Working Group 4 of the Life+ Project Sanctioning: prosecution and judicial practice

Dr. Carole M. Billiet, chair WG4

EUFJE conference 2016, Bucharest 18-19 November 2016

LIFE14 GIE/UK/000043

Overview

1. WG4: profile
1.1. One WG amidst four
1.2. Issues to discuss
1.3. Outputs to deliver
1.4. Team: countries, functions and courts
1.5. Working topics
1.6. Kick-off meeting 2 December 2016
2. The EU background: relevant developments
2.1. The EU-wide evolution towards public law enforcement
2.2. Civil society in criminal environmental law enforcement
2.3. Combining punishment with remedial sanctioning
3. Concluding remarks, questions and invitation

1. WG 4: profile

1.1. One WG amidst four

Subject-focused WG's

WG 1 Wildlife

WG 2 Waste

WG 3 Chemicals (Air)

> Issues hindering efficient and effective prosecution and adjudication

> Overarching practice

WG 4 Sanctioning: Prosecution and judicial practice

1.2. WG 4 : issues to discuss

WG on *sanctioning*

> *proportionate, effective and dissuasive*

1/ Administrative >< criminal sanctioning

What best when?

2/ How prosecutors *seek to apply* sanctions, how judges *apply* sanctions in criminal *and administrative* contexts

3/ Ongoing *practical implications* Eco-crime Directive

Extent to which differences in sanctioning practices undermine enforcement and other EU policies (cohesion common market)

1.3. Outputs to deliver

- Contents
  - Interim findings – interim reports, 2017 and 2018
    Final findings and report, 2019
  - Three (sets of) topics
    - Caring for best practices

- Training materials
  - Annual conferences EUFJE & ENPE
    EJTN & [Academy of European Law (ERA)] > larger target audience
  - Challenges regarding the ‘canning’ of training

1.4. Team: countries, functions and courts

Member	Country	Prosecutor	Judge
Chair Carole M. Billiet	Belgium		Administrative green court, punitive
Sara Boogers	Belgium	X	
Ksenija Dimec	Croatia		County court (court of appeal), civil department
Katerina Weissova	Czech Republic	X	
Marc Clement	France		Cour administra-tive d'appel Lyon
Françoise Nési	France		Cassation, ch. pénale; [civil]
Wanja Welke & Anja Wuest	Germany (Hessen)	X	
Jegor Cekanovskis	Latvia	X	
Lucia Giron	Spain	X	

1.5. Working topics

1/ Proportionality in prosecution decisions, prosecution sentencing claims & sentencing decisions

- England & Wales Sentencing Guidelines (2014)
- Recommendation n°177 (2015) on the gravity factors ad sentencing principles for the evaluation of offences against birds

2/ [your thoughts?]

3/ [your suggestions?]

1.6. Kick-off meeting 2 December 2016

***Draft** agenda*

1/ Team members WG 1-2-4: introduction

2/ The LIFE+ project: general outline

3/ The WG's: goals and outputs to deliver

4/ The database of crime cases

5/ The development of training materials

6/ Thematic work: the Cap & Gap Report

7/ Joint kick-off discussion first thematic topic WG 4: proportionality in prosecution and sanctioning

