Strategic Project on Environmental Crime

Report

November 2014

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Foreword

Environmental crime is a serious crime, often committed by organised crime groups, that affects society as a whole, as its impact is felt not only in the health of humans and animals but also in the quality of air, soil and water. The EU Serious and Organised Crime Threat Assessment 2013 (SOCTA) identified environmental crime as a specific emerging threat that requires intensified monitoring.

Environmental crime also often involves a cross-border dimension, and the increase of international trade and the abolition of border controls within the Schengen area add to the scope of the problem.

Despite the potentially grave consequences of environmental crime, particularly in the areas of illegal trafficking of waste and trafficking of endangered species, its seriousness is still often underestimated at national and international level.

In this context, Eurojust took the initiative in 2013 to launch the 'Strategic Project on Environmental Crime'. The goal of this report is to summarise the findings of the Strategic Project. It highlights the main problems encountered by the national authorities in prosecuting environmental crime and attempts to present suggestions for addressing some difficulties, particularly those linked to cross-border cooperation. Another goal of this report is to raise awareness among practitioners, policy makers and legislators of the necessity to improve cooperation within the European Union and internationally in this important area.

I would like to express my gratitude to the Member States and to Norway for their valuable contributions to the Strategic Project. These contributions were essential in identifying and addressing the main problems in the investigation and prosecution of environmental crime. Particular thanks go also to the European Network of Prosecutors for the Environment (ENPE), which co-hosted the strategic meeting on environmental crime in November 2013, and to the Commission, Europol, INTERPOL, the IMPEL Trans-frontier Shipment Prosecutors' Task Force and the CITES Secretariat for their active participation and feedback during that meeting. Finally, I wish to warmly thank those at Eurojust who contributed to this report and to the Financial and Economic Crime Team at Eurojust, the initiator of this project.

Michèle Coninsx
President

1. Introduction

Eurojust is pleased to present this report on the outcome of the Strategic Project (the 'Strategic Project') on Environmental Crime (the 'Report'). Eurojust launched the Strategic Project in spring 2013 on the basis of an intriguing paradox: there was growing evidence of an increasing understanding that environmental crime is a serious crime, often involving a cross-border dimension and organised crime groups (OCGs), while at the same time, statistics on prosecutions of environmental crime in the Member States did not appear to reflect the real impact of this crime. The number of cases referred to Eurojust, at that time, was also very low.
A number of project activities carried out during the past year has enabled Eurojust to build significant expertise in the fight against environmental crime, to collect knowledge on the main obstacles as well as best practice when prosecuting environmental crime cases, and to look into possible solutions and the way ahead.

This Report presents in its second chapter the project objectives, the methodology used to implement these objectives and the project activities undertaken to achieve these objectives.
Based on the different sources of information available, the Environmental Crime Project Team (the Project Team) analysed the main issues in the prosecution and investigation of environmental crime, with a special focus on three topics: trafficking in endangered species, illegal trafficking in waste and surface water pollution. The first two are particularly important today at European Union level and are the focus of a number of EU and international initiatives.
The analysis carried out on the three topics mentioned above is described in detail in three chapters.

Two separate chapters are subsequently devoted to the national enforcement structure and access to expertise, and to possible solutions and best practice in tackling the challenges identified. In this context, it should be stressed that possibilities for enhanced cooperation among key stakeholders could assist Member States and Eurojust in supporting the investigation and prosecution of environmental crime cases more efficiently. Within this framework, it has already been proven that the partnership established through the Strategic Project between Eurojust and the European Network of Prosecutors for the Environment (ENPE) is particularly successful.

In the conclusions, the main findings and challenges identified by the Project Team are presented.

Eurojust hopes that the present Report will be instrumental in supporting the current developments and initiatives undertaken at EU and international level in the fight against environmental crime. Additionally, Eurojust believes that this Report could also contribute to raising awareness among practitioners, legislators and policy makers about the serious impact of this important crime phenomenon.

2. Project objectives, methodology and activities

In April 2013, the College of Eurojust (the 'College') approved the Strategic Project. The overall objective was to strengthen and improve cooperation among national authorities and Eurojust in the fight against environmental crime. More specifically, the Project assesses the present situation and identifies problems, obstacles and possible solutions with regard to European and international cooperation.

The Project Team dedicated to this Strategic Project is composed of representatives of Eurojust's National Desks and members of the administration, and has been working under the overall overview of the Financial and Economic Crime Team of Eurojust. The Project Team has been reporting regularly to the College of Eurojust.

To gather the necessary information and provide relevant answers to the issues presented in the following chapters, the Project Team developed and carried out the following steps and activities:

- Legal research was carried out on the latest developments in the field of environmental crime law at EU and international level, in particular in the fields of trans-frontier shipment of waste and trafficking in endangered species. Special attention was placed on studying the 2008 Directive 2008/99/EC on the protection of the environment through criminal law (the 'Environmental Crime Directive') and its implementation, EU implementation of international instruments such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the 'Basel Convention'), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the 'CITES Convention');
- The Project Team identified a number of cases for which assistance from Eurojust had been requested by national authorities during the last several years in the field of environmental crime. However, only a small number of cases was found and analysed[1]. When possible, interviews were carried out with relevant National Desks to deepen the Project Teams' understanding of the substance, challenges and positive outcomes of the cases identified;
- A Questionnaire[2] (the 'Questionnaire') was drafted and sent to competent authorities of Member States through the National Desks at Eurojust as well as to Norway and the United States (which are represented by Liaison Magistrates at Eurojust). The Questionnaire was divided into four chapters: (1) Questions relating to Criminal Policy, including challenges, support which could be provided by Eurojust; (2) Best practices, obstacles and possible solutions, including questions on the links between environmental crime and OCGs, the legal instruments used to fight environmental crime, the possible need for common definitions and standardisation of penalties; (3) the organisation of law enforcement and prosecutorial units when dealing with environmental crime cases [3]; and finally, (4) an open question on the topics that appeared most relevant to Member States to debate within the field of environmental crime. The first two sections of the Questionnaire included specific questions targeting the illegal trafficking in waste and trafficking in endangered species more precisely.

[1] This attempt was only partially successful because, in view of data protection rules, case files are not kept beyond a limited time period by National Desks at Eurojust.

[2] Blank Questionnaire attached as Annex 1.

[3] This question aimed to complete a survey that was undertaken in April 2012 when the Financial and Economic Crime Team asked Member States through their National Desks at Eurojust if specialised enforcement units existed (or not) in their countries. The replies received at the time are also partially used in this Report (see table in chapter 6).

