with their legal capacity judicially modified will be assisted by their legal representative.

Victims of crime who have not waived their right, may exercise criminal action. In the case of death or disappearance of the victim as a result of the crime, the criminal action may be exercised by his or her partner and by his or her children who, at the time of the death or disappearance of the victim, coexisted; by their parents and relatives in a straight line or collateral within the third degree who are under their guardianship, persons subject to their guardianship or curatorship or who are under their foster care. If the previous do not exist, it can be exercised by the other relatives in a straight line and by their siblings, preferably, among them, who will have the legal representation of the victim.

When there is a plurality of victims, all of them will be able to appear independently with their own representation.

The criminal action may also be exercised by associations of victims and by the legal persons of whom the law recognises legitimacy to defend the rights of the victims, provided that this is authorised by the victim of the crime.

When the crime or offence committed has the purpose of preventing or hindering the members of local corporations from exercising their public functions, the local administration in whose territory the punishable act may have been committed may also appear in the case.

Civil actions arising from a crime may be exercised together or separately from the criminal proceedings. When exercised together with the criminal action, the civil action shall be handled once the criminal action has been exercised, unless the injured party (victim) renounces it or reserves it expressly for exercise in a civil court after the criminal trial has ended. When exercised separately by a civil court, the civil action will not be addressed by the court until the criminal trial has been resolved in a final judgment (*le criminal tient le civil en état*).

Consequently, remedial action can be claimed by the victims directly affected by the crime and by NGOs in criminal court as well as civil jurisdictions.

IV. Summer and autumn 2019: Further input from WG members

Discussions in Helsinki (14 September 2019) and The Hague (29 October 2019) focused on the following three points.

1. When reading all answers, and paying attention to (a) complementarities in harshness of punitive sanctioning (between the administrative and the criminal track; within the criminal track, between the options the prosecutor has and, next, the options the criminal court judge has), and (b) informal strategies that have developed, there is one rather fundamental issue that catches the eye. It is as follows: with regard to environmental crime, there happens to be quite commonly a trade-off between remedial and punitive action. If you have "active remorse", do what is needed to repair damage, you often can get away with your offence without punitive sanction or with a light punitive sanction.

How do you feel about this? What are your thoughts? Is such trade-off a policy to pursue, develop, recommend? Or is punitive sanctioning to be maintained as a rule, to keep the "price" of offending up? Indeed, taking remedial action can simply be "do what you already had to do", for instance have a wastewater purification system or ask for and obtain an environmental permit? What are, eventually, the criteria you would need to accept "remedial action only" (in a trade-off for punishment) and the criteria you would propose to cumulate punitive and remedial action?

2. Some countries, especially Flanders (Belgium) and the Netherlands, offer a wide range of remedial options.

A wide range, it appears when reading, has to be appreciated in terms of (a) tools, but also (b) access to the tools, more specifically the actors (administration officials, involved citizens, victims, NGOs, prosecutors, judges etc.) with a right of initiative to activate them (many tools with only one or two actors having the right to activate them are less useful than those with a lot of actors able to activate them).The importance of the right of initiative is a point we did not spot clearly during our discussions in December 2018.

What are your views on having a truly wide range of remedial options: (a) a good set of tools in the administrative, the civil and the criminal tracks, with (b) for each tool a complete set of actors having access to it, meaning administration officials, civil society (NGOs, concerned public) and,

within the criminal track, additionally prosecutors (pre-trial and trial stages) and judges (trial stage only)? Are you in favour of this approach, and if so why, or do you have reservations on tools or actors, or some tools for some actors, and if so why?

3. What is, in your opinion, most needed in your country to improve remedial action whenever an environmental offence/crime has been committed?

A. Helsinki discussion

On the first occasion we discussed the abovementioned issues, in Helsinki, only judges participated. Three countries were represented: Croatia (Court of Appeal, civil division), France (Supreme Court judge, criminal chamber until 2018, civil chamber today) and the Netherlands (Court of Appeal).

Our findings were as follows:

(a) Regarding the co-existence of punitive and remedial sanctioning

We agreed on four main points:

(1) 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 (timely and in full scope).

(2) Remedial action should not exclude punishment, but can moderate punishment.

