

# Sanctioning Environmental Crime (WG4)

Second-stage Interim Report:  
International cooperation and  
specialisation of the judiciary

2017/18



**LIFE-ENPE Project**  
**LIFE14 GIE/UK/000043**  
March 2019

Contributors: C.M. Billiet (ed.),  
S. Boogers, K. Dimec, K. Weissová,  
F. Nési, A. Wüst, E. van Die and  
L. Girón Conde.



With the contribution of the LIFE financial instrument of the European Community



# Contents

Part 1. Good practices in prosecution and adjudication – Focus on international cooperation	7
I. Introduction to Part 1	8
II. Winter 2017/18: first input of the WG members	9
A. Belgium	9
B. Czech Republic	13
C. Germany	14
D. The Netherlands	16
E. Spain	19
III. Spring 2018: further input of the WG members	20
A. Cooperation within the EU	21
B. International cooperation	24
C. One recommendation: what matters most for each of us?	24
IV. Autumn 2018: additional country-related information	25
V. Autumn 2018: observations and recommendations	25
Part 2. Good practices in the prosecution and adjudication work – Focus on environmental specialisation among prosecutors and courts/judges	29
I. Introduction to Part 2	30
A. Enforcement chain approach: synergies	30
B. The necessity of having enough cases	31
C. The “one judge” problem	31
D. Specialised lawyers	31
II. Winter 2017/18: first input of the WG members	33
A. Belgium	33
B. Croatia	37
C. Czech Republic	39
D. Germany	40
E. The Netherlands	42
F. Spain	43
III. Spring 2018: further input of the WG members	44

A. First question. Is specialisation needed for all cases? Or only organised environmental crime? Or only major environmental cases?	45
B. Second question. Specialisation in the enforcement chain: what brings what? Start with police units (see Czech Republic), with judges (see Germany), ...?	47
C. Third question. Is Model 5 of the Pring and Pring study (specialised chambers) a way forward? Under what circumstances?	48
D. Last question. One recommendation: what matters to all of us?	48
IV. Autumn 2018: observations and recommendations	49
Annex 1: Support in international criminal cases	52
Annex 2: Specialised environmental courts and tribunals: a necessity?	58
Annex 3: France – Written note of 2 December 2018	59
Annex 4: 2017/18 Working Group members	62



## List of abbreviations

AIRS	Department of International Affairs and Legal Assistance in Criminal Matters (the Netherlands)
CISA	Convention implementing the Schengen Agreement
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EAW	European arrest warrant
ECT	environmental court and tribunal
EFO	European freezing order
EIO	European investigation order
EJN	European Judicial Network
EU	European Union
EUFJE	European Union Forum of Judges for the Environment
IRC	International Legal Assistance Center (the Netherlands)
JIT	joint investigation team
LIRC	National International Legal Assistance Center (the Netherlands)
MLA	mutual legal assistance
MS	member state or member states
RC	examining magistrate (the Netherlands)
WED	Economic Crimes Act (the Netherlands)
WG	working group

# Introduction

The LIFE-ENPE project LIFE14 GIE/UK/000043 has formed four working groups to build capacity and consistency in implementing EU environmental law. The working groups 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 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 second working year (December 2017–December 2018) Working Group 4 comprised 10 members, including both prosecutors and judges, from 7 countries.<sup>1</sup>

<b>Working Group member</b>	<b>Country</b>	<b>Role</b>
Carole M. Billiet	Belgium	Academic/Judge
Sara Boogers	Belgium	Prosecutor
Ksenija Dimec	Croatia	Judge
Kateřina Weisssov	Czech Republic	Prosecutor
Marc Clment	France	Judge
Franoise Nesi	France	Judge
Wanja Welke	Germany	Prosecutor
Anja Wust	Germany	Prosecutor

---

<sup>1</sup> W. Welke left the working group at the end of 2017.



Els van Die	Netherlands	Judge
Lucia Girón Conde	Spain	Prosecutor

This report provides the findings from the working group’s activity between December 2017 and December 2018, its second working year, during which the working group analysed and discussed two topics: international cooperation (Part I) and environmental specialisation among prosecutors and courts/judges (Part II). The group met on five occasions: a kick-off meeting in Brussels on 8 December 2017, a teleconference meeting on 22 June 2018, a meeting in Heraklion on 24 September 2018 (mostly prosecutors) and a meeting in Sofia on 17 November 2018 (judges only). The cycle of the second working year was completed by a meeting in Brussels on 7 December 2018, which also saw the kick-off of the third working year.

This report is the second of its kind. The findings of the working group’s activity in its first working year, from December 2016 to December 2017, have also 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.<sup>2</sup> As for that first report, this second 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.

---

<sup>2</sup> The report is available online from the ENPE website: [www.environmentalprosecutors.eu/cross-cutting](http://www.environmentalprosecutors.eu/cross-cutting).



# Part 1. Good practices in prosecution and adjudication – Focus on international cooperation

8 December 2017 – 7 December 2018

Kick-off meeting: Brussels, 8 December 2017

First input from working group (WG) members: winter 2017/18

First draft of the report communicated to WG members on 8 May 2018

Second meeting (teleconference): 22 June 2018

Second draft of the report communicated to WG members on 6 September 2018

Third meeting: Heraklion, 24 October 2018 (mainly prosecutors)

Third draft of the report communicated to WG members on 23 November 2018

Fourth meeting: Brussels, 7 December 2018

Final draft of the report communicated to the WG members on 21 December 2018.

Report approved on 11 January 2019.

## I. Introduction to Part 1

At our kick-off meeting for the second working year on 8 December 2017, Judge van Die presented a note detailing international cooperation in criminal cases in the Netherlands (Annex 2). The Netherlands has specialist units to handle international cooperation on crime (IRC), including both incoming and outgoing requests, regionally (EU) and globally. International cooperation takes place at the police level and at the prosecutor level. It is not always clear when cooperation requests should be handled by the police or by prosecutors. The importance of international cooperation is increasing. A specific concern relates to the proceeds of crime: Judge van Die mentioned the existence of Directive 2014/42/EU of 3 April 2014 “on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union” (OJ L 29 April 2014, No. 127/39), which had to be implemented by the member states by 4 October 2015.

During the discussion following the presentation, a few points emerged:

- What is *most needed*, is *information* in a *reasonable time*. In practice, it was said, it is commonplace to have to wait two to five years for an answer. This, obviously, is too late, too slow.
- Other countries (Belgium, Czech Republic, Germany, Spain) do not have one specialist unit to handle international cooperation in criminal cases. Knowing where to address questions in other countries can therefore be a challenge. Tools exist to help you find your way (e.g. the Fiches Belges), but their existence is not generally known.
- The EU is increasingly involved due to the development of EU tools and support structures for international cooperation, not only within the EU but also beyond: the EU investigation order (EIO) (formerly mutual legal assistance or MLA request), European arrest warrant (EAW), Eurojust (with joint investigation teams), etc.

### Questions to explore

Building on the initial discussion of the topic, the following questions were selected to start deepening the analysis.

- (1) What are your personal experiences with international cooperation in criminal cases? What do you see happen around you with regard to it? Please consider in your answer (a) outgoing as well as incoming cooperation requests, and (b) cooperation within the EU as well as at the wider international level.
- (2) What are, in your opinion, the most common needs?
- (3) Do you experience or observe special problems with regard to international cooperation in *environmental* crime cases (as compared to other types of crime):

(a) with regard to *instruments* that exist or do not exist?

(b) with regard to *the environmental law*?

## II. Winter 2017/18: first input of the WG members

*Of all the working group members, five answered the abovementioned questions: Belgium, the Czech Republic, Germany, the Netherlands and Spain. Their answers follow here.*

### A. Belgium

*Author's note: This is a personal reflection of the author, and does not represent the opinion of other Belgian prosecutors or of the Public Prosecutor's Office in general.*

(1) What are your personal experiences with international cooperation in criminal cases?

When investigating serious (organised) environmental crime (e.g. illicit shipment of waste or wildlife trafficking), national borders are likely to be crossed (certainly in a small country like Belgium) and international cooperation becomes a must.

#### ***The EU Investigation Order***

The instrument most used currently is the EU investigation order (EIO), since most investigations are limited to EU member states (MS). This Directive 2014/14 was implemented in Belgian law by the “Wet van 22 mei 2017 betreffende het Europees Onderzoeksbevel in Strafzaken” [Law of 22 May 2017 concerning the European investigation order in criminal affairs].

This tool has greatly facilitated international cooperation in environmental crimes, since “environmental crimes” are one of the types of so-called 32 “listed facts”.

This means that if the maximum penalty for a crime belonging to one of the “listed facts” in the requesting MS is imprisonment of at least three years, then you no longer have to prove “double incrimination”, that is, prove incrimination in both countries.

So, for instance, every type of waste crime (even illegal deposit of one bag of household waste) in Flanders is (theoretically) punishable with imprisonment of five years maximum. This means that when I want to request the interrogation of a suspect in the Netherlands, I no longer have to prove that this fact (illegal deposit of waste) is also punishable in the Netherlands.

Since under Flemish law (Decreet Algemene Bepalingen Milieubeleid) [Decree General Provisions for Environmental Policy] the most serious environmental crimes, where real environmental damage has occurred or is likely to occur (e.g. waste crime, wildlife crime,

pollution crimes, deforestation, damage to protected nature) are punishable by a maximum imprisonment of three years (by negligence) or five years (if committed intentionally), we can always rely on an EIO for “listed facts” for investigations abroad.

Furthermore, there exists a clear model document of EIO, which can be filled out quite easily (some items simply need to be marked).

Before the EIO existed, it was much more difficult and time-consuming to make a request for MLA.

This system of “listed facts” in the EIO also has cleared up another difficulty that previously occurred specifically in regard to requests to Germany. Since Germany does not recognise the criminal liability of legal persons, it was often very difficult to send a request to Germany in order to interrogate the responsible person (CEO) of a German company, since there was no double incrimination (the company could not be punished for the same facts under German law).

The EIO Directive also requires the MS to give some guarantees about the period of execution of an EIO. Normally the EIO has to be officially acknowledged (accepted) by the executing (receiving) MS within a period of 30 days after receiving the request, and has to be executed within a period of 90 days after the official acceptance (so 120 days in total). If execution is not possible within this period, then the demanding authority has to be informed of the reasons for delay.

This is also a substantial improvement compared to the earlier MLA system, where you sometimes had to wait two years just to get a copy of a police record from another MS.

### ***MLA outside the EU***

I cannot recall any specific personal experience of requests for investigation outside the EU.

Of course there are bi- and multilateral treaties on this matter, but were such a need to arise during an investigation, I would ask for help from my specialist colleagues (international cooperation team) or I would contact the Belgian desk at Eurojust for more information or even practical assistance (since Eurojust also has a network of judicial contacts outside the EU).

### ***Joint investigation teams***

With the very concrete (practical and financial) support of Eurojust, it is increasingly becoming easier to set up a joint investigation team (JIT) to deal with serious forms of transboundary crime.

For example, we (in Antwerp) now have an ongoing JIT in a case of waste trafficking with the Netherlands, and also in a case of food safety problems, similarly with the Netherlands.

Since the use of a JIT is limited (because of lack of police capacity) to really serious cases, in Belgium an investigative judge is also normally involved.

### ***Competent authorities for legal assistance (EIO), outgoing and incoming?***

In Belgium we do not have any specialist separate entities, like the IRCs in the Netherlands, to deal with international judicial cooperation. Any Belgian prosecutor/investigative judge can send out an EIO or another request for MLA. If I want to send out an EIO, I always use the website of the European Judicial Network (EJN), [www.ejn-crimjust.europa.eu/ejn](http://www.ejn-crimjust.europa.eu/ejn). To find out which legal instrument has to be used for a specific request to a specific country, you can use the “Fiches Belges” tool on this website. To find out to which specific (local) authority in a country you have to send the request, you can use the “Atlas” tool.

Any Belgian prosecutor (but not judge) can receive an EIO or another request for MLA. The competence is based on the locality where the investigative measure has to be executed. Most Belgian prosecutors’ offices, however, have organised themselves in a way that there is a (small) team of prosecutors and assistants who specialise in international cooperation and who deal with all incoming international requests.

If such an incoming request concerns a matter of environmental crime, my colleague from the international team will contact me to inform me about the request, so that I can check for any links with ongoing local investigations and advise on how to carry out the request (which police unit, which special environmental inspection unit etc.).

(2) What are your most common needs?

### ***Clear rules on exchange of information between administrative authorities and the use of this information in criminal investigations***

In environmental matters there often/sometimes exists a good degree of cooperation at an administrative level between competent authorities in different countries. For example, in waste trafficking there is strong cooperation between EU countries in dealing with the “return-to-sender” of illegal shipments and containers. Similarly, CITES authorities in countries across the world cooperate well in international wildlife trafficking cases in order to exchange information about CITES certificates etc.

But when it comes to exchange of information on persons involved in this international trafficking, persons who might be suspected of committing crimes, it is often more difficult to obtain the information via administrative cooperation. The reason for this hesitation is, of course, the protection of privacy and the specific rules about the rights of defence for suspects in criminal matters (Salduz).

It is not always clear how information obtained via an administrative procedure can be used in a criminal investigation. This is already a difficult issue in domestic local environmental cases, but it becomes even more difficult when dealing with the international exchange of information. Given that the administrative authorities, however, have a far more direct link with their international partners and a much faster way of exchanging information (compared to, for

example, the police), it is a pity that this information often does not end up in the criminal report, or that we have to wait several months to obtain the same information via an official request for legal assistance.

Therefore, it would be very useful if the EU would develop rules (guideline) on :

- How to exchange information between administrative authorities (although perhaps such international guidelines already exist, possibly dispersed across different EU legal instruments on specific topics).
- How to legally use this information (obtained by exchange between administrative authorities) in a criminal investigation.

### ***Networking is crucial***

The execution of EIOs is far easier if you know who to contact in the requested country. And by that I do not mean which “competent authority” you should send the EIO to. I mean that sometimes it is easier if in advance you can directly contact your specialised counterpart (environmental prosecutor) in the other country, to explain what you are investigating and what information you are looking for. Your counterpart best knows the legal possibilities and the right people to address in his/her own country, so this can really help you further in (a) posing the right questions in your EIO to the right authorities, and (b) getting a quick and accurate answer to help you proceed with your investigation.

I have already experienced that when you know people in person, it is much easier to write them an email or pick up the phone to ask for more information about something going on in their country. And if your counterpart already knows that an EIO is on its way, the execution will be easier and quicker.

But of course you cannot attend every international seminar and get to know every European environmental prosecutor in person...

It would therefore be useful if the ENPE website could provide (in a secure part of the site?) a list of specialised environmental prosecutors, with details about their locality, their area of expertise, and of course contact information.

(3) Do you experience or observe special problems with regard to international cooperation in environmental crime cases (as compared to other types of crime)?

This question was already answered in (1) above.

Since the creation of the EIO and the appearance of “environmental crime” in the “list of facts”, I experience no special problems specific to environmental crimes. However, before the EIO, or in other requests for legal assistance where there still is a need to prove double incrimination,

it is often very difficult to find out if a specific environmental crime is also punishable according to the law of the requested country. (It is far easier to figure out that theft is punishable than to find out whether the unlicensed operation of a factory is punishable by criminal law in another country.)

Therefore, the existence of an online list of European environmental prosecutors could also be useful for seeking advice on the appropriate law in a specific country.

## B. Czech Republic

I have focused on MLA requests since they are, from my point of view, the most important part of international cooperation.

(1) What are your personal experiences with international cooperation in criminal cases?