- A summary analysis was prepared from the many replies received (26 Member States and Norway)[4]. This analysis gave the Project Team a clearer view of the situation prevailing in the different countries with regard to environmental crime, and in particular with regard to the illegal trafficking in waste and trafficking in endangered species. The analysis was instrumental in the preparation of the Strategic Meeting *Towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust (the 'Strategic Meeting')* [5];
- Additionally, the preparation of the Strategic Meeting also benefited from close cooperation with two specialised networks. The Task Force of Prosecutors specialising in trans-frontier shipments of waste supported by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) provided substantial input. Furthermore, rich discussions on, for instance, priorities at EU and national level in fighting environmental crime and surface water pollution, were carried out with the newly established ENPE;
- Although the Questionnaire did not specifically cover water pollution, a decision was taken to add surface water pollution to illegal trafficking in waste and trafficking in endangered species as one of the main focuses of the Strategic Meeting[6]. Indeed, Member States indicated in their replies to the last question of the Questionnaire that, in addition to the two previous topics, water pollution is one subject of particular concern to practitioners. One of the workshops of the Strategic Meeting was therefore dedicated to this new topic. The conclusions of the Strategic Project on surface water pollution consequently stem mainly from the discussions held and the expertise available in the Strategic Meeting. The two other workshops focused respectively on illegal trafficking in waste and on trafficking in endangered species;
- The Strategic Meeting's objective was to target prosecutors. This objective was fully met because around 100 participants (mostly prosecutors specialising in the field of environmental crime, as well as representatives of the European Commission, Europol, Interpol and the CITES Secretariat) attended and participated actively in the meeting. On 27 and 28 November 2013, after a general session dedicated to environmental crime and introductory sessions on the three specific subjects, participants shared their expertise in three corresponding workshops. Issues and best practice in dealing with these types of cases were, in particular, discussed. Recommendations were drawn up and brought to the attention of the Plenary of the Meeting;
- The outcome report of the Strategic Meeting was published as a Council document[7];
- Since April 2013, conferences and meetings have been attended by members of the Project Team, providing additional insight into initiatives relating to environmental crime;
- When the European Commission issued a call for contributions to the EU approach against wildlife trafficking[8], the Project Team, with the support of the College, drafted a Eurojust Contribution[9]. This was sent to the Commission in preparation for the Conference on the EU Approach Against Wildlife Trafficking held on 10 April 2014 in Brussels. The conference aimed

[4] The summary analysis is attached to this Report as Annex 2.
[5] The Strategic Meeting was held in The Hague on 27 and 28 November 2013.
[6] The information collected by the Project Team on surface water pollution was therefore less voluminous than that collected for trafficking in endangered species and illegal trafficking in waste.
[7] Report of the Strategic Meeting *Towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust*, 24 March 2014, Council document 8101/14. This Council Document can be found in Annex 3 of this Report.
[8] Brussels, 7.2.2014 COM (2014) 64 final, Communication from the Commission to the Council and the European Parliament on the EU approach against wildlife trafficking.
[9] The Eurojust Contribution can be found in Annex 4 of this Report.

to identify measures and actions to be undertaken by the EU domestically and internationally to strengthen its approach against wildlife trafficking[10];

- The Project Team has convened regularly since April 2013. In July 2014, a Eurojust Contact Point on Environmental Crime was established to ensure the continued commitment of Eurojust in this particularly important field. The Contact Point will provide a visible contact person at Eurojust for practitioners and external stakeholders in environmental crime matters and will regularly report to the Financial and Economic Crime Team and to the College of Eurojust. The establishment of such Contact Point should also further raise awareness of the support available at Eurojust to the competent national authorities in this area and stimulate the development of expertise and the sharing of best practice among prosecutors in the area of environmental crime; and
- This Report will be provided to the relevant national, European and international authorities and organisations fighting environmental crime.

[10] Approximately 160 representatives from Member States, EU institutions, judges and prosecutors, networks, international organizations, civil society, research institutions and key third countries participated in the conference, which was opened by Commissioner Potočnik, European Commissioner for the Environment and John Scanlon, CITES Secretary General.

3. Trafficking in endangered species

Most Member States who replied to the Questionnaire launched by Eurojust began by recognising the low number of cases they are dealing with in terms of trafficking in endangered species. They also generally recognised that the reason behind this situation is not that this type of crime does not exist (actually many of them tend to think that much more could be done at investigative and prosecutorial level in this area), but that a conjunction of factors is responsible for this situation, starting with the lack of seriousness with which these crimes are 'labelled' at national level. Europol's Environmental crime threat assessment (the 'Europol Threat Assessment'[11]) recognises, however, the emerging threat posed by trafficking in endangered species in terms of impact, high value, *modus operandi* and dimension, in the EU as well as worldwide. The following challenging questions render the fight against trafficking in endangered species even more complicated.

3.1 Complexity of legislation relating to protection of endangered species

EU legislation in the field of protection of endangered species draws on one main piece of international legislation, the CITES Convention[12]. This international instrument is acknowledged as one of the most successful international environmental treaties[13]. 177 States are parties to CITES. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

Approximately 5 000 species of animals and 29 000 species of plants are protected by CITES against overexploitation through international trade. They are listed in the three CITES Appendices. The species are grouped in the Appendices according to how threatened they are by international trade.

Appendix I includes all species threatened with extinction and that are, or may be, affected by trade. Their trade is prohibited except when the purpose of the import is not commercial.

Appendix II includes species that may become threatened with extinction unless their trade is strictly regulated, as well as species that are not at risk themselves but resemble threatened species that are included in order to protect their threatened counterparts. International trade may be authorised by the granting of an export permit or re-export certificate. No import permit is necessary.

Appendix III includes all species that are protected within any State parties that needs the cooperation of other parties in trade control to prevent unsustainable or illegal exploitation. International trade is allowed on presentation of the appropriate permits or certificates.

The EU has also included the CITES Convention in its legal framework through:

- Council Regulation (EC) N° 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein; and
- A number of Commission Regulations amending Council Regulation (EC) N° 338/97, particularly with regard to amendments to species covered by the legislation. The last amendment being Commission Regulation (EU) N° 75/2013 of 29 July 2013 amending Council

[11] Europol, *Threat Assessment 2013 – Environmental Crime in the EU*, Council doc. 15915/13, 11 November 2013.
[12] Convention; http://www.cites.org/
[13] *See*, in particular, Christine Fuchs, *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – Conservation Efforts Undermine the Legality Principle*, German Law Journal, Vol. 09 N°11, pp. 1565-1596.

Regulation (EC) N° 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

Council Regulation 338/97 is broader than the CITES Convention in terms of species protected. Also, obligations under Regulation 338/97 are, in some ways, stronger than under the CITES Convention[14].

European Union legislation provides additional angles for protection, the violation of which also constitutes a criminal offence pursuant to the Environmental Crime Directive. For instance, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (the 'Birds Directive')[15] and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive')[16], are considered to be the cornerstone of Europe's nature conservation policy. The conservation policy is built around two pillars: the Natura 2000[17] network of protected sites and the strict system of species protection. All in all, EU legislation protects over 1 000 animals and plant species and over 200 so-called 'habitat types' (*e.g.* special types of forest, meadow, wetland, etc.) that are of European importance[18].

The Birds Directive and the Habitats Directive each consist of two sets of rules: the designation of special areas of conservation and the protection of specific species. Once areas have been designated, a strict legal regime applies and Member States have a number of obligations, such as to establish the necessary conservation measures and therefore to prohibit certain activities that could jeopardize the conservation of the species listed.

The more instruments are in force, the more complicated the situation at national level becomes for practitioners. Indeed, from an EU perspective, the mixture of old first pillar instruments and third pillar instruments that have now, since the Lisbon Treaty[19], fallen under the area of freedom, security and justice, with much more weight than before, is challenging from a practical implementation point of view. For instance, only experts can determine with certainty if species found are indeed endangered, the category under which they fall, and whether a penal response to the illegal trade has been triggered. The question of the necessity and availability of expertise will be covered in more detail in chapter 6.

[14] For instance, an export AND an import permit have to be obtained for certain species when only an export permit is required under the CITES Convention.

[15] http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm.

[16] http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm.

[17] Natura 2000 is the centrepiece of the EU's nature and biodiversity policy. It is an EU-wide network of nature protection areas established under the 1992 Habitats Directive. The aim of the network is to assure the long-term survival of Europe's most valuable and threatened species and habitats. It is composed of Special Areas of Conservation (SAC) designated by Member States under the Habitats Directive, and also incorporates Special Protection Areas (SPAs) which they designate under the 1979 Birds Directive. Natura 2000 is not a system of strict nature reserves where all human activities are excluded. Whereas the network will certainly include nature reserves, most of the land is likely to continue to be privately owned and the emphasis will be on ensuring that future management is sustainable, both ecologically and economically. The establishment of this network of protected areas also fulfills a Community obligation under the UN Convention on Biological Diversity http://ec.europa.eu/environment/nature/natura2000/index_en.htm.