(3) The ability to realise such a sanctioning package differs between the criminal and the administrative sanctioning track, with some actors, especially the prosecutor in the criminal track, having more action options than others, for instance the judge. Having more options means having greater responsibilities.

(4) The balancing of punitive and remedial sanctioning (action) is present in different stages of the sanctioning process, from its very start to the implementation of sanctions, and different balancing possibilities exist for each of the stages.

Discussions leading to the abovementioned observations and viewpoints included the following considerations.

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

- Industry fears the negative publicity and the social stigma that come with a criminal conviction. It is a reason why it has no problem with paying for remedial action. The social stigma comes with a criminal prosecution; it is far less with remedial action in the

administrative track and also less in the case of a transaction with the prosecutor's office. From the policy makers view, this is a wrong motive for remedial sanctioning.

- Remedial action boils down to the offender doing what he/she had to do anyway. Therefore we cannot neglect punitive sanctioning. Always punish and whenever possible also go for remedial sanctioning.

- In the criminal court, remedial sanctions systematically come in an annex to punitive sanctions. Indeed, remedial sanctions are an accessory to a conviction with punitive sanctions as the main sanctions. Thus, the system excludes a trade-off between punitive sanctions and remedial action, at least at the criminal court level. The only niche at this level with leeway to balance both types of sanctioning is at the level of the punitive sanction as an answer to (the lack of) remedial action taken by the offender.

- In the administrative sanctioning track, it is possible to find authorities competent for remedial sanctioning only or for punitive sanctioning only. Both types of sanction are not necessarily in the same hand. Yet balancing remedial action and administrative fines remains possible in such a setting (lower fine in cases of swift remedial action).

- The position of the criminal court judge differs from the one of the prosecutor. The prosecutor has more options: opportunity dismissal, criminal transaction, allowing the administration to punish:

    - In the Netherlands, for instance, a recent transaction by the public prosecutor's office involved a bank paying €75 million.

    - Criminal transactions come faster than a judgment and allow for the integration of remedial action.

    - Factors with relevance to the prosecutor's decision: whether one or more civil parties (NGO, citizens) are in the case, or none; the nature and extent of damage; degree of intentionality when committing the illegal facts etc.

    - Croatia: not sure the transaction option exists.

- There is another option for the judge: a conditional sentence, with a delay to allow the defendant to do something, or a probatory sentence, with a condition not to repeat the offence within a given time span (which is a tool for individual prevention rather than remedial action).

- The difficult reality of the follow-up on conditional/probatory sentences and the implementation of remedial sanctions. In the Netherlands, Belgium, other countries, it is the job of the prosecutor's office to do that follow-up. The person who happens to be in charge matters for the quality of the follow-up.

(b) Regarding the actors with access to sanctioning tools

The issue under consideration is: who should be entitled by the law to "push the button" for remedial sanctioning?

What about the *criminal court judge*, *ex officio*, as is possible since 2009 in the Flemish Environmental Enforcement Law?

- The Netherlands: a remedial sanctioning initiative assigned to the judge would be problematic. In our legal system, we have no active criminal court judge, even less an active civil court judge. We have not a single rule allowing the judge to do something that was not asked for. Note that being an active judge, or not, is not fully a matter of the system. It is partly also linked to the personality of the judge.

- Croatia: it is possible to act *ex officio*, but what happens in practice? In practice, we observe judicial restraint. Knowledge is an issue: how does the judge know what to order? This is also an issue where the diligence of the environmental administration is concerned. Judicial restraint can be part of the system but also just the personality of the judge involved.

What about *civil society (citizens, NGOs)*? They have a right of initiative for remedial sanctions in Flemish environmental law.

- What about people who complain about everything?

- Complaints are not the same as a procedural right that necessarily brings along an evaluation of the offence reported and remedial action that is possible. It is the latter that we are discussing.

- One point: no initiative right for punitive sentences, including administrative fining procedures. Punishing is not up to civil society.

(c) What is most needed to improve remedial action once an offence is committed?

Not discussed.

B. The Hague discussion

At the meeting in The Hague, five countries were represented: Croatia (judge), the Czech Republic (public prosecutor), Germany (public prosecutor), the Netherlands (judge) and Spain (public prosecutor).