### ***Direct cooperation***

In respect of MLA requests, the trend – not only within EU – is towards direct cooperation (the prosecutor/judge from one state can address his/her request directly to the prosecutor/judge in the other state), which seems to be more effective and less time-consuming compared with cooperation at ministerial or other central office level (meaning these are not competent to execute the request and only redirect it). In the Czech Republic the regional prosecutors' offices and regional courts are responsible for direct cooperation, while the Supreme Prosecutor's Office and the Ministry of Justice are central bodies that also develop and distribute guidelines and give advice in particular cases to judges and prosecutors. At a regional level there are two to three specialists in each regional prosecutor's office dealing with MLAs, EAWs, international arrest warrants and other international issues.

Outgoing requests are the responsibility of the particular prosecutor or judge who is dealing with the case. A very useful tool for finding the competent authority in a foreign state is the Judicial Atlas on the EJM website, where you can find the competent authority according to the requested measures, stage of proceedings and presumed place of evidence. In my experience it works smoothly.

As to cooperation within the EU from the point of view of a Czech prosecutor, there are countries where cooperation is almost problem-free and quick, above all neighbouring countries (Germany, Austria, Slovakia, Poland), maybe thanks to similar legislation. There are, however, countries where it takes a long time to get a result, for example Italy, Great Britain (it is interesting that Great Britain has a specialist body dealing with incoming MLA requests – UK Central Authority, International Criminality Department – responsible for the territory of England, Wales and Northern Ireland, which unfortunately does not work efficiently – slow execution of MLA requests, lack of interest in the outcome and no responsibility/control of the central body of the outcome). Generally, cooperation within the EU (with exceptions named above) is in most cases quicker and less complicated than with non-EU countries (from my point of view) thanks



to good international conventions and EU legislation, the option of facilitation via Eurojust and the greater need for cooperation in the Schengen area without internal borders.

(2) What are your most common needs?

Accuracy. The MLA request should, if allowed by law of the executing party, be executed in the requested way and completely, which should be guaranteed by the prosecutor or judge even if it is police who gathers the evidence, hears witnesses, etc.

Speed and good communication in the course of executing MLA requests (direct cooperation should also mean direct communication [phone, email] in case of any problems, additional questions or settling dates of witness hearings). The lack of communication often leads to refusal to execute the request even if it could be executed in another way – for example, if the evidence to be obtained is not available in a certain way (e.g. the hearing of a witness is impossible) but there is other evidence (e.g. written documents) that can prove the same thing.

(3) Do you experience or observe special problems with regard to international cooperation in environmental crime cases (as compared to other types of crime)?

No.

### C. Germany

(1) What are your personal experiences with international cooperation in criminal cases?

My personal experience with international cooperation is similar to what was discussed and highlighted in our meeting on 8th December 2017.

In the Federal State of Hessen we have no specialised units to deal with international cooperation. In my office there are several prosecutors handling the outgoing requests for legal assistance of other colleagues and also the incoming requests. This work is optional and comes on top of the regular workload. There is, of course, direct communication with prosecutors in other EU member states. Any request going abroad outside the EU has to be sent via the official channels through our Ministry of Justice.

Outgoing requests: In most cases it takes a long time, i.e. two years or more, to get an answer. This is taken into consideration by any prosecutor when weighing up the possible course of action in an investigation. As it is uncertain when you will get a result, many colleagues have the tendency to act rather reluctantly when it comes to requesting international legal assistance.

However, sometimes you can get answers in a reasonable time when you signal that it is really urgent. This requires personal input and relies on a certain amount of luck, depending on who

will be dealing with your request abroad. You can never be certain to get the information you need in reasonable time.

Often it is very helpful if the police or customs prepare a request for legal assistance using their options for international cooperation, e.g. send a request for information to the competent judicial authority abroad even before the court order is submitted.

Dealing with requests to and from other EU member states is much more flexible, quicker and more promising than dealing with requests from or to jurisdictions outside the EU. In particular, the possibility of contacting the foreign authority directly and also the existence of the different EU tools facilitate cooperation.

As the growing importance of confiscating the proceeds of crime was discussed at our meeting in Brussels, I would like to contribute my experience to this specific topic. Indeed, efficiently seizing the profits of crime is very important for the prosecution. But asking for legal assistance to freeze assets in another country is not free from risks regarding the confidentiality of information. In several cases, where coordinated searches and freezing of bank accounts in Germany and abroad had been prepared for a certain date, our request to the foreign authority for the information on the case to be handled in strict confidence until a certain date has been ignored. Banks have thus been informed of the freezing measures beforehand and the offenders have come to know about the investigation.

There were different reasons for such malfunctions: sometimes it has actually been due to the fact that the legislation on when to inform a financial institution or even the suspect about such a measure is different from the German rules; and sometimes it has been due to the fact that the request was simply “executed” without any real interest in the result. Finally, it might sometimes be due to a lack of direct coordination of the necessary measures, that is, there are too many formal obstacles and *de facto* obstacles (language barrier, authorisations, workload) that prevent the prosecutor executing the request from taking his time and directly calling the investigating prosecutor to coordinate the precise requirements of a case in a detailed way.

As to the incoming requests, I can say that they are treated with the same priority as our “normal” cases. However, the execution of requests can take quite a lot more time when some measures have to be executed in our district and others in the competence of another local authority. Unfortunately, the translations of the requests are sometimes so poor that we cannot understand what the case is about and what measure is being requested, so we have to send it back.

(2) What are your most common needs?

Firstly, I think that it is important to have more manpower and, secondly, there is a need for personnel to have a better grounding in the law and ongoing training about the changing regulations, new legal instruments and ever-increasing databases that can be used in the EU.

Furthermore, it would be very helpful to have a specialist unit that is at least able to address one's questions arising in the course of making a request for legal assistance to people with expertise, contacts and sufficient experience.

The way this has been organised in the Netherlands – specialist units that deal with every problem concerning international cooperation – seems ideal to me.

(3) Do you experience or observe special problems with regard to international cooperation in environmental crime cases (as compared to other types of crime)?

I do not see any special problems in international cooperation with regard to environmental crime cases. The most important factor is to have the option of communicating directly with the foreign prosecutor to understand precise legal needs, especially the kind of material/documents/proof explicitly needed in a case. This ability to have direct contact is normally guaranteed in the EU.

(a) with regard to existing/non-existent instruments?

The EAW, the EIO and the EU “freezing order” (2003/5877 JI) cover environmental crime as well as the illegal trafficking of protected species and can similarly be used. A JIT is possible too, so my impression is that inside the EU there are sufficient instruments.

(b) with regard to environmental law?

See the response to (3) above.

I have not handled any outgoing legal requests concerning environmental cases yet. However, when executing incoming requests, I have experienced no difficulties resulting from different legislation between Germany and the requesting state.

#### D. The Netherlands

In the Netherlands, international cooperation in criminal matters is regulated by the Criminal Code and the Criminal Procedure Code. Legal assistance includes extradition, transfer and takeover of prosecution and the enforcement of criminal judgments (“grote rechtshulp”). In addition, there is also “legal aid” (“kleine rechtshulp”), which then regulates cooperation at the level of the police and the public prosecutor during the police investigation or during the criminal investigation.

During the procedure a judge can be involved in matters and questions relating to legal assistance cases because these issues are discussed and decided at a hearing. The examining magistrate, as investigative judge, plays an important role in the legal aid in the event that investigative activities are to be carried out abroad. As a court judge you have no influence on

this. In addition, judges at a pre-trial chamber (“raadkamer”) in Amsterdam are involved in cases that seek the arrest of a suspect via an EAW (this is a judicial decision taken in a member state of the EU and in which another member state is requested to arrest a criminal suspect or to hand over a convicted person. The aim is to facilitate the extradition of suspects and convicted persons within the EU. Every year around 550 arrest warrants are sent by the Netherlands to other EU member states).

(1) What are your personal experiences with international cooperation in criminal cases?

The main problems are not knowing where to go with your questions and the time you lose waiting for information; both inside and outside the EU, one country often works faster and more easily than another. The political situation and/or corruption in the requested country also sometimes play a role. However, there has been a sharp increase in legal assistance in recent years, both incoming and outgoing. Fortunately, there has been a response to that; instead of simply seeing more treaties, there are now more collaborations such as Eurojust, Europol and the shared will to act decisively and internationally against all forms of crime, resulting in a system in which mutual trust also increases.

(2) What are your most common needs?

The most important things in legal assistance are good information and clear rules and/or agreements about what kind of legal assistance you need or want regarding the various crimes. As a result, the person who wants this information knows where to go and to whom to address it. Mutual contacts are therefore of great importance.

(3) Do you experience or observe special problems with regard to international cooperation in environmental crime cases (as compared to other types of crime)?

With regard to environmental criminal law, our regulations have many opportunities for international cooperation. Because violation of prohibitions in environmental legislation is punishable as an economic offence, the police and the public prosecution service have a wide range of investigative powers at their disposal. The various investigative powers included in the WED (Dutch Economic Crimes Act) can be used “in the interest of the investigation”. This concept is interpreted as meaning that “indications” of an economic offence are sufficient to be allowed to apply the powers. In this connection, reference can be made to HR 9 March 1993, NJ 1993, 633. In this judgment, the scope of the concept of detection in the Law on Economic Crimes (Wet Economische Delicten) (WED) has been interpreted in such a way that it includes actions that aim to verify where a violation actually occurred of a provision punishable in the WED, if there are “indications” that an economic regulation has not been complied with.

Also, the deliberate violation of the prohibitions under environmental law has a maximum sentence of six years and a fine of the fifth category (Article 6, first paragraph, under 1°, WED).

It follows that pre-trial detention can be imposed for these offences, which also implies that broad investigative powers are available on the grounds of the Code of Criminal Procedure (telephone tapping, arrest in the event of an offence, access to traffic data and financial transaction data).

The police or investigating officer has access to any premises except for residences. To enter or search a residence, they either need permission from the resident or authorisation from the public prosecutor. The investigating officer may stop and search vehicles, has the authority to inspect all business data and may even make copies, open packaging or take samples.

For example, if it is suspected that a shipment is being transported with the aim of illegally dumping it as waste, the investigating officer may stop the driver, check the shipment in the vehicle and open the containers. This also applies if the vehicle is parked on private property.

It should also be mentioned that the investigative judge (rechter-commissaris) may authorise the interception of telecommunications if it is the opinion of the public prosecutor that the investigation urgently requires the application of this power and the offence, by its nature, constitutes a serious infringement of the law. See Criminal Code (Article 126m Sv). Crimes which, by their very nature, constitute a serious violation of the legal order can include crimes such as murder, drug trafficking, human trafficking, extensive environmental offences, arms trafficking, and also serious financial crimes, such as extensive serious fraud, for example a VAT carousel. Such crimes seriously damage the rule of law because of their violent nature or because of their size and consequences for society.

In addition, the WED establishes the obligation to cooperate: with respect to fact-finding in the context of the WED, one is obliged to provide all cooperation necessary for carrying out the investigation. The WED also contains its own participation provision (Article 3 of the WED): "Participation in an economic offence committed within the Kingdom in Europe is punishable even if the participant has committed the offense outside the Kingdom".

Because these offences are so severe, international legal assistance is possible. In the cases that I have experienced, legal assistance has been limited to legal aid or "kleine rechtshulp", that is, legal assistance in the field of exchange of all kinds of information on a large scale between the police/investigative services, the hearing of suspects and witnesses (experts), the stopping of vehicles (cars, trucks), tracing money and goods due to possible (preventive) seizure/forfeiture, depriving persons of their illegally obtained advantage.

Incidentally, I do not think that our broad regulations encounter problems when executing requests. In my opinion, the starting point is that the law of the requested country applies to the implementation.

In line with the Act of 7 June 2017, amendments are to be made to the Code of Criminal Procedure and some other laws with a view to modernising the regulation of international cooperation in criminal matters (revision of the scheme for international cooperation in criminal matters):

In a previous cabinet period, a start was made on modernising the Dutch Code of Criminal Procedure; this also includes the arrangements regarding legal assistance. Former Minister of Justice and Security, Van der Steur, expressed himself thus:

“Modern legislation is essential for effective legal assistance. Clear and applicable procedures lead to better international cooperation and adequate implementation of legal assistance requests.”

The legislative proposal is part of the overall modernization of the Code of Criminal Procedure. Every year the Netherlands receives about 30,000 requests for legal assistance in criminal cases (figures for 2013). A new regulation is needed not only so that these requests from foreign authorities can be carried out in an efficient manner, but also to allow the Dutch police and judiciary, if necessary, to conduct research abroad in an adequate manner. Nowadays, research is carried out in almost all criminal investigations into serious and organised crime. Many offences have an international dimension. For example, victims or perpetrators are abroad, or the proceeds of a crime are invested outside the country's borders. In all these cases, the help of foreign authorities is needed to clarify criminal offences, punish perpetrators and take criminal money.

The new regulation takes more account of the daily practice of international cooperation, in which expertise and good communication with foreign authorities are paramount – at case level. There will be greater opportunity for consultation between countries and the necessary flexibility will be provided for the implementation of legal assistance requests, partly in view of the deployment of available capacity. Another important innovation is that in the future video hearing of suspects in another country will also be possible. At the moment this is only possible if it concerns a witness or expert abroad.

In addition, the bill better reflects the very large diversity of legal assistance relations. This results in large differences, for example where it concerns the manner in which a request is submitted and the conditions imposed on the execution of foreign legal assistance requests. Furthermore, the bill describes more clearly which powers may be applied in the execution of a legal assistance request and there will be a clear numbering of the legal articles. The new regulation also ensures that digitisation of legal assistance communications becomes possible.

It is currently impossible to say when this new law will come into force.

## E. Spain

(1) What are your personal experiences with international cooperation in criminal cases?

The Spanish Prosecutor's Office has a General Prosecutor for International Cooperation with a central International Cooperation Unit in Madrid and a Prosecutor's Network for International Cooperation with a delegate in every provincial prosecutor's office. I work with my delegate

colleague in Lugo in some mutual assistance cases with Portugal, in which we collect witness statements as evidence and send them to the requesting prosecutor's office in Portugal.

(1 cont.) What do you see happen around you with regard to it? Please consider in your answer (a) outgoing as well as incoming cooperation requests, and (b) cooperation within the EU as well as at the wider international level.

Within the European Union in relation to common crimes, the results of the Spanish Prosecutor's Network for International Cooperation are quite good, since MLA tools are helpful. Conversely, international cooperation is not as easy with other countries and difficulties increase in dealing with cybercrime, fraud crime and environmental crime.

(2) What are your most common needs?

One of the most important needs is quick cooperation in securing and transferring evidence and fluent cooperation with foreign authorities.

(3) Do you experience or observe special problems with regard to international cooperation in environmental crime cases (as compared to other types of crime)?

Yes, indeed.

(a) with regard to instruments that exist or do not exist?

There are no special legal provisions for transferring and securing evidence that reflect the specific nature of evidence in environmental crimes: lab expertise, animals, birds eggs, etc.

(b) with regard to the environmental law?

The 2008 Eco-crime Directive has established a general approach among the EU countries for the regulation of environmental crimes. However, differences remain between administrative and criminal offences in national law, so difficulties in prosecuting environmental crimes abroad can appear frequently. These difficulties are due to the technicalities of the subject and the variety of administrative laws.

