EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

SUMMARY REPORT
TRAINING AND SPECIALISATION OF JUDGES IN ENVIRONMENTAL LAW
6 March 2019

EUFJE

Milieu Consulting

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EUROPEAN UNION FORUM OF JUDGES FOR THE ENVIRONMENT

QUESTIONNAIRE RELATING TO THE TRAINING AND SPECIALISATION OF JUDGES IN ENVIRONMENTAL LAW

Introduction

The European Union Forum of Judges for the Environment (EUFJE) held its inaugural meeting at the Court of Justice of the European Union (CJEU) in Luxembourg on 26 April 2004. The purpose of EUFJE is to promote, in the context of sustainable development, the implementation of national, European and international environmental law. More specifically, the association seeks to:

- share experience in judicial training in environmental law;
- foster knowledge of environmental law among judges;
- share experience in environmental case law;
- contribute to better implementation and enforcement of international, European, and national environmental law.

It was agreed at the inaugural meeting that the early work of EUFJE would be to obtain information about environmental law training facilities offered to members of the judiciary in each of the EU/EEA member states, as well as particular courts or tribunals which have jurisdiction in respect of environmental cases. EUFJE produced a report collating and analysing the 19 responses to the 2004 questionnaire.

EUFJE has met regularly since 2004, holding annual conferences:

- London 2005;
- Helsinki 2006;
- Luxembourg 2007;
- Paris 2008;
- Stockholm 2009;
- Brussels 2010;
- Warsaw 2011;
- The Hague 2012;
- Vienna 2013;
- Budapest 2014;
- Bolzano 2015;
- Bucharest 2016;
- Oxford 2017.

In advance of most of those conferences, EUFJE surveyed its members on various issues, with the findings presented at the meeting. Through these surveys, EUFJE has gained an insight into the ways in which a broad range of environmental issues are addressed in the member states. The conferences have addressed a wide range of environmental topics, including:

- Waste;
- Soil;
- Integrated pollution prevention and control (IPPC);
- Habitats;
- Strategic environmental assessment (SEA);
- Environmental impact assessment (EIA);
- Protection of the environment through criminal law;
- Human rights and the enforcement of environmental law;
- Climate change.

In 2018, EUFJE decided to revisit the topic of training and specialisation in environmental law, carrying out another survey of its members to obtain further information and establish any progress made since the original 2004 survey. Responses were received from members in 18 EU/EEA member states.

The 2018 survey saw some new member state respondents, which were not involved in the original survey in 2004:

- Bulgaria;
- Croatia;
- Czech Republic;
- Estonia;
- Hungary;
- Romania;
- Slovakia.

For these first-time respondents, this report sets out their approaches to training and specialisation in environmental law for members of the judiciary.

Some of the member judges who responded in 2004 did not provide an update in 2018:

- Austria;
- Germany;
- Greece;
- Ireland;
- Lithuania;
- Luxembourg;
- Portugal;
- Slovenia.

Here, this report includes their responses to the original 2004 survey. As no update has been given, these responses may not represent the current situation in those countries.

Members in the following countries responded in both 2004 and 2018:

- Belgium;
- Denmark;
- Finland;
- France;
- Italy;

- Norway;
- Poland;
- Spain;
- Sweden;
- the Netherlands;
- UK.

Some members did not respond to either questionnaire (2004/2018):

- Cyprus;
- Latvia;
- Malta.

The report presents a comparative analysis of training and specialisation in environmental law in those members' countries. This analysis tries to identify the progress made in those countries since 2004. The report is based solely on the answers provided by EUFJE member judges and a brief comparison with online sources[1], as the study accommodated neither in-depth nor long-term research. This report summarises the national reports and formulates recommendations based on the experiences of members and discussions at the 2018 conference in Sofia (16-17 November). Further details on the national responses can be found in each national report (available at: www.eufje.org).

The questionnaire had three parts:

1. Outline of the legal system and environmental protection laws;
2. Training and information;
3. Organisation of courts and enforcement agencies.

[1] For example, the United Nations Environment Programme (UNEP) Study on Environmental Courts and Tribunals, G. Pring and C. Pring, 2016, available on the EUFJE website and the European e-Justice portal, which includes a page on 'Access to justice in environmental matters' for most of the member states, with detailed information on their constitutions, judiciary, access to justice and standing, etc.

Responses to questionnaires in 2004 and 2018

Member State	Response to 2004 questionnaire	Response to 2018 questionnaire	Current status
Austria	Yes	No	Member
Belgium	Yes	Yes	Active member
Bulgaria	No	Yes	Active member
Croatia	No	Yes	Active member
Cyprus	No	No	Member
Czech Republic	No	Yes	Active member
Denmark	Yes	Yes	Active member
Estonia	No	Yes	Active member
Finland	Yes	Yes	Active member
France	Yes	Yes	Active member
Germany	Yes	No	Member
Greece	Yes	No	Active member
Hungary	No	Yes	Active member
Ireland	Yes	No	New member
Italy	Yes	Yes	Active member
Latvia	No	No	Member
Lithuania	Yes	No	Member
Luxembourg	Yes	No	Member
Malta	No	No	Member
Norway[2]	Yes	Yes	Active member
the Netherlands	Yes	Yes	Active member
Poland	Yes	Yes	Active member
Portugal	Yes	No	New member
Romania	No	Yes	Active member
Slovakia	No	Yes	Active member
Slovenia	Yes	No	New member
Spain	Yes	Yes	Active member

[2] Norway is not a member of the EU but is part of the EEA and Schengen.

Sweden	Yes	Yes	Active member
UK	Yes	Yes	Active member

1. Member responses to part I of the EUFJE questionnaire

This part of the report considers the responses to part I of the questionnaire, which asked:

What is the general nature of the system of law in your country (e.g. civil or common law)?
- Does it include constitutional protection of the environment?
- Does it include a general law protecting the environment?
- Does it include a code or compilation encompassing all (or a substantial part) of the laws relating to provisions on environmental protection?

Members' responses to these questions are summarised below.

Austria (2004)

Austria has a civil law system. There are several constitutional provisions for the protection of the environment, e.g. the Constitutional Act on Comprehensive Environmental Protection. The Austrian Constitution does not contain a fundamental right provision for the environment. Austrian environmental law is not codified into a single statute but is, rather, contained in several federal statutes, e.g. the Trade Act, the Clean Air Act for Boiler Plants, the Air Pollution Impact Act, etc. Austrian environmental law is mainly administrative (public) law.

Belgium

Belgium has a civil law system within which environmental law is included as part of statutory law.

The Constitution of Belgium includes an explicit provision on the right to enjoy the protection of a healthy environment (Article 23). This provision has no direct effect (i.e. it cannot be invoked by private persons in respect of authorities or third parties). However, it offers a framework for legislators, within which they can establish more specific rights for individuals. It also includes a standstill obligation, which provides that the level of environmental protection must be maintained. Environmental laws can nevertheless be relaxed, as long as this does not entail a lowering of the protection level, save for situations justified by reasons of public interest.

There is no Belgian code of environmental law. Powers are divided between the federal state and the three regions, thus environmental law is spread over different laws, decrees (Flanders and Wallonia) and ordinances (Brussels-Capital Region). However, there is a tendency towards compilation. The Walloon region has an Environmental Code and a Water Code, while the Flemish '*Decree of 5 April 1995 including General Provisions regarding Environmental Policy*' contains the enforcement provisions for different 'sectoral' decrees.

Bulgaria

Bulgaria has a civil law system. Article 55 of the Bulgarian Constitution sets out the right to a healthy and favourable environment as a fundamental constitutional right.

The 2002 Environmental Protection Act (EPA, SG No. 91) is the key framework law for environmental protection, regulating (among others): environmental authorities, access to information, EIA and prevention of industrial pollution. Further specific legislation exists for waste, climate change mitigation, air quality, water, protected areas, biodiversity, genetically modified organisms (GMOs), chemicals, noise and soil.

Croatia

Croatia has a civil law system, which ensures constitutional protection of the environment and a general law protecting the environment. It does not have an environmental code.

Czech Republic

The Czech Republic has a civil law system. The Preamble to the Constitution of the Czech Republic provides a basic proclamation on the protection of the environment, while Article 7 of the Constitution requires the state to use its natural resources prudently and to protect its natural wealth. These provisions do not confer rights to individuals.

Article 35(1) of the Charter of Fundamental Rights and Freedoms grants the right to a favourable environment, but its significance is diminished by Article 41, which stipulates that it is enforceable merely through and in the scope of regular laws implementing it. There is no individual act that deals comprehensively and specifically with this right and its protection.

Broadly, the right to a favourable environment is reflected in the levels of pollution in water, air and soil protection legislation, supported by the procedural framework that provides for public participation in decision-making and access to justice. It is likewise reflected in the legal regulation of the rights of neighbours (§ 1013 of Act No. 89/2012 Sb., Civil Code). More specifically, the right to a favourable environment is explicitly recognised by the Civil Code within the protection of personality (§ 81(2) of the Civil Code). The right to a favourable environment has rarely been litigated in the courts.

Czech environmental law is dispersed across a number of regulations. Despite attempts to compile environmental protection laws into a code, no such code yet exists.

Denmark

Denmark has a civil law system. The Danish Constitution does not guarantee the right to a safe and healthy environment. Danish environmental law consists of a comprehensive system of rules, some of which comprise different sorts of regulations and various competent authorities. Danish environmental law is strongly rooted in administrative law.

Estonia

Estonia has a civil law system. The Constitution of the Republic of Estonia stipulates that the natural wealth and resources of Estonia are national resources, which must be used sparingly and that '*everyone has a duty to preserve the human and natural environment and to compensate for harm that he or she has caused to the environment'*. The Constitution does not consider the right to a clean environment or to environmental information to be fundamental rights.

In Estonia, there is no single law protecting the environment. Rather, this protection is divided amongst many different pieces of legislation. The general part of the Environmental Code Act creates the basis for more detailed laws and regulations on environmental protection by providing the most important legal definitions and stipulating the principles and main duties of environmental protection, duties of the operator, environmental rights and the process of granting environmental protection permits.

Estonia also has a range of more specific environmental legislation, the most important of which is the Nature Conservation Act. There is also the Water Act, the Forest Act, the Environmental Impact Assessment Act, the Environmental Management System Act, and the Environmental Liability Act.

Finland

Finland has a civil law system. The Constitution of Finland includes an explicit – although somewhat declaratory - provision on the environment: '*the nature, biodiversity, the environment and cultural heritage shall be a responsibility of everyone'* and '*the public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment'*.

Environmental law in Finland is not codified but, rather, contained in several acts, such as the Environmental Protection Act (covering the general field of pollution control) and the Waste Act (covering relevant parts of waste management). There is also legislation covering nature protection, water management, planning and building, and mining. Technical norms (such as emission limit values) are implemented by decrees of the Council of State. Most of the environmental cases fall within the domain of administrative law.

France

France has a civil law system. Its Environmental Charter ensures constitutional protection of the environment. France has an Environmental Code, which covers (among others): participation, EIA, the protection of natural species and of natural sites, fishing and hunting, regional industrial activities, waste, GMOs, control of chemical products and radioactive substances.

Germany (2004)

Germany has a civil law system. While German law includes constitutional protection of natural foundations of life and animals, there is no general law protecting the environment. This is because legislative competence for the environment is shared between the federal government and the federal states (*Länder*).

The federal legislation is aimed at polluting or dangerous industries and includes aspects of air and soil pollution, the treatment of waste and GMOs. While water protection and nature have framework laws, their details are regulated by the *Länder* and there is no consolidated system of environmental law.

Greece (2004)

Greece has a civil law system, which has provided constitutional protection of the environment since 1975. Greek law addresses the environment quite extensively, including the protection of nature (general fauna and flora, forests, protection of habitats, wetlands, mountains, coastal regions, etc.) and a general law protecting the environment (Law 1650/1986).

Although there is no environmental code or consolidated body of environmental law, a special commission considers the codification and improvement of environmental law.

Hungary

Hungary has a civil law system, and provides constitutional protection of the environment in addition to a general law protecting the environment.