[18] http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm.

[19] Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJEU 2007/C306/01.

3.2 Level of seriousness and penalties associated with trafficking in endangered species

Generally speaking, despite binding EU legislation both from a protection and criminal law point of view, cases of trafficking in endangered species only lead to very lenient sanctioning. This situation is aggravated by the fact that trafficking in endangered species could easily be considered a crime without apparent victims, as endangered species do not have a voice. Many practitioners participating in the Strategic Meeting felt that the absence of seriousness with which trafficking in endangered species is often considered should be changed, as should the image of those particular types of crime. The lack of awareness of the impact and scope of this crime should be corrected at national level, and be followed by clear, practical enforcement changes.

The question of the assessment of the real damage caused to wildlife is crucial in determining the level of penalty to be applied. Indeed, one often-debated aspect is the notion among many prosecutors that the overall environmental impact of offences against wildlife is not taken into full consideration when penalties are decided by criminal courts. The overall impact on the environment includes, in particular, diminishing diversity, the effect on public health, the undermining of the rule of law and of sustainable economic development in countries of origin. The extent of cross-border damaging aspects has inspired some academics to think in terms of a new form of international criminal environmental offence and, in that context, to enlarge the mandate of the International Criminal Court or create a specific European or International Criminal Court.

The price on the illegal market for wildlife species is sometimes viewed as an indicator of the 'seriousness' of the damage but also, first and foremost, as an indication of the proceeds that should be traced, frozen and confiscated by competent authorities. Participants of the Strategic Meeting indicated that proceeds generated by criminals in this area are particularly high.

In some Member States, such as Finland and the United Kingdom, efforts have been made in particular cases to elaborate on the question of the 'value' of endangered species and thus contributing to creating case law that builds on a better understanding of the damage and risks connected with the offences at hand. However, no common 'price list' is attached, across the EU or internationally, to protected species. Participants mentioned the following criteria as a possible basis for evaluating trafficking or loss in each endangered species:

- The level of extinction or possible extinction of the species trafficked, as established by the CITES convention worldwide;
- The illegal 'market price' of those species;
- The particular extinction level at national level.

If the CITES Convention clearly classifies endangered species, enabling competent authorities to know how close to extinction the species are from a worldwide perspective, difference of population of some of these species may vary to a great extent from one Member State to the other. Therefore, some participants of the Strategic Meeting asked, for instance, if the 'price' of a specific bird, present in one country and on the verge of extinction in another, although classified as protected by the CITES Convention, should be as high in both countries.

It is, however, clear that basing the pricing on the CITES Convention, which is the commonly accepted legal basis and the common assessment tool of the level of extinction of endangered species, could

enable the identification and recognition of harmonised values in the future. Those values would have to be updated regularly, following the evolution of level of extinction of each species, but would provide great assistance and clarity to practitioners. Their mere existence would also contribute to raising the awareness level of competent authorities as to the seriousness of the crime.

3.3 Insufficient coordination among competent authorities at national and international level

Fighting trafficking in endangered species requires a multidisciplinary approach elaborated, first and foremost, on cross-agency cooperation at national level, which should then be reflected at EU level.

A number of national authorities are crucial to fighting the trafficking in endangered species. One of the most important is customs authorities who, by controlling goods and persons, often discover living or dead endangered species. However, some Member States have stressed that even among administrative authorities, cooperation can be poor. A lack of coordination between administrative authorities leads the public prosecutor, in some Member States, to a situation where s/he does not receive the proper and necessary information. In some countries, environmental inspectors exist; in others, customs specialists are the only law enforcement/ investigative bodies of this specialisation. Health authorities, such as veterinaries, are also particularly important, as non-authorised and rare species can bring with them unknown and/or dangerous viruses that could ultimately be threatening to human beings. However, control authorities – whatever their background might be - do not always carry out as many controls as they would like due to lack of personnel and the implementation of other priorities (see 3.2 above and chapter 6).

Additionally, one specific feature of cases relating to the trafficking in endangered species is that, when discovered alive, competent authorities need to use the services of organisations that will be able to keep those specimens in good care. Animals are, for instance, often kept several years before the authorities in charge take a final decision on what to do with them. In the meantime, the public budget is used to take care of them. Expensive DNA parental tests are regularly also necessary to try to demonstrate that offenders had their own illegal breeding stations. Competent authorities are, however, often confronted with a lack of budget and resources at national level, as this crime type is generally not a priority (see reference to low level of awareness as to seriousness of the crime, above).

Difficulties in national coordination and cooperation do not contribute to the smooth handling of cases in need of European and international cooperation. Many cases are not referred to Eurojust because national authorities do not always grasp the importance of tackling the case in a cross-border manner. Furthermore, clear mandates, resources and means to ensure complementarity are not systematically elaborated either at EU or international level. For instance, the more that Europol and Interpol strengthen their ties the more successful the fight against the trafficking in endangered species will be. In this context, it is worth noting that the EU is currently considering possible changes in its policy with regard to wildlife trafficking (see contribution of Eurojust, Annex 4).

3.4 Burden of proof and evidence gathering

Gathering evidence of the trafficking in endangered species can be particularly challenging, especially when other Member States or third countries (source of the animals and/or plants or customers of this illegal traffic) are involved. Generally speaking, mutual assistance requests tend to be answered in a time frame that is too lengthy. Therefore, if prosecutors do not give adequate consideration to those

cases from the start – because, in particular, of the false perception of absence of seriousness – they might be even more discouraged by the lack of rapid response to their international requests.

Additionally, the complexity of the legislation (see above) entails situations where the offence can be difficult to detect and prove. For instance, some Member States highlighted that possession of a CITES species is not always a breach of the law; rather, the law is breached only when it can be established how the specimen was obtained. Proving how a person came into possession of a specific animal can be quite challenging. Because of the difficulties in evidence gathering, it might be – and this is confirmed by several replies received to the Questionnaire – that if an investigation is opened, it will only focus on the unlawful possession of 'strictly protected species'. This prosecutorial decision is also founded on the absence of records at national and EU level of where and when the species was imported. Furthermore, from the Member State of importation, the animal or plant can easily be moved to another Member State without monitoring due to the absence of internal border controls within the EU.

Finally, many national representatives highlighted at the Strategic Meeting that, because of the absence of seriousness with which those crimes are considered at national level, it is very difficult, from an investigative point of view, to use relevant investigative techniques such as undercover agents, interception of telecommunications, etc. Many Member States link the maximum level of penalty to the use (or not) of the most coercive - but also often the most efficient in complex cases - investigation tools. In short, the lower the penalty, the less coercive investigation techniques allowed. Participants of the Strategic Meeting stressed, for instance, how closed criminal groups trafficking in wildlife can be (similar to the collectors mentioned in the Strategic Meeting, see Annex 3), preventing competent authorities collecting information without, for instance, establishing specific contacts through social networks when, in practice, the interception of communications, is very seldom used in cases of the trafficking in endangered species. As penalties are in most cases low, 'standard' investigation tools used for other serious crimes cannot be used unless (in some Member States) evidence is obtained showing the presence of OCGs. Proving the presence of OCGs can, however in practice, only be efficiently achieved using such investigation tools and intelligence that is collected systematically; therefore this situation creates a dilemma.

3.5 Links to organised crime

The Threat Assessment produced by Europol stresses the links between trafficking in endangered species and OCGs. Indeed, the proceeds generated from the commission of these crimes is often very important and the penalties, as mentioned above, particularly low. A majority of Member States stated in their replies to the Questionnaire that links to OCGs have been proven in their cases. However, surprisingly, discussions held during the Strategic Meeting showed that few prosecutors had experience in practising European/international cooperation in this field. It appeared that links to systematic poaching or trafficking and OCGs are often not investigated. This situation calls for attention and action since the presence of OCGs is growing.