### III. Spring 2018: further input of the WG members

*A first draft report with the introduction and a compilation of all input provided (see Sections I and II above) was sent to the working group members on 8 May 2018, for discussion at a*



*teleconference in June. The teleconference took place on 22 June and lasted an hour. It was attended, for this part of its agenda, by six working group members representing Belgium, Croatia (first part of the meeting), the Czech Republic, France and Germany.*

*The meeting agenda mentioned the following discussion points to further our analysis:*

(a) Within the EU

- Tools:

- Do all of you use the EIO, which appears to be the tool with the most “daily” usefulness? See recent entry into force of EIO Directive in Belgium (22 May 2017). See use of MLA requests in the Czech Republic. See experience in Hessen of having to wait two years for responses.
- Does the EU toolkit (EIO, EAW, EU freezing order) (with support of EJN and Eurojust) suffice?

- Communication

- Specialist units versus the necessity of one-to-one communication.
- Sara Booger’s suggestion: list of contacts on ENPE website (secure part).

(b) Globally

How different is the need for tools and communication from the needs in an EU context?

(c) Make one recommendation: what matters most for each of us?

*Prior to the meeting (22 June, morning), France sent a written note with its thoughts on the issues raised. The note is incorporated in the meeting account that follows.*

## **A. Cooperation within the EU**

### **1. Tools**

#### ***France (written note)***

I have no answer on the tool most frequently used by my public prosecution colleagues or by examining magistrates for the purposes of international cooperation on environmental matters. I propose to try to obtain some precise and practical information, but it is difficult at the level of the Court of Cassation, which is far removed from daily experience out in the field.

I also think that information on the adequacy of the tools and on areas for improvement should be sought more specifically from officers of the various environmental police and/or from criminal investigation officers. I think that the issues (and tools) can be compared or equated

with those in the fight against drugs or arms trafficking, or in the context of offences relevant to TRACFIN (anti-money-laundering).

I think that it is also essential to be able to carry out cross-checks between these different types of trafficking (for example, waste trafficking and the laundering of the proceeds from it...).

### ***Czech Republic***<sup>3</sup>

The EU directive regarding the EIO had not yet been implemented in Czech legislation by the time we held the teleconference in June. We were one of the last three EU countries that still had to do so. The law has now been amended and as of 16 August 2018 we can use and execute the EIO. However, given the short time since implementation, my only experiences with the tool, up till now, are through requests from other states.

### ***Germany***

The EIO was implemented in German legislation on 22 May 2017. We have to use it for outgoing requests and work with it on incoming requests. The tool is very easy to use; straightforward. It is easy to check if you have all the information needed for successful assistance. Yet the experience is mixed.

A practical observation: it is a long form (16–17 pages). This creates a risk that important points are overlooked (a very human reaction). A short request focusing on certain points only is no longer possible.

We still have to get used to working with it. In the future it will make things easier as it was designed to do. There is that risk of overlooking important points. The returns are very mixed. There is no strong sense of obligation. With an easy case, it goes quickly. If there is a lot of work or delicate work (e.g. involving a suspect) it is often the same as before the EIO. You have to wait a long time. Or they do not answer your questions. Legally they are obliged to enforce the measures that I requested, but this does not always happen. The EIO does not create a stronger obligation. Yet there are examples where it functions very well.

### ***Belgium***

Processing an EIO, drafting one, is a lot easier than what we had before. The MLA document was more difficult.

The implementation of an EIO is something else. I agree with Germany. Getting the answers does not always happen quickly and they are not always good. Even if there are delays in the implementation of the legislation, it should go faster. There is (still) an implementation issue.

---

<sup>3</sup> Information updated according to legislative developments via email of 7 September 2018.

Once the tool is set up in all MS, I hope there will be improvement in some time, improvements in the implementation in practice.

Our federal prosecution office coordinates the implementation. We have to inform it about any problems we experience and about other MS that create problems. They assume the follow-up.

It is easier than before, but when you have special requests or needs, personal contacts remain essential. Personal contacts are also a plus when it comes to following up your request. You combine the EIO and your contacts.

### ***Belgium and Czech Republic***

As regards the EU toolkit as a whole (EIO, EAW, EU freezing order, with support from EJM and Eurojust), we have what we need.

### ***Germany***

The toolkit is indeed sufficient. We have used them all. In some cases you wish you could combine an EIO and a freezing order.

### ***Belgium***

Agreed: in some cases it would be ideal to be able to combine an EIO and a freezing order.

## **2. Communication**

### ***France (written note)***

Dialogue and cooperation, both within each MS and at the international level, with public authorities such as customs, tax administration, fraud prevention – that is, with investigating authorities that are not police or environmental – can also be very fruitful for finding perpetrators of environmental crime.

If I have understood correctly (which is not certain), it is about knowing whether you should favour recourse to specialist services as against dialogue at a personal level. In my opinion, one does not preclude the other: a specialist service is better equipped, with resources and competent people, to deal with an environmental offence. But personal affinity and contacts are equally a guarantee of effectiveness. Having a number to call with a specific question, technical or legal, fosters links between services (it is more often than not reciprocated) and allows discussions about a case that are more personal and less restricted.

As to the website, it is a good idea, but a telephone conversation is even better, in my view.

Is the question: is there a need for communication tools and means specific to the environment within the EU? The response would be to have a foundation of technical and scientific expertise, regularly documented, easily accessible and up to date with the latest state of scientific

knowledge in subjects as specific as chemical products (fertilisers, pesticides etc.), industrial risks (fire, explosions), substances that pose a risk to health (asbestos, pesticides), wastes and their methods of treatment, nuclear waste and nanomaterials.

### ***Germany, Czech Republic and Belgium***

There is no contradiction between the need to have the support of specialist units and the need for one-to-one communication.

Specialist units provide a service to the prosecutor who is handling the investigation. You need EIOs, you need someone who knows the legislation regarding international cooperation (the procedures and the law). But for success in the case, especially coordination on what can be done abroad, you need direct communication. This includes, for instance, help regarding what day legal action will be implemented or when new information comes up.

## **B. International cooperation**

### ***Czech Republic***

International cooperation at the global (non-EU) level is very different. The challenges it raises are huge and complex. Every country is different. You have to look it up. Thailand, for instance, is entirely something else than the US.

We more or less manage quite well with the means we have. It is important that your communications are relevant.

### ***Belgium***

Same experience, feeling: with countries other than EU, things get very tricky.

A website/online tool would be very welcome. For instance, for cooperation Belgium–Nicaragua. Something like the Belgian fiches, like what the EJM offers but then worldwide.

## **C. One recommendation: what matters most for each of us?**

### ***Czech Republic, Germany and Belgium***

The most important is:

- to get answered quickly, with an accurate/correct answer; and
- if it is not possible to meet your request, that you hear it quickly; direct communication if there is a problem with implementation or execution.

#### IV. Autumn 2018: additional country-related information

*Following our discussion of the third draft report on 7 December 2018, Spain offered some additional country-related information with regard to cooperation within the EU as well as at the wider international level.*

##### ***Within the EU***

With Law 3/2018, on 11 June 2018 the EOI came into effect in Spanish internal law, making cooperation much easier and more efficient. In addition, the recent Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders will be useful too.

##### ***At the wider international level***

There is an Ibero-American network of international legal cooperation, IberRed, a structure formed by central authorities and contact points from ministries of justice, prosecutors' offices and judicial powers of the 22 countries that make up the Ibero-American community of nations, as well as the Supreme Court of Puerto Rico ([www.iberred.org/](http://www.iberred.org/)). It is quite useful as a source of information, but there are no tools such as the ones that apply in the EU. There is also a website for the Ibero-American Association of Prosecutors' Offices ([https://en.wikipedia.org/wiki/Ibero-American\\_Association\\_of\\_Public\\_Prosecutors](https://en.wikipedia.org/wiki/Ibero-American_Association_of_Public_Prosecutors))

Finally, the Spanish website ([www.prontuario.org](http://www.prontuario.org)) allows the identification of the conventions applicable to specific cases of judicial cooperation in criminal and civil matters. It facilitates immediate access to the text of the relevant treaty through the corresponding links.

#### V. Autumn 2018: observations and recommendations

*A first draft of these observations and recommendations was formulated at the third WG meeting, in Heraklion. The final observations and recommendations were agreed upon after an in-depth discussion on 7 December 2018.*

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

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

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

Combined with the option of support offered by Eurojust and the EJM, and also considering the possibility of setting up joint investigation teams (JITs) (discussed below), the current toolkit is sufficient to meet the needs of prosecution practice; no additional tool is required.<sup>4</sup>

In terms of policy development, international cooperation within the EU is a matter of consolidation (see (4) and (5) below).

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

This pattern, however, does not apply as a rule in areas of environmental crime involving illegal trafficking, such as wildlife and waste trafficking, and trafficking-related money laundering. Even in such criminal cases, however, the specifics of the case and the means available to investigate it can reduce the investigation to local (national, EU) aspects only.

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

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

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

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

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

(c) To complete the picture, mention has to be made of the JIT, a cooperation tool prosecutors use in association with Eurojust and EUROPOL. Depending on national rules, JITs are used for cooperation between EU MS and also for cooperation with non-EU states. It is appreciated as

---

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

a good tool to have in investigations involving two countries where a lot is going on, as well as most certainly in investigations involving more than two countries.<sup>5</sup>

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

To establish individual contacts, meeting and networking possibilities are most welcome. Lists of specialist environmental prosecutors are also helpful. Some EU MS have such lists, most often on secure parts of official websites (e.g. Belgium and the Czech Republic), which makes them inaccessible to prosecutors from other countries, but sometimes with open access (e.g. Spain),<sup>6</sup> allowing them to be consulted by anyone. ENPE could help by providing a list of specialist environmental prosecutors for the whole of the EU, with details of their location and area of expertise and with contact information, on a secure part of the ENPE website. Eurojust already has such a list, without open access. It is not clear how complete it is.

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

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

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

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

---

<sup>5</sup> See also Council Resolution 2017/C 18/01 on a model agreement for setting up a JIT.

<sup>6</sup>

[www.fiscal.es/fiscal/publico/ciudadano/fiscal\\_especialista/medio\\_ambiente/organigrama/!ut/p/a1/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcFszcDBzdPYOdTD08jE28DIEKloEKDHAARwN8-oNdjaD68SjAo9\\_fzwy\\_fosgE7zuNzfHrx9kASX6QQoIhF-4fhQ-JWAfgBXgC2JCgYRXgYmBsX5BbigQRbhkeqYrAgCoBklo/dl5/d5/L2dBISevZ0FBIS9nQSEh/](http://www.fiscal.es/fiscal/publico/ciudadano/fiscal_especialista/medio_ambiente/organigrama/!ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbzcFszcDBzdPYOdTD08jE28DIEKloEKDHAARwN8-oNdjaD68SjAo9_fzwy_fosgE7zuNzfHrx9kASX6QQoIhF-4fhQ-JWAfgBXgC2JCgYRXgYmBsX5BbigQRbhkeqYrAgCoBklo/dl5/d5/L2dBISevZ0FBIS9nQSEh/)



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

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

# Part 2. Good practices in the prosecution and adjudication work – Focus on environmental specialisation among prosecutors and courts/judges

8 December 2017 – 7 December 2018

Kick-off meeting: Brussels, 8 December 2017

First input working group (WG) members: winter 2017/18

First draft of the report communicated to the WG members on 8 May 2018

Second meeting (teleconference): 22 June 2018

Second draft of the report communicated to the WG members on 6 September 2018

Third and fourth meetings: Heraklion, 24 October 2018 (mainly prosecutors) and Sofia, 17 November 2018 (judges only)

Third draft of the report communicated to the WG Members on 23 November 2018

Fifth meeting: Brussels, 7 December 2018

Final draft of the report communicated to the WG members on 29 December 2018

Report approved on 11 January 2019.

## I. Introduction to Part 2

At the December 2017 meeting Luc Lavrysen, President of the European Union Forum of Judges for the Environment (EUFJE), gave a presentation (Annex 3) based on the work of Pring and Pring (2016, 2009) regarding environmental courts and tribunals (ECTs).<sup>7</sup> He discussed the five models that can be distinguished in practice, Model 1 being the strongest type of ECT and Model 5 the most modest, in terms of competences. Model 1 ECTs handle (a) criminal, administrative and civil cases in (b) environmental, land use planning and energy law over (c) a vast territory. An archetypal example is the Land and Environment Court of New South Wales.

In the ensuing discussion, four issues emerged:

- The enforcement chain approach: synergies
- The necessity of having enough cases
- The “one judge” problem
- Specialist lawyers.

### A. Enforcement chain approach: synergies

- Wanja Welke (Germany, Frankfurt region) pointed out that specialised prosecutors need specialised judges. In Sweden, there are 21 specialised environmental prosecutors but not a single specialised criminal court/judge. This discrepancy in expertise levels leads to practices where prosecutors try to solve cases without having to go to court.
- Sara Boogers (Belgium, Flanders) mentioned an audit of stakeholders involved in specialisation efforts at the prosecution level, which started in 2012: special police, inspectorates, prosecutors. The response was very positive. Specialisation was beneficial to all: better communications, better instructions for investigation, etc. After recent *de facto* specialisation at the level of the court of first instance in the Antwerp region, the quality (relevance) of questions asked during audiences improved significantly, as did the reasons given for judgments, not least when deciding for acquittal. Sara pointed out that specialisation is also needed at the level of investigative judges. Antwerp now has a specialised investigative judge (waste and wildlife trafficking).
- Els van Die (the Netherlands) briefly described the Dutch system, with its “economic” chambers (financial, environmental, strictly economic) in 19 district courts and 4 appeal

---

<sup>7</sup> G. Pring and C. Pring (2016), *Environmental Courts and Tribunals: A Guide for Policy Makers*, Nairobi, UN Environment, 142 p. The study, which builds on a previous one by the same authors published in 2009, is available online: <https://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf?sequence=1>.

courts, counting respectively some 3–4 judges and 5–6 judges who *de facto* made personal decisions to specialise. The specialisation at court level has led to specialisation at prosecutor level.

### B. The necessity of having enough cases

Specialisation is not possible when there is an insufficient number of cases.

- Wanja Welke and Anja Wüst pointed out that the constitutional organisation of the judiciary in their country, with environmental justice at the level of the *länder*, is an obstacle to environmental specialisation because it is a barrier to acquiring a sufficiently large case load. The jurisdictions are too fragmented.
- A sound approach is to think in terms of a relatively wide specialisation (environment, land use and zoning, forest fires, animal welfare, energy, etc.)

### C. The “one judge” problem

This problem is closely connected to the previous one.

- It was felt to be problematic if all or most environmental cases were being dealt with by a single judge.
- In the Czech Republic, the constitution insists on the right of each citizen to his/her lawful judge. The way this right is understood calls for a very strict rule of assigning cases to judges by means of lottery (you cannot know which judge you will have), at the least at first instance level where cases are decided by one judge (at appeal level, you find chambers with *de facto* specialisation). An implication of this constitutional element is that specialisation will only be possible if specialised courts are created.
- In Antwerp (Belgium, Flanders), first instance cases are dealt with by one judge or by a chamber of three judges, depending on their importance and complexity.

### D. Specialised lawyers

Specialised prosecutors and judges are necessary because there are specialised lawyers. As a rule, defendants in environmental cases are assisted by specialised lawyers.

- With regard to Belgium, the extent to which specialised lawyers handle environmental cases has increased since the reform of environmental enforcement law between 2007 and 2009. Since then, relatively fewer serious cases tend to be handled by administrative procedures (fining officers); a higher proportion of serious cases remain in the criminal sanctioning track. Estimates are that in criminal courts today, 80–90% of offenders are defended by specialised lawyers, sometimes even one with an environmental law specialisation and another with a criminal law specialisation.