The Hungarian Constitution of 2011 includes a number of important references to the environment. It includes provisions ensuring everyone's right to a healthy environment, as well as an obligation to restore (or pay for the restoration of) any damage done to the environment. It also includes an obligation to protect, maintain and guard natural resources, especially soils, forests, waters, biological diversity and cultural values. Sustainable development is mentioned in the Constitution as one of the national objectives.

Act LIII of 1995 on General Rules of Environmental Protection contains relevant legislation.

Ireland (2004)

Ireland has a common law system. It does not provide any specific constitutional protection for the environment. Environmental law is not codified in any single Act, but is, rather, contained in Acts of the parliament (*Oireachtas*), European legislation and case law. Environmental law is highly regulated in Ireland.

Note from the editors: In 2017, the High Court in Ireland recognised the right to the environment as one of the unenumerated rights protected under Article 40(3) of the Constitution of the Republic of Ireland: '*A right to an environment that is consistent with the human dignity and well-being of citizens at large is an essential condition for the fulfilment of*

all human rights. It is an indispensable existential right that is enjoyed universally, yet which is vested personally as a right that presents and can be seen always to have presented, and to enjoy protection, under Art. 40.3.1 of the Constitution. It is not so utopian a right that it can never be enforced.'[3]

Italy

Italy has a civil law system. Since 2001, environmental protection and the protection of ecosystems are enshrined in Article 117 of the Constitution, as a competence of the state. Before 2001, environmental protection was indirectly assured by Article 9 (landscape) and Article 32 (human health) of the Constitution.

Environmental law in Italy is not codified in a single Act. DLV 152/2006 attempted to codify the most important environmental laws in a single act (concerning general principles, air and water pollution, waste management, etc.). However, many legal matters remain codified by individual acts. Law 349/86 established the Italian Ministry for the Environment.

Lithuania (2004)

Lithuania has a civil law system. Environmental protection is enshrined in part 3 of Article 53 of the Constitution, which states '*the state and each person must protect the environment from harmful influences*'. Article 54 goes on to say, '*the State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and shall supervise the sustainable use of natural resources, as well as their restoration and increase.*

The destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, shall be prohibited by law.'

There is no single code designed for environmental protection. Lithuania's environmental law is highly regulated, addressing environmental protection, protected territories, land and forestry.

The Code of Administrative Violations of Law, the Civil Code and the Criminal Code all provide for liability for violations committed against nature.

Luxembourg (2004)

Luxembourg has a civil law system. While there is no specific constitutional protection of the environment, there is a general law protecting the environment and a consolidated system of environmental law.

[3] Friends of the Irish Environment CLG v Fingal County Council [2017] IEHC 695.

Norway[4]

Norway has a mixed legal system with features of both civil and common law. The Norwegian Constitution (Article 112) stipulates that:

'*Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.*

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles.'

Debate is ongoing as to whether this provides citizens with specifically enforceable rights or if it is merely a guideline for drafting legislation or a principle of interpretation.

Norway has several environmental laws, such as the Greenhouse Gas Emissions Trading Act, the Pollution Control Act, the Climate Act (which applies to the Nationally Determined Contribution ('NDC') as registered in the NDC register under the Paris Agreement) and sector-specific legislation.

Poland

Poland has a civil law system, which is based on codified law and includes constitutional, administrative, civil and penal law. The Polish Constitution provides a high level of protection for the environment. Under Polish constitutional law, environmental protection is a duty of the public authorities and private persons.

The law of environmental protection is codified law. The most significant elements of environmental protection law are included in administrative law, with additional protections in civil legal and penal norms. Finally, municipal authorities are entitled to protect the environment by enactment of legislation, which is in force on their territory.

Portugal (2004)

Portugal has a civil law system. It provides for constitutional protection of the environment, a general law of environmental protection (Law 11/87 - 7 April) and a consolidated system of environmental law.

Romania

The Romanian legal system includes constitutional protection of the environment (Chapter II, Article 35 Romanian Constitution, 'The right to a Healthy Environment').

[4] Norway is not part of the EU but is part of the EEA and Schengen.

There is a general law protecting the environment (the Environmental Protection Law (137/1995)) and a significant number of other specific pieces of legislation.

There is, however, no code or compilation encompassing all (or a substantial part of) the laws relating to provisions on environmental protection.

Slovakia

Slovakia has a civil law system. There is no general law protecting the environment, nor an environmental code. Instead, environmental provisions are included in a large number of laws and decrees. The Slovak Constitution creates the main legal framework for environmental protection, with its Article 44(1) stipulating that *'everyone shall have the right to a favourable environment'*. It goes further, including a positive obligation to protect the environment, as well as an obligation not to imperil or damage it beyond the limits laid down by law. The Slovak state is responsible for caring for ecological balance and effective environmental policy, as well as securing protection of certain species of wild plants and animals. The right to a favourable environment is not absolute but limited by Slovak legislation.

Slovenia (2004)

Slovenia has a civil law system. The Slovenian Constitution contains a general provision for the protection of the environment. Its Article 5 provides for the preservation of natural wealth and creates opportunities for the harmonious development of society and culture in Slovenia. Article 72 of the Constitution guarantees a healthy living environment.

There is no single code designed for the protection of the environment but there is a general law protecting the environment. The Environmental Protection Act 2004 similarly guarantees the constitutional right to a healthy environment.

Spain

Spain has a civil law system. According to Article 45 of the Spanish Constitution, '*everyone has the right to enjoy an environment suitable for the development of the person, as well as the duty to preserve it (par. 1). The public authorities shall watch over a rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on an indispensable collective solidarity (par. 2). For those who break the provisions contained in the foregoing paragraph, criminal or, where applicable, administrative sanctions shall be imposed, under the terms established by the law, and they shall be obliged to repair the damage caused (par. 3).'*

The Spanish state has primary competence in respect of environmental protection, but the self-governing communities (*communidades autonomas*) can take additional protective measures.

Environmental law is scattered over many different laws, such as Law 21/2013 on Environmental Impact Assessment for plans and projects, Law 27/2006 on the Rights of Access To Information, Public Participation and Access To Justice in Environmental Matters,

the Environmental Liability Law 26/2007, Law 22/2011 on Waste and Soil Contamination, Law 42/2007 on Natural Heritage and Biodiversity, Law 34/2007 on Air Quality, and Royal Legislative Decree 1/2016 on Integrated Pollution Prevention and Control.

Sweden

Sweden has a civil law system. While the Swedish Constitution does not contain any provision expressly protecting the environment, it does include a provision relating to sustainable development. This states that the public institutions shall promote sustainable development leading to a sound environment for present and future generations.

The Swedish Environmental Code, which entered into force on 1 January 1999, is a major piece of legislation containing the basic general principles of environmental law. The Environmental Code replaced provisions from 15 legal acts and is generally applicable to all (or most) aspects of the environment. More detailed provisions are laid down in a large number of ordinances issued by the government and environmental authorities.

The Netherlands

The Netherlands has a civil law system. While the Dutch Constitution does not provide for a substantive right to a clean and healthy environment, its Article 21 states that the government must take care to protect the environment.

There is no single code protecting the environment. The general Environmental Management Act (*Wet Milieubeheer*) was enacted to harmonise environmental legislation. This provides general rules for various topics, from substances and waste to enforcement, publicity of environmental data and legal remedies. It is a framework law, which is still being developed.

The most important instruments within the Environmental Management Act are environmental plans and programmes, quality requirements, permits, general rules and enforcement. The law also contains the rules for financial instruments, such as levies, contributions and damages.

More specific rules are developed in decisions (general administrative measures or administrative orders) and ministerial regulations.

The Environmental Management Act will be subsumed into the Environmental Act (*Omgevingswet*) as of 1 January 2021. The new Environment Act will integrate more than 20 laws, hundreds of administrative measures and ministerial regulations and 40 plans in the areas of space, living, infrastructure, environment, nature and water.

Other acts, such as those on Town and Country Planning, Nature Protection, Food Security, Hunting and Fishing, also provide environmental protection.

UK

The UK has a common law system. It does not provide for constitutional protection of the environment. The system of law in the UK is made up of primary legislation (Acts of Parliament: statutes or enactments), secondary legislation (regulations, rules and orders: statutory instruments) and case law (made by the judiciary).

The Acts of Parliament include the Environmental Protection Act 1990, the Clean Neighbourhood and Environment Act 2005, and the Climate Change Act 2008.

Regulations include the Air Quality Standards Regulations 2010, the Environmental Permitting (England and Wales) Regulations 2010, and the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

Conclusions and recommendations on part 1 of the report: on the nature of environmental law

Most of the EU/EEA member states have a civil law system (except for Ireland and the UK, which have common law systems). Environmental law is generally statutory law.

Many member states have constitutional provisions protecting the environment, mostly without direct effect but counting as guidelines or principle declarations.

Other than in France and Sweden, there are no codes encompassing all of the laws relating to environmental protection.

Environmental law is scattered over many sectoral laws, e.g. on waste, air quality, water, soil, noise, protected species and areas. Environmental law is transversal and can be found in general criminal, civil and administrative law. Different authorities are involved in the national implementation and enforcement of environmental law.

Environmental law is highly regulated, often scientific in nature, and complex. It is constantly changing because of the need to implement European directives and jurisprudence.

These special features mean that training and specialisation of judges are crucial for efficient, correct and effective adjudication of environmental cases.

2. Member responses to part 2 of the EUFJE questionnaire

2.1 Training

2.1.1 General organisation of training

(a) Initial training before taking office

There are various ways to become a judge in many EUFJE members' jurisdictions. These differences in selection criteria have resulted in different levels and types of initial training.

In the 2004 report on training and information, EUFJE identified three models for the initial training of judges, based on member state practices: (1) little or no initial training; (2) decentralised initial training, which primarily involves shadowing senior judges; (3) formal training for judges, which is usually centralised and may have distinct training streams for judicial and administrative judges.

The survey of members in 2018 revealed that many of the member countries fall within more than one of these categories.

In several jurisdictions, initial training depends on the level of experience and expertise of the judge on entering the profession. In the UK and Ireland, for example, only very experienced lawyers can become judges. Due to their extensive knowledge of the law and experience in practice, they are capable of delivering high quality decisions without training. In such circumstances, little or no initial training is provided.

Other countries, such as Bulgaria recruit new judges via a competition. These new recruits are required to carry out a nine-month structured training programme at the National Institute of Justice, followed by mentorship from experienced judges.

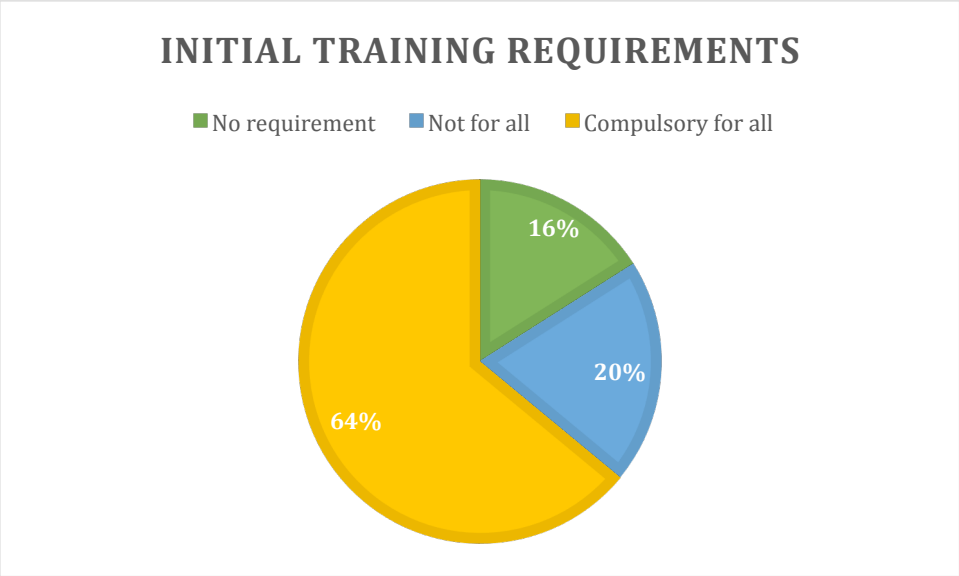
Most members responding to the questionnaire identified more than one category of candidates recruited to the judiciary and more than one training method.