OCGs direct the attention of practitioners to links between trafficking in endangered species and other crime areas. Those links are, however, in many cases difficult to establish in detail. It seems evident that a more systematic collection of intelligence would enable law enforcement authorities to more easily establish cross-links with other crime areas. In this context, it may be worth noting that criminal networks involved in the illegal trade in wildlife tend to use the same routes as those used for other

illegal commodities, and that when links to other serious crimes are recognised by Member States, the most common offences relate to corruption, the fraudulent obtaining of licences or forgery of the latter (including customs official documents), money laundering and, as the case may be, other illegal activities of the OCGs involved (for instance drug trafficking). Those links typically enable investigators and prosecutors to, indirectly, deal with the trafficking in endangered species in the same manner as any other serious and organised crime, and to use the entire spectrum of investigative techniques (see 3.4 above).

Finally, failing to recognise the involvement of OCGs and, as the case may be, the proceeds generated by trafficking in endangered species, prevents, to a certain extent, launching financial investigations and asset recovery procedures (see 3.2. above) in cases of trafficking in endangered species.

4. Illegal trafficking in waste

The increasing importance of the illegal trafficking in waste as a criminal phenomenon has been highlighted in the Europol Threat Assessment. The latter confirms that the illegal trafficking in waste remains under reported and under investigated, which results in the identification of very few OCGs, an aspect which will be discussed in greater detail below. It also shows the interconnectedness of illegal waste trafficking with the legal economy as legal businesses take advantage of the difference in price of disposing waste in other jurisdictions. The illegal activity of these legal businesses often amounts to fraud and tax evasion, thus constituting serious rather than organised crime.

Furthermore, as a result of the introduction of stringent regulations and an increase in the amounts charged for the legal disposal of waste, Member States have noticed a growing demand for illegal waste disposal services, especially with regard to waste intended for exportation. Due to the economic crisis and the financial constraints, companies have increasingly tried to avoid payment of costs incumbent upon them for disposal of waste products (such as fees) and to circumvent the regulations in force, at national and EU level.

Finally, the Europol Threat Assessment also stresses the link between the trafficking in illegal waste, especially to Africa and Asia, and global trade and transport. The economic growth noticed in the destination countries reflects the demand for materials extracted from predominantly electronic waste, a process which has a detrimental impact on the environment and human health. With regard to the trafficking in illegal waste within the borders of the EU, such transportation is facilitated by the free movement of goods and people. Additionally, the absence of systematic border controls and checks within the Schengen Area also facilitate this type of criminal activity.

Analysis of the information available from the sources mentioned in chapter 2 showed that many obstacles discussed in relation to the prosecution of the trafficking in endangered species appear equally in the prosecution of cases of illegal waste trafficking. However, specific issues or obstacles in connection with illegal trafficking in waste should also be highlighted.

4.1 Cross-border cooperation and mutual legal assistance

Cross-border cooperation is considered a main challenge in the investigation and prosecution of cases of illegal waste trafficking. For example, if foreign freight carriers or waste shippers are accused of illegal waste trafficking, additional investigations are regularly needed to identify the persons initiating the waste shipment, to question them and determine the extent of the offence. These activities require close cooperation between the concerned Member States, which is not always as smooth as necessary for efficient investigation and prosecution.

Also, judicial proceedings against foreign freight carriers or waste shippers are often transferred to their home countries. However, the period of time before a decision is made - just on the question of whether the proceedings will be transferred – can be lengthy. Furthermore, the transferring Member State will subsequently often not receive information on the outcome of the proceedings. As a consequence, the transferring Member State will not know if the offence of an illegal waste shipment will be prosecuted with the same severity as it would have been in the transferring Member State.

Another challenging aspect of cross-border cooperation concerns requests for information from other Member States: it can be difficult to convey the procedural requirements of the requesting jurisdiction

to ensure that any evidence will be gathered accordingly (including procedural requirements that may be unfamiliar to the foreign jurisdiction). Also, it can be a complicated process to ensure that the quantity, type and form of evidence provided is satisfactory and that time limits under national legislation of the requesting Member State are complied with. Finally, investigators often encounter the situation that the companies involved are located in several different countries, causing difficulties in identifying the responsible individuals.

There is a requirement to establish the origin of waste and to examine the entire chain of companies that produced (parts of) the waste and transferred it abroad. In addition, any intermediaries need to be identified and suspects from different countries need to be interrogated. This requires efficient mutual legal assistance and a quick exchange of information that is not always available among Member States of the European Union, and it can be particularly difficult and time consuming if it requires mutual legal assistance with countries located outside the European Union due to the lack of regular cooperation and well-established contact points.

4.2 Complexity and ambiguity of environmental legislation

Environmental legislation can be challenging to law enforcement and judicial authorities. Environmental legislation often requires a high level of expertise and understanding of rather technical issues, such as the different categories of waste, its composition and its definitions. This expertise is not yet sufficiently developed throughout the EU.

Also, the implementation at national level of EU legislation in this field differs from Member State to Member State. This situation does not support a harmonised cross-border approach to fighting environmental crime. In addition, uncertainties exist regarding definitions of waste, for example, the distinction between waste and by-products or the categorisation of waste. The absence of clarity in the definition of waste was also identified as a major obstacle in the prosecution of cases of illegal waste trafficking. For example, asphalt granules have been recognised as waste in one Member State and as material in another.

In addition to varying national legislation in the Member States concerning the illegal trafficking in waste, the interpretation of EU legislation itself was reported to be problematic. For instance, the interpretation of Regulation 1013/2006 poses problems to practitioners, in particular concerning the chapeau to Annex III ('green-listed' waste), which provides:

> *Regardless of whether or not wastes are included on this list, they may not be subject to the general information requirements laid down in Article 18 if they are contaminated by other materials to an extent which (a) increases the risks associated with the wastes sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Directive 91/689/EEC; or (b) prevents the recovery of the wastes in an environmentally sound manner (emphasis added)*

Defendants will claim, for instance, that waste cannot be considered contaminated by other materials to an extent that prevents the recovery of the wastes in an environmentally sound manner if an (EU approved) company has accepted its receipt for recovery of the waste in question.

An additional challenge to the prosecution of illegal waste trafficking arises from frequent updates and changes to environmental legislation. Law enforcement and judicial authorities are required to continuously update their expertise and knowledge.

4.3 Level of penalties

An important issue linked to differences in the implementation of the EU legal framework into national legislation concerns the level of penalties. The Environmental Crime Directive requires that the Member States take the necessary measures to ensure that the environmental offences are punishable *'by effective, proportionate and dissuasive criminal penalties'*.

However, there is no uniform interpretation of those terms ('effective, proportionate and dissuasive') among the Member States. Also, the importance that Member States give to this particular crime area is not always the same and there are very different levels of penalties for the same offence in the Member States. Generally, it can be said that a low number of prosecutions regarding environmental crime is accompanied by an even lower number of convictions.

Another important issue to consider is that in many Member States the level of potential penalties corresponds to the investigative measures that can be used to investigate such offences. This means that if the penalty for the illegal trafficking in waste is not high enough or if the behaviour is not qualified as a serious crime, coercive or complex investigative techniques (*e.g.* interception of communications, video and audio surveillance) can potentially not be used[20].

In addition, if the offence is only punishable by fines, attempts are not punishable and no coercive measures such as search/seizure can be performed.