Next to identifying an issue of terminology, namely that the terms "transaction" and "settlement" are synonyms and designate one same enforcement tool, our findings were the following.

(a) Regarding the co-existence of punitive and remedial sanctioning

(1) One main extra point, in addition to the four main points agreed upon in Helsinki: in all cases with intent, there is no possibility for a trade-off between punishment and remedial action (to be considered a bottom line).

(2) There are differences between countries on the options for settlements. In Spain, unless for minors, settlements before the start of the criminal procedure are not possible. The legality principle opposes it. But in the first stage of a criminal procedure, there is the possibility of an agreement if the defendant repaired the damage. It is a mitigating circumstance that leads to a lesser punishment, but there always remains some punishment. Or a suspended sentence. The judge has to ratify the agreement. In the Czech Republic, a defendant can ask for a settlement, but he has no right to it. Note that in Spain, there exists no opportunity dismissal option for prosecutors. Once you have an offence and an offender, you have to start a criminal procedure. A dismissal for technical reasons is of course possible. In Belgium and the Netherlands the defendant has no formal right to ask for a settlement (he can ask for it informally).

In Belgium a settlement is possible even if the case is already being prosecuted in the criminal court, as long as there is no final judgment. So, even in the stage of appeal a settlement is still possible. (i.e. de “verruimde minnelijke schikking” – Article 216bis Section 2 Wetboek Strafvordering). The defendant can ask the prosecutor for such a settlement. It is the prosecutor who decides to start negotiations on a settlement (he/she can also choose to continue the court proceedings, of course). When the prosecutor and defendant reach an agreement, the settlement has to be “approved” by the criminal court where the case is being heard. The court can only approve or reject; the court cannot change the terms of the settlement. A very important legal condition of coming to such a settlement in the trial stage is the reparation of all damage caused by the illicit act. So, in cases of environmental crime the prosecutor has to verify that remedial actions have been correctly performed and that financial compensation has been paid to the victims (neighbours, NGOs, etc.).

The defendant might prefer such a settlement even in the trial stage in order to prevent the negative publicity of a (maybe extensive and long-lasting) public trial procedure (and the high cost of legal representation that comes with such a procedure).

The prosecutor might agree with such a settlement in the trial stage also to avoid an extensive and long-lasting trial procedure, just because of lack of capacity in the public prosecutor’s office, where time management and efficiency are becoming more and more important tools to survive the everyday job.

(3) There is some weird and wrong way of using *the polluter pays* principle in these situations. In sanctioning, there is no place for this principle. Paying a transaction sum or a fine cannot provide justification for illegally contaminating the environment. Even if there are advantages in the speed of such “punishment” and efficiency, it is still questionable.

(4) The administrative sanctioning track has options that the criminal one does not, and *vice versa*. Prison sentences are a classic example. It is a fact to consider when managing cases: what is best to aim for? In Spain, in the criminal track, you can lose for a period of time your right to work as a business manager (perpetrators cope by using someone in their family). In Germany, where having a profession is a fundamental right, this sanction is limited to (liberal) professionals (lawyer, physician, …) who need a licence to practice, which can only be obtained after a state exam (the state controls the profession from the outset).

(b) Regarding the actors with access to sanctioning tools

(1) Czech Republic: It is a good thing that NGOs have access to justice. Because of their by-laws, they are supposed to have an interest. Under Czech law, they can file a criminal report and can ask for information on the proceedings, but are not entitled to be a victim and ask for damages in criminal proceedings.

(2) In Spain things are more strict. The prosecutor has to ask for the criminal as well as the civil sanctions (and eventually quantify the damage). NGOs can ask for something if they are victims. NGOs can also use an *actio popularis*, but need to pay a warrant to be a party in the case and they need to apply for it and ask for punishment and for restoration of damage.

(3) What if the offender cannot pay?

In Germany, the civil and the criminal justice are very separated, and whereas income is irrelevant in the civil track when determining damages to pay, criminal fines have to take the offender's income into account (in Croatia and the Czech Republic too).