While the three models from the 2004 study have been maintained for the purposes of comparison, members with a mix of training structures at the initial stage have also been identified. Where initial training is required for some or all new judges, members often use a combination of centralised and decentralised training.

The three differentiated models are:

- Little or no initial training for judges;
- Decentralised training;
- Training through a centralised establishment.

Almost two-thirds of countries have compulsory initial training for all judges.



1. **Little or no initial training for judges:** this generally reflects the experience of the judges prior to their recruitment to the judiciary. It is possible to become a judge in the following countries with little or no initial training:

    - Czech Republic – it is possible for applicants with no court experience or training to be appointed as judges. Initial training is voluntary. There is a proposal that candidates register as trainees, gain five years' experience and pass an exam. This is an internal instruction within the Ministry, which was not yet discussed and is not likely to be implemented.
    - Denmark – judges are recruited from among experienced practitioners.
    - Estonia – there is a mandatory training programme for newly appointed judges, but no training before assuming office.
    - Finland – experienced candidates may become judges without following the traditional formal training programme.
    - Hungary – there is a structured route to becoming a judge, but those who have worked as legal advisors for one year after their bar exam can also become judges.
    - Ireland - judges are recruited only from among very experienced legal practitioners.
    - The Netherlands – legal practitioners with minimum experience are not required to complete the training course.
    - Poland – there is a structured training programme for lawyers with three years' experience. Some experts, such as professors, prosecutors and chairmen or advisors to the General *Prokuratoria*, can become judges without being required to complete the programme.
    - Slovakia – there is a structured training programme but it is possible for lawyers who were trained by the Slovak Bar Association rather than the Judicial Academy to become judges.
    - UK – judges are recruited only from among very experienced legal practitioners.

    In summary, there is little or no initial training requirement for any judges in the following member states:

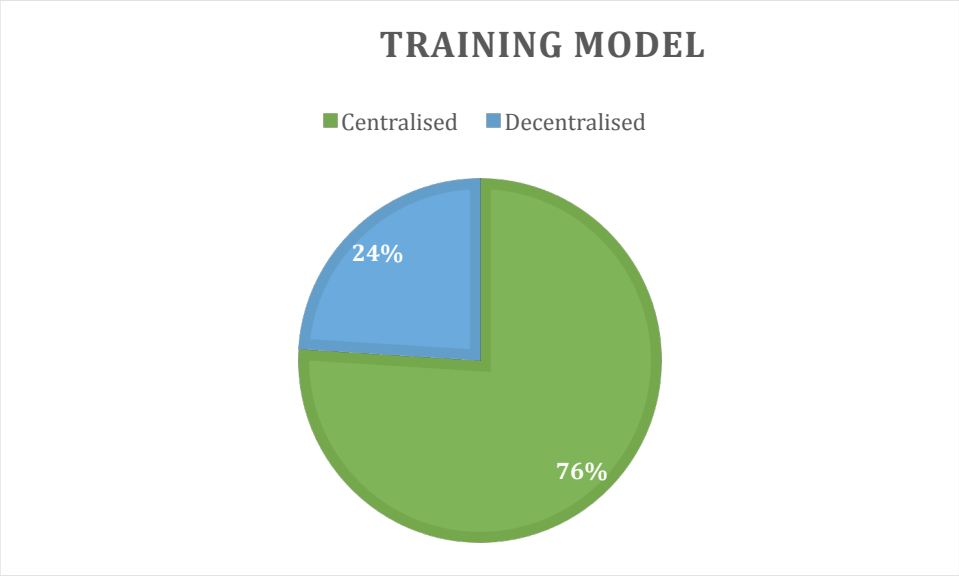
- Czech Republic;
- Denmark;
- Ireland;
- UK.

The following member states have an initial training requirement but it does not apply to all new judges:

- Finland;
- Hungary;
- The Netherlands;
- Poland;
- Slovakia.

Finally, all judges from the following countries are required to participate in initial training:

- Austria (2004 study);
- Belgium;
- Bulgaria;
- Croatia;
- Estonia;
- France;
- Germany (2004 study);
- Greece (2004 study);
- Italy;
- Lithuania (2004 study);
- Luxembourg (2004 study);
- Norway;
- Portugal (2004 study);
- Romania;
- Slovenia (2004 study).



2. **Decentralised training:** in some countries training consists of shadowing existing judges, often to complement formal training. Some countries, however, provide solely this type of training:

    - Austria (2004);
    - Denmark (2004);
    - Germany (2004);
    - Luxembourg (for judicial judges) (2004);
    - Slovenia (2004);
    - UK (for magistrates).

3. **Training provided through a specialised training body:** Some countries have centralised training bodies that provide programmes for both new and experienced judges. In some cases, these organisations provide specific training for new judges. This varies from comprehensive training to short courses, depending on the country. This training is sometimes combined with internships in the courts:

    - Belgium – an Institute of Judicial Training was created in 2007 to provide mandatory courses and practical training for those qualifying as judges via judicial traineeship. Experienced lawyers can become judges via professional capacity exams or oral exams. They do not have a training period but must attend certain mandatory courses, e.g. on the editing of sentences in civil or criminal matters;
    - Bulgaria – the National Institute of Justice provides compulsory training;
    - Croatia – the Croatian Judicial Academy and apprenticeship with the courts;
    - Czech Republic – the Judicial Academy, but the courses are not compulsory;
    - Finland – the Judicial Training Board provides training to those who have passed a pre-selection exam to become a junior judge;
    - France – École Nationale de la Magistrature;
    - Greece (2004) – National Training Centre for Judges;
    - Hungary – the Hungarian Judicial Academy and apprenticeship with the courts. It is also possible to become a judge by working for at least one year as a legal advisor after passing the bar exam;
    - Italy – School for the Judiciary;
    - Lithuania (2004) - National Training Centre for Judges;
    - Luxembourg (2004) – National Institute of Administrative Training;
    - The Netherlands – law graduates who have completed a short course;
    - Norway – the Norwegian Courts Administration has a one-year training programme;
    - Poland – training was decentralised in 2004 but a National School of Judiciary and Prosecution was established in 2009 and judges now complete its 36-month apprenticeship;
    - Portugal (2004) – the National Training Centre for Judges;
    - Romania – National Institute of Magistracy. Since October 2018, both the length of the internship and the duration of initial training has doubled in Romania. Judges now have four years initial training and a two-year internship;

- Slovakia – Judicial Academy of the Slovak Republic. Judicial candidates who start either as bailiffs or judicial aspirants are trained by the Judicial Academy;
- Sweden – the Court Academy and apprenticeships or traineeships within the courts;
- Spain – the Escuela Judicial organises initial and continuous training.

(b) Continuous training

Continuous training is available to some extent in the member states of all of the 2018 questionnaire respondents. In 2004, no continuous training was offered in either Greece or Luxembourg. Training is provided in environmental law in Greece on an annual basis, which suggests that continuous training of the judiciary in Greece has improved[5].

Training is offered at an EU level, as well as a national level.

The Academy of European Law[6] (ERA) offers seminars and courses on EU law, which are attended by members of the judiciary from across the EU. The European Judicial Training Network[7] (EJTN) develops training standards and promotes training programmes for judges within the EU. The EJTN also encourages cooperation between EU judicial training institutions and knowledge exchanges between members of the judiciary. The EJTN organises 300 seminars and 2,600 exchanges each year[8].

Where training is offered at a national level, a distinction can be made between optional and mandatory training, as well as between centralised and decentralised approaches.

Continuous centralised or decentralised training

Most countries offer some form of centralised continuous professional training to judges.

Centralised continuous professional training is available in the following member countries:

- Austria (2004) – Minister of Justice;
- Belgium – Institute for Judicial Training (created in 2007 and operational since 2009);
- Bulgaria – National Institute of Justice;
- Croatia - Croatian Judicial Academy;
- Czech Republic – Judicial Academy;
- Denmark – Administration of the Courts;
- Estonia – Training Council in collaboration with the Training Department of the Supreme Court of Estonia;
- Finland – Judicial Training Board (new since the 2004 report);
- France –École Nationale de la Magistrature ;
- Germany (2004) ;
- Hungary – Hungarian Judicial Academy;
- Ireland (2004) – Judicial Studies Institute;
- Italy – School for the Judiciary;

[5] European Academy of Law, Mapping the environmental law training offer in the member states 2015-2016.
[6] https://www.era.int/cgi-bin/cms?_SID=NEW&_sprache=en&_bereich=ansicht&_aktion=detail&schluessel=era
[7] http://www.ejtn.eu/About-us/
[8] European Judicial Training Network, 2018 EUFJE Annual Conference, available at: https://www.eufje.org/images/docConf/so2018/so2018_presWP.pdf

- Lithuania (2004);
- Netherlands – Institute of Judicial Studies;
- Norway - Norwegian Courts Administration and National Conference;
- Poland – National School of Judiciary and Prosecution;
- Portugal (2004);
- Romania – National Institute of Magistracy;
- Slovakia – Slovak Judicial Academy;
- Slovenia (2004);
- Spain – Judicial Council;
- Sweden – Court Academy;
- UK – Council of Judicial Studies for professional judges (for magistrates, the training remains decentralised) (2004).

The 2004 study identified Poland as the only country with an entirely decentralised training model, since which time Poland has begun to offer training in a centralised way. In the UK, training for magistrates is decentralised. Some members noted that courses are being made available electronically (Croatia, Sweden).

In most of EUFJE's member countries, decentralised training is used to complement centralised training, with some recognising informal training:

- Finland – some training is devolved to the courts;
- France – training can be provided by other organisations;
- Italy – local training is provided;
- Norway – training is offered by lawyers' associations and other organisations;
- Poland – training events are also organised by divisions, at judges' requests;
- Romania – decentralised in the Courts of Appeal but take place in cooperation with the central body;
- Sweden – specialised training may be provided in a decentralised way, e.g. Nacka Land and Environment Court decides on a training programme each year;
- Slovakia – self-study, seminars, exchange of experience and internships are also recognised. Short courses are also prepared by the courts.

Mandatory or optional continuous legal training

Continuous legal training is mandatory in the following countries:

- Belgium – training is compulsory in some specialist areas, e.g. for family, examining and juvenile judges, but not for environmental judges or prosecutors;
- Bulgaria – training can be made compulsory in specific circumstances by the Supreme Judicial Council, e.g. promotion, specialisation or appointment as administrative head;
- Czech Republic – updates on administrative law are provided at annual meetings, at which attendance is compulsory;
- France – training is mandatory to a certain point in a judge's career;
- Ireland (2004) - judges appointed after a 1995 law commit to undertaking those courses considered necessary by the head of the jurisdiction. Aside from the annual court conference, training takes place after hours or on Sundays;
- Italy - training can be compulsory for certain positions, e.g. chief positions in the courts of first or second instance must complete specific compulsory training courses;

- Lithuania (2004) – such training is compulsory at least once every five years, as well as in specific instances, e.g. promotion, changing courts, promotion, substantial legislative changes;
- Poland - it is compulsory to attend training organised by the National School of Judiciary and Prosecution;
- Romania – it is compulsory to attend at least one training event every three years, supervised by the National Institute of Magistracy;
- Slovenia (2004);
- UK.

In countries where continuous training is mandatory, such training is always financed by the state but does not always lead to a reduced workload.

Continuous professional training is optional in most countries.

Judges may have a general requirement to maintain their expertise (Bulgaria, Czech Republic, Finland, Slovakia) or training may be considered for career advancement (Belgium, Estonia, Hungary, Italy, Norway, Poland, Romania and, to some extent, Finland).

Some countries also demonstrate their support for training by allowing judges time off to participate in training (Croatia, Czech Republic, Denmark, Estonia, France, Hungary, Italy, Norway, Romania, Slovakia and Sweden), incorporating it into the court calendar (Finland) or creating a right to training (Bulgaria). It should be noted, however, that this leave can be notional, as the same workload remains when the judge returns from training.