- In Germany (Frankfurt region) and the Netherlands a similar picture is observed. Specialised lawyers are involved in pre-trial settlements too. Large companies come with several lawyers.

When discussing preferences for models, Model 1 was the preference of Ksenija Dimec (Croatia) and Els van Die (the Netherlands), specifically that the court should have three divisions (criminal, administrative and civil) and that prosecutors assigned to that court should decide on a case-by-case base whether they would be pursuing the sanction of offences in the criminal or the administrative chamber (the Netherlands). This model would also guarantee consistency in judgments, for instance with regard to the interpretation of environmental law concepts (nowadays, administrative and criminal courts can have different opinions). A model combining criminal and administrative specialisation was the preference of Anja Wüst (Germany, Frankfurt region).

Generally speaking, specialisation was considered a necessity for improving the quality of adjudication. It was questioned, however, whether there truly is, across Europe, a trend towards environmental courts and tribunals (Ksenija Dimec). The existing examples of specialisation based on a legal framework (mainly Sweden) are too scarce.

Luc Lavrysen mentioned that in most European countries, supreme administrative courts have *de facto* environmental specialisation at chamber level as environmental cases tend to make up some 20–25% of their case load. In practice, therefore, specialisation seems most needed with regard to criminal and civil cases.

It was agreed to work over the winter on the following three questions. WG members were asked to answer the questions after looking again at the slides of Luc Lavrysen (Annex 3) and/or the Pring and Pring (2016) study.

(1) Ideally, what kind of specialisation model at the level of courts and tribunals (and prosecutors' offices) would you like to have in your country and why?

(2) Wishes are one thing, reality is another. Realistically speaking, what way forward do you see for your country? What could be a step forward that stands a chance of being achieved in your country?

(3) Do you think that specialisation at the level of criminal courts (and prosecutors' offices) combined with a wide open access for victims (private persons and environmental NGOs) to criminal proceedings to claim damages – an option that integrates the civil case load into the criminal track – could be a way forward in your country and/or in other European countries?

## II. Winter 2017/18: first input of the WG members

*Five working group members gave input on this topic, answering the questions mentioned above: Belgium, Croatia, the Czech Republic, Germany and the Netherlands. Their thoughts are fully reproduced in the following pages.*

*Spain added input by email on 4 December 2018.*

### A. Belgium

*Author's note: This is a personal reflection of the author, and does not represent the opinion of other Belgian prosecutors or of the Belgian Public Prosecutor's Office in general.*

#### ***Personal experiences and evolution in my job since 2002: from general prosecutor to specialised environmental prosecutor***

When I first started working as a public prosecutor in 2002, in a rather small public prosecutor's office in Turnhout, there was very little specialisation amongst public prosecutors. Everyone investigated and prosecuted all types of crime (traffic offences, thefts, rapes, even murders), and somewhere between all these cases now and then were dossiers on environmental crime. Because of a lack of specialisation, these environmental dossiers often "got lost" at the bottom of a pile of other dossiers and there were few effective prosecutions in court. Only the larger Belgian public prosecutors' offices, such as Antwerp and Ghent, already had (more or less) specialist divisions for environmental crime at that time.

So when I was transferred to Antwerp in 2004, and started working in the environmental division there in 2005, my *ad hoc* specialisation in environmental crime began. And since then I have never left environmental law enforcement.

In 2009 the Flemish legislator issued a complete new set of laws on environmental enforcement, the so-called "Milieuhandhavingsdecreet", transposing the requirements of the EU Environmental Crime Directive. This was the starting point for the different (sometimes small) prosecutors' offices in the Flemish region to start working together more closely, in order to obtain the more uniform application and enforcement of these new rules. The participants of a newly formed working group were mostly public prosecutors who were (personally) interested in environmental law and enforcement, but who also had to deal with other types of crime during their daily work because of lack of official specialisation in their respective public prosecutors' offices.

In 2010 for the first time two smaller public prosecutors' offices – Kortrijk and Ieper – started working together in an official and organised way in order to divide certain specialist crimes, including environmental, between them. Since then the prosecutor in Kortrijk deals with all cases on environmental crime and land use for the two districts (while Ieper took up other specialisations for the two districts). This enabled the prosecutors to achieve a higher level of

specialisation and to change the internal organisation of their offices so they only had to deal with these specific cases.

In 2011 – I was working in the small public prosecutor’s office of Turnhout again at that time – I set up a similar official collaboration between the public prosecutors’ offices of Turnhout and Mechelen. In Turnhout I started handling all environmental crime cases for the two districts. This enabled me to focus purely on this kind of crime, and I no longer had to deal with other types of (general) crime. My colleagues in Turnhout and Mechelen, on the other hand, were happy that they no longer had to deal with any kind of environmental dossiers!

After one year of collaboration we executed a survey among our stakeholders (mainly specialised inspectorates for environment, nature, urban planning, etc.). They all evaluated the collaboration as a very positive step forward towards better prosecution in environmental dossiers. The inspectorates had a specific prosecutor who they could address for all their dossiers. Since this prosecutor was specialised, the dossiers were better managed and the prosecutor developed a clear prosecution policy, giving more accurate and specific instructions to the enforcement agencies and to the (specialised) police forces on how to conduct the investigation in each case. Also, the quality of the prosecutions in court improved, as the specialised environmental lawyers now had to face a specialised environmental prosecutor in court.

These “*ad hoc*” collaborations were the start of a general reform of the Belgian judicial landscape in April 2014. The legislator decided to merge 27 judicial districts into 13 larger entities. For instance, the tribunals and public prosecutors’ offices of Antwerp, Mechelen and Turnhout are now combined into the judicial district of Antwerp (with tribunals and public prosecutors’ offices in three divisions, but all working together as one entity). One of the motives for this “upsizing” was to give the judicial districts the possibility (but not the obligation) to deploy specialised magistrates (prosecutors and judges) in different divisions of the court.

The judicial district of Antwerp grabbed this chance and, in an official Royal Decree of 16 February 2016, different specialisations were assigned to specific divisions of the Antwerp district (environmental crime, but also financial and tax crime, international cooperation, human trafficking, terrorism). Since then all environmental cases from the divisions of Turnhout, Mechelen and Antwerp have been prosecuted and brought to court exclusively in Antwerp.

In the public prosecutor’s office of Antwerp we now have the specialised section “BLW” (Bijzondere Leefmilieuwetgeving = Specific Environmental Legislation), where four public prosecutors work together full time on environmental crime cases (including land use) as well as “food- and pharma-crime” (we combine two specialisations).

In the Antwerp tribunal of first instance, all environmental crime cases are handled by two judges (two chambers) who have become increasingly specialised since dealing with more and more environmental cases. (However, they have to do other types of crime as well, as not enough environmental criminal cases reach court to keep them fully occupied.)



We even have two specialised investigative judges in Antwerp, who also investigate other types of crime. But when a large environmental crime dossier needs to be investigated (e.g. a large case of international waste trafficking), it will always be one of these two investigative judges who will lead the investigation. So they are becoming increasingly specialised as well! The court of appeal in Antwerp also has a specialised chamber and a specialised prosecutor-general to handle all environmental cases at the appeal level.

So, looking at my career as a public prosecutor so far, I can conclude that we have already come a long way in Belgium/Flanders in achieving better specialisation among prosecutors and judges. And we try to keep moving even further in the right direction!

But what this history shows most of all is that the change towards greater specialisation in Belgium/Flanders started in an unofficial and unorganised way at the very bottom of the judicial organisation, with a few (deputy) prosecutors who cared enough and who strived for a way to implement more specialisation in their different judicial districts – true bottom-up change management!

(1) Ideally, what kind of specialisation model at the level of courts and tribunals (and prosecutors' offices) would you like to have in your country and why?

Ideally I would prefer a Model 1 organisation: extensive competencies, with administrative, civil and criminal jurisdiction. This model gives the best guarantee of a uniform jurisdiction and interpretation of the law. Effective environmental enforcement implies more than only a criminal investigation and sanctioning of the perpetrators; environmental enforcement is broader than simply environmental crime. There is also need for compliance, for restoring the damage brought upon the environment and for preventing more damage from occurring.

To achieve such an integrated approach, it is best if all actors involved work together in one organisation with different branches (criminal, administrative, civil). This allows all actors (prosecutors and judges) to have an overview of all aspects of a case: the state of affairs of the criminal investigation and procedures in the criminal court, but also the administrative measures imposed in order to restore or prevent environmental damage.

However, in Belgium such a Model 1 approach to environmental jurisdiction would be very difficult to obtain as we have different levels of competence:

- Justice in general is a federal competence of the state of Belgium. This includes all types of criminal prosecution and jurisdiction, but also civil jurisdiction.
- Environmental policy (including urban planning etc.), on the other hand, is a regional competence. The three regions – Flanders, Wallonia and the Brussels Region – all have their own environmental legislation, including legislation on sanctioning, and their own administrative competences in the field of environmental enforcement.

So the Flemish authorities have the competence to impose administrative measures, including the administrative jurisdiction and sanctioning of all kinds of environmental offences.

But when criminal investigation, prosecution and sanctioning is necessary or preferred, then it is the Belgian Justice Department (public prosecutor's office, tribunals and courts) that is the only competent authority.

So, realising a merger between these different competences would require reform of the Belgian state model, which would not be easy.

(2) Realistically speaking, what way forward do you see for your country? What could be a step forward that stands a chance of being achieved in your country?

The abovementioned difficulties oblige us to be more realistic and modest in our expectations.

A realisable and most wanted step forward would be to oblige every judicial district in Belgium to have a minimum number of specialised environmental prosecutors and judges (the number depending on the scale, population and specific characteristics of each district, e.g. extensive industry, large harbour).

A similar system already exists in Belgium for prosecutors and judges specialising in tax law (*inter alia* Wet 23/03/1999 betreffende de rechterlijke inrichting in fiscale zaken + artikelen 78 en 151-151bis Gerechtelijk Wetboek).

By officially prescribing legal specialisation, the legislator is recognising the importance of investigating, prosecuting and sentencing this specific kind of crime. This would also legitimise the fact that some prosecutors are purely handling environmental cases (because even now some colleagues consider these to be less interesting and less important dossiers).

As long as specialisation in environmental enforcement/crime is not officially prescribed in the law, the fate of specialist prosecutors and judges will always depend on the goodwill of the Chief Prosecutor and of the President of the Court. While there are sufficient numbers of prosecutors/judges to divide the work between, it can be justified that some only handle environmental (crime) cases. But in times of need or crisis (e.g. terrorism) there is always a risk that the board of direction decides that environmental prosecutors will have to handle other kinds of dossiers as well... And that would mean going a few steps backward again.

Maybe the EU could even oblige MS to develop the official specialisation of prosecutors and judges of environmental law (criminal and civil). It would be a logic step for achieving better implementation of the Environmental Crime Directive and of the EU environmental policy in general.

(3) Do you think that specialisation at the level of criminal courts (and prosecutors' offices) combined with a wide open access for victims (private persons and environmental NGOs) to criminal proceedings to claim damages – an option that integrates the civil case load into the criminal track – could be a way forward in your country and/or in other European countries?

Belgium already has this kind of “open access for victims” to criminal proceedings.

It is prescribed in the Belgian Code on Criminal Procedures for victims of all kind of crimes, thus including environmental crime. So it is clear in Belgium that a private person who suffered damage from an environmental crime can access the criminal court (if the offender is being prosecuted there) in order to claim damages. The victim can also lodge a complaint directly with an investigating judge, who is then obliged to start an investigation on these facts.

But, of course, environmental crimes often do not have individual victims. Damage to the environment affects us all. Therefore, both the Constitutional Court of Belgium and the Court of Cassation have recognised that an environmental NGO can claim financial compensation for damage caused to the environment in general. These NGOs can also lodge a complaint with an investigating judge to start a criminal investigation (e.g. when the prosecutor's office does not take any action).

The fact that these NGOs sometimes show up as victims in a criminal procedure emphasises the seriousness of the environmental crime. The NGO is better placed to explain to a judge why the illegal killing of five specimens of protected birds can have a real impact on nature conservation, or why the pollution of a small river can cause real damage to the habitat of protected species of amphibians. And these kinds of arguments are often also repeated in press coverage of the cases, bringing more attention to the case.

Recently the College of Prosecutors-General even issued a directive to all public prosecutors that the “Vlaamse Vogelbescherming”, a Flemish NGO for bird and wildlife protection, has to be informed by the prosecutor's office every time it prosecutes a wildlife crime in a criminal court.

I personally think this is a positive evolution, giving more attention and importance to environmental crime cases.

## B. Croatia

(1) Ideally, what kind of specialisation model at the level of courts and tribunals (and prosecutors' offices) would you like to have in your country and why?

For the first-instance level, I would prefer to have Model 1 because it comprises all three competences (administrative, civil and criminal) under one roof, combining legal, scientific and technical experience – scientific/technical support is sometimes crucial and always very important. Application of Model 1 would lead to decisions of high quality because they would be delivered by judges specialising in environmental law, which would contribute to uniformity of

case law and thus to legal certainty. Having all three competences under one roof would prevent their overlap in the same case and contribute to better collaboration among them.

Second-instance courts (appellate level) do not need the help of non-legal experts providing that non-legal experts did their task in the first-instance proceedings. Moreover, overlap of competences is rare at the second level and collaboration among the competences is not as necessary as at the first level. Therefore, for the second-instance proceedings (appellate proceedings), Model 5 would be sufficient and efficient – to have a chamber/department/section that deals only with environmental cases.

(2) Realistically speaking, what way forward do you see for your country? What could be a step forward that stands a chance of being achieved in your country?

Unfortunately, this question needs a realistic answer, while Question 1 enabled me to dream a little bit. Generally speaking, as a judge with almost 20 year experience, I support specialisation because very often we have essential changes to national legislation. Furthermore, as we are not only national judges, but also European judges, we have to be acquainted with European legislation and to follow the rich case law of the Court of Justice of the European Union together with the case law of the European Court of Human Rights. If there is no specialisation, one (judge) cannot be expert in all fields of law, which leads to decisions that lack quality. Then we do not have uniform decisions, which leads to legal uncertainty and distrust of the public in the judiciary as a whole.

In the last five years we have had reforms of the judicial system (for example, changes in the distribution of cases among appellate courts, with a modest shift to “specialisation” in a way that labour, family and land registry cases are not distributed to all appellate courts, but to designated courts). But “green courts” are not in mind or a priority for the national legislature. Therefore, Models 1–4 are utopia. However, a significant step forward would be the adoption of Model 5 – to establish a specialised department for environmental disputes in general courts, both at the first and appellate level. This would contribute to higher quality judicial decisions and to uniformity of case law, and would not bring any additional costs. I completely agree with the old adage “Think Big, Start Small” as a trend in the creation of ECTs, and adoption of Model 5 would be suitable to begin with – a first and very important step in specialisation.

(3) Do you think that specialisation at the level of criminal courts (and prosecutors’ offices) combined with a wide open access for victims (private persons and environmental NGOs) to criminal proceedings to claim damages – an option that integrates the civil case load into the criminal track – could be a way forward in your country and/or in other European countries?

Although I think that this model, in general, would be a significant way forward, I am not sure that it could work in my country because criminal judges never deal with civil aspects of the case (damages, interests etc.) in the framework of criminal proceedings, but refer the parties to

the civil courts to seek protection of their civil rights. But, as I said, although it would not work in my country, I think it is good option.

### C. Czech Republic

(1) Ideally, what kind of specialisation model at the level of courts and tribunals (and prosecutors' offices) would you like to have in your country and why?

