


EUFJE 2010 - Discussion on national reports
Second item - Sanctioning the Habitat- and Birds
directives. The balance between the administrative and
the criminal track

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“Experience has shown that the existing systems of penalties have not been sufficient to achieve complete compliance with the laws for the protection of the environment. Such compliance can and should be strengthened by the availability of criminal penalties, which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law.”...




Art. 3

*Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed **intentionally or with at least serious negligence...***

*(f) the **killing, destruction, possession or taking of specimens of protected wild fauna or flora species**, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;*

*(g) **trading in specimens of protected wild fauna or flora species or parts or derivatives thereof**, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;*

*(h) any conduct which causes the **significant deterioration of a habitat** within a protected site*



- In general, the punishment of environmental offences belongs to the realm of traditional criminal law enforcement:

finer and imprisonment

- Almost all the reporting countries make use of remedial sanctions in the administrative track

Administrative and criminal sanctions and their finality

	Administrative		Criminal	
	Punitive	Remedial	Punitive	Remedial
Belgium Federal			x	x
Belgium Flanders	x	x	x	x
Belgium Brussels	x	x	x	x
Finland		x	x	
France			x	
Germany	x	x	x	
Hungary	x	x	x	
Netherlands		x	x	
Norway		x	x	
Poland	x	x	x	
Slovakia	x	x	x	
Slovenia	x	x	x	
Sweden	x	x	x	
U.K.		x	x	



examples of remedial administrative sanctions:

- **ban on the use or the sealing of buildings,..., equipment, means of transport,...**
- **removal of materials, including waste materials, the possession of which is in contravention of the environmental legislation, including the nature conservation and protection law;**
- **... animals may, at the expense of the offender, be immediately released or taken to an accredited rescue centre for birds and wild animals or be destroyed...**
- **authorities can also order the offender to repair completely or partially the consequences of the offence, or do so themselves at the expense of the offender.**


In some countries (the Netherlands, Norway, Slovakia) the authorities can impose a penalty payment in order to enforce the legislation

Administrative fines: some reported minima and maxima

Countries	Amount of the fines
Belgium, Flanders	0 – 1,375,000 euro (= 250,000 x 5.5)
Belgium, Brussels	62.50 – 625 euro
Germany	Saxonia and Baden-Württemberg: up to 50,000 euro
Slovakia	Up to 33,194 euro (legal persons) or 2,958 euro (natural persons)
Sweden	1,000 SEK (about 100 euro) – 50,000 SEK (about 5,000 euro)

Criminal sanctions: finality

Countries	Punitive		Remedial	
	Yes	No	Yes	No
Belgium Federal	x		x	
Belgium Flanders	x		x	
Belgium Brussels	x		x	
Finland	x			
France	x			
Germany	x			
Hungary	x			
Netherlands	x			
Norway	x			
Poland	x			
Slovakia	x			x
Slovenia	x			x
Sweden	x			
U.K.	x			

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- **Conventional punitive sanctions – imprisonment and fines - prevail in the criminal sanction apparatus**
 - **Some countries (France, Belgium) report on confiscation, destruction, publication of sentence and forfeiture of illegally acquired benefits**
 - **Remedial criminal sanctions are the exception (Belgium)**

Main punitive criminal sanctions: type and level

Countries	Prison sentence		Fines	
	No	Yes	No	Yes
Belgium Federal	x			(500 x 5.5) to (100,000 x 5.5) or (100,000 x 5.5) to (1,000,000 x 5.5)
Belgium Flanders		Deliberately: 1 month to 5 years By lack of caution or care: 1 month to 3 years		Deliberately: 550 euro (= 100 x 5.5) to 2,750,000 euro (= 500.000 x 5.5) By lack of caution or care: 550 euro (= 100 x 5.5) to 1,650,000 euro (= 300.000 x 5.5)
Belgium Brussels		8 days to 2 months	x	137,5 euro (=25 x 5.5) to 687,5 euro (= 125 x 5.5)

Finland				Day fines, with a minimum of 6 euros.
France		6 mois (x 2)		9 000 euro (x 2)
Germany		up to 5 years		x
Hungary		Up to 3 years Up to 5 years in case of irreversible damage		x
Netherlands		2 years for offences 1 year for misdemeanours		Up to 18.500 euro
Norway		Maximum 1 year Gross contravention: maximum 3 years Very serious: maximum 6 or 10 years		
Poland		Up to 2 years Significant damage to fauna and flora: up to 5 years		x

Slovakia				Entrepreneur or legal person: up to 33 193,91 euro Natural person: up to 2 958,17
Slovenia		Up to 5 years (10 years if criminal organisation)		
Sweden		Up to 2 years If serious: at least 6 months and at the maximum 4 years		From about 500 euro to about 1,000,000 euro
U.K.		Maximum 6 months		Maximum level 5 (currently £ 5000) Maximum £ 20,000 (Magistrates court) or unlimited amount (Crown Court)

legal persons

Countries	Criminal sanctions	Administrative
Belgium Federal	x	
Belgium Flanders	x	x
Belgium Brussels	x	x
Finland	x	x
France		
Germany		x
Hungary	x	
Netherlands	x	x
Norway	x	x
Poland	x	
Slovakia	no	x
Slovenia		x
Sweden		x
U.K.		x

Implementation of Ecocrime-directive

Countries	Implemented		Not implemented (yet)
	Copy-paste	Specific formulation	
Belgium Federal		(pre-existing)	
Belgium Flanders		x	
Belgium Brussels			x
Finland		(pre-existing)	
France			x
Germany		Pre-existing	
Hungary		Pre-existing	
Netherlands		Pre-existing	
Poland			x
Slovakia		Pre-existing	
Slovenia			x
Sweden		Pre-existing	
U.K.		(pre-existing)	



“Epistula non erubescit”

Most countries report a (very) low level of criminal enforcement, or don't report at all on the practice of punitive enforcement, be it criminal or administrative ...