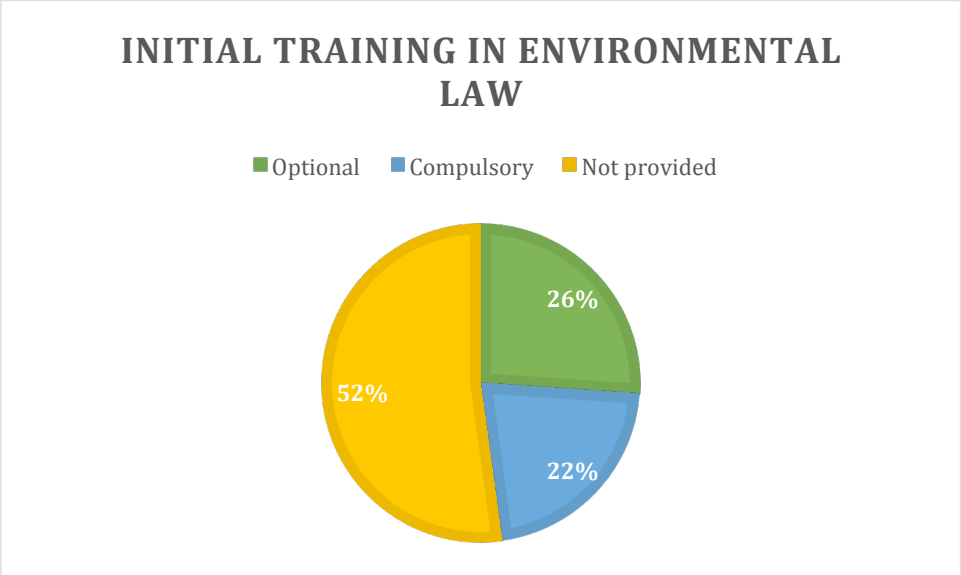
2.1.2 - Training in environmental law

One of the key goals of this study was to identify current recruitment and training practices in relation to environmental law. Given the complex and technical nature of environmental law, it is important that judges are provided with training to ensure its effective implementation in member states.

(a) Recruitment

As recorded in the 2004 report, no country requires a judge/trainee judge to have studied environmental law at recruitment stage.
Finland does require applicants to hold a Masters-in-Law to become a judge, and environmental law forms a mandatory part of that qualification.

(b) Initial training
Training in environmental law is not usually offered as part of the initial training and is rarely a compulsory element of judges' initial training.



There are some exceptions:

- Belgium – only one day of training on environmental law is compulsory for those who go through judicial training (the judicial training takes 24 months in total);
- Bulgaria – environmental law is part of the initial training of judges;
- Germany (2004);
- Italy – all judges attend seminars on environmental law as part of their initial training;
- Portugal – the initial training curriculum for judges includes 15 hours of training in environmental law[9].

Spain offered training in environmental law as part of initial training in 2004, but it is unclear if this is still the case.

[9] European Academy of Law, Mapping the environmental law training offer in the Member States 2015-2016.

In other countries, training on environmental law is offered at the initial stage but is not compulsory.

It is important to note that the voluntary nature of training in environmental law at this stage does not necessarily result in a lower level of training in environmental law. In Sweden, for example, while training in environmental law is optional, there is a specific environmental law track within judicial training, which allows judges to specialise in environmental law and work within specialised courts. This means that not all judges are trained in environmental law, but those who need environmental law for their work within specialised courts are given tailored training for this work. Sweden has chosen to focus the training in environmental law where it is needed rather than training all judges in this area. In other countries, exposure to and/or training in environmental law can form part of internships/externships/pupillage (Belgium, France, Poland). The Czech Republic and Finland have offered environmental law options either as part of initial training or as part of the general training available to those at the start of their career.

(c) Continuous training

Training in environmental law has gained importance since 2004 and is offered as part of continuous training in many jurisdictions:

- Belgium - offered every year or every two years;
- Bulgaria – offered on a continuous basis;
- Croatia – two courses were offered this year for the first time;
- Czech Republic – seminars are usually offered annually. Judges are also encouraged to participate in EU training, but uptake is low;
- Denmark – an average of three hours training in environmental law is provided annually[10];
- Estonia – provided twice a year and judges are free to participate in additional training;
- Finland – training in environmental law is offered;
- France – some specialised courses have been provided. The National School of Magistracy offers an annual course[11];
- Greece – an average of 28 hours' training in environmental law is provided annually[12];
- Hungary – specialist training is offered;
- Italy – environmental law seminars are offered as part of the annual training programme;
- The Netherlands – the Judicial Training Institute provides a course in environmental and planning law (approximately 120 hours) and training on specialist topics in environmental law[13]. In addition to this, environmental law training, conferences and internships are offered annually in the catalogue;
- Poland – may be provided on request to the chairman of the division. It has been organised for first instance administrative courts on an annual basis since 2010[14];
- Portugal (2004);
- Romania – previously at least one event per year[15] but this appears to have been stopped due to a lack of uptake;

[10] European Academy of Law, Mapping the environmental law training offer in the Member States 2015-2016.
[11] ibid.
[12] ibid.
[13] ibid.
[14] ibid.

- Spain - at least one event per year[16];
- Sweden - the Court Academy provides training on environmental law, which is open to all judges. It liaises with the judiciary and the Land and Environment Court to identify training needs. Specialised training may also be provided within the courts;
- Slovakia – at least one event per year[17]. It was noted that these courses are not popular. The training was open to all judges and bailiffs.

The ERA carried out a survey on training in environmental law for members of the judiciary between 2015 and 2016.

The survey identified 10 member states that do not organise training in environmental law for judges or send their judges to other training providers for such training. Where the respondents were asked why no environmental law training was provided, their responses typically indicated that there were too few cases, too few judges working in the field, no interest, or no identified need for such training. Since that survey, the situation has improved in two of the 10 member states: Croatia and France have provided courses in environmental law, while Poland has noted that such training can be provided on request. The ERA also provides training in European environmental law. Since 2009, it has designed 16 training modules on the topic and held over 50 workshops for 1,200 judges and prosecutors in the framework of the 'Cooperation with national judges in the field of environmental law' project, sponsored by the European Commission[18]. However, only four of the 18 respondents to the EUFJE survey indicated that they had used the training materials prepared at EU level.

Where such training is not offered formally, judges are usually free to attend external training events in the area of environmental law.

(d) Assessment of training

The European Commission has produced guidance for training providers in relation to judicial training[19]. It recognises the importance of judicial training in the development of a European area of justice. It also notes that '*Training needs should be evaluated regularly, and topics should evolve with changes in legislation and case law*'[20].

Most survey respondents indicated that national training plans/programmes are produced and offered to judges. The preparation of these plans and programmes usually involves some degree of consultation with the judiciary, both formally and through feedback on training:

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[15] European Academy of Law, Mapping the environmental law training offer in the Member States 2015-2016.
[16] ibid.
[17] ibid.
[18] http://ec.europa.eu/environment/legal/law/training_package.htm
ERA training on EU Environmental Law, 2018 EUFJE Conference, available at:
https://www.eufje.org/images/docConf/so2018/so2018_presJPR.pdf
[19] European Commission – Directorate-General for Justice, Advice for training providers: European judicial training, 2015, available at:
http://ec.europa.eu/competition/calls/2019_judges/useful_advice_training_providers_2019_en.pdf
[20] ibid., p. 3.

- Belgium – the High Council of Justice establishes the guidelines for programmes for continuous training. In a 2014 study[21] carried out by the EJTN, the training needs assessment of the Judicial Training Institute of Belgium – which uses a competence matrix - was identified as a promising practice;
- Bulgaria – the National Institute of Justice collects information from the courts on training needs annually;
- Croatia – stakeholders and regional training centres complete annual training needs assessment questionnaires, which the Programme Council of the Croatian Judicial Academy then uses to make proposals. This was classified as a promising practice in the 2014 study on best practices in training judges and prosecutors[22];
- Czech Republic– the Ministry and Judicial Academy consider feedback from previous training;
- Estonia – the Legal Information and Judicial Training Department at the Supreme Court of Estonia produces an annual plan. While it considers feedback from training carried out that year, its information is primarily based on ongoing communication with the judges. The programme must be approved by the Training Council[23]. In 2014, Estonia's use of court practice analysis as a tool to identify training needs and assess the impact of training was identified as a promising practice[24];
- France – through feedback forms distributed to the judges who follow trainings in environmental law;
- Hungary – content determined by the Hungarian Judicial Academy;
- Poland – the National School of Judiciary and Prosecution/the Minister at its own initiative or at the request of the Chairman of the Court of Appeal. In 2014[25], Poland's work on developing competency profiles for each judge was classified as a promising practice in training needs assessment;
- Romania – revised annually by the National Institute of Magistracy. In a 2014 study[26], Romania's structured procedure to determine training needs was identified as a good practice;
- Slovakia – Slovak Judicial Council creates an annual academic plan, in cooperation with the board of the Judicial Academy and with the consent of the Minister. The courts also prepare other courses independently;
- Spain – content determined by the director of the course;
- Sweden – reviewed annually by the Court Academy, which provides training on environmental law. It liaises with the judiciary and the Land and Environment Court to identify training needs.

The EJTN Handbook on Judicial Training Methodology in Europe highlights the importance of continuous training needs assessment for judges through surveys, questionnaires, observation and identification of tasks, and career development discussions[27]. The EJTN has

[21] European Judicial Training Network, Pilot Project – European Judicial Training 'Lot 1 – Study on best practice in training judges and prosecutors, 2014.
[22] ibid.
[23] The Training Council is a judges' self-governmental body comprised of 2 judges of a court of first instance, two judges of a court of appeal, two justices of the Supreme Court, a representative of the Prosecutor's Office, a representative of the Ministry of Justice and a representative of the University of Tartu School of Law.
[24] ibid.
[25] ibid.
[26] ibid.
[27] European Judicial Training Network, EJTN Handbook on Judicial Training Methodology in Europe, 2016, available at: http://www.ejtn.eu/News/The-EJTN-Handbook-on-Judicial-Training-Methodology-now-available-in-23-languages/

also produced Guidelines for Evaluation of Judicial Training Practices[28] to evaluate training activities. The guidelines set out an evaluation of training programmes based on Kirkpatrick's four levels of evaluation model.

[28] European Judicial Training Network, Judicial Training Methods: Guidelines for Evaluation of Judicial Training Practices, 2017, available at: http://www.ejtn.eu/PageFiles/17381/EJTN_JTM%20Guidelines%20for%20Evaluation%20of%20judicial%20Training%20Practices%20Handbook%202017.pdf

2.2 Availability of information on environmental law

(a) Existence of environmental case law periodicals

Respondents indicated that national environmental case law (lower courts) is not always published online. Nor do the courts in which they work always provide a paid subscription to specialist environmental law journals.

The Netherlands, Norway and Spain have some form of specialised environmental case law periodicals or databases. The Swedish Land and Environment Court of Appeal publishes all of its rulings on its website. In Italy, there is a national database that classifies cases by theme.

In the UK, several journals and bulletins provide updates or commentary on recent environmental legislation and case law. In Denmark, the legal magazine, *Miljøretlige Afgørelser og Domme* (Environmental case law) publishes all judgments from the CJEU on environmental matters, with a short summary, as it does for Danish case law. The magazine is published electronically by the Karnov Group and most judges have a subscription to the magazine.

Some innovative solutions are evident, such as the collaborative database of environmental case law of the Court of East Flanders in Belgium, and the Czech Environmental Law Magazine, an online publication that comments on recent Czech cases in this area.

(b) Judges' computer equipment

Most respondents noted that judges were provided with computers. No respondent specified that no computer was provided.