Ideally it would be nice to have specialised prosecutors and courts in the Czech Republic. Environmental offences are defined under Czech law in 14 provisions of the Criminal Code. All these provisions protect the environment, but each of them a very different part of it (they range from protecting soil, water or air, woods, protecting the environment from illegal disposal of waste or waste trafficking, illegal trafficking or trading in endangered species, to maltreatment of animals, poaching or spread of contagious animal or plant diseases). Also, the *modus operandi* and the scope of evidence needed to prosecute a case are different in each type of environmental offence. For this reason specialisation is needed to make certain that cases are dealt with by someone with previous experience in such cases, with contacts in other law enforcement authorities and specialist knowledge.

(2) Realistically speaking, what way forward do you see for your country? What could be a step forward that stands a chance of being achieved in your country?

At present there is a kind of specialisation in the Czech Republic close to what is described as "green benches" at the court level, but only in courts of appeal. All cases of environmental crime are tried before district courts (the lowest courts) in the first instance, according to the term of imprisonment specified in the Criminal Code. (The competence of district and regional courts is set according to the term of imprisonment in each provision, which should express the basic seriousness of a crime and direct the case accordingly to the district or to the regional court for more serious cases.)

Even if organised illegal trafficking in endangered species is known to finance terrorism and to bring as great a profit as trafficking in drugs (e.g. rhino horns, ivory, eel trade), cases of organised environmental crimes are held before district courts in the Czech Republic. This is one thing that should change from my point of view – organised environmental crime cases should be tried at the regional level, possibly by specialised judges. What is also needed is the specialisation of the police, customs and prosecution service. In the Czech Republic we are now working on the basis of training as many people as possible from the police, customs and prosecutors, above all those who deal with environmental cases, but also people who may possibly never have such a case. The positive experience, in my opinion, is that training generally increases the awareness of environmental crime.

In the Slovak Republic there is a special police unit dealing with environmental cases. I see this as an example of good practice and something that could be introduced into the Czech system

under present circumstances. (Nowadays we only have two people at the highest police officer level who organise training and develop guidelines for police officers in charge.) However, I do not see a way to achieve specialisation in our current prosecution service other than with specialised prosecutors within each district prosecutor's office to deal with environmental cases and training these people. In fact the situation is that in some district offices there are specialised prosecutors (e.g. for trafficking in endangered species at Václav Havel airport, for poaching in other districts, or simply where environmental cases are assigned to prosecutors who have previously had such a case).

As for administrative courts and other bodies, there is specialisation in the High Administrative Court and also at the first and second level of decision-making dealing with administrative offences (enforcement agencies and the Ministry of the Environment). Administrative powers, for example in issuing permits for waste import and export, registration of waste, legal felling of timber and other powers are spread among various entities, e.g. enforcement agency (Czech environmental agency), local administrations,<sup>8</sup> the Ministry of Environment. Both systems (administrative and criminal) are separate and the option of specialised courts/tribunals dealing with administrative issues as well as criminal proceedings in environmental cases is practically excluded in the Czech Republic.

In summary, it would be good, and in my view also feasible, to have a special police unit dealing with environmental offences. That would also bring more charged perpetrators and more cases before court, which could then lead to discussion about specialised prosecutors and courts.

(3) Do you think that specialisation at the level of criminal courts (and prosecutors' offices) combined with a wide open access for victims (private persons and environmental NGOs) to criminal proceedings to claim damages – an option that integrates the civil case load into the criminal track – could be a way forward in your country and/or in other European countries?

Yes. Besides specialisation, there should be more space in criminal proceedings for assessing damages inflicted by the criminal act on the environment and for NGOs or also municipalities/the state to claim damages (for example, in cases of illegal waste dumping or water pollution there are huge costs to repair the damage, paid for by the state or municipalities, but it is not easy to claim damages in court because a damaged environment belongs to everyone and nobody, and it is not the property of some individual who can claim damages).

#### D. Germany

(1) Ideally, what kind of specialisation model at the level of courts and tribunals (and prosecutors' offices) would you like to have in your country and why?

---

<sup>8</sup> Municipalities still struggle with the “double hat” problem, where the department that issues permits is also in charge of monitoring and inspections. This generates dysfunctionalities. Enforcement is neglected.

Ideally speaking, I would like to have environmental courts rather similar to Model 1 (and, of course, the corresponding appeal stages) with extensive competencies, combining administrative and criminal law, exceptionally civil law too, in order to achieve more uniformity in decisions, more visibility for cases and matters of the environment and sustainability, to gather expertise and, through that, to have greater efficiency in the decision-making.

(2) Realistically speaking, what way forward do you see for your country? What could be a step forward that stands a chance of being achieved in your country?

Realistically speaking, I do not see ECTs being established in the German judicial system where you have the general “ordinary” jurisdiction (civil law and criminal law) on one side distinct from the administrative jurisdiction on the other side. There are no existing political tendencies or initiatives in that direction. Criminal cases concerning environmental offences are therefore “widespread”, as they are dealt with by the ordinary local court.

Within the criminal courts, at the first-instance level for the smaller cases (Amtsgericht) only a certain section has the competence for environmental cases (in combination with some other special offences, e.g. tax offences, drug offences), so there should be a *de facto* specialisation of the judges; however, there are so few environmental cases, compared to the number of ordinary criminal cases, that the desirable effects (concentration of knowledge, greater efficiency or uniformity in decisions) are, from my point of view, very weak.

It is the same situation for big environmental cases at the first-instance level. They are dealt with by a chamber competent in economic crime and environmental crime (Wirtschaftsstrafkammer).

From my point of view, specialised departments in the prosecutors’ offices of all federal states would be a step forward. At present, there are very few specialised prosecutors. It would lead to greater efficiency, better knowledge of new regulations and new technical aspects; it would allow the gathering of more expertise and achievement of more uniformity in the decisions (e.g. whether to bring a case to court or not).

As there is always the need to have a sufficient number of cases (and the need for the lawful judge), all major cases from a larger territory should be dealt with not by the local prosecutors, but by a specialised prosecutor’s office competent for a larger district or the whole federal state. Correspondingly there should be a specialised section within one Regional Court competent for these cases. “Specialised prosecutors need specialised judges”. However, it would be difficult to define clear criteria to decide whether some case is a “major” case or not.

For the minor cases, I think there is not the same necessity to provide expertise to solve them, so to me it is not necessary to move them away from the local jurisdiction.



(3) Do you think that specialisation at the level of criminal courts (and prosecutors' offices) combined with a wide open access for victims (private persons and environmental NGOs) to criminal proceedings to claim damages – an option that integrates the civil case load into the criminal track – could be a way forward in your country and/or in other European countries?

Specialisation at the level of courts and prosecutors' offices could, of course, be a step forward in Germany. However, the combination with fully open access to criminal proceedings for victims (i.e. giving them more rights to intervene than under current law and integrating the civil caseload into the criminal track) seems to me to be counterproductive, as this would prolong the proceedings, which – in criminal law – of course have to be efficient and lead to quick decisions. I think it is more efficient to have the criminal and civil tracks separate. The criminal verdict gives a preliminary decision to the civil proceedings anyway.

#### E. The Netherlands

(1) Ideally, what kind of specialisation model at the level of courts and tribunals (and prosecutors' offices) would you like to have in your country and why?

I have a preference for Model 1 as mentioned in Luc's slides. In my opinion, environmental issues must be assessed by specialised criminal judges. The files are often technically complex and so legally specific that a generally trained judge is insufficiently equipped. Since the formation in the Netherlands of the Functional Prosecutor's Office (a special public prosecutor's office in this area, among others) with its own specialist public prosecutors and the special environmental teams with the police and the Ministry directed by the Functional Prosecutor, I believe that the incumbent judiciary must do the same. There is already some specialisation within the 19 district courts and 4 appeal courts because, under our Law on Judicial Organisation, each court has the so-called economic chamber; in practice these chambers are islands that do not know enough about each other's business.

Environmental enforcement is also administrated by administrative law. The Administrative Jurisdiction Division of the Council of State (Raad van State, Afdeling Bestuursrechtspraak) is the highest administrative court in the Netherlands. It has had a specialised chamber for environmental issues for many years. It handles specialised environmental matters, including administrative law enforcement. This means that it is the highest court that can rule on a dispute between the citizen and the government. If branches of government have a dispute between themselves (for example, a municipality and a province), the Administrative Jurisdiction Division also issues a judgment on the case.

A citizen who does not agree with a decision of a municipality, a province, a water board or the central government can appeal to the Administrative Jurisdiction Division of the Council of State. This concerns matters relating to the environment or spatial planning. The Administrative Jurisdiction Division is divided into three chambers, which deal with the various subjects. Pring



and Pring (page 95) rightly points out that the Division does not have an exclusive environmental chamber; yet it is all concentrated in one court.

Also, an asset of the specialisation according to slide 1 is the concentration of knowledge and experience (counteracting courts developing contradictory case-law). Additionally, the relationship between citizen and government exists in both administrative law and criminal law. This relationship can also exist in civil cases (an illegal government act). Furthermore, in recent years administrative law, punitive administrative law and criminal law in this area have increasingly been regulated with a clear aim to apply administrative law first and only later apply the (administrative) or criminal punitive law. Specialisation also promotes clarity and uniformity in this choice.

(2) Realistically speaking, what way forward do you see for your country? What could be a step forward that stands a chance of being achieved in your country?

In my opinion, there is no clear step forward. The Council for the Judiciary (which forms the board of the 19 courts and 4 courts) endorses the call for specialisation, but rejects environmental judges. We have set up a special Environmental Knowledge Centre that makes all information available to judges. That is enough, according to the council. I think there will only be change if the prevailing politics wants to see change. After all, the parliament/legislator is the initiator of new law. Perhaps at some point the discussion will emerge from the EU.

(3) Do you think that specialisation at the level of criminal courts (and prosecutors' offices) combined with a wide open access for victims (private persons and environmental NGOs) to criminal proceedings to claim damages – an option that integrates the civil case load into the criminal track – could be a way forward in your country and/or in other European countries?

It may well be that claims by the injured party, where there is specialisation, are less likely to be declared inadmissible due to the complexity of the claim. After such a judgment, the injured party can then bring the claim to the civil court. This generally does not happen; the civil court is expensive and the outcome is uncertain given the other evidence system (who states, proves). A conviction by a criminal judge is of course strong evidence, but the injured party often lets it go.

## F. Spain

(1) Ideally, what kind of specialisation model at the level of courts and tribunals (and prosecutors' offices) would you like to have in your country and why?

Ideally speaking, I think that Model 1 would be the best model in order to obtain judicial protection against environmental harm from every branch of the law. Having criminal, administrative and civil courts specialising in environmental matters would provide more accurate decisions and more trust and safety to society.

(2) Realistically speaking, what way forward do you see for your country? What could be a step forward that stands a chance of being achieved in your country?

In Spain no system of extraordinary courts exists; however, special courts have been created for specific matters, for example courts dealing with violence against women, courts responsible for the welfare and supervision of prisoners, and juvenile courts. These are ordinary courts but specialise in a particular area so it would not be impossible to have criminal courts dealing exclusively with environmental crimes, but only in those provinces in which the number of the environmental cases would allow it.

At the level of Administrative Tribunals, specialised chambers for environmental infractions have already been created.

(3) Do you think that specialisation at the level of criminal courts (and prosecutors' offices) combined with a wide open access for victims (private persons and environmental NGOs) to criminal proceedings to claim damages – an option that integrates the civil case load into the criminal track – could be a way forward in your country and/or in other European countries?

In Spain we have specialist prosecutors and access for victims and NGOs to criminal proceedings (acusación particular y acción popular) to claim civil damages (and also criminal penalties). This means that civil responsibilities deriving from a crime can always be claimed within the criminal proceedings by the victims or NGOs, or by the prosecutors who are obligated by law to claim civil damages due to a crime. However, not having specialisation at the level of the criminal courts, it is very difficult to get a condemnatory sentence, let alone civil compensation for environmental damage.

### III. Spring 2018: further input of the WG members

*The first draft of this report, with the Introduction and a compilation of all initial input (Sections I and II above), was sent to the WG members on 8 May 2018 for discussion at a teleconference meeting in June. This meeting happened on the 22 June and lasted one hour. For this part of its agenda, it was attended by five WG members representing Belgium, the Czech Republic, France and Germany.*

*The meeting agenda mentioned the following points for discussion to further the analysis:*

Specialisation: a realistic way forward

(1) Is specialisation needed for all cases? Or only organised environmental crime? Or only major environmental cases?

(2) Specialisation in the enforcement chain: what brings what? Start with police units (see Czech Republic), with judges (see Germany), ...?

(3) Is Model 5 of the Pring and Pring study (specialised chambers) a way forward? Under what circumstances?

(4) One recommendation: what matters to all of us?

*Prior to the meeting (22 June, morning), France sent a written note with their ideas on the issues raised.*

*Spain and Croatia added their views on 4 and 7 December 2018, respectively, by written comments on the third draft (November 2018) of the report.*

#### **A. First question. Is specialisation needed for all cases? Or only organised environmental crime? Or only major environmental cases?**

##### **1. France (written note)**

Specialisation: it appears difficult to me to distinguish between subjects, and even between the seriousness of offences. Minor offences can involve complex scientific and technical facts, and, by their repetition or persistence, describe wrongful, severe and long-term behaviour, and in the end result in heavy criminal and/or administrative sanctions.

Furthermore, specialisation in the environment and health in general will, given the number and diversity of cases handled, lead to the development of a typology of criminal acts and the creation of a scale of penalties that is carefully considered and coherent (including by comparing not only the breach itself, but also its general effects on the environment, with a connection to the principle of repairing ecological damage).

Specialisation – as well as the precise organisation of the proceedings – is needed for complex cases of organised trafficking (wildlife, waste), but it is as much about the complexity of the questions arising, the number of persons that can be involved (private persons and legal entities), the number of victims and the importance of harm in criminal offences arising from maritime or industrial disasters (the sinking of the Erika or the Prestige, the explosion of the AZF factory in Toulouse, etc.).

Who is going to direct the case toward specialist handling? I would say that in view of the nature of the facts, it is likely that a special police unit would be approached, in conjunction with the judicial police: this is often the case in France, the specialised police inspector not always having the same powers to act as a criminal police officer (searches, taking into custody, etc.). In this instance, they act together. In France an initial decision is made between solely administrative proceedings, administrative and criminal proceedings, or solely criminal proceedings if the offence is serious or a repeat offence. The decision between an ordinary court and a specialised court is made at the prosecutor level (prosecuting body), who can send the case to court or refer the case to a specialised judge. Depending on geographical region, there may be courts specialising in the environment (and health), which group together prosecutors and judges.

### *Teleconference*

The previous viewpoints were repeated. It is difficult to separate cases needing specialisation and others. Offences that are not complicated and do not rank high on the scale of offences can have very important consequences. Or can take on greater proportions by repetition or accumulation with other offences.

It is up to the prosecutor's office to select and direct cases on a case-by-case basis.

## **2. Czech Republic**

The Czech Republic has no tradition of specialised courts for whatever crime (with the exception of specialised military courts in the past).

Realistically, it ought to be possible to make a distinction between less and more serious crimes, even if it is not perfect.

If the most harmful cases could go to the regional courts, which are one level above the district courts and handle serious crimes against property (involving more than EUR 200 000), this would be better for prosecutors as well as judges because they would have more time to give to each case. At the district court level, there is no time. Nowadays, all environmental cases go to the district courts. This is the law.