In Spain, you have to pay the civil damages first if you want the prison sentence suspended. If you have no money at all, you can get a suspension on specific grounds or on the seizure of income you earn over fifteen years (now five) (civil prescription time). Even for companies, the cost of civil damages can be too high, for instance when they made little or no profit for a long time. Grab all money you can get, then go into bankruptcy, is their working philosophy.

In the Czech Republic and Croatia, you cannot go to prison for not paying. The constitution forbids it.

(4) The nature of the damage to be remediated matters.

In Spain, for instance, the administration, which is competent to handle administrative offences that are not a crime, is very effective on urban planning offences, specifically in Galicia. The administration gives the offender the option to demolish voluntarily and he/she receives an 80% reduction in the administrative fine if doing so. The legal timescale to comply is short: only one year (until 2019 it was even less, only six months). If the offender does not comply with the proposal, the file goes to the prosecutor and he/she will always prosecute, always bring it to the criminal court (as explained above, Spain has no opportunity principle in prosecution). The file will also go to the prosecutor whenever it concerns a crime. If the illegal acts are a crime and

the offender demolished the illegal construction, this will count as a mitigating circumstance and a reduction in the fine can be made. However, other types of environmental crime, e.g. illegal extraction of sand, are very difficult for the administration to solve within the legal term (only one year, previously only six months).

(5) In the Czech Republic, there is a state fund for environmental crime (e.g. for waste), but it does not pay for remedial action. Here *the polluter pays* principle rules.

(c) What is, in your opinion, most needed in your country to improve remedial action whenever an environmental offence/crime has been committed?

Czech Republic and the Netherlands: money. This also means capacity, people to do the job. All others present agreed.

V. Observations and recommendations

The working group discussed observations and recommendations to make at its meeting on 6 December 2019 in Brussels. The draft of their phrasing was discussed and finalised at the working group meeting of 6 March 2020 in Brussels.

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 our discussions.

A. Tools, strategies and actors

1. 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.

2. 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).

3. 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.

4. 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.

5. 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.

6. 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.

7. 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).

8. 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. The co-existence of the administrative and the criminal sanctioning tracks

9. 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.

10. 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 **7.** 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 **8.** 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.

11. 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,[7] 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

[7] 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.

12. 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

13. 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.

14. As 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.

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Annex 1: Restoration and safety measures in environmental enforcement

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ministerie

Restoration & safety measures in environmental enforcement

Is this a concern for prosecutors and criminal judges?

Sara Boogers
Senior public prosecutor
Antwerp - Belgium

Environmental enforcement = sanctioning & more

- Classic / general criminal enforcement :
  - imposing a sanction
  - repair damage by paying a compensation to the direct victims of the crime
  - hope to prevent recidivism by :
    - deterrent sanctioning
    - individual guidance of convicted criminals (probation)

- Environmental crime :
  - Imposing a sanction – “effective, proportionate and dissuasive”
  - Victims :
    - Individual persons → restoring damage financially
    - Nature, environment → restoring damage not (only) by financial compensation, but (also) by specific actions
  - Prevent recidivism :

    - Sanctions high enough

    - Problem to prevent ‘ongoing’ crimes, e.g. unlicensed chemical plant → specific measures needed

Restoration measures in Flemish environmental law

General for all kinds of environmental offences

1. Order to restore in the original state
   - e.g. re-plant trees in case of deforestation

2. Order to stop illicit use of a building, of grounds, …
   - e.g. stop using a barn in an agricultural area as a place to manufacture carpentry
   - e.g. stop using a forest area as a field for horses to graze

3. Order to perform adjustive measures
   - e.g. adjusting the shores of a pond created without license in a nature protected area so that wildlife can use that pond

Specific for waste offences

→In case of illicit dumping of waste :

Obligation to remove the waste and bring it to a licensed waste facility within a certain period of time

Safety measures in Flemish law

- Prohibit to further exploit the facility where the environmental offence is committed
  - ➢ to stop an ongoing crime - e.g. an unlicensed factory
  - ➢ and/or to avoid further damage to the environment - e.g. water pollution caused by exceeding the standards for waste water
  - ➢ closing of the whole facility or just a part of the installation
  - ➢ Prohibition for a certain period of time or just until certain conditions are fulfilled

Who can impose these measures?