8/ Closing remarks and communications

2. The EU-background: relevant developments

2.1. The EU-wide evolution towards public law enforcement: a new reality …

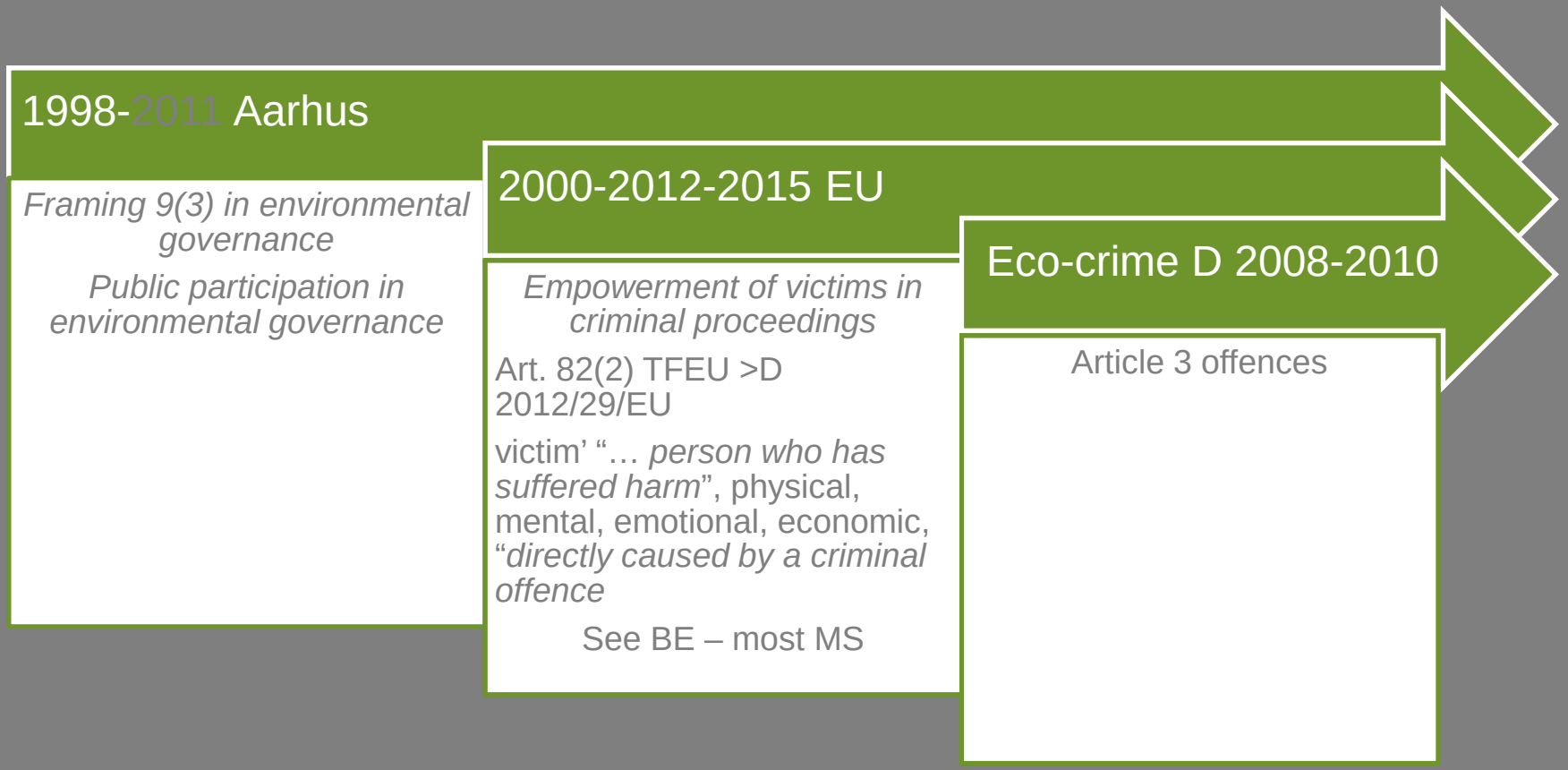
- *Today*, all 28 EU MS can sanction infringements of (EU-embedded) environmental law by criminal as well as administrative sanctions
  - See http://ec.europa.eu/justice/criminal/criminal-law-policy/environmental-protection/index_en.htm
- Increasingly both tracks are equipped with punitive (e.g. fines) and remedial (e.g. remedial order) sanctioning tools
  - Belgium, Portugal, England & Wales / Scotland, …
  - Dominant traditional pattern: criminal track punitive, administrative track remedial (e.g. Denmark, Finland, Ireland, The Netherlands)

➢ A system approach emerges: ‘public law enforcement’

… with prospects

- Policy debate: a growing demand for a further development of such two-track systems
  - EC (2011)
    - Evaluation study Eco-crime Directive: 'Relations between the administrative and criminal sanctioning systems'
    - COM(2011) 573 final 'Towards an EU Criminal Policy': 'In many cases, administrative sanctions may … be sufficient or even more effective than criminal sanctions'
  - EFFACE (2016), Conclusions and recommendations:
    - Proposal: make clear in the Eco-crime directive that not only criminal sanctions can provide effective, dissuasive and proportional sanctions
    - "*This suggestion is increasingly important in the light of developments in MS to increasing use of administrative sanctions*"
  - ENEC (2016), … (Birds Directive EC Study (2011))
- Co-existence tracks: issue *formal coordination mechanisms* (infringement categories , priority rules, …)
  - For instance Belgium. *Maturity indicator*

2.2. Civil society in criminal environmental law enforcement



…Rights of victims in criminal proceedings throughout the EU

Victim Status*	With active right-endowed status	Without active right-endowed status
Pre-trial stage	Austria, The Netherlands Belgium, Bulgaria, Estonia, France, Greece, Hungary, Luxembourg Portugal, Romania, Sweden Czech Republic, Latvia, Lithuania, Poland, Slovenia, Slovakia, Spain, Finland	Cyprus, Denmark, Ireland, UK (England & Wales, Northern-Ireland, Scotland) Croatia, Germany, Malta
Trial stage	Austria, Belgium, Croatia, Latvia, The Netherlands Bulgaria, Czech Republic, Estonia, France, Germany, Greece, Hungary Italy, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden Finland, Malta	Cyprus, Denmark, Ireland, UK (England & Wales, Northern-Ireland, Scotland)

https://e-justice.europe.eu/content_rights_of_victims_of_crime_in_criminal_proceedings , consulted 24 September 2016

2.3. Combining punishment with remedial sanctioning

- A question for the criminal sanctioning track
- Raising interest in this possibility, at least in debating it
- *Your insights?*

3. Concluding remarks, questions and invitation

- A wonderful opportunity
- At times with very interesting challenges
- Suggestions that deeply matter to you?
- Who is interested to be part of the expert stakeholders pool?

ENPE

Thank you

LIFE14 GIE/UK000043