Judges have access to a wide range of databases in several EUFJE member countries:

- Belgium – access to all databases;
- Bulgaria – access to national, EU and international databases;
- Croatia – access to all databases;
- Czech Republic – access to (mainly public) databases; Licences for academic databases are not usually available;
- Estonia – access to national law databases and journals;
- Finland – access to a wide range of databases on environmental law;
- France - access to databases on national, EU and international law;
- Hungary - access to national legislation and case law databases;
- Italy – free access to national databases, and access to databases and journals provided by the School for the Judiciary;
- Norway - access to databases on national, EU and international law;
- Poland - access to databases on national, EU and international law;
- Romania – access to databases;
- Slovakia - access to national, EU and international databases;
- Spain – access to national databases, but not always EU or international;

- Sweden - access to a wide range of national, European and international databases.

2.3 Training proposals

There was a general interest in training in environmental law among the respondents to the survey. While responses were sometimes scattered, the most popular areas for training were (in order of preference):

(a) General principles of European environmental law;
(b) EIA;
(c) Criminal liability of corporations;
(d) Comparative environmental law;
(e) International environmental law;
(f) Access to justice and standing;
(g) Administrative and civil liability in environmental law;
(h) Nature protection;
(i) Air pollution;
(j) Environmental procedural requirements, in particular impact assessments relevant for spatial planning, energy and transport;
(k) Management and transportation of waste;
(l) Role of NGOs;
(m) Evaluation of ecological harm and measures for restoration or rehabilitation;
(n) Freshwater pollution;
(o) International trade in protected species (CITES);
(p) Sustainable development;
(q) Landscape and monuments;
(r) Protection of the seas;
(s) GMOs;
(t) Habitats Directive;
(u) International law of the sea.

Respondents also suggested the following:
(a) Regular updates on EU environmental law;
(b) Regular updates of training needs;
(c) EU experts should work with domestic experts to provide training.

At the 2018 EUFJE conference in Sofia, training needs were discussed in greater depth. The importance of training in environmental law at all stages of a judge's career was discussed. EUFJE members praised the training available at EU level but highlighted the need for training to be adapted to national needs, i.e. covering domestic legislation and preferably in the national language of the relevant country. The members also highlighted the need for support from their own states to attend EU level training.

Conclusions and recommendations on part 2 of the report: on training

There are various ways to become a judge in the EUFJE member countries, thus there are multiple training methods. Since 2004, a trend has emerged towards creating national training institutes and centralising initial and continuous training for new judges (new and experienced lawyers alike).

No country formally requires a judge to have studied environmental law at the recruitment stage.

Training in environmental law is rarely a compulsory part of judges' initial training.

Training in environmental law should form part of the initial training of prosecutors and judges.

Many countries now organise continuous training in environmental law, but, again, this is often optional. Judges are usually entitled to leave from work to participate in training, but their work load is not necessarily alleviated, which may limit voluntary participation.

Member judges expressed the need for training in various branches of European environmental law (e.g. EIA, criminal liability of corporations, standing, evaluation of ecological damage, restorative measures, CITES, air pollution, nature protection, waste) and the need for regular updates on environmental law. The training on offer should be tailored to domestic needs.

The EJTN and ERA provide excellent training in European environmental law, albeit mainly in English. Members highlighted the need for more in-depth 'domestic' support. **Judges need training in the domestic legislation implementing EU environmental law.** This training should be case based and provided by practitioners.

Many judges reported a linguistic barrier to their participation in EU level training.
In some cases, judges' workloads do not allow for participation in EU level workshops, or the court hierarchy does not support this.

Stronger **sensitisation of, and cooperation with, court presidents or chief prosecutors at the national (i.e. district) level is recommended, together with a training offer in the domestic language (or with interpretation)** in European and national environmental law.

3. Member responses to part 3 of the EUFJE questionnaire

3.1 General courts and tribunals responsible for enforcing environmental law

3.1.1 Distinction between ordinary and administrative courts

In examining which general courts have jurisdiction in environmental cases in member countries, it is important to understand the court structure in each case.

In the majority of countries, such as **Belgium, Croatia, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the UK,** a dual structure has been put in place, with ordinary courts and tribunals having jurisdiction in civil and criminal cases, and administrative courts having jurisdiction in administrative disputes (involving public authorities).

It is important to note, however, that while the majority of member states have adopted the dual system, the powers of the administrative courts may differ.

In most European countries, the jurisdiction of administrative courts is limited to the power to suspend and/or annul the decisions of administrative bodies.

In some countries, such as **France, Finland, Germany, Poland, Portugal, the Netherlands and Spain**, the administrative courts have more extensive powers:

- **French** administrative courts have distinct power in cases of extreme urgency and in cases of judgment on the merits. In cases of extreme urgency, they can suspend a decision, take any measure necessary to protect the fundamental rights of the petitioners, and impose orders, including (where appropriate) periodic penalty payments. In cases where a judgment is given on the merits, they can annul the challenged decision and order the authorities to pay compensation. In special cases, they can substitute their decision for the challenged decision and can impose fines and damages.
- In **Finland**, the administrative courts can not only suspend or annul a decision, but also have the capacity to amend or change decisions. They cannot, however, take the place of the administrative authorities (i.e. they cannot grant a permit where the competent administrative authority has turned down that permit application). They may also impose provisional protective and compulsory measures. Typically, administrative courts hear appeals against different decisions concerning approval of land use plans, various environmental permits, and cases concerning enforcement of permits or legislation using administrative coercive measures, including imposition of conditional fines.
- In **Germany**, the administrative courts are empowered to annul administrative decisions, as well as to oblige the authorities to take a decision. They can also substitute their decision for that of the authorities.
- Similarly, since 15 August 2015, the administrative courts in **Poland** can repeal a decision taken contrary to the law and, in certain circumstances, decide in what

way the case is to be settled by the authority, including deciding the content of the decision.

- In the **Netherlands**, administrative courts can substitute their decision for the challenged decision, as well as impose fines.
- In **Portugal,** the administrative courts are empowered to annul administrative acts and to decide on claims for compensation against the authorities.
- In **Spain**, the administrative courts may impose provisional protective and compulsory measures. That power is limited and does not extend to taking the place of the administrative authority. The courts cannot, for example, issue a permit where the competent authority has refused one.

Ireland, Norway, Romania and Slovakia do not have specific administrative courts or tribunals that are separate from the general court system.

In **Bulgaria**, the administrative courts and the Supreme Administrative Court are part of the ordinary court system.

In **Denmark**, all sorts of cases are settled by a single court system; it does not have courts with specific jurisdiction in the area of public law. In practice, however, a number of administrative courts have been established to decide on disputes between the state and private individuals in relation to certain specific matters. Disputes can subsequently be brought before the ordinary courts.

In **Estonia,** there are only separate administrative and judicial courts in the first instance, with no separate administrative court at Circuit or Supreme Court level. The Circuit Courts are comprised of civil, criminal and administrative chambers, as is the Supreme Court of Estonia.

3.1.2 Distinction between civil courts and criminal courts

Germany, Hungary, Poland, Spain and the UK distinguish between civil courts and criminal courts.

In most countries (**Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Italy, Lithuania, Luxembourg, the Netherlands, Poland and Sweden**), there are no separate courts for civil and criminal matters. Rather, these cases are tried by different divisions or chambers of the same ordinary court, both in the first instance and in appeal or cassation. In some countries, such as **Portugal**, this specialisation has only been implemented at the appeal level.

Finally, there are countries where the distinction is less strictly emphasised, as is the case in **Denmark, Finland, Ireland and Slovakia**. **Norwegian** courts have general competence, meaning that they can rule in civil, criminal, administrative and constitutional matters.

3.1.3 Powers

It is important to note that in EUFJE member states, the powers of the different courts are similar but not always identical.

In general, the criminal courts can pass sentences ranging from fines to imprisonment and, in many jurisdictions, order compensation, safety or remediation measures.

Civil courts focus primarily on compensation, either in kind or equivalent, and can also order injunctive relief, such as preventive or remediation measures.

Administrative courts are mainly empowered to rule on the suspension and annulment of administrative acts. They can, however, have broader powers (as set out in section 3.1.1).

3.1.4 Existence of a constitutional court

Most European countries have a constitutional court. This is usually a *sui generis* court that is positioned within the state organisation as separate to other, more conventional state powers.

Exceptionally, the constitutional court is part of the normal judiciary and is mentioned as such in the Constitution (e.g. **Germany and Poland).**

Access to the constitutional courts is not always regulated in the same way. The right to lodge an appeal directly with the constitutional court is usually open to political authorities and varies according to the nature of the regulation against which the appeal is lodged (for example, in **Germany**, the government; in **Poland**, the President; and in **Portugal**, the House of Representatives).

Direct access for natural and legal persons to the constitutional court exists in a minority of European countries (**Belgium**, insofar as the person has an interest, and **Hungary**, for persons claiming infringements of their constitutional rights).

In countries without a constitutional court, in some cases, the ordinary courts and tribunals have the power of constitutional review, such as in **Denmark, Estonia, Finland, Greece, Ireland, Norway, Sweden and the UK.**

The **Finnish** Constitution, for instance, stipulates that when the application of a law could manifestly come into conflict with the Constitution, and the statute was not adopted in the manner provided for constitutional amendments, the court must give priority to the provision of the Constitution. Equally, if a provision of a decree or any other legislative rule ranking lower than a statute comes into conflict with the Constitution or another law, it shall not be applied by a court or any other authority. Similarly, in **Sweden**, all courts are under an obligation not to apply acts or ordinances that are in conflict with the Constitution or superior norms.

Estonia does not have a constitutional court. Instead, the power of constitutional review is vested in the Supreme Court.

In some countries, no court has the power of constitutional review. In the **Netherlands**, for example, court review of constitutionality is prohibited by the Constitution, which

solely vests the Dutch parliament with responsibility for the conformity of legislation with the Constitution.

3.2 Specialised environmental courts and tribunals?

3.2.1 General trend

In contrast to the global trend[29], there are no standalone specialised environmental courts and tribunals with comprehensive (i.e. administrative, civil and criminal) jurisdiction in Europe.

In EUFJE member countries, environmental cases are generally assigned to judges of the ordinary courts and administrative courts, according to their respective competences.

A certain degree of **specialisation has developed spontaneously at chamber level of supreme (administrative) and some appeal courts**, because environmental cases are systematically referred to those chambers. As a result, a concentration of environmental cases arises and the judges concerned become experts - or train themselves to become experts - in environmental law.

This is the case in **Belgium** (specialised chambers at the Council of State and certain courts of appeal), **Bulgaria** (specialised division at the Supreme Administrative Court) **Finland**, **Greece, Italy** (Third Chamber of the criminal section of the Supreme Court of Cassation handles all cassation cases on environmental crimes)**, the Netherlands** (some chambers of the Council of State) and **Poland** (separate divisions in large administrative courts).

However, **the majority of civil and criminal environmental cases are referred** to the lower/district courts of the general court system. This is where the bulk of cases arrive, with members highlighting that, in their experience, environmental cases tend to be pushed out by other types of cases, both because of the workload and the lack of a critical mass of environmental cases.

These judges must often combine environmental matters with other cases, and, as training is not compulsory, the degree of specialisation may depend of the experience or motivation of the individual judges or the number of environmental cases brought before them.

A circular effect arises where there are not enough environmental cases for judges to specialise or train in. The same effect tends to occur within the police and the prosecution.

[29] According to the UNEP Study on Environmental Courts & Tribunals (Pring & Pring, 2016), the number of Environmental Courts has increased exponentially since 2000. In 2016, there were over 1,200 environmental courts and tribunals in 44 countries at national or state/provincial level, with some 20 additional countries discussing or planning environmental courts and tribunals. This sharp increase is driven by: the development of new international and national environmental laws and principles; recognition of the linkages between human rights and environmental protection; the threat of climate change; and public dissatisfaction with existing judicial forums.

As a result, in many member states, robust environmental sentencing in first instance civil and criminal matters is the exception rather than the rule.

This circular issue, together with the complexity of environmental law, partly explains the gap between the enormous compliance efforts deployed at EU level and poor environmental enforcement in practice.

Specialisation should be organised and anchored in the law[30]. This would contribute to more continuity in the interpretation and enforcement of environmental laws.

3.2.2 Exceptions - examples of specialisation/good practice

Sweden

The Environmental Code (which became effective in 1999) established a system of environmental courts in Sweden. The environmental courts are part of the general court system. There are five regional **Land and Environment Courts** at district court level, as well as one Land and Environment Court of Appeal.