## **3. Belgium**

Taking into account the context of the judicial system in Belgium, all environmental cases need specialisation. Any other approach would imply changing a lot, which would be complex.

- One has to consider the requirements relating to the implementation of EU guidelines. Also, small offences can be embedded in European environmental legislation, with ensuing sanctioning requirements.
- Were specialisation somehow applied only to certain elements of environmental crime, you would lose overview of the entire illegal behaviour taking place.
- There remains, of course, the division between criminal, administrative and civil handling of cases. The criminal point of view is not enough to handle a case. It is, for instance, important to also look at remedial action.

## **3. Germany**

Same as Belgium, Germany thinks all environmental cases need specialisation.

There is no time not to be specialised; if not specialised, the time burden is forbidding.

Specialised prosecutors/judges could develop guidelines for non-specialised colleagues.

#### **4. Spain**

From my point of view specialisation is needed for all kinds of environmental cases in order to have a good knowledge of the subject matter, and to deal with the technical expertise required for, and the administrative and European laws applicable to, environmental crimes.

#### **5. Croatia**

Same as Belgium and Germany, Croatia thinks all environmental cases need specialisation.

**B. Second question. Specialisation in the enforcement chain: what brings what? Start with police units (see Czech Republic), with judges (see Germany), ...?**

#### **Czech Republic**

It would be much better to have specialisation in the full enforcement chain, in the administrative as well as criminal tracks.

#### **Germany**

Specialisation throughout the enforcement chain is needed.

Very important, if not most important, however, is specialisation at the level of the police so as to have them build cases with proof. Proof makes a case. They should also have the economic and financial knowledge to see behind facades.

#### **France**

When discussing specialisation in the enforcement chain, it is important not to forget customs and tax administrations.

#### **Spain**

Specialisation throughout the enforcement chain is an essential need. Spain has a specialist nature protection police unit (SEPRONA), but more training and staff are needed. And what is also very important is to have independent expertise so as to obtain trustworthy technical reports.

#### **Croatia**

Like the Czech Republic and Germany: specialisation throughout the enforcement chain is needed because if only one link is weak, the whole chain is weak.

**C. Third question. Is Model 5 of the Pring and Pring study (specialised chambers) a way forward? Under what circumstances?**

**Belgium and Croatia**

Specialised chambers are a good step forward. Model 1 of the Pring and Pring study is totally unrealistic.

Having every EU MS organise itself with specialised chambers in their existing judicial structure would be a good way forward.

**Germany**

Specialised chambers are more or less the way it works now in Germany.

The creation of specialised chambers is realistic as a recommendation to make.

**France**

France has very strict separation between administrative law and (classical) judicial law. Changing this would require a very deep reform of the judicial system.

When thinking about specialised chambers in the judiciary, there is an issue of geographical scale. A level should be determined so that only three to four environmental pools have to be established.

**Czech Republic**

A network of specialist contact points (e.g. waste, transfrontier shipments), inspectorates mainly, matters a lot.

See also the EJM contact points.

**Spain**

At the level of Administrative Tribunals, specialised chambers are already working in Spain. It would be very useful also to have specialised chambers at the Criminal Courts of Appeal as a step forward .

**D. Last question. One recommendation: what matters to all of us?**

*(Not discussed due to lack of time; to be discussed this autumn)*

#### IV. Autumn 2018: observations and recommendations

*A first draft of these observations and recommendations was formulated following the third WG meeting on 24 October in Heraklion (mainly prosecutors) and the fourth WG meeting on 17 November in Sofia (judges only). In view of its discussion and before completion of a final draft at the 7 December 2018 meeting, France communicated a written note on 2 December. The contents of that note, which is provided as an annex (Annex 4), were effectively taken on board during the discussion at the December meeting. The final observations and recommendations were agreed upon after an in-depth discussion on 7 December 2018.*

(1) Environmental specialisation is needed throughout the enforcement chain, from monitoring to judgment.

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

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

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

(5) Ideally, the model embodied by the Land and Environment Court of New South Wales is the model preferred by the Working Group.

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

(6) In reality, thinking about specialisation of the judiciary requires the acknowledgment of the following facts:

(a) The vast majority of EU MS have a dual judicial system, with general courts on the one hand and administrative courts on the other. Hoping to change this is not realistic. As a rule, the organisation of the judiciary is embedded in the constitution of the MS.<sup>9</sup>

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

---

<sup>9</sup> Exceptions to this dual system include Denmark, England and Wales, and Ireland.

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

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

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

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

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

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

In EU MS where the legal system offers the possibility for victims of damage to participate in the criminal trial as a civil party, but where in practice criminal courts as a rule avoid deciding on the damages and leave the issue to be settled by civil courts,<sup>10</sup> support should be given to the criminal courts to handle the damages too.

Generally speaking, the recommended approach will:

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

---

<sup>10</sup> As in, for instance, Croatia and Germany.



- Be less expensive for the state (only one case to bring).
- Be less expensive for civil society (the prosecution carries the burden of proof; eventual expertise costs are not for civil society to prepay).
- Result in a court that is more completely and better informed on the issues raised by the offences committed (e.g. the damage and suffering caused) and thus will lead to better judgments.
- Speed up the case handling (less time needed to handle cases).

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

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

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

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

(10) The approach where the criminal and civil aspects of an environmental offence are systematically handled by a specialised environmental chamber of the criminal courts, within one same case, might require thinking about *ad hoc* judicial structures that are fit to handle cases concerning many victims. In cases involving extensive and serious damage, victims will tend to regroup. As a rule, courts organise themselves to cope with such exceptional cases.<sup>11</sup> Nonetheless, some of those cases could benefit from being handled by an *ad hoc* specialised court.

A few issues seem to require one ad hoc specialised court at country level by reason of their technical and legal complexities: cases resulting from catastrophic events (e.g. the Erika case in France, the explosion at a chemical plant). They require another availability of judges involved, of investigation means and of time to spend on the case.

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

---

<sup>11</sup> See, for instance, the Belgian case regarding the terrorist acts in Zaventem on 22 March 2016.

# Annex 1: Support in international criminal cases

## **Els van Die:**

The Department of International Affairs and Legal Assistance in Criminal Matters (AIRS) is the knowledge centre and central point of contact for international legal assistance in criminal cases for the Netherlands. It is part of the Ministry of Justice and Security.

International criminal law is taking on an ever-greater role in the treatment of criminal cases as international police and judicial cooperation intensifies.

Cross-border criminal investigations are no longer restricted to the Netherlands. International cooperation between police, tax authorities, customs and justice from different countries is the order of the day.

In addition, international criminal law covers all forms of mutual legal assistance, such as searches in various countries, interrogation by foreign authorities, use of research results collected by foreign authorities and vice versa, requests for extradition and surrender of persons, the transfer of criminal convictions or criminal prosecution.

### Principles/the basis of international cooperation in criminal matters:

- (1) The principle of sovereignty (each state has exclusive competence on its own territory to act in accordance with its own legal order).
- (2) The principle of legitimate expectations (in the context of international legal assistance, treaty countries have a certain confidence in their mutual legal systems).
- (3) The specialty principle or goal-binding principle (information may only be used for purposes determined by the providing country).
- (4) The principle of reciprocity (states only perform for each other if the other party declares itself willing to make a corresponding performance).

One of the central principles of criminal law cooperation is the principle of double incrimination. This principle means that legal assistance can only be granted if the conduct, on the basis of which a criminal investigation has been initiated or a conviction has been pronounced, constitutes an offence under the law of both the requesting and the requested state. The reason for including this principle in legal assistance is threefold. Firstly, states do not want to take on more obligations than the other party would do in a reverse situation (reciprocity principle). In this way symmetry between the legal assistance obligations remains. Secondly, states do not

want their sovereignty to be undermined too much (sovereignty principle). For that reason, they do not want to cooperate in the enforcement of norms that are in conflict with their own national legal opinion or in which a criminal sanction is deemed misplaced. Finally, the application of the principle of double incrimination ensures legal certainty for citizens (principle of legal certainty).

The government can only take repressive action against a citizen if he has committed a crime that is also punishable under his national law. The requirement of double incrimination plays an important role, especially in traditional legal assistance treaties. The principle is included in all treaties and this means that no legal assistance can be granted if there is no double incrimination. Only in mutual legal assistance is the requirement limited to the use of coercive measures. However, the inclusion of the principle of double incrimination in these treaties limits the possibilities for granting legal assistance. If this requirement did not apply, it would indeed be possible to provide legal assistance for many more facts.

Since the arrival of the Convention implementing the Schengen Agreement (CISA) and the EUO, a tendency has been found to reduce the requirement of double incrimination, thus increasing the possibilities for providing legal assistance. In these agreements the highest minimum penalty that must be on a criminal offence in order to be able to go for legal assistance is reduced. This tendency to reduce the requirement for double incrimination has continued in the framework decisions drawn up on the basis of mutual recognition. The European Commission wants the double incrimination requirement to disappear completely from the framework decisions in due course, because this requirement would not be compatible with the principle of mutual recognition. Mutual recognition means that a decision taken in a MS must automatically be accepted in all other MS and must have the same or comparable legal force. In the framework decrees, double incrimination has already been abolished for 32 offences and in the framework decree on monetary sanctions for 39 offences. For all other offences, the double incrimination requirement still applies.

The abolition of the double incrimination test was originally intended for a category of offences that could be classified as terrorist activities, or at least for offences that would be punishable in all EU MS. For those offences, double incrimination is indeed given and testing is superfluous. In the course of time, however, there are also crimes on the list that are not related to terrorism and that could (with some stretching of the law) also apply to entrepreneurs with European activities. This includes offences such as corruption, fraud, money laundering, information crime, environmental crime, fraud and counterfeiting of products and product piracy. These offences may also apply to entrepreneurs because within the EU the surrender right has to comply with the requirements of the Framework Decision on the issue, but the penal provisions in the EU are far from being harmonised. Moreover, the offences in the Framework Decision have not been defined so that each MS can interpret the offences according to its own legislation and case law.

#### The Department of International Affairs and Legal Assistance in Criminal Matters (AIRS)

AIRS is responsible for Dutch legal assistance policy and the handling of international legal assistance: small legal assistance, takeover of criminal prosecution, and rendition with non-EU

countries. AIRS is the central point of contact for international legal assistance in criminal cases for the Netherlands

Any request granted or refused must be reported and a file must be created and kept up to date. The International Legal Assistance Centers (IRCs) and the National International Legal Assistance Center (LIRC) use the National Uniform Registration System, in which all incoming and outgoing police and judicial legal assistance requests are registered.

For the sake of completeness all incoming and outgoing police and judicial requests for legal assistance must go through the LIRC or the relevant IRCs; registration takes place from the legal assistance request.

In some cases, AIRS (a division of the Ministry of Justice) can be involved. This applies specifically to cases where police data are provided to countries where human rights and safety risks can play a role.

AIRS serves as a knowledge centre for international legal assistance and advises the Minister of Justice and Security on individual legal assistance matters. In addition, if necessary, AIRS contributes to legislation, regulations and policy in the field of international legal assistance. In addition, since 1 January 2015, AIRS has been responsible for the files on piracy and international courts and tribunals, in addition to the international crimes file.

#### National International Legal Assistance Center (Landelijk internationaal Rechtshulp Centrum [LIRC]) (national):

LIRC is responsible for the exchange of information and cooperation between the Netherlands and all countries of the world in the field of judicial and police legal assistance; tasks include the registration and execution of requests for legal assistance on behalf of the National Unit and the special investigative services.

#### International Legal Assistance Centers (IRCs) – regional/district

This is a partnership between the Public Prosecution Service and the police. It forms an intermediary for international cooperation and legal assistance between foreign and Dutch investigative and prosecuting authorities and in that context also provides for the rapid deployment of the public prosecutor and/or examining magistrate (rechter-commissaris [RC]).

The main administrative activities are:

- registration of legal assistance requests/EIOs, filing, mail handling and archiving;
- preparing simple requests from the RC;
- requesting and processing translation assignments;
- requesting judgments, documents and detention data at home and abroad;
- dealing with outgoing requests for takeover of criminal prosecution;

- processing civil legal assistance requests/EIOs;
- administrative handling of trafficking cases;
- processing criminal awards.

A large part of the work concerns the handling of European arrest warrants (EAWs). The IRC Amsterdam is the central authority for all EAWs sent to the Netherlands from the countries of the EU. The importance of international cooperation in criminal matters is only increasing.

Legal activities:

- Studying and independently assessing surrender requests (EAWs), extradition requests and incoming legal assistance requests.
- Taking the requests into consideration and conducting independent and direct consultations with the foreign authorities of the 28 countries of the EU as well as the IRC partners such as the Amsterdam/Amstelland regional police, other public prosecutors, IRCs and police regions in the Netherlands.
- Advising and supporting the prosecutors in handling specific cases.
- Acting as a contact point in the area of international legal assistance within the public prosecutor's office and in contact with the Ministry of Security and Justice, the office of the Examining Judge, the Liaison Officers and various foreign colleagues.

The main rule is that every request for legal assistance from abroad is forwarded to the public prosecutor. Legal assistance requests also include police cooperation, including the international exchange of information. In practice, it appears to be unclear with regard to the latter form of cooperation how far police powers extend. When is the police officer independently authorised to deal with the request for legal assistance and when should the treatment be conducted through the OM (openbaar ministerie/public prosecutor's office)?

The authority of the police to handle a legal assistance request independently exists in the following cases:

(1) If police information is requested. In the event that information is requested that comes wholly or partially from a file containing police data, Article 17 of the Police Data Act states that these police data can be provided to police authorities abroad, insofar as this is necessary for the proper execution of the police task in the Netherlands or the police task in the relevant country. Police data can also be provided to Interpol and Europol. Paragraph 5 of Article 17 states that police data shall only be provided if sufficient guarantees exist for the receiving body for proper use and for the protection of privacy. According to parliamentary history, countries that are members of the Council of Europe can be expected to meet this criterion. For those countries for which this is not the case, it will be necessary to consider separately on a case-by-case basis whether, in view of the nature of the data and the purpose for which it is requested

and taking into account what is generally known about the country, the provision of the information is justified.

(2) As long as no investigative powers explicitly included in paragraph 2 of Article 552i are required for obtaining the requested information. This concerns Articles 126g to 126z (the special investigative powers), Articles 126zd to 126zu (detection of terrorist crimes), Article 126gg (exploratory investigation) and Article 126ff (prohibition on permitting). In the Cooperation Decree on special investigative powers, a number of these powers have been further elaborated.

Special attention is requested for Articles 126nc and 126uc, which fall under the aforementioned Articles 126g to 126z and are not excluded therefrom. These articles give the investigating officer the authority to request data from third parties in certain cases. National police therefore have the authority to claim these data independently. If this takes place on the basis of a request for legal assistance, the intervention of the public prosecutor will be required.

(3) If the use of coercive measures is not necessary to obtain the requested information.

(4) As long as the requested information is not used as evidence. Written information can only be used as proof by the judicial authorities of the requesting state with the consent of the competent authority, pursuant to Article 39 of the CISA. In the field of police legal assistance, it must also be stated that the content of the message cannot be used as evidence in criminal proceedings or may be presented to the judge and the defence in the criminal file at the hearing. For countries that are not members of the CISA, the above also applies in full, unless a bilateral treaty stipulates otherwise. Information can only be used as evidence if it is obtained from the competent judicial authorities (for the Netherlands: prosecutor and judge).

When asked for (parts of) trial report(s) that are in a criminal file, these requests from abroad must be forwarded to the public prosecutor. The same applies to the police report drawn up by the police, even if the witness appeared voluntarily.