4.4 Insufficient coordination among national authorities

Close cooperation between national authorities is particularly essential in the field of illegal waste trafficking as the implementation of the relevant legal framework is mostly supervised by administrative authorities that, for instance, issue licences to companies, authorise transport and perform customs control. However, these national authorities are primarily concerned with the compliance of the regulatory framework. The establishment of a criminal case, including the correct securing of evidence, is not necessarily their main priority. This situation can hamper the quantity and quality of information provided from the relevant administrative authorities to the prosecution offices.

In addition to the level of cooperation between national authorities, it can also be the sheer number of administrative authorities involved in the management and control of waste trafficking that can pose obstacles to the efficient investigation and prosecution of criminal cases: a high number can result in insufficient communication and coordination among them.

In this context, a key challenge for investigating agencies is to ensure that there is sufficient intelligence available and analysed. However, if members of the public are not aware that what they have seen is a crime and do not report it, this potential intelligence can be lost. Therefore, close cooperation between the law enforcement authorities and non-law enforcement investigating agencies is needed to ensure that an accurate overall intelligence picture is built and maintained.

Closer cooperation among the investigating and prosecuting authorities with customs authorities also appears to be beneficial, as there is often a huge amount of valuable data collected by customs that is not in all instances shared with the specialised law enforcement units fighting environmental crime - when those specialised units exist - and prosecution.

[20] See similar issue in sub-chapter 3.4 above in the field of trafficking in endangered species.

4.5 Burden of proof and evidence gathering

In the field of illegal trafficking in waste, it can be particularly difficult to prove the intention of the perpetrators of such offences. Due to the complexity of the relevant regulatory framework and the technical expertise required to understand the different requirements for certain categories of waste, suspects will regularly defend their actions as involuntary mistakes and lack of awareness of their illegal nature, and it is difficult to prove the contrary. Also, the shippers of waste will typically claim to have been unaware of the contents of a shipment.

Another challenge can be proving the law of the destination country in relation to Article 36(f) of Regulation 1013/2006. This provision determines that the export of waste for recovery from the EU to non-OECD Decision countries is prohibited if the importing of that waste has been prohibited by the country of destination.

A similar difficulty can arise in the context of the prosecution of cases concerning Articles 36(g) and 49 of Regulation 1013/2006, which require the management of waste exported to non-OECD Decision countries to be carried out in an environmentally sound manner. Evidencing that this obligation has not been fulfilled regularly requires the securing of reliable evidence and testimony from witnesses residing in these countries, neither of which is always available to the prosecution.

In general, the gathering of evidence concerning the illegal trafficking in waste can be challenging due to its technical requirements. A waste shipment might pass through two or three different jurisdictions. This requires the gathering of evidence in terms of procuring documentation from the various competent authorities and an assurance that evidence was not tampered with (*e.g*. the defence may argue that containers were left unsealed at some point prior to inspection).

Another issue arises when perpetrators dispose of waste in illegally maintained waste deposit sites that are commonly used by other illegal waste managers. This leads to mixing of waste by different 'offenders' and, as a result, it can be extremely difficult to link a specific deposit to individual suspects.

The securing of evidence in a cost-effective manner is also a challenge when it comes to the composition of waste, *e.g.* the quantity of 'green listed' waste and the quantity of other material. Defendants in such cases will regularly argue that waste was contaminated (not mixed) within a tolerable level. Competent authorities, on the other hand, will argue that the relevant legislation does not provide for any level of tolerance and that cases are only prosecuted where officers 'on the ground' are of the view that the 'contamination' is of such a level that it constitutes a mixture of wastes.

4.6 'National' focus of waste prosecution

From the information gathered through the Project Team's activities, it also appears that prosecutions often focus on the producer alone and keep a purely national perspective. This approach - limited to achieving a conviction solely for the 'national' aspect of the offence - can hamper an effective fight against this criminal phenomenon, which has by definition a cross-border nature.

4.7 Links to organised crime

Cases of illegal trafficking in waste also show links to and the involvement of OCGs. The Europol Environmental Threat Assessment supports this assessment. The involvement of OCGs in the illegal trafficking in waste is incentivised by the rationale of maximizing profits and minimising costs. The

report outlines that OCGs exploit the lack of EU-wide standardised control regimes and demonstrates the use of fraudulent documentation as key aspects of their *modi operandi*.

Despite the resulting long-term environmental damage, large numbers of companies are willing to use the services of OCGs so as to benefit from lower prices for the transport and disposal of waste than those available on the legal market. The *modi operandi* of OCGs in that regard depends on the type of waste to be transported and its destination – intra-EU as opposed to extra-EU. In that sense, a cycle is formed, consisting of the origin, transit and destination of the waste. Within this process, OCGs are aware of the weaknesses in waste control mechanisms and rely on the fraudulent certification of documents to conceal the origins and composition of waste.

5. Surface water pollution

One of the workshops of the Strategic Meeting was dedicated to surface water pollution. The workshop had a strong operational focus and was divided into two parts. In the first part, two case illustrations were presented, one from Hungary and one from Sweden. These case illustrations were used to demonstrate the impact of surface water pollution, to give operational examples of obstacles, solutions and lessons learned and to serve as a platform for the discussion in the second part of the workshop.

Analysis of the case illustrations and the resulting discussion indicated that many of the obstacles prosecutors and investigators are faced with are typical for environmental crimes in general and sometimes intrinsically linked to each other.

5.1 Complexity and ambiguity of environmental legislation

The implementation of EU legislation for surface water pollution[21] in national legislation differs from Member State to Member State. As a consequence, different enforcement actions are available in each Member State. These enforcement actions range from administrative and civil processes to criminal proceedings. In some Member States, an offence of surface water pollution could be dealt with in all three ways simultaneously. Furthermore, it was reported that there is a variety of possible defendants in each Member State. While some prosecutors could only prosecute natural persons, others could also prosecute companies or even municipalities and a final group of national prosecutors could prosecute all parties.

A further issue that arises in cases of surface water pollution is that there are several regulators and numerous regulations. Participants noted that there is often a lack of clarity about the role each regulator has to play in each case. This lack of clarity can hamper investigations and thus further complicate the proceedings.

In addition to the challenges posed by differences in legislative implementation, environmental legislation in general is often highly technical and thus requires a certain degree of technical expertise (see the above chapters). This creates an obvious challenge for law enforcement and judicial authorities. The situation is no different for surface water pollution: some specific knowledge is for instance required of the chemicals used and the damage these can cause to the environment as well as to public health.

5.2 Level of penalties

As mentioned previously in the Report, environmental offences in Member States are punishable 'by effective, proportionate and dissuasive criminal penalties' established by Directive 2008/99/EC. We have already mentioned that there is no uniform interpretation of these terms and that there is no special priority given to the fight against environmental crime in general; this applies equally to surface water pollution. The result is that penalties and the level of convictions vary considerably.

Furthermore, the level of penalties can affect the number of investigative and coercive measures that are available to the investigator or prosecutor. This situation can result in Member States not giving enough focus to this type of crime.

[21] Directive 2000/60/EC establishing a framework for Community action in the field of water policy is the main legal instrument concerning EU water's policy.

5.3 Insufficient coordination among national authorities

One major obstacle that was mentioned during the discussions at the Strategic Meeting was the lack of coordination between national authorities and the lack of clarity of the mandates of these authorities. Administrative authorities that can issue licences and concessions for companies and municipalities, (for example for emission limit values) might not prioritise an investigation for the sake of building a criminal case should these emission limit values be exceeded. Coordination between administrative authorities and prosecution offices is therefore important for the effective investigation and prosecution of cases of surface water pollution.