The regional environmental courts function as both:

(1) trial courts (first instance) on permits for hazardous activities, water developments and environmental damage claims made by individuals, groups, NGOs and government;

(2) appellate courts (second instance) for appeals of decisions by local and regional bodies on environmental permits, disposal of waste and clean-up orders.

The Land and Environment Court of Appeal hears appeals of cases from the regional Land and Environment Courts. Its decisions in the category (1) cases can be appealed to the Supreme Court, and its decisions in category (2) are in most instances final[31].

A Land and Environment Court consists of one judge trained in law, one environmental 'technical expert' (with a science or technical qualification) and two 'lay expert' members.

The regional judge and technical expert are fulltime employees of the court, while the two lay experts are selected depending on the expertise required in a given case. All four members of the panel have equal say in the decision-making process.

This **multidisciplinary approach** acknowledges that environmental adjudication is increasingly based on highly complex scientific and technical projections of uncertain future impacts on intricate social, economic and environmental factors, and that law-

[30] For further recommendations, see: Billiet, C.M. (ed.), Boogers, S., Dimec, K., Weissova, M., Clement, F., Nesi, A., Wust, E., Van Die, E. and Giron Conde, L., *Sanctioning environmental crime: on international cooperation and on specialisation of the judiciary* (LIFE-ENPE Project LIFE14/GIE/UK/000043), London, ENPE, 2019, *forthcoming.*

[31] United Nations Environment Programme, Study on Environmental Courts and Tribunals (G. Pring & C. Pring), 2016, p. 27.

trained judges generally do not have the scientific or technical training to analyse expert testimony on these issues[32].

The appellate body has the authority to replace the appealed decision. Both the procedural and substantial legality of a decision can be tried.

The Land and Environment Courts have the power to impose orders, injunctions, prohibitions and withdrawals of permits, in combination with administrative fines, decide on compensation and order the payment of damages.

They do not have jurisdiction in relation to environmental crime. Despite proposals to add environmental crime to the competence of the Land and Environment Courts, these have not yet been successful. Environmental crime cases are dealt with by the general courts.

Decisions on hunting and forestry are appealed to the administrative courts.

The Land and Environment Courts handle approximately 6,500 cases per annum, while the Land and Environment Court of Appeal handles around 2,100.

Less far-reaching forms of specialisation are evident in some other EUFJE member countries:

Austria

Until 2014, Austria had a specialised environmental court, the Independent Environmental Senate (*Umweltsenat*) for EIA cases. The *Umweltsenat* was abolished and all environmental cases were transferred to the newly created general **Administrative Courts**, two national courts and one in each of the *Länder*/states. One of the national courts and each of the nine *Länder* courts are developing **benches specialising in environmental and planning law**, thus the discontinued *Umweltsenat* has been enlarged into 10 environmental courts with greatly broadened environmental jurisdiction, without sacrificing specialisation. However, in times of heavy caseload, those judges can be moved to other benches (e.g. asylum)[33].

Belgium

Some specialisation within the ordinary courts

Belgium has taken some steps towards specialisation within the criminal chambers of the Courts of First Instance and the Courts of Appeal.

For many years, the Court of East Flanders (Ghent department) has had two judges specialising in environmental law on a voluntary basis and handling all such cases for the Ghent and Oudenaarde departments.

[32] A majority of experts surveyed in the 2016 UNEP study believe that this approach can deliver more expert, fair and balanced judgements (UNEP, Study on Environmental Courts and Tribunals (G. Pring and C. Pring), 2016, p. 26.

[33] UNEP Study on Environmental Courts and Tribunals (G. Pring and C. Pring), 2016, p. 81.

The Courts of Appeal of Antwerp, Mons and Ghent have chambers specialising *'de facto'* in criminal environmental and town planning cases, as well as a specialised Attorney General.

In April 2014, a general reform of the Belgian judicial landscape was undertaken, which saw the 27 judicial districts merged into 12 larger districts. The local departments remained, thus no courts were abolished in practice.

As of 2014, the judicial districts can (there is no obligation) appoint one local department of the Court of First Instance that shall exclusively handle the entire criminal environmental and town planning cases for all departments in the district, allowing the judges and prosecutors in these departments to specialise.

Only the Courts of First Instance of Antwerp (Antwerp department), West Flanders (Kortrijk department), Liège (Huy department), Luxemburg (Arlon department) and Namur (Namur department) have formally installed a department specialised in and handling all the criminal environmental cases of the district. The judges and prosecutors who work in these specialised departments are not allowed to devote themselves exclusively to environmental cases but must combine environmental matters with other types of criminal cases.

Unfortunately, no specialised departments have been appointed in the other Courts of First Instance of Belgium. This is partly because there is no obligation to appoint a local department specialised in environmental cases, and also reflects other priorities.

Specialised administrative courts

The Flemish Region has two specialised environmental administrative courts: the Council for Permit Disputes and the Enforcement College.

The Council for Permit Disputes was established by the Flemish parliament in 2009 as an administrative court for permits in the area of town and country planning and, more recently, integrated environmental permits.

The Enforcement College (formerly the Environmental Enforcement College) was established in 2009 and deals with appeals against administrative fines imposed for infringements of environmental law. It can annul and substitute decisions of government agencies.

The judges in both bodies are specialists in environmental and town planning law.

Denmark

There are no specialised courts dealing with environmental cases in Denmark. However, Denmark has a long tradition of specialised administrative appeal bodies or tribunals dealing with appeals of administrative decisions. In environmental matters, the **Nature and Environmental Appeals Board** (*Natur- og Miljøklagenævnet,* http://www.nmkn.dk/) deals with administrative appeals. This Appeals Board is part of the Ministry for the Environment, but it operates independently. Administrative decisions

made under a broad range of environmental legislation (including the Environmental Protection Act, the Nature Protection Act and the Planning Act) can be appealed to the Nature and Environmental Appeals Board. Relevant legislation determines who can appeal and which decisions can be appealed to the Appeals Board. In general, there is broad access to appeal by individuals, as well as NGOs.

Unless explicitly limited by law, the Appeals Board can carry out a full review of the administrative decision, including matters of legality as well as discretionary matters (merits). The Appeals Board may use cassation and return an invalid decision to the authority, or, in case of full review, replace the decision with a new decision on the merits (reformatory). The decision of the Appeals Board can be brought to the courts normally within six months.

Finland

Finland does not formally have specialised environmental courts. In practice, however, some of the administrative courts are developing a degree of specialisation in environmental law.

In Finland, the **Vaasa Administrative Court** (trial level) (formerly the Water Court of Appeal[34]) has exclusive jurisdiction to hear appeals under the Environmental Protection Act and the Water Act. As a result, environmental cases represent a significant share of its overall caseload and two divisions of that court deal almost exclusively with environmental cases. The Vaasa Administrative Court has judges with technical and scientific training, in addition to legally qualified judges.

In the Supreme Administrative Court of Finland, all types of environmental cases are consistently referred to the same court chamber. When recruiting and assigning judges and judge assistants to the chamber, special knowledge on environmental law plays a significant role. The two latest presidents of the chamber were both professors in environmental law, and several judges and judge assistants have considerable experience in environmental law (e.g. from permit authorities, as legislative counsellors in relevant ministries, the parliament, etc.).

When the Supreme Administrative Court hears an appeal, two expert counsellors for the environment (who are qualified engineers or natural scientists) are assigned to the judges.

Ireland

In the Dublin Metropolitan District, Ireland has appointed one **criminal court** to deal with regulatory crime at district court level. Environmental crimes in the Dublin district are heard by this court, as are many environmental crimes committed in other districts, on the basis that the accused has its registered office in the Dublin Metropolitan District[35].

[34] The former special Land Courts have been abolished and their duties entrusted to the District Courts. The former Water Courts have been transformed into Environmental Permit Authorities, while the former Water Court of Appeal has been incorporated into the Vaasa Administrative Court.

[35] Editor's note: in Ireland, a crime can be prosecuted where it occurs, where the accused is arrested or where the accused resides. In the case of a legal person, its residence is its registered office.

Appeals to planning decisions are heard by an independent public body (***An Bord Pleanála*).** This Board is also responsible for the determination of applications for strategic infrastructure development and proposals for the compulsory acquisition of land by local authorities.

The Netherlands

In environmental cases, administrative judges can ask an expert opinion of the "Foundation of Independent Court Experts in Environmental and Planning Law" (*Stichting Advisering Bestuursrechtspraak voor Milieu en Ruimtelijke Ordening*; *www.stab.nl*). The independence and impartiality of the environmental experts in this foundation is guaranteed by the Dutch Environmental Management Act, the Town Planning Act and the General Provisions on Environmental Law Act. These expert opinions help the administrative judges to assess environmental cases.

UK

The UK's **Planning Inspectorate** is an executive body of the government that operates independently. It conducts local investigations in connection with appeals relating to town and country planning, licences for industrial gaseous emissions, licences for construction of transport infrastructure, etc. It does not, however, have the legal authority to revoke or reconsider an appeal decision that has been issued (although it can correct minor typographical and other errors). An appeal decision can only be reconsidered following a successful challenge in the High Court on a point of law.

The **Planning Courts** are part of the Administrative Court, a specialist court within the Queen's Bench Division of the High Court of Justice.

The Planning Courts are based at the Royal Courts of Justice in London and at district registries across England and Wales. Cases at these courts are heard by the planning liaison judge or a high court judge, while cases at district registries are heard by a district judge.

The Planning Courts hear claims for judicial review and statutory challenges in respect of decisions made by planning authorities and other public bodies. Its broad jurisdiction encompasses:

- granted planning permission;
- development consent;
- compulsory purchase orders;
- highways and other rights of way;
- decisions under EU environmental legislation.

3.3 Criminal environmental cases

3.3.1 Investigation

In virtually all countries, the police services have the general authority to investigate and detect environmental crimes. However, some member countries also have environmental inspectorates or regulatory authorities with sole or primary responsibility for investigating environmental crimes.

The approach to criminal investigation can be categorised according to: whether the environmental inspectorate/regulator is the primary investigator; the environmental regulator and the police work in partnership to investigate environmental crime; or the police have sole or primary responsibility for the investigation of environmental crimes.

3.3.1.1 Environmental crime is primarily investigated by the environmental inspectorate or regulators

In the **UK**, the powers of the police are limited to infringements of the protection of wild animal species and certain local environmental offences. The local authorities are empowered to investigate infringements of town and country planning law and minor environmental offences.

Larger scale infringements are the responsibility of specialised agencies.

The Environment Agency has the power to investigate and prosecute environmental crime, bringing prosecutions for issues such as water pollution and waste management infringements. Under the Police and Criminal Evidence Act 1984, it has powers of entry, interviews under caution, compulsory interview, power to obtain samples and documents, and can invoke the offence of obstructing an officer.

Natural England (which advises the English government on issues relating to nature) brings prosecutions for harm to protected habitats and species.

The Health and Safety Executive brings prosecutions for incidents relating to hazardous substances and the misuse of pesticides.

Each agency has experts whose relevant scientific knowledge and expertise befit their undertaking independent investigations, as well as trained in-house lawyers who lead the prosecutions. The agencies also employ enforcement officers to ensure that members of the public adhere to environmental regulations.

The National Wildlife Crime Unit is a UK police force that assists in the detection and prevention of wildlife crime. Its officers are stationed within many police stations throughout the UK.

The local authorities employ Environmental Protection Officers, who specialise in the enforcement of environmental legislation.

The environmental authority also plays a significant role in **Estonia,** where the Environmental Inspectorate performs the functions of an investigative body (within the limits of its competence) and has the same powers as the police in relation to environmental crime. The Inspectorate conducts pre-trial proceedings relating to the violation of the requirements for the protection and use of the environment and natural resources. It plays a significant role in gathering evidence and providing professional expertise for the prosecution. The Environmental Inspectorate conducts extra-judicial proceedings in misdemeanour cases, and imposes fines. It is also a party to court proceedings and executes the functions of the prosecution in such cases. Other organisations (e.g. the police, the Estonian Tax and Customs Board, rural municipalities and city governments) also have a limited role in investigating environmental infringements (specific misdemeanour cases). The police and the Tax and Customs Board have no specialisation in environmental law. All criminal offences are prosecuted by the Prosecutor's Office.