1) Administrative authorities

- Special inspection agencies (environmental inspection, nature and forest inspection, ..)
- Local authorities / local inspectors
- Possibility to impose a penalty for not respecting the imposed measure
- Adminstrative appeal possible

2) The civil judge

- Upon request of a victim of an environmental offence
- Security measures possible in case of urgency because of threat that substantial damage is likely to occur (milieustakingsvordering)

3) The criminal judge

- In case of prosecution of environmental offences
- The criminal judge may – next to the criminal conviction – impose restoration measures
  - Request of the competent administrative authority
  - Request by the public prosecutor
  - Request of the victim of the offence
  - Or spontaneously by the judge
- In case of conviction for illicit dumping of waste, the judge is obliged to order the removal of the waste
- The judge can prohibit the exploitation of a facility
- The judge can impose a penalty for non-compliance to these measures

Role of the prosecutor?

- Special attention during the investigation :
  - what is the environmental damage?
  - ways to restore this damage?
  - need for safety measures?
  - consider together with the competent authority which is the best procedure to obtain restoration : administrative or criminal
  - often simultaneously administrative / criminal procedure
    - → criminal proceedings take notice of the status of the administrative measures
    - → may have impact on the level of the penalty
    - → when administrative measures fail, possibility to 'replace' them with judicial measures along with the conviction

- Duration of an investigation can take longer because we want to wait and see if the suspect will ‘voluntarily’ restore the damage → influences the decision on wether or not to prosecute before criminal court

- During criminal proceedings :
  - the prosecutor requests the criminal judge to impose specific measures upon the defendant along with the conviction (best with a written request)

  - If there’s already a written request from the competent autorithy for specific measures, the prosecutor makes sure that this document is inserted in the dossier and mentions this request specifically for the attention of the judge

- After the criminal conviction :
  - Prosecutor is responsible for the execution of the sentence, including the follow up of the restoration or security measures that are imposed upon the prosecutor's request (by ordering the police to check the situation regularly, and if needed claiming the imposed penalties in case of non-compliance)
  - If measures imposed upon request of competent authority → follow up by this authority

Administrative or criminal procedures : what's the best option?

- In Flanders : since ca. 2 years more and more tendency with the competent authorities towards the maximum use of the administrative measures, with possibility to impose an administrative penalty for non-compliance
  - → Positive : faster procedures and easier for them to follow up
  - → Negative : less requests for restoration measures from the competent authorities before the criminal judge → this 'devalues' to some extent the prosecutor's case in court – judge not likely to impose a 'dissuasive' sanction when the situation is already regularized and the damage is restored via administrative procedures

Value of restoration / safety measures in criminal proceedings?

- The possibility for a criminal judge to impose such measures significally enriches his/her toolkit for environmental enforcement - the judge can really influence the situation ‘on the field’

- When a suspect is not ‘impressed’ by administrative measures, maybe a criminal conviction (including the same measures) might be more persuasive

- Even if administrative measures were succesful, it’s useful to make notice of these measures in the criminal proceedings as well, in order to ‘complete the picture’ of the crime committed.

Discussion

- What kind of remedial actions exist in your country?
- Who can impose these measures? Administrative / judicial procedures?
- Is it useful / necessary that such remedial actions can also be imposed in criminal procedures (trial stage)? Is this a role for the prosecutor and criminal judge to play?

Annex 2: France – Written note of 5 March 2020

A. Information

Considering that today's judicial responses to environmental offences "are not satisfactory", due to "excessively long delays in the processing of litigation" and because they "are not adapted: the priority issue is to repair the damage incurred and to take measures so that it does not happen again", the French Minister of Justice presented to the Council of Ministers on 29 January 2020 a draft law "in relation to the European Public Prosecutor's Office and specialised criminal justice", of which Section 2 particularly concerns strengthening the fight against environmental crime. The following are expected:

- A new judicial organisation with specialised jurisdictions on three levels:
    - routine business (fly-tipping, fishing and hunting offences, visual and noise pollution etc.): heard by judicial tribunals (a new classification of court of first instance in France); once there are several judicial tribunals in the same département, one of them could specialise in this type of litigation;
    - serious environmental offences or endangerment of the environment (pollution of waste water or soil by industrial activities, infringement of the classified facilities regime, offences against protected species or areas, infringement of industrial waste regulations): heard by a specialised court created by the Court of Appeal (court of second instance), excluding offences already falling within the remit of specialised courts (on grounds not specifically related to the environment) (courts specialising in coastal matters, courts specialising in inter-regional matters). The judges will be specialised so as to "better manage the technicality of the law";
    - industrial accidents with multiple victims or major technological risks (nuclear activities) will fall within the jurisdiction of the inter-regional hubs based in Paris and Marseille.
- Creation of an "ecological judicial convention" suitable for the judicial processing of cases against "legal entities with important financial implications" with a view to "obtaining a rapid response" (by recognition of the business's responsibility), "implementation of financial or environmental compensation" and "corrective mechanisms".
- Creation of public-interest employment (an alternative sanction to prison or fines for any breach in general) with an environmental and sustainable development vocation to "raise awareness of environmental issues among sentenced individuals".

Furthermore, a report evaluating the relationship between justice and the environment (October 2019) underlines the need to coordinate the services of the administrative police and judicial police and to adapt the range of sanctions.

“The ecological judicial convention” is a settlement procedure. Such a settlement procedure already exists in France for matters of fraud. It includes a public interest fine payable to the Treasury, in proportion to the benefits derived from the offence, up to a limit of 30% of the average annual turnover of the legal entity, as well as an obligation on the legal entity to follow a compliance programme under the supervision of the competent administration. The inadequate implementation of the settlement may lead to the prosecutor launching a prosecution.

The benefit of this settlement procedure for offences committed by businesses is to allow for a faster response than by referral to a trial court.

There are problems, however:

- how to guarantee that offenders fulfil the commitments they have made (for example, a commitment to repair the ecological damage);

- the need to ensure that everything is not done “behind the scenes” with regard to offences committed by professionals (legal entities, important financial issues): the State Council, in its opinion on the draft, insisted on the requirement for transparency in sanctioning, proposing that the order validating the convention, and the convention itself, be subject to publication procedures on websites (ministry of justice, department of environment, website of the commune where the offence was committed etc.).

The audit mission “justice for the environment” had made a proposal that was not taken up in the draft law: “creation of an independent authority as guarantor of the defence of common goods in the interest of future generations, able to act on citizen’s referral, with the power to give opinions, make recommendations and even issue injunctions, including as an emergency, and charged with guaranteeing the quality, transparency and impartiality of environmental expertise and information provided to the citizen.”

This proposal departs from the common procedural framework and does not answer the question of this authority and its composition. It has the merit of trying to identify the concept of an independent third party, while the “public interest covenant”, in that it constitutes a “sanction” reserved for legal entities and important financial issues, seems to give room to professional polluters and does not totally ignore the “licence to pollute” often denounced as nothing beyond an admission of responsibility that has neither the publicity nor the impact of a court conviction.

Some proposals can, under the guise of the urgency and importance of compensation, obscure the quest for a degree of impunity for important economic actors.

B. On the question of penalty/compensation

The initial choice of referring a case to the courts (or not) must rest in the hands of the prosecutor (implementing criminal justice policy) provided, however, that access to the courts is fully open to victims and civil society via, for example, NGOs, which can substitute for the prosecutor if they believe it necessary, having regard for the nature of the offence, the harm or the risk involved and the character of the perpetrator of the offence (including a legal entity).

By contrast, once before the judge, it is necessary – to ensure both the punitive and dissuasive effect of a criminal court intervention – that the culpability be recognised in the conviction, which will then be recorded in the person's criminal record.

The circumstances surrounding the offence itself, like the status of the perpetrator (character, material and financial conditions), if not already considered in the indictment, will intervene in the choice of punishment, which should allow the judge the widest possible range of options, including compensation.

But it would be inappropriate to rely upon the overriding need for a remedy to obscure the violation of a public order provision.

In France, under common law, there is the option of separating the ruling on the conviction from the ruling on the sentencing, which can go on until absolute discharge of sentencing, if, at the end of the deadline set by the first ruling, the one on the conviction, the offender proves that he/she has repaired the harm caused by the offence.