5.4 Burden of proof and evidence gathering

A major challenge in cases of surface water pollution is to identify the source of the pollution in the first place. In a Swedish case concerning cryptosporidium (a parasite) in drinking water, the authorities were forced to carry out extensive investigations and use cameras to follow the pipes to their source. In a Greek case of water pollution, the authorities concluded that the source of the water pollution could only be identified by digging up all the pipes. This was prohibitively expensive and, as a consequence, the prosecutor had to prosecute an alternative crime considered less severe. The issue of identifying the source is exacerbated by the fact that there are often several sources emitting to the same body of water. Thus, the securing of evidence in a cost-effective manner is a considerable challenge.

Furthermore, in some cases of surface water pollution, time is an issue. The longer it takes to find qualified experts to gather evidence, or to establish the existence of water pollution in the first place, the more prosecutors and investigators run the risk of the evidence being either contaminated by other pollutants or simply being washed away.

As a result of the challenges mentioned above prosecutors often choose to prosecute alternative crimes rather than surface water pollution. For example, in the Swedish cryptosporidium case, the municipality was prosecuted for providing unwholesome drinking water, which was an easier crime to prove than the alternatives. In the Greek case, companies emitting pollutants to the body of water were prosecuted for exceeding their emission-limit values. The crime that is chosen to be pursued in court may have benefits in terms of burden of proof, but then a more lenient penalty may be imposed.

6. National organisational structure and access to expertise

6.1 Diverse national organisation to tackle environmental crime[22]

Country	Specialised investigation unit in environmental crime[23]	Specialised judicial unit in environmental crime	Other specialised units
Belgium	Environmental Crime Service under the General Direction of the Federal Judicial Police. At investigative level: two local judicial police forces (Brussels and Mons) have specialists in environmental crime.	No. But: - Some Public Prosecutors' Offices (the 'PPO') have specialised sections on environmental crime - 'Coordination' by the Prosecutors General of the 'Environmental expertise network' of prosecutors who specialise in this area (exchange of experience, advice, etc. through the network).	Some administrative services, with law enforcement competence in environmental matters: - at federal level: Ministry of Public Health, Food Chain Security and Environment. - at regional level: Flanders, Wallonie, Brussels.
Bulgaria		The Supreme Cassation Prosecutors' Office; specialised sector which has competence to monitor and advise the work of the first instance PPOs in cases of environmental crime.	
Czech Republic	Some specialised police officers.	Specialisation at Supreme Public Prosecutor's Office in Brno, Superior Public Prosecutor's Office in Prague and Olomouc, Regional Public. Prosecutor's Offices and some of the District Public Prosecutor's Offices.	

[22] The information was updated in May 2014.

[23] When 'none' is indicated, the investigative and/or judicial competence falls under the general competence of law enforcement and/or prosecutorial/judicial authorities.

Country	Specialised investigation unit in environmental crime	Specialised judicial unit in environmental crime	Other specialised units
Denmark	No national specialised unit(s) as such. However, every police district has a unit that specialises in cases concerning environmental crime.	In each of the two regional prosecutors' offices there are specialised units dealing with environmental crime.	
Germany	Due to its federal structure, no central authorities in this regard; specialised units are present in investigative, prosecutorial and/or administrative authorities at *Länder* level.		
Estonia	Environmental Inspectorate (law enforcement unit dealing with environmental crimes). Each of Estonia's four districts has a prosecutor and an investigator of the environmental inspectorate who deal with environmental crimes. There are no specialised judges in courts.		Specialised investigators in the Tax and Customs Board (environmental inspectorate).
Ireland	The Environmental Protection Agency, the National Transfrontier Shipment Office in Dublin City Council, *An Garda Síochána* and the 34 local authorities investigate environmental crime. *An Garda Síochána* also has investigative competence and experience regarding environmental crime including littering and illegal dumping. While there are general Garda powers, there is also a specialist section within the Garda National Bureau of Criminal Investigation which deals with significant cases of illegal dumping and associated offences. The Network for Ireland's Environmental Compliance and Enforcement (NIECE) provides a forum for investigators to meet and share expertise. The local authorities and the Environmental Protection Agency prosecute minor offences in the District Court in their own name. Non-minor offences are prosecuted in the Circuit Court by the Director of Public Prosecutions. The Director of Public Prosecutions has no investigative powers. Investigation files are submitted by the relevant investigating body. There is no specialist agency for prosecutions on indictment of environmental crime. Investigation files submitted to the DPP are dealt with by a designated unit. The Irish Network of Environmental Prosecutors provides a forum for environmental prosecutors to meet and share expertise. There is no specialist environmental unit within the judiciary.		

Country	Specialised investigation unit in environmental crime	Specialised judicial unit in environmental crime	Other specialised units
Greece	Special unit on environment within the Hellenic Police of Attica (Unit of Protection of Property Rights, Cultural Legacy and Environment).	In the PPO in Athens, there is one prosecutor exclusively in charge of cases related to environmental crime. In the rest of the PPOs throughout Greece, one assigned prosecutor is responsible for cases (but not exclusively) relating to the environment.	Environment Inspector (basic investigative and administrative authority).
Spain	The Department of Environmental Crime. A national unit that investigates and prosecutes environmental crime (the unit handles serious environmental crime with national competence). The unit consists of police investigators, four prosecutors and experts with different education/background (engineers). The unit deals with serious cases of environmental crime and gives advice to local police/prosecutors who handle the less serious cases of environmental crime. In addition, there is a wide domestic network of specialised prosecutors seconded in all regions. The Civil Guards, the National Police, the Autonomous Police and, occasionally, the Local or Municipal Police, have units specialising in environmental matters, although those set up in the Civil Guards are the most 'developed'.		Forest Police is more of an administrative nature.
France	Specialised judicial police: the OCLAESP, (Central Office against Infringements of Environment and Public Health).	Two specialised criminal jurisdictions: division of public health of Paris and Marseille; within the Ministry of Justice: the public health, social and environmental law division is in charge of coordination and follow up of public action and of drafting criminal law in those fields.	
Country	**Specialised investigation unit in environmental crime**	**Specialised judicial unit in environmental crime**	**Other specialised units**
Croatia	None, but there are police officers in Police Administrations trained to	None, but there are specialised	Administrative bodies (ministries

	work on environmental crime cases.	prosecutors who work on environmental crime cases. They are advised and their work is coordinated by the State Attorney's Office of the Republic of Croatia.	and their respective inspection bodies) with law enforcement competence in the environmental sector: - Ministry of Environmental and Nature Protection - The Ministry of Maritime Affairs, Transport and Infrastructure - Ministry of Agriculture - Ministry of Health - Customs Administration.
Italy	One specialised police force (Operational Ecological Carabinieri).	None	The Guards of the State Forestry Corps have considerable experience in the waste sector. In the field of maritime pollution, specific departments of the Harbour Offices have specialised competence.
Latvia	None	None	

Country	Specialised investigation unit in environmental crime	Specialised judicial unit in environmental crime	Other specialised units
Lithuania	No specialised law enforcement unit but some police investigators specialise in this area.	No specialised prosecutorial units (environmental crimes fall under the Prosecutor's Office of the Republic of Lithuania), but some prosecutors specialise in this area.	Environment Protection Agency (under the Ministry of Environment) organises and coordinates State environmental protection control at administrative level (also appointed as a competent authority under Basel, Rotterdam and Stockholm Conventions). This agency is composed of customs officers and other State officers.
Luxembourg	None	None (but some prosecutors have acquired this specific knowledge).	
Hungary	No information.	Department of Economic and Environmental Crime Cases within the Prosecutor's Office.	
Malta	Investigations can be conducted jointly between the police and the Malta Planning Authority (MEPA).		MEPA has administrative enforcement powers and can inform the police when an act against the environment constitutes a criminal act.