3.3.1.2 Environmental crime is investigated by the environmental inspectorate or regulators in partnership with the police

The **Belgian** report notes that the investigation of (environmental) crimes is the responsibility of the police and specialised environmental agencies. They are overseen by the Public Prosecutor (a member of the judiciary), who decides whether to prosecute the perpetrators in court or forward the case to the administration to impose an administrative fine. Since the police reform of 1998, Belgium has two police services: the federal police and the local police. Few local police forces have environmental specialists.

The federal police 'Central Department for Combating Capital and Organised Crime', in Brussels, has an environment unit. This unit supports police officers in combating environmental crime through advice, training, centralised information, representation at Interpol and Europol and strategic analysis. This unit has been downsized in recent years, with only a handful of staff members now remaining.

In **Bulgaria**, the regulatory authorities (in addition to the police) are empowered to investigate any potential breach of environmental requirements. The national police have a division for environmental crime, but this is not operational due to a lack of personnel.

In **Denmark**, the police work together with the environmental authorities and, in a number of cases, the police have set up units specialising in environmental law.

In **Finland**, the police services have the general authority to investigate and detect environmental crimes, while other public authorities often have special investigative powers, such as the customs services. Typically, the police do not have units that specialise in environmental law.

In **France**, the police and customs services have specialised environmental units at national and local level. The *Office Central de Lutte contre les Atteintes à l'Environnement et à la Santé Publique* (OCLAESP) investigates international trafficking in endangered species or waste. Environmental crime is also investigated by specialised officers, such as environmental inspectors or officers from the forest and other administrations.

In **Italy**, while all police services have a general authority to investigate and detect environmental crimes, in practice, certain branches of the police are involved in such investigations.

In 2016, two branches of the police specialising in environmental crime (*Corpo forestale dello Stato* (CFS) and *Comando Carabinieri per la Tutela dell'Ambiente*) were replaced by the *Comanda unita per la tutela forestale, ambientale e agroalimentare Carabinieri*. This Comanda is organised into 14 regional commands and three agencies (environmental protection, agro-food protection, protection of biodiversity and parks) and approximately 700 station commands on the national territory. It has approximately 8,500 military personnel dealing with illegal agro-foodstuffs, environmental and biodiversity protection, poaching and organised crime (insofar as it has an impact on the environment). There are also 29 units specialised in complex investigations in environmental matters and organised crime. The local police have some responsibility for the investigation of environmental crimes, including illegal building and illegal waste management. In addition to the military and police, there is the Italian Institute for Environmental Protection and Research (ISPRA), which comprises 21 territorial Environmental Protection Agencies (ARPA/APPA) and is part of a network known as the 'National System for Environmental Protection'. ARPA/APPA personnel sometimes have police powers.

In 1989, **Norway** established its National Authority for Investigation and Prosecution of Economic and Environmental Crime (*Økokrim*) to combat economic and environmental crime. This is an independent national body that investigates and prosecutes the most complex cases within its scope. *Økokrim* is both a police unit and a prosecution authority.

It has similar powers as the ordinary police in relation to the investigation and prosecution of crime. Most environmental crimes, however, are investigated by the local police and environmental inspectorates. The National Authority works in cooperation with national and regional prosecution offices, police authorities and national inspectorates.

The Norwegian Environment Agency's primary tasks are to reduce greenhouse gas emissions, manage Norwegian nature and prevent pollution. The Directorate of Fisheries administers marine life, and its tasks include monitoring and control of compliance with marine resources legislation and regulation. The Norwegian Customs Department also plays an important role in this respect, although it is not subordinate to the Ministry of Climate and Environment.

These administrative units have the authority to investigate and react to less serious breaches, for example by imposing fines or withdrawing licences.

Police services in **the Netherlands** have the general authority to investigate and detect environmental crimes. In addition, some public authorities often have special investigative powers, such as the environmental inspectorate and customs services. Most of the regional police divisions have officers or units specialising in environmental law.

In **Portugal**, the judicial police and the National Republican Guard have specialist units at national level. Various public officials and specialised officers are authorised to investigate certain violations of environmental law.

This is also the case in **Spain**, where there is some specialisation within the *Corps Supérieur de Police* (responsible for customs) and the *Guardia Civil* (Seprona).

In 2017, the **Slovak** General Prosecutor proposed the creation of a specialised police body. The Department for Detection of Hazardous Substances and Environmental Crime became operational in early 2018, as a special part of the police service, and investigates environmental crimes. The Slovak police cooperates with the experts of the Slovak Environmental Inspectorate.

According to **Sweden's** Environmental Code, a supervisory authority (normally at municipal level) is obliged to report any suspicion of environmental crime to the police and prosecutors. The responsibility for investigating and prosecuting criminal offences lies with the police and prosecution. Cooperation between the supervisory authorities and the police is essential for a successful criminal investigation. The Customs Office has specific obligations regarding environmental crime in export/import-related matters.

Specially trained police officers investigate environmental crime. They cooperate with the National Unit for Environment and Working Environment Cases within the prosecution authority. A prosecutor is always responsible for the initial investigation of environmental crime.

3.3.1.3 Environmental crime is investigated primarily or solely by the police

Austria has opted for specialisation in the investigation of environmental crimes, both locally and nationally. Some officers have responsibility for environmental crimes, while several hundred others (*Umweltkundige Organe*, UKO) have received basic and supplementary training. The Federal Office of Criminal Investigation has a special department in charge of environmental crimes.

The **Czech Environmental Inspectorate** is subordinate to the Ministry of the Environment and is competent solely for administrative enforcement. Only the police and prosecution can investigate criminal violations of environmental law. There are no specialised environmental police units.

In **Germany**, the police and customs have specialist environmental units but the public prosecutor does not.

In **Hungary** environmental crime is investigated by the police.

Lithuania has a Division of Violations of Ecology and Law within the (police) Chief Commissioner's office in Vilnius. In 2004, it planned to set up similar departments in other cities.

In **Poland**, the police and prosecution conduct criminal investigations. There are no special agencies. The general and regional Directors of Environmental Protection are obliged to inform the police and prosecution of environmental crimes.

In **Romania**, environmental crime is investigated by the police, which has no specialised units.

3.3.2 Prosecution

In most member states, prosecution policy is within the remit of the public prosecutors.

Public prosecutors are generally part of the judicial organisation, which is often (but not always) under the authority of the Minister of Justice.

Most countries therefore have a clear division between the investigation of environmental crime and its prosecution.

There are exceptions to this rule. In some countries (e.g. **Norway, Denmark**) the public prosecutors are part of the police force, while in other countries this function is shared between the public prosecutor and specialised government agencies (e.g. **UK**).

In **Norway**, *Økokrim* is under the authority of the Director of Public Prosecutions.

In **Denmark**, the police are under the authority of the Central Commission of Police and the Ministry of Justice. A police district is headed by a chief constable, who is also the public prosecutor in the district in question. Thus the police are both the investigator and public prosecutor. In practice, the police carry out their duties in cooperation with the authorities in charge of the environment.

In many countries (**Belgium, France, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal and Spain**), proceedings are usually instituted by the public prosecutor. In a number of these legal systems, the aggrieved parties can institute proceedings by bringing an action for damages (e.g. **France, Belgium**) or directly summoning the perpetrators to appear before the criminal court (**Belgium**). In some countries (**Belgium, France, Ireland, Poland**), certain administrative authorities can themselves take criminal proceedings for certain infringements (offences in respect of forestry, hunting, fisheries and customs affairs).

Specialisation of the public prosecution

In **Austria**, environmental crimes are prosecuted by the public prosecution and administrative authorities. A distinction is made between administrative and ordinary penal law. Administrative penal law is enforced primarily by administrative authorities and gives rise to the imposition of administrative penalties. More serious environmental crimes, as defined in the Penal Code, are punished under ordinary environmental penal law. Such cases fall within the jurisdiction of the criminal courts and are investigated and prosecuted by the police and the public prosecutor. Although **Austria and Portugal** opted for specialisation with the police services, no such specialisation exists for public prosecutors.

Since 2008, **Belgium** has seen a voluntary collaboration between two smaller prosecutors' offices in the Province of West Flanders, Kortrijk and Ieper. Kortrijk specialised in all of the environmental and town planning cases for the two districts (while Ieper took up other specialisations). This enabled the prosecutors in Kortrijk to specialise in environmental cases. In 2010 and 2011 other prosecutors' offices followed this example.

Following judicial reform, most of the Belgian public prosecutors' offices in Flanders started (or continued) collaborating on environmental matters. In Antwerp, for example, there is a specialised section for environmental crime (*Bijzondere Leefmilieu Wetgeving)*. Three prosecutors work full-time on environmental, town planning, food safety and pharma-crime, handling all of the cases for the district of Antwerp (departments of Antwerp, Turnhout, Mechelen). In Antwerp, two examining judges specialise in environmental crime.

In **France**, there are no specialised environmental prosecutors but, since 2002, some specialisation of prosecutors and examining magistrates has been organised in two 'public health' branches at the courts of Marseille and Paris. Their competence is limited to infringements of the Environmental Code that relate to products that are dangerous for humans or animals, as well as 'complex' cases (i.e. cases with international or technical character, or the scale of damage or responsibilities involved). These specialist prosecutors and examining magistrates can be assisted by specialist public servants (e.g. from the pharmaceutical or veterinary administration).

In 2004, the so-called *Juridictions interrégionales specialisées* (JIRS) were created. These comprise prosecutors and examining magistrates specialised in organised and complex financial crime. The magistrates get specialist assistance from the customs and fiscal authorities. Between 2004 and 2013, only one environmental file was investigated by a JIRS.

Finland has established a system of key prosecutors, making it possible to consistently refer environmental cases to the same prosecutor. This gives rise to a certain degree of specialisation.

This type of system is also evident in **Spain.** Here, an environmental prosecutor is present in each province and is responsible for environmental crimes. Conflicts of jurisdiction are resolved by the Chief Prosecutor.

In **Italy**, some prosecutors' offices organise working groups specialising in specific crimes, including environmental crimes. They can ask for technical advice from the territorial Environmental Protection Agencies (ARPA/APPA) or other authorities, or can appoint a technical expert.

For some specific environmental crimes (e.g. involving organised crime), the law provides for the case to be dealt with by the District Antimafia Directorate (*Direzione distrettuale Antimafia*, DDA).

The **Netherlands** has at least one prosecutor in each district who specialises in environmental law.

In addition to these prosecutors, there is a national division within the prosecution services (*Functioneel Parket*), which has national jurisdiction and deals with complex environmental crimes. The *Functioneel Parket* is responsible for the investigation and prosecution of all environmental criminal cases investigated by the environmental inspection body (*Inspectie Leefomgeving and Transport*) or by the national police.

Sweden has established a special environmental unit (the National Unit for Environment and Working Environment Cases) within the Swedish Prosecution Authority. The prosecutors in that unit are responsible for the investigation and prosecution of crimes

against the Environmental Code or ordinances and serious hunting crimes (regarding protected predatory animals), among others. The national unit conducts activities in five locations in Sweden. Each office has a geographical area of responsibility.

In **Slovakia**, the Office of the General Prosecutor has specialists in crimes against the environment in place in each structure of the office since 2008.

There are no prosecutors specialised in environmental cases in **Bulgaria, Czech Republic, Estonia, Hungary, Poland or Romania.**

3.4. Civil environmental cases

3.4.1 General

In most member countries, the civil courts are empowered to award damages, either in kind or equivalent. Consequently, the civil courts typically deal only with environmental cases where damages are claimed.

The role of the civil courts can vary slightly in the different countries, as does the volume of environmental cases referred.

While in **France**, the civil courts have many environmental cases, in **Sweden**, the civil courts are generally not involved in environmental cases. Rather, environmental damages/compensation cases are dealt with by the Land and Environment Courts.