(5) The requested information may not relate to the application of cross-border observations and requests for controlled deliveries. For cross-border observations, possibly in combination with a request for controlled delivery, the designation of mutual assistance requests for cross-border observations is applicable (2006A003). This prescribes that an order from the public prosecutor is required pursuant to Article 126g or Article 126o Sv.

(6) The requested information may not relate to Criminal Intelligence Unit (CIE) information. The provision of CIE information abroad takes place with the permission of the CIE Public Prosecutor. See also the Explanatory Memorandum to the Police Data Decree of 14 December 2007, which stipulates this in the same terms: 20 The (actual) provision – except in urgent cases – takes place through the intervention of the National Criminal Intelligence Unit (NCIE).

(7) The requested information may not relate to the legal absolute and relative grounds for refusal (Articles 552k, 552l, 552m Sv). If there is an ongoing prosecution in the Netherlands or

if the *ne bis in idem* principle is violated, the request for legal assistance must be refused. The request must be submitted to the Ministry of Justice in accordance with Article 552l paragraph 2 of the Dutch Code of Criminal Procedure in case of fear of a discriminatory prosecution. When a request for legal assistance concerns political or tax offences, an authorisation must be obtained from the Ministry of Justice, in accordance with Article 552m of the Code of Criminal Procedure, before the request for legal assistance can be executed. The Minister of Justice may give an indication that a request for legal assistance cannot be executed. On the basis of Article 552k paragraph 2, such a request for assistance is refused.

(8) The requested information may not relate to judicial data/judicial documentation. Judicial documentation cannot be provided by the police abroad in accordance with the Judicial and Criminal Data Act and the Judicial Data Decree. However, the police can issue information from its own police file Recognition Service System (HKS) on the basis of the Police Information Decree (see Section 4.3) and check this information with the Judicial Information Service before sending it abroad. The prescription will then continue to apply, as mentioned above, that this police information may not be used as evidence abroad.

Department of International Legal Assistance in Criminal Matters (AIRS)

Contact details

Telephone number: (070) 370 73 14

Email address: [airs@minvenj.nl](mailto:airs@minvenj.nl)

Postal address:

PO Box 20301

2500 EH The Hague

---

Els van Die

WG4 – Sanctioning

# Annex 2: Specialised environmental courts and tribunals: a necessity?



# SPECIALIZED ENVIRONMENTAL COURTS AND TRIBUNALS: A NECESSITY ?

Luc Lavrysen, Brussels, 8 December 2017

# GLOBAL TENDENCIES

## Based on:

G. Pring & C. Pring, *Greening Justice. Creating and Improving Environmental Courts and Tribunals*, World Resources Institute, Washington, 2009, 119 p.

G. Pring & C. Pring, *Environmental Courts & Tribunals: A Guide for Policy Makers*, Nairobi, UN Environment, 2016, 120 p.

## GLOBAL TENDENCIES

- Explosion of number of ECTs since 2000
- For the moment 1200 ECTS, in 44 countries; discussions in 20 other countries
- Propelled by the fast development of environmental law principles and rules on the different levels of government

## GLOBAL TENDENCIES

- Link between environmental law and human rights law
- Environmental and climate change crisis
- Critics on the ability of the general judicial system to respond in an effective way

## DIVERSITY

Hugh differences in the various systems (5 Models)

### **Model 1: Extensive competencies**

- Administrative, civil and criminal jurisdiction
- Environmental law in the broad sense, land use planning, renewable energy
- Large territory (sometimes various regional sections or local hearings)

## DIVERSITY

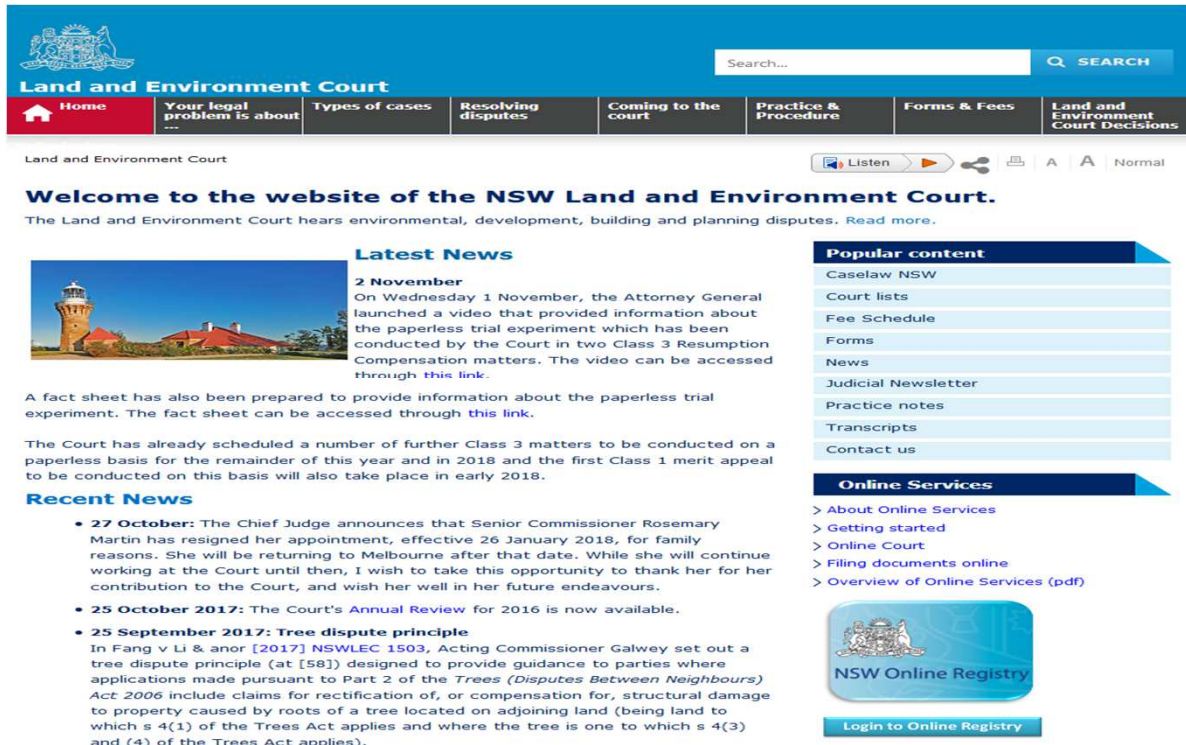
- Combining legal, scientific and technical experience (technical judges or experts of the Court)

E.g. **Land and Environment Court of New South Wales (Australia)**

<http://www.lec.justice.nsw.gov.au/>

**National Green Tribunal (India)**

<http://www.greentribunal.gov.in/>



The screenshot shows the homepage of the NSW Land and Environment Court website. The header includes the court's name, a search bar, and a navigation menu with items like Home, Your legal problem is about, Types of cases, Resolving disputes, Coming to the court, Practice & Procedure, Forms & Fees, and Land and Environment Court Decisions. The main content area features a 'Welcome to the website of the NSW Land and Environment Court.' message, a 'Latest News' section with a video announcement from 2 November, and a 'Recent News' section with three news items from October and September 2017. A 'Popular content' sidebar lists various resources like Caselaw NSW, Court lists, and Forms. At the bottom, there is a 'Login to Online Registry' button for the NSW Online Registry.

**Land and Environment Court**

Search...

Home | Your legal problem is about | Types of cases | Resolving disputes | Coming to the court | Practice & Procedure | Forms & Fees | Land and Environment Court Decisions

Land and Environment Court

Listen

**Welcome to the website of the NSW Land and Environment Court.**

The Land and Environment Court hears environmental, development, building and planning disputes. [Read more.](#)

**Latest News**

**2 November**  
On Wednesday 1 November, the Attorney General launched a video that provided information about the paperless trial experiment which has been conducted by the Court in two Class 3 Resumption Compensation matters. The video can be accessed through [this link](#).

A fact sheet has also been prepared to provide information about the paperless trial experiment. The fact sheet can be accessed through [this link](#).

The Court has already scheduled a number of further Class 3 matters to be conducted on a paperless basis for the remainder of this year and in 2018 and the first Class 1 merit appeal to be conducted on this basis will also take place in early 2018.

**Recent News**

- **27 October:** The Chief Judge announces that Senior Commissioner Rosemary Martin has resigned her appointment, effective 26 January 2018, for family reasons. She will be returning to Melbourne after that date. While she will continue working at the Court until then, I wish to take this opportunity to thank her for her contribution to the Court, and wish her well in her future endeavours.
- **25 October 2017:** The Court's [Annual Review](#) for 2016 is now available.
- **25 September 2017: Tree dispute principle**  
In *Fang v Li & anor* [2017] NSWLEC 1503, Acting Commissioner Galwey set out a tree dispute principle (at [58]) designed to provide guidance to parties where applications made pursuant to Part 2 of the *Trees (Disputes Between Neighbours) Act 2006* include claims for rectification of, or compensation for, structural damage to property caused by roots of a tree located on adjoining land (being land to which s 4(1) of the *Trees Act* applies and where the tree is one to which s 4(3) and (4) of the *Trees Act* applies).

**Popular content**

- Caselaw NSW
- Court lists
- Fee Schedule
- Forms
- News
- Judicial Newsletter
- Practice notes
- Transcripts
- Contact us

**Online Services**

- > [About Online Services](#)
- > [Getting started](#)
- > [Online Court](#)
- > [Filing documents online](#)
- > [Overview of Online Services \(pdf\)](#)

**NSW Online Registry**

Login to Online Registry

**National Green Tribunal**  
Faridkot House, Copernicus Marg, New Delhi-110001

HISTORY | CHAIRPERSON | MEMBERS | CALENDAR | REGISTRY | MULTIMEDIA RESOURCES | RELATED LINKS | CONTACT US

- ❖ CASE STATUS
- ❖ CAUSE LIST
- ❖ DAILY ORDERS
- ❖ DISPLAY BOARD
- ❖ E-FILING
- ❖ GAZETTE NOTIFICATIONS
- ❖ INTERNATIONAL CONFERENCE
- ❖ INTERNSHIP PROGRAMME
- ❖ JUDGES ROSTER/WEEKLY CAUSELIST
- ❖ JUDGEMENTS
- ❖ NGT ACT / RULES
- ❖ OFFICE ORDERS
- ❖ PUBLICATION
- ❖ PUBLIC COMPLAINTS
- ❖ PUBLIC NOTICES
- ❖ RIGHT TO INFORMATION
- ❖ TELEPHONE DIRECTORY
- ❖ TENDERS
- ❖ WORKING HOURS/SITTING HOURS

[Click here to view International Conference on Environment 2017\(Live from 3rd Nov 2017\)](#)

**Important Orders**

al Application No. 21/2014 Vardhaman Kaushik Vs. Union of India orders dated 18th July 2016 | [Click here to see Or](#)

[Home](#)

The National Green Tribunal has been established on 18.10.2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues.

[Read More](#)

**Latest Announcements**

- ❖ Notice International Conference on Environment- November 2017
- 17-Oct-2017**
- ❖ Empanelment of Registered Suppliers for providing different items at NGT Principal Bench New Delhi
- 12-Oct-2017**
- ❖ Rescheduling the sitting of Special Circuit Bench

[View All](#)

## DIVERSITY

### Model 2 + 3: Intermediate competencies

Model 2 : combination of administrative and civil jurisdiction – environmental and planning law, not energy law – legal and technical expertise – large territory

E.g. **Vermont Superior Court, Environmental Division** (US)–  
**Land- and Environmental Courts** (Sweden) -**Tribunal Ambiental** (Chile) – **Environment and Land Court** (Kenya)

The screenshot shows the website of the Tribunal Ambiental. The main headline reads: "Ministra suplente Ximena Insunza participó en seminario 'Fiscalización y sanción ambiental en Chile: propuestas y desafíos'". Below this, there are sections for "Transmisiones", "CONSULTA DE CAUSAS", and "SENTENCIAS". The "NOTICIAS" section features two articles: "Tribunal Ambiental escuchó alegatos en dos demandas por reparación de daño ambiental contra Minería Maricunga por desecamiento de humedales en la región de Atacama" and "Tribunal Ambiental de Santiago confirmó rechazo del Comité de Ministros a la RCA del Proyecto Hidroaysén". The right sidebar includes "ESTADO DIARIO", "AVISOS", and "AUDIENCIAS". The footer contains contact information and a navigation menu.

11

## DIVERSITY


Model 3 : combination of civil and criminal jurisdiction  
± 450 Environmental Tribunals in PR China

Model 4 : more limited competencies: specialized administrative Courts and Tribunals

- E.g. *Vasaa Court* (Finland), *Environmental Court of New Zealand*, *Raad voor Vergunningsbetwistingen* and *Milieuhandhavingscollege* (Flemish Region of Belgium)

12





THE SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA

**MENU**

- Judicial News
- Grand Justices
- Judicial System
- Laws&Regulations
- PRC Laws
- Focus News
- Home

Posted: 2014-07-20 19:49:54

### Judicial News

#### China's supreme court sets up environment cases division

The Supreme People's Court (SPC) has set up a tribunal for environment cases to better implement the revised environmental protection law, said a court spokesman here on Thursday.

The tribunal will hear civil cases involving pollution, exploitation of natural resources and conservation of natural environment such as forests and rivers, said Sun Jungeng, SPC spokesman, at a press conference.

It will also hear appeal cases forwarded from lower courts, supervise the trial of environment cases at lower courts and draft judicial explanations about such cases, Sun said.

The SPC expects that the tribunal can set the standards for trials of environment cases, better protect people's environmental rights and help fight pollution and other offenses harming the environment, he said.

About 134 special environment tribunals have been established at local courts in 10 provincial divisions since the first was founded in southwest China's Guizhou Province in 2007.

Following suit of the SPC, all provincial high courts will also set up similar institutions while city courts and lower ones can decide based on their own conditions, said Zheng Xuebin, chief judge of the tribunal, also at the press conference.

According to Zheng, environment cases have taken a very small proportion of all court cases across the country, nearly 30,000 out of more than 11 million.

Zheng admitted that it is still difficult for people to file an environment case since courts are held back by technical problems such as lack of practical standards to assess damage, and in some cases interference from local governments.


With the operation of more environment tribunals, Zheng expects the number of these cases to increase.


China's top legislature revised the environmental protection law in April, imposing much harsher punishment on polluters and heavier liability on government.

The new law allows public litigation on environmental issues and expands the range of the plaintiff, from parties directly affected by environmental damage to officially registered social organizations that engage in public litigation on environmental issues for more than five years.

China has faced an increasing number of protests, or "mass incidents", over environmental issues. Cities have seen residents take to the streets against paraxylene projects, which they believe are a major threat to the environment and public health.


Courts are considered a more rational way for people to express their concerns without triggering chaos and violence.


13



## Environment Court of New Zealand

Te Kōti Taiao o Aotearoa



ENVIRONMENT COURT

**Auckland Unitary Plan Appeals**

**Overview of the Environment Court's processes**

**About the Environment Court**

**Representing yourself in the Environment Court**

**Forms & fees**

Environment Court cases online

**Decisions & publications**

**Speak to reo Māori or use sign language**

**Contact us**

**Nau mai haere mai ki te pae tukutuku o te Kōti Taiao**

Most of the Environment Court's work involves the Resource Management Act 1991. The court largely deals with appeals about the contents of regional and district plans and appeals arising out of applications for resource consents. The consents applied for may be for land use, a subdivision, a coastal permit, a water permit or a discharge permit or a combination of these. The Environment Court sits in a number of courthouses in different parts of the country.