Country	Specialised investigation unit in environmental crime	Specialised judicial unit in environmental crime	Other specialised units
The Netherlands	Law enforcement units specialised in this area exist: - Several hundred police officers organised in regional units are entrusted full-time with investigating environmental crime cases - a special investigative service attached to the Department of Infrastructure and Environment, with general powers of investigation (particularly with regard to hazardous wastes, chemicals and pesticides and persistent organic pollutants) - special investigative officers (supervisory officers with additional power to investigate) partly attached to the Department of Infrastructure and Environment - Dutch Customs Organisation (Belastingdienst/Douane).	National Public Prosecutor's Office for Serious Fraud and Environmental Crime are present in The Hague, Amsterdam, Rotterdam, Den Bosch and Zwolle.	Enforcement is also organised in regional or local bodies, for example the Port of Rotterdam area and Amsterdam: The DCMR Environmental Protection Agency is the regional environmental agency of the local and regional authorities operating in Rijnmond, the larger 'Port of Rotterdam' area in the Netherlands.
Austria	Specialised units on police level.	In AT, some PPOs have specialised sections on environmental crime. The specialised sections are established in the PPOs of Vienna, St. Pölten, Feldkirch and Innsbruck.	
Portugal	One law enforcement unit is competent to deal with those cases at administrative level and to support prosecution services in the context of criminal investigations: Inspecção-Geral da Agricultura, do Mar, do Ambiente e do Ordenamento do Território.		
Romania	None	None	
Slovenia	None	None	
Country	**Specialised investigation unit in environmental crime**	**Specialised judicial unit in environmental crime**	**Other specialised units**

Slovak Republic	A network of prosecutors specialised in this field. The Department for Detection of Dangerous Materials and Environmental Crime is part of the Criminal Police Agency (but, it does not carry out investigations).	None	
Finland	Certain police officers specialising in investigating such crimes.	Several prosecutors working in different prosecutors' offices who specialise in investigating environmental crimes.	
Sweden	Specially appointed police officers trained in environmental crime. Customs criminal department investigates offences regarding illegal trafficking in waste when the offence has been discovered during border inspections.	No specialised courts, but a National Unit for Environmental Crime falling under the PPO, focuses on environmental crime. Although the National Unit is based in Malmö, prosecutors belonging to it are posted at the ordinary PPO in six towns.	Many other public bodies are involved at different levels in investigations, such as the municipality, the Coast Guard, and the Swedish Environmental Protection Agency.

Country	Specialised investigation unit in environmental crime	Specialised judicial unit in environmental crime	Other specialised units
United Kingdom	In England & Wales the primary environmental regulator is the Environment Agency which both investigates and prosecutes environmental offences. Wildlife Crime is investigated by the Police and Her Majesty Revenue and Customs (HMRC) and is prosecuted by the Crown Prosecution Service. Scotland - Investigation of environmental crimes in Scotland is carried out, in the main, by the Scottish Environment Protection Agency (SEPA). They can work in conjunction with the police when necessary and the police can also investigate and report environmental crime to the prosecution service (Crown Office Procurator Fiscal Service, COPFS), which has a Wildlife and Environmental Crime Unit with a team of prosecutors who specialise in the investigation and prosecution of wildlife and environmental offences across Scotland. Marine Scotland and Scottish Natural Heritage also have roles which involve enforcement of Environmental Law. An Environmental Taskforce was established in 2011 involving national and local government authorities, the police, SEPA and COPFS coming together to tackle environmental crime. Northern Ireland - Investigations are carried out by the Northern Ireland Environment Agency (NIEA). They submit files to Public Prosecution Service (PPS) to consider as to whether a prosecution should take place. Within PPS the Departmental Section deals with specialist prosecutions including environmental cases.		
Norway	The National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) acts as a national task force within the police, as it investigates and prosecutes major and fundamentally important cases of environmental crime, but also acts as an adviser to the local police. In every local police district (27 units) there are specialised police officers and prosecutors trained to investigate environmental crime Several laws within Norwegian legislation specifically cover environmental crime. There are no specialized courts.		The guards of the Norwegian Nature Inspectorate and officers in the Norwegian Coast Guard have law enforcement competence in some environmental matters.

Analysis of the sources of information available to the Project Team suggests that the organisational structure at national level is hugely diverse across the European Union.

An 'organisational' challenge in the fight against environmental crime can arise, for example, when a specialised national 'Environmental Protection Agency'; exists that it has the necessary technical expertise and knowledge in relation to environmental crimes but no criminal investigative powers. 'Regular' law enforcement and prosecution authorities, on the other hand, will have the investigative powers, but they do not always have the specialised knowledge and a specific interest in environmental crime.

An additional challenge can arise when the competent national authority, such as the Environmental Protection Agency, does not treat illegal shipments from the perspective of criminal law but rather from an administrative perspective, and therefore does not provide the necessary information to the investigating authorities.

Another issue is the possibility for prosecutors to specialise in environmental crime while the same possibility is not mirrored in the law enforcement authority or vice versa. Therefore, the expertise available on one side is not matched on the other. A possible solution to this particular challenge is the establishment of personal and institutional contacts that would allow for better cooperation.

In addition, some Member States have established special courts for environmental offences, such as administrative courts for permits relating to hazardous activities. However, criminal environmental cases often remain within the competence of regular criminal courts. This situation will sometimes affect the level of sentencing.

Furthermore, investigations often focus on specific parts of the national territory, even if they are linked to the illegal activities by the same enterprise/group in other parts of the country. When investigations are led between various prosecuting offices into separate offences, this can result in an underestimation of the legal qualification of the facts, which, if considered together, could qualify as a more serious and even as organised crime.

During the discussions at the Strategic Meeting, it became obvious that it is crucial for a smooth and efficient investigation and prosecution to be effectively organised at national level. For some Member States, as pointed out above, it is a challenge to clarify the respective mandates and to ensure efficient coordination of the relevant entities.

6.2 Lack of human resources with the necessary expert knowledge

Environmental crime cases do not differ from other serious crime investigations when the sheer number of individuals to prosecute, or the number of victims (in the Swedish cryptosporidium case 27,000 people were affected) or witnesses (in the Hungarian red mud case 125 witnesses were called by the prosecution) is high. Naturally, cases of such magnitude require a large number of qualified persons and a lack of resources can therefore seriously hamper the investigation. In the case of illegal trafficking in waste, for instance, competent authorities are often confronted with victims located abroad, in third countries far away from the country of origin of the waste. In the case of trafficking in endangered species, source countries are also often located outside of the European Union and cooperation needs to be established to dismantle those criminal networks.

Additionally, as mentioned above, regulations related to illegal trafficking in waste, protection of endangered species and surface water pollution are technical and complex. Experts are needed, for example, to decide if certain items qualify as waste, if waste is exported for recovery or re-use, or if an egg belongs to a specific protected species. Also, offenders will often falsely claim that the transporting of goods or raw materials is for manufacturing and others will mix protected with non-protected eggs.

It can be difficult to identify or find competent and truly independent experts who are sometimes required for extremely specific aspects of environmental prosecution (e.g. polychlorinated biphenyl (PCB) pollution, phytosanitary products, radioactive or asbestos waste, the type of water pollution and its source). For instance, the 'Swedish cryptosporidium case' began with suspicions put forward by a doctor at the hospital to which the sick individuals who had been drinking the polluted water were brought. Without the suspicions of the doctor, the investigation would most probably not have been initiated.