In **Denmark, the Netherlands, Ireland and the UK**, the civil courts are charged with two types of environmental cases: in private law (e.g. nuisance); and in public law (e.g. assessment of unlawful acts, omissions and decisions).

Although the civil courts in most countries are primarily empowered to award damages, in **Ireland** and the **UK**, a judge confronted with a particular dispute may also make other orders, such as an injunction or declaration on a point of law, a quashing order, mandatory order or prohibition order.

In **Bulgaria**, the civil courts can order indemnification for environmental damages, the termination of violations of environmental law, and the removal of the consequences of pollution. There are no specialised environmental civil courts.

In **Italy,** the civil courts have jurisdiction on issues relating to environmental taxes, as well as challenges to the imposition of administrative sanctions.

In **Lithuania**, the civil court can make a range of orders, including granting a particular right, restoration of the relationship, and prohibition to perform certain acts.

In **Slovakia and Poland**, the civil courts can also prohibit the continuation of environmentally harmful activities.

In **Poland**, the civil courts may award compensation or order the prohibition of certain environmentally harmful activities. They can impose a financial penalty or oblige the remediation of damage. There is no environmental specialisation in the Polish civil courts.

In **Romania**, the civil courts can award compensation for damages and order restoration to the environment's initial state.

3.4.2 Standing of NGOs

In general, NGOs have standing in environmental cases. This standing is usually subject to certain conditions, such as the registration of the NGO and its stated purpose in respect of environmental protection.

Most countries have provided for a right of action for NGOs in their legislation.

In **Belgium**, the right of standing of NGOs is assessed on a case-by-case basis. In order to have standing, a 'personal and direct interest' must be proven. This interest should be different from the public interest.

According to case law, associations which (according to their by-laws) devote themselves to environmental protection, have sufficient interest to launch an action against violations of environmental law by private persons or authorities.

In January 2016, the Constitutional Court decided that associations who work for a collective interest such as the protection of the environment should be awarded compensation for moral damages that is not merely symbolic in cases where that collective interest has been violated. The Court held that to decide otherwise would be discriminatory and would harm the interests of environmental protection groups 'who play an important role safeguarding the constitutional right to protection of a healthy environment'.

In **Bulgaria**, NGOs engaged in environmental protection, which meet the requirements of national law and are established in accordance with national law (i.e. registered as legal entity and undertaking legal activities) are presumed to have the requisite interest where the subject matter regulated by the litigious action, omission or administrative act violates the provisions of national environmental protection legislation.

The role of NGOs in environmental cases in **Czech Republic** has been subject to uncertainty and frequent change in recent years. NGOs have limited standing before criminal and civil courts: they can become parties to the proceedings as ordinary individuals, but not in their pursuit of the public interest (protection of the environment). Liability matters are generally considered to fall outside of their interest, thus they cannot participate in proceedings concerning administrative punishment. Nor can they claim compensation for environmental loss or for any damage suffered by their members.

In 1992, the comprehensive Act No. 114/1992 Coll., on Nature and Landscape Protection, was adopted, granting NGOs the right to participate in all proceedings that would involve interests protected by the Act, including all important permit procedures under the Czech Building Act. The EIA Act subsequently broadened the participation of the public concerned in environmental matters outside nature and landscape protection to all proceedings subject to the EIA process.

The Czech Parliament recently decided to restrict environmental NGOs from participation in a wide range of permitting procedures. Since 1 January 2018, NGOs may not

participate in procedures concerning building projects other than those requiring an EIA. Some decisions under the Act on Nature and Landscape Protection have been transformed into binding statements, effectively further restricting public participation.

With respect to judicial protection, plaintiffs (including NGOs and other members of the public) must meet criteria of *locus standi*. Conditions for legal standing in administrative and judicial proceedings are similar, but not the same. The administrative courts consider impairment of rights independently of participation in administrative proceedings, although, in theory, the proceedings mirror one another and form related phases of effective public participation. For a long time, judicial interpretation restricted NGOs to procedural aspects of the administrative decision because legal entities enjoyed no substantive rights in connection to environmental harm. In response to recommendations from the European Commission, minor changes were introduced, such that NGOs may now challenge the outcome of the subsequent proceedings in court on both substantive and procedural aspects. Nevertheless, the Constitutional Court overturned its settled case law in a judgment of 30 May 2014, concluding that NGOs may claim a violation of the right to a favourable environment when they demonstrate a close relationship to the issue at question. The administrative courts have therefore developed a set of conditions for impairment of rights, most notably the local activity of the NGO, which is independent of participation in the administrative proceedings and applies to all environmental cases.

NGOs must obtain formal recognition and registration by the court. According to the case law of administrative courts, an NGO can register even after the proceedings have started and can then effectively participate in it. Some additional requirements are stipulated by the EIA Act for participation in proceedings subject to the EIA process: three years' activity in the field, or 200 supporting persons. Any further requirements for standing (such as existence of relationship to the matters in question) are assessed on a case-by-case basis.

In **Denmark**, all persons, including associations, have the right to bring an action before the courts as a claimant or respondent. The claimant must, however, prove a material and individual interest.

In **Estonia**, Section 30(2) of the General Part of the Environmental Code Act stipulates that if an environmental organisation contests an administrative decision or takes a step in accordance with the procedure, it will be presumed that it has the requisite interest or that its rights have been violated if the contested administrative decision or step is related to the environmental protection goals or the current environmental protection activities of the organisation. The Act goes on to define an environmental NGO for the purposes of the Act. The right to standing is then assessed on a case-by-case basis.

In **Finland**, according to the Administrative Judicial Proceeding Act, NGOs have no right of action, in principle. However, almost all environmental acts allow environmental NGOs to appeal to administrative courts against administrative decisions if they meet certain requirements. The organisation shall be registered, its area of operation (locally or

regionally) shall be, according to its by-laws, in the area of the project, and the purpose of the NGO shall be based on protection of the environment or nature.

Nevertheless, with respect to acts that do not have this kind of provision (e.g. the Expropriation Act, the Aviation Act, and the Fishing Act), the Supreme Administrative Court accepts the *locus standi* of NGOs, based on the Aarhus Convention, case law of the CJEU and the constitutional environmental clause.

In **France**, associations that work in the field of environmental protection and are at least three years in existence can be deemed 'acknowledged associations' (Article L.141-1 Environmental Code). Associations that have not been acknowledged will also be granted standing on the condition that the claim lies within the objective laid down in its articles of association.

In **Hungary,** NGOs have standing to challenge administrative decisions if they operate in the area that would be impacted by the activity or facility. The right to standing is assessed on a case-by-case basis.

In **Italy,** NGOs have the same standing as every person and can take legal action in civil and administrative courts in the same way as any citizen. Standing in criminal cases is assessed on a case-by-case basis.

The right of some associations (national or operating in at least five regions) to take action is enshrined in law.

However, every environmental association is allowed to take action to obtain compensation relating to its environmental protection actions.

In **the Netherlands**, it is generally acknowledged that NGOs have a right of action in environmental cases, with a distinction drawn between types of dispute.

Article 305a of the Civil Code grants a right of action to NGOs, insofar as those NGOs have legal personality and have been incorporated by notarial deed. The right of action is not contingent upon any recognition or authorisation by the government but the stated purpose of the NGO must be in keeping with its actions. Its right of action is limited to actions for injunctions and cannot involve claims for damages.

In **Norway,** sections 1-4 of the Civil Procedure Act grant standing to NGOs on the condition that the claim lies within the organisation's objective and within the scope of its normal activities. Standing is assessed on a case-by-case basis.

In **Poland**, NGOs have the right to participate in proceedings in all courts: civil, penal and administrative. NGOs can initiate proceedings or participate in ongoing proceedings. An NGO can challenge the decision of an administrative authority even if it did not participate before that authority. The case must relate to the goal of environmental protection insofar as it is stated in the by-laws of the NGO.

In **Romania**, Article 20, paragraph 6 of the Government Emergency Ordinance no. 195/2005 confers *locus standi* to environmental protection NGOs in environmental matters. There are no special requirements.

Standing of environmental NGOs was approached strictly in **Slovakia** until the 'Slovak Brown Bear' case[36]. Both the CJEU and the Slovak Supreme Court ruled that a proceeding deciding on interventions in respect of the environment has the potential to directly affect the rights of an environmental NGO in light of the objective of Article 9 para. 3 of the Aarhus Convention.

The Slovak Nature Protection Act was amended in 2010 to provide that 'the party to the proceedings as stipulated by this act is any natural or legal person, which has such position guaranteed by the special legal provision'. The term 'party to the proceeding' is interpreted in line with the abovementioned case law of the CJEU. In order to gain standing, the NGO must simply prove that its goal is environmental protection. Formal recognition or accreditation is not necessary.

In **Sweden**, NGOs have standing in environmental cases, with formal recognition or accreditation required. They must, however, have nature conservation or environmental protection as their main objective, at least 100 members (or prove they have public support) and have conducted activities in Sweden for at least three years. Through case law (referring to the Aarhus Convention) NGO standing has been extended to decisions concerning hunting and forestry (competence of the administrative courts).

NGOs do not have standing in criminal or civil cases (unless directly concerned).

In the **UK**, bodies such as the National Trust, the Royal Society for the Protection of Birds, the Campaign to Protect Rural England and Friends of the Earth have standing. Government advisors, the Environment Agency and Natural England, also have standing.

[36] Judgment of the CJEU (Grand Chamber) 8 March 2011, Case C-240/09.

Conclusions and recommendations on part 3 of the report: on enforcement of environmental law

In contrast with the global trend, there are **no 'standalone' specialised environmental courts** with comprehensive (i.e. administrative, civil and criminal) jurisdiction in Europe.

The few specialised courts that exist are (part of the) **general or administrative courts,** e.g. the Swedish Land and Environment Courts, the Finnish Vaasa Administrative Court, the Council for Permit Disputes in the Flemish Region of Belgium, the Planning Courts in the UK. Their jurisdiction is, however, often limited to administrative disputes involving public bodies.

A certain degree of **specialisation has developed spontaneously at chamber level of supreme (administrative) and some appeal courts** to which environmental cases are systematically referred. As a result, a concentration of environmental cases arises and the judges concerned become experts - or train themselves to become experts - in environmental law.

However, **the greater portion of civil and criminal environmental cases are referred** to the lower/district courts of the general court system. This is where the bulk of cases arrive, with many members highlighting that, in their experience, environmental cases tend to be pushed out by other types of cases because of the workload and/or the lack of a critical mass of environmental cases.

These judges often have to combine environmental matters with other cases, and training is not compulsory, thus the degree of specialisation may depend of the experience or motivation of the individual judges and the number of environmental cases brought before them.

In the experience of our members, **in some EUFJE member states, environmental enforcement is weak because of a circular effect**: the public does not complain because the police do not invest in environmental cases; the police do not invest because the judges are not interested in environmental cases; and judges state there are not enough environmental cases to specialise in. In other member states, the prosecutors avoid bringing environmental cases to court because of the lack of specialisation of the judges. As there are no environmental matters, there is no interest by the judiciary in training in environmental law.

As a result, in many member states, robust environmental sentencing in first instance criminal and civil matters is often the exception rather than the rule.

This **circular issue, together with** the complexity of environmental law, partly explains the **gap between the enormous compliance efforts deployed at EU level and poor environmental enforcement in practice.**

Specialisation in environmental law is needed throughout the enforcement chain.

Police forces, prosecutors and judges working on environmental cases should all be specialised. This is also in the best interest of the parties. Specialisation of the courts in environmental law is crucial, as they are the end point of the enforcement chain.

Without a strong enforcement chain, **environmental laws remain 'dead letter'**, meaning that public confidence and awareness remain low and the environment continues degrading at a rapid and irreversible pace.

EUFJE members strongly believe, based on experience, that specialisation of the courts, increased amalgamation, more comprehensive jurisdiction and a multidisciplinary approach would contribute to outcomes that are better for individuals, society and the environment. **Such specialisation should be structured and obligatory.**

This would contribute to better continuity in the interpretation and enforcement of environmental laws.