**Auckland Unitary Plan Appeals »**

You may appeal the Auckland Council's Unitary Plan decision on the recommendations of the Independent Hearing Panel.

**About the Environment Court »**


Read the the Environment Court's practice note, learn about the court's jurisdiction and history, and read biographies of the Environment Judges and Commissioners.

**Forms & fees »**

Forms & the fees you'll need to pay if you make an application in the Environment Court, including how to pay the fees.


**POPULAR LINKS**

Practice note 2014



Practice note

Notices of hearing



Notices of hearing

**RELATED LINKS**

- Ministry for the Environment
- Resource Management Act 1991

**Overview of the Environment Court's processes »**

How resource consent appeals and plan appeals typically progress through the Environment Court.

**Representing yourself in the Environment Court »**

In the Environment Court you don't need a lawyer and you can represent yourself.

**Environment Court cases online »**

Matters before the Environment Court with a high level of public interest or a large number of interested parties, have case information published


14

## DIVERSITY

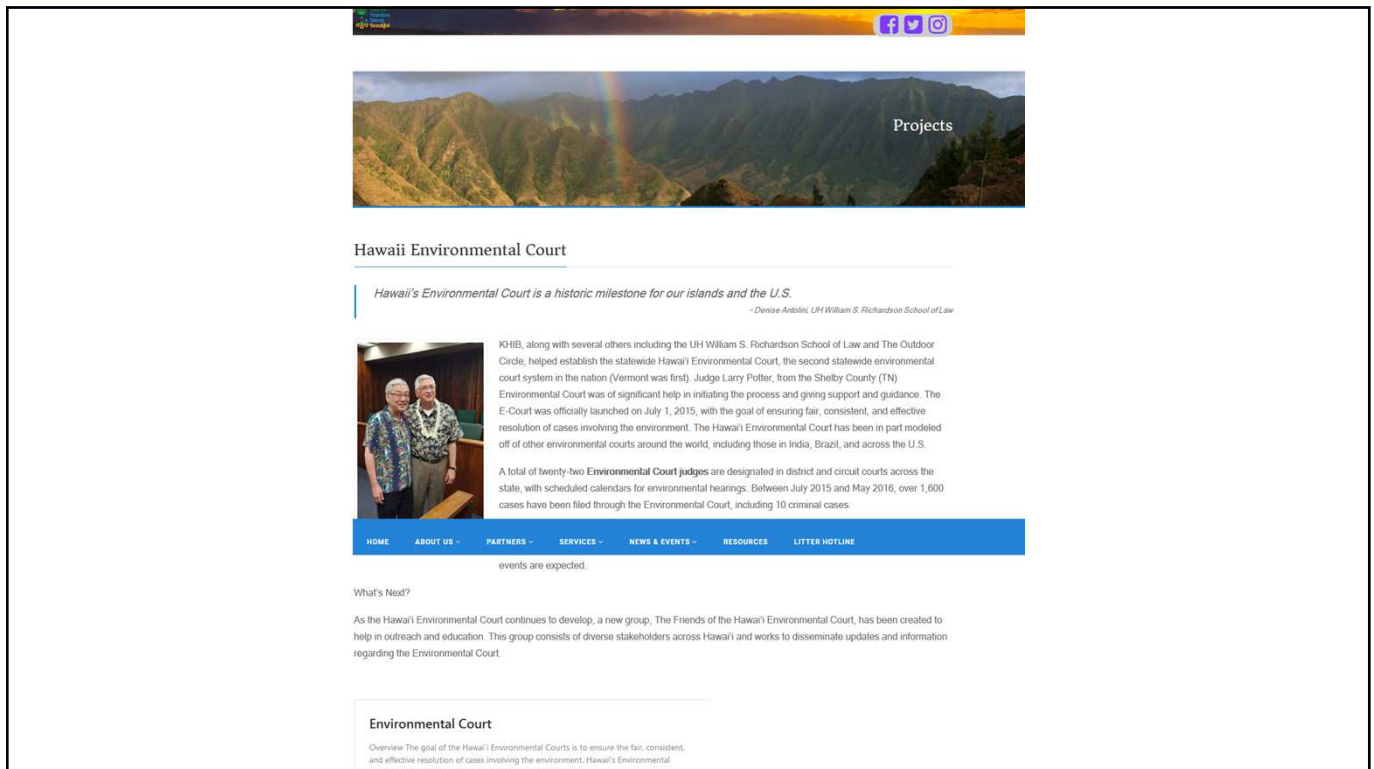
- Model 5 – Specialised sections of General Courts
  - E.g. **Environmental Courts** (Philippines), **Lahore High Court Green Bench** (Pakistan), **Hawai'i Environmental Courts**

***Preference for model 1, but national legal traditions and political circumstances can advocate for another model***

***Important to include civil law in the competencies of such courts and tribunals***

The screenshot displays the website for Green Bench Orders. At the top, there is a navigation menu with links: Home, About Us, Judges, Case Management, Reported Judgments, Certified Copy Status, District Judiciary, Downloads, Other Links, and Help Line. A search bar is located in the top right corner. The main content area features a green banner with the text: "Main interim orders and final orders of Green Bench at Principal Seat are available". Below the banner, there is a section titled "Green Bench Orders" with a search form. The search form includes the following fields: "Tag Word:" with a dropdown menu set to "Any"; "Hon'ble Judge:" with a dropdown menu set to "Mr. Justice Syed Mansoor Ali Shah"; "Case No:" and "Hearing Date:" with input fields; and "Party(ies):" with an input field. There are "Submit" and "Clear" buttons at the bottom of the search form.





**Hawaii Environmental Court**

*Hawaii's Environmental Court is a historic milestone for our islands and the U.S.*  
- Denise Anblin, UH William S. Richardson School of Law

KHIB, along with several others including the UH William S. Richardson School of Law and The Outdoor Circle, helped establish the statewide Hawaii Environmental Court, the second statewide environmental court system in the nation (Vermont was first). Judge Larry Potter, from the Shelby County (TN) Environmental Court was of significant help in initiating the process and giving support and guidance. The E-Court was officially launched on July 1, 2015, with the goal of ensuring fair, consistent, and effective resolution of cases involving the environment. The Hawaii Environmental Court has been in part modeled off of other environmental courts around the world, including those in India, Brazil, and across the U.S.

A total of twenty-two **Environmental Court judges** are designated in district and circuit courts across the state, with scheduled calendars for environmental hearings. Between July 2015 and May 2016, over 1,600 cases have been filed through the Environmental Court, including 10 criminal cases.

HOME ABOUT US PARTNERS SERVICES NEWS & EVENTS RESOURCES LITTER HOTLINE

events are expected.

What's Next?

As the Hawaii Environmental Court continues to develop, a new group, The Friends of the Hawaii Environmental Court, has been created to help in outreach and education. This group consists of diverse stakeholders across Hawaii and works to disseminate updates and information regarding the Environmental Court.

**Environmental Court**

Overview: The goal of the Hawaii Environmental Courts is to ensure the fair, consistent, and effective resolution of cases involving the environment. Hawaii's Environmental

## ADVANTAGES

- **Expertise:** Expert decision makers make better decisions
- **Efficiency:** Greater efficiency, including quicker decisions
- **Visibility:** Shows visible government support for the environment and sustainability and provides an easily identifiable forum for the public
- **Cost:** Can lower expenses for litigants and the courts
- **Uniformity:** Greater uniformity in decisions, so litigants know what to expect
- **Standing:** Can adopt rules that expand standing, for individuals, ENGO's and PIL
- **Commitment:** Effectuates government's commitment to the environment and sustainability

## ADVANTAGES

- **Accountability:** Greater government accountability to the public
- **Prioritization:** Ability to prioritize and move on cases that are urgent
- **ADR:** Broadens ability to use ADR and other non-adversarial dispute resolving processes, including restorative justice
- **Issue Integration:** Can deal in a more integrated way with multiple laws, particularly if the ECT has civil, criminal and administrative jurisdiction
- **Remedy Integration:** Can combine civil, criminal and administrative remedies and enforcement under one roof
- **Public Participation:** Involvement of the public can be increased

## ADVANTAGES

- **Public Confidence:** The public's confidence in the government and the judicial system can be increased, so that members of society are more likely to bring concerns to the system
- **Problem Solving:** Judges can look beyond narrow application of the rule of law and craft creative new solutions
- **Judicial Activism:** Can apply new international principles of environmental law and natural justice as well as national/local law
- **Potential Drawbacks can be avoided by smart design of the ECT system**



Luc LAVRYSEN

Full Professor of Environmental Law

CENTRE FOR ENVIRONMENTAL & ENERGY LAW

E: [luc.lavrysen@ugent.be](mailto:luc.lavrysen@ugent.be)

[www.ugent.be](http://www.ugent.be)



# Annex 3: France – Written note of 2 December 2018

## France: note for the meeting of 9 December 2018

### I. Model of specialisation

The ideal model would be a specialist court consolidating the three facets of the environmental case, administrative, criminal and civil, insofar as the basis of both the criminal offence and the civil wrong is a general or individual statutory provision. But this seems to me to be unrealistic in the context of our judicial system, which remains governed by the principle of a strict separation between administrative and criminal courts, stemming from the principle of the separation of power, any conflicts in competence between the two types of court being settled by a specific court: the Tribunal des Conflits (a recent example being the positioning of relay masts and disturbance linked to electromagnetic waves; an identical resolution for the positioning of wind turbines).

However, the specialisation of a court could/should bring together criminal and civil procedures, not least because in France the criminal judge can adjudicate on “civil interests”, that is, on compensation for damage sustained by the victim of an offence, including in the event of acquittal, when it is possible to rely on misconduct based on, and within the limits of, the facts that are the subject of the prosecution.

The question being asked, therefore, is on the level of the court and the field of competence of the specialist court: not all cases need be referred to a specialised court, but specialisation can turn out to be necessary from a certain level of complexity or because of the gravity of the offence’s impacts (e.g. trafficking), and from the fact that other offences may be connected (for example, when an environmental offence converges with customs, tax or financial offences).

To my mind, it is at the stage of preliminary investigation that the prosecutor should be allowed to direct the case towards a specialised prosecutor and/or investigating judge. Thus, France has two specialised prosecution units focused on health matters, which also deal with environmental matters insofar as they have an impact on health. We also have interregional courts specialising in cases of a certain size or complexity on financial or organised crime matters, which similarly may also be presented with a case that has an environmental component.

At the ruling stage, direction towards a specialised court or session must, in my view, be considered from the first instance level for important cases already examined by a prosecutor

and/or a specialised investigating judge. You can also retain flexibility and anticipate that the prosecutor receiving general cases, or even the lawyers, could ask the president of the court for a case to be allocated to the specialised court. To meet the need, which I think is real, for a sufficient number of cases to ensure that specialisation is of genuine relevance, you can envisage only creating them in the jurisdiction of appeal courts of a certain size, or situated in an area that is particularly exposed to environmental crime (coastal areas, regional parks, industrial areas with installations classified for environmental protection etc.).

It equally seems to me that this specialisation should be understood in a fairly flexible and broad way: environment, but also of course health, and similarly urban and land-use planning.

Flexibility can also be understood as giving some leeway to prosecuting bodies (mainly prosecutor): environmental cases may grow in number where considered as being under consumer law (labelling, marketing of GM products, pesticides, nanomaterials) or labour law, or commercial law... the prosecutor having to establish which is the element that raises the essential judicial question to be dealt with and to direct the case accordingly, and then towards the judge specialising in the environment if necessary.

It seems to me that the cross-cutting nature of the environmental law, which is the hallmark of its “good health” as it must be taken into account in all implemented policies or projects, should not be an obstacle to the specialisation of the courts as long as you take care to ensure from the start that a procedure has clear direction (prosecutor’s services dedicated to this stage). This strategic direction, from the initial investigation, should also facilitate access to specialised investigators, such specialisation being all the more effective when integrated from the start and applied to all stages of the process.

Recourse to a specialised court – or a specialised session of an existing court – seems to me in any case somewhat inevitable for large-scale cases (maritime disasters such as the sinking of the Erika, major industrial disasters such as the explosion at the AZF factory in France, nuclear accident, etc.) and if group actions multiply (allowed in respect of environmental matters in France) following health-related harm in particular (conditions related to particulate matter, pesticides, asbestos etc.), an ordinary court will find it difficult to deal with them, including at the practical level (composition of the court, courtroom, etc.).

## **II. Ways to improve the prosecution and sanction of environmental offences**

In addition to specialisation, it also appears necessary to have a better approach to the tools of prosecution and the handling of offences. Prosecutors are best placed to give their views on the means of investigation. But it is certain that greater effectiveness in prosecution and punishment (and redress) could also be achieved with a better match between the tools and the defined objectives, particularly at the community level.

It could be useful for certain countries that have extensive and longstanding legislation to do some “tidying up” of existing offences so as to take better account of new behaviours that have already been identified (such as certain forms of trafficking) and allow them to be made illegal

and prosecuted according to their seriousness and their adverse impacts on the environment, including being able to differentiate the prosecutions via one or several aggravating circumstances (e.g. for trafficking, taking note of offences by organised groups). You can also, for example, in line with progress towards the repair of ecological damage, envisage offences of which the victim would no longer be property or a physical person, but the environment *per se* (for example, an offence that endangers the environment, in the image of an offence that endangers human life).

Likewise, for sentencing, measures could also be considered that simultaneously consider not only the nature of the sentence, but also the nature of redress – at every stage of the procedure – to enable sanctions to be imposed with certainty and to prevent any recurrence of the offence, but equally to make good the damage caused as soon as possible.

In my view, effectiveness also means a kind of guide for all relevant stakeholders, allowing them, for each offence, to be familiar with the components that need to be brought together to characterise it, and to avoid (for example) the pitfall of an incomplete or poorly drafted report from the outset, which can lead to the voiding of prosecutions or the acquittal of the accused.

# Annex 4: 2017/18 Working Group members

## **Dr. Carole M. BILLIET, Belgium** **Academic/Judge**

### *Education*

Master in Law

Master in Anthropology

Ph.D. in Law

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

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

### *Publications*

See *website*: <https://biblio.ugent.be/person/801001589241>

**Sara BOOGERS, Belgium**  
**Public Prosecutor**

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

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

**Marc CLEMENT, France**  
**Judge**

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

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

In 2010 he published *Environment European Law* (Editions Larcier, third edition published in 2016) and contributed to the books *Waste Management in European Law* (Eleven International Publishing, 2014) and *The Habitats Directive in its EU Environmental Law Context* (Routledge, November 2014), in which he authored "Global objectives and scope of the Habitats Directive: What does the obligation of result mean in practice?" He recently published for Telos



“Jurisprudence 2.0” ([www.telos-eu.com/fr/societe/justice-et-police/jurisprudence-20.html](http://www.telos-eu.com/fr/societe/justice-et-police/jurisprudence-20.html)), for *Recueil Dalloz* in January 2017 “Do judges need to fear Artificial Intelligence?” and in the *Paris Innovation Review* in October 2017 “Blockchain, smart contracts: what else?”

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

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

### **Ksenija DIMEC, Croatia Judge**

Graduating in 1993 as a Master of Law at the University of Rijeka, Ksenija Dimec started her professional career as an apprentice in 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 member of the national working group for CITES, which was established to facilitate mutual cooperation among law enforcement agencies in this area, to train their employees and observe and react to new trends in environmental crime.

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

**Wanja WELKE, Germany**  
**Public Prosecutor**

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

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

**Anja WÜST, Germany**  
**Public Prosecutor**

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

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

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





© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.



With the contribution of the LIFE financial instrument of the European Community