Furthermore, resulting from the need for technical expertise, a case concerning the illegal trafficking in waste, trafficking in endangered species or surface water pollution can also depend on the timely and immediate availability of environmental inspectors. A criminal investigation can be negatively affected when police or customs officers detect the possibility of an environmental offence but the required expertise to determine the technical requirements is not available on a 24 hours per day, seven days per week basis. Generally, there are only a few specialists at national level. Additionally, any assessment of the material and chemical composition of waste has to be performed by an expert, which significantly increases the cost of evidence proceedings. The same applies to DNA testing (see chapter above on trafficking in endangered species). Legal and technical assistance is demanding and not always executed with the necessary level of expertise, possibly leading to disagreement among experts. Furthermore, the risk in countries where expertise is rare is that the defence acquires all of the available expertise and therefore gains an advantage in the court proceedings. The need for experts also significantly increases the cost of evidence proceedings, thus making investigation and prosecution yet more burdensome and can result in the prosecution choosing an alternative, sometimes less serious, crime to prosecute.

7. Best practice and possible solutions

7.1 Closer international cooperation and involvement of Eurojust

Resulting from the inherently cross-border nature of illegal waste trafficking, trafficking in endangered species and surface water pollution, international cooperation is a key requirement in fighting these types of crime effectively. A number of stakeholders play a fundamental role in this process (see cooperation with partners below).

Replies to the Questionnaire and feedback from participants during the Strategic Meeting showed the level of interest in involving Eurojust more closely in the coordination of cross-border environmental crime cases. At the Strategic Meeting, Eurojust's representatives presented the coordination centre established under Dutch chairmanship in an environmental case. This practical example raised awareness of the possibilities and added value that can be provided by Eurojust, from the simple speeding up of requests for mutual legal assistance to the organisation of coordination centres for action days with simultaneous house searches and arrests taking place in several Member States. Also, Eurojust's network of contact points in third countries appears to be of great interest to practitioners. The establishment of new channels of judicial communication to contact points in Asia and Africa, as destination regions for illegally trafficked waste and source countries for trafficking in endangered species, could be considered.

Eurojust provides clear added value regarding sharing and gathering best practice. For instance, participants in the Strategic Meeting recognised that in the field of surface water pollution, Eurojust has a 'platform role' to coordinate national action, assist prosecutors in the Member States and ultimately raise awareness in Member States. The Strategic Meeting brought to light a common agreement that networks and Eurojust could play this important advisory, coordination and guiding role in this field. The competent authorities of different countries could be assisted in their wish to communicate and share expertise, but also, by involving Eurojust, in their coordination needs when complex, cross-border investigations require, for efficiency purposes, the use of European coordination tools (see sub chapter below).

In addition, it is common to use requests for mutual legal assistance in environmental cases. When prosecutors who - across the European Union – often are not specialists in this area, send a letter of request to their counterparts in other Member States, it could be useful, as stressed by many participants to the Strategic Meeting, to obtain - if possible prior to drafting - some advice on best practice in this area. The latter could be coordinated and facilitated by Eurojust.

A pragmatic step could also be the setting up and maintenance of a list of contact points in the Member States for practitioners in the field to quickly contact an expert from another Member State and to facilitate a first exchange of views on the best way ahead on a particular problem. This list of contact points could focus on expertise relating to environmental crime in general or on one of the three areas mentioned above more specifically.

7.2 Joint investigation teams and other cooperation tools

It appears that the establishment of joint investigations teams (JITs) in the three environmental crime types mentioned above is not yet very well developed. Given the advantages of JITs, in particular in allowing competent authorities to exchange information in a quick and simplified manner, this instrument could be of great help to enhance judicial cooperation in such cases. Also, it would allow the participation and contribution of necessary experts within the framework of such a JIT. In the workshop focusing on trafficking in endangered species, participants recognised that, had Eurojust been involved at an earlier stage - in particular with the establishment of a JIT - the case would have benefited from additional expertise located in other Member States and might have allowed broader prosecution. Member States are not, either, necessarily using other possible cooperation tools, such as coordination meetings and coordination centres at EU level. Given the complexity and cross-border nature of those crimes, there is no doubt, as confirmed by participants of the Strategic Meeting, that cooperation should be stepped up and tools used that are similar to those already in use with more 'traditional' types of crime.

As suggested by participants of the Strategic Meeting, one of the means which could be used by competent authorities is to use tools available in tackling other forms of serious crime. Other legal possibilities should, however, also be examined, such as the possibility to more systematically use the Convention on mutual assistance and cooperation between customs administrations (the 'Naples II Convention') 24. Indeed, this Convention can be used by judicial authorities instead of standard Mutual Legal Assistance requests in cases where customs offences are concerned. Therefore, environmental crime information received under this instrument can be used as evidence in criminal proceedings.

7.3 Exchange of case law and best practice

The examination of the available information in trafficking in endangered species, illegal trafficking in waste and surface water pollution, showed that there is great interest and a need for an exchange of relevant national case law among practitioners in these fields. Replies to the Questionnaire, as well as discussions during the Strategic Meeting, highlighted the willingness of prosecutors to study and learn from cases already judged in other Member States.

To this end, a particularly useful tool is under development by the IMPEL Transfrontier Waste Shipment Task Force which foresees a database of case law on environmental crime, with a special focus on transfrontier shipment of waste and the enforcement by the Member States of Regulation 1013/2006. The database will comprise a collection of national judgments submitted by the prosecutors participating in the IMPEL network. The full text of each judgment will be available in its original language, accompanied by a short summary in English provided by the submitting Member State (names of defendants will be omitted). The database will also allow the use of keywords and some additional information (e.g. domestic reference of the case, the name of the prosecutors involved, etc.). In its initial stage, the database will be accessible only to the prosecutors who are part of the IMPEL network. However, in the long-term, the aim is to make the database accessible to prosecutors around Europe to share knowledge and experience and to establish common practices in the fight against environmental crime. Developing the same type of database for the trafficking in

[24] Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations, OJ C 189 , 17/06/1998 P. 0001 – 0018.

endangered species and cases of surface water pollution could provide a strong increase in the knowledge of practitioners and give rise to comparisons and possible common practices across the different judiciaries.

The need to exchange case law is quite close to that relating to the exchange of best practice. The expertise and operational experience of prosecutorial services on cases of environmental crime is still very limited in some Member States while others have already gathered a significant amount of practical experience and knowledge in this area. Equally, networks such as the ENPE and IMPEL are actively seeking to exchange information and to build expertise among their members. There is a great interest from practitioners who could benefit hugely from an exchange of best practice from colleagues prosecuting cases of environmental crime. The European Union Trade in Wildlife Information Exchange (the 'EU-TWIX')[25] network allows practitioners dealing with cases of trafficking in endangered species to share and request a broad scope of practical and legal useful information (from physical characteristics of specific species to information relating to court decisions, for instance). This information has great potential and a further development and use of this tool should most probably be envisaged.

Eurojust is willing and committed to continuing its assistance and support of the prosecution of environmental crimes. Participants of the Strategic Meeting considered it particularity interesting to establish a platform to share best practice, information and experience for future investigations.

7.4 Multidisciplinary approach to fighting environmental crime

Multidisciplinary teams investigating and prosecuting cases of environmental crime are already present in some Member States (see chapter 6 above). While this national organisation might not be the panacea for all Member States, it allows for easier access to different types of expertise and shows the multidisciplinary nature needed to tackle this crime area.

Easily accessible support from experts or specialised departments should be possible when faced with technically difficult investigations, e.g. customs officials with regard to the export of waste, the control of relevant certificates accompanying the transfer of protected species, specialised personnel from environmental agencies, etc. A multidisciplinary approach and close cross-agency cooperation is needed to tackle environmental crime efficiently. It is also important to clearly understand the division of mandates of each agency involved to avoid overlaps and maximise the use of available expertise.

As recognised in other crime types with links to organised crime, there should be an intelligence-led approach to the fight against serious and organised environmental crime. To implement