There are many ways to manage the situation: hence, if the perpetrator of the offence has limited resources, you can limit the fine to allow for the best compensation of the victim, and adjust the complementary or accessory measures, such as the publication of the ruling, prohibitions or suspensions (which equally have the advantage of avoiding the recurrence of the offence and can be highly punitive for businesses, as, for example, in a prohibition on the conclusion of public procurement contracts), or prison sentences suspended and conditional on various obligations or prohibitions supervised by the judge responsible for the execution of sentences.

Confiscation measures, included in the conviction, can also prove to be very effective: confiscation of proceeds (drugs), or the means of committing the offence (vehicles, boats, etc.).

C. On the question of criminal/administrative sanction

The administration may intervene from the detection of the offence to impose measures limiting the damage or to allow repairs to be carried out: consignment, administrative coercion,[8] suspension of the facility's operation, fines and penalty payments, and the option, where

[8] Administrative security measures at the expense of the offender (see Part III, D. France).

appropriate, of closing the facility, formal notice following the detection of a problem during investigation. This will, moreover, allow for the direction of proceedings towards a criminal prosecution, or otherwise.

Furthermore, administrative and criminal sanctions can absolutely complement one another without violating the *non bis in idem* (double jeopardy) rule, when they do not have exactly the same objective: as in, for example, sea fishing, the administrative fine is intended to remedy the harm caused to fishing resources: it will be calculated according to the level of protection given to the illegally fished species (for example, tuna, scallops, sharks) as well as the volume of the catch. Most often it is greater than the criminal fine incurred, which only seeks to repress the criminal behaviour.

The established principle of not being able to exceed the maximum sentence, either administrative or criminal, also allows for the sanction to be varied on a case-by-case basis.

The variety of environmental offences, and indeed perpetrators, implies that the judge has significant capacity to adapt the sentence not only according to the environmental issues, but also the character of the offender (in France the judge is absolutely required to individualise the sentence and justify its proportionality with regard to the offences committed and also the circumstances of the offender). It is necessary, in turn, that the specific criteria are established regarding the choice to make within the range of sentences or measures available.

D. On the intervention of NGOs

It seems important that NGOs that have the defence of the environment as their mission are able to bring civil proceedings and launch a public action with the same status as a prosecutor, as is the case in France. Admittedly, it is not their job to demand a sentence, but the prosecutor will intervene at the appropriate moment in the proceedings and will exercise this power that is reserved for prosecutors. However, NGOs may request, exercising the civil action attached to the public action, compensation not only for their personal injury, but equally compensation for the ecological harm as such, resulting from the offence. This has been the procedure in France since the “biodiversity” law, which established the principle that any person who damages the environment must make good for the ecological damage.

This same law established the principle of pre-emptive action for ecological harm, in Article 1252 of the biodiversity law: the judge may order reasonable actions apt to prevent or stop the damage.

A new problem also emerges gradually as environmental law progresses: the co-ordination of the different laws and, for example, with regard to compensation, whether ordered by criminal or civil court, the question of taking into account the Environmental Liability Directive, transposed into domestic law by EU member states.

In France the environmental liability law (Article L.160-1 and those that follow in the environmental code) is based on the initiative of the operator to remedy voluntarily the harm or risk of harm to the environment caused by the operator's activity, under the sole control of the public authorities, and moreover, without the ability of NGOs to intervene at this stage (they may only bring an action for failure of the public authorities to act if the latter do nothing when the operator has taken no measures or only insufficient measures).

There is, in effect, a risk of inconsistency between the compensation already implemented under this legislation and other compensation that may be decided by a criminal court, as part of the sanction itself, or as a civil claim. There may therefore be not only a conflict of power, but also incompatibility between measures.

French law has recently adopted a specific provision on this point (Article 1249, paragraph 3 of the Civil Code), which specifies that for the compensation of ecological harm "the assessment of harm is to take into account, where appropriate, compensatory measures that have already taken place" and in particular on the application of the law on environmental liability.

Annex 3: 2018/19 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

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

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 2018 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 and 2017 she collaborated as a lecturer with the Spanish Open University in several conferences on criminal law subjects.

Françoise NESI, France
Judge

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

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

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).

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