

# Findings and recommendations of an EU LIFE+ project's Working Group on Sanctioning, Prosecution and Judicial Practice

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# What this presentation brings

- A EU LIFE+ project with ENPE/EUFJE 2015-2020
  - A Working Group (WG) on the sanctioning, prosecution and judicial practice, of environmental offences, aiming to contribute to the revision of the Eco-crime directive 2008/99/EC
    - Prosecutors and judges from 8 Member States of the European Union
  - 3 interim reports et 1 **synthesis report of June 2020** with key recommendations for the future development of the EU policy regarding the fight against environmental crime
- The key recommendations

# First key recommendation

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

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

# Second key recommendation

The WG recommends the development, at the EU level, of **comprehensive guidelines** on good practices regarding the **design of environmental law enforcement legislation** in the Member States.

These guidelines have to cover the **full enforcement chain**, from the monitoring of compliance to the implementation of sanctions imposed.

The guidelines also have to cover the **sanctioning toolkits** to be provided to the enforcement actors in both the criminal and the administrative sanctioning tracks.

# Third key recommendation

The criminal sanctioning track as well as the administrative sanctioning track have to be equipped with both **remedial and punitive sanctioning tools**.

Indeed, whereas **traditionally** the punitive sanctioning track aimed to punish and the administrative sanctioning track aimed to remediate, this task division has been fading away since a few decades.

In most EU MS today, the administrative sanctioning track is equipped with a mixed toolbox. In practice therefore, this recommendation mainly concerns the toolkit of criminal court judges: in all EU Member States **criminal court judges** should additionally be **able to impose remedial sanctions** and their remedial toolkit should be a good one (well-equipped, allowing for proportional remedial sanctioning).

# Fourth key recommendation

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

Environmental specialization of prosecutors and judges is an issue debated worldwide since years. In practice, such specialization is increasingly observed throughout the world.

The analysis the WG made, distinguishes between an ideal environmental specialization model and an environmental specialization model that could be realized taking into account the actual organization of justice in the EU MS, which, it should be stressed, is anchored in the constitution in the MS that have a constitution.

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

# Fifth key recommendation

The contribution of environmental NGOs has to be acknowledged and their access to criminal courts has to be strengthened.

That environmental NGOs play a unique and tremendously important role in the implementation and enforcement of environmental law has been well established for decades.

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

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

# Sixth key recommendation

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

As concluded in the WG's first interim report, the training must above all aim to create knowledge and understanding of **environmental crime** and the harm it causes/can cause. Such knowledge and understanding are essential for commitment to the prosecution and sanctioning of environmental offences.

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

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

# Seventh key recommendation

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.

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

# Last key recommendation

The WG observed that international judicial cooperation involving non-EU countries is far less developed than international judicial cooperation within the EU. The WG's final recommendation is to strengthen tools and communication for international judicial cooperation beyond EU borders. Such development is necessary in view of the increasingly global dimension of environmental crime.

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

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

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

# Thank you!

For the WG reports, see:

<https://www.environmentalprosecutors.eu/>

<https://www.environmentalprosecutors.eu/cross-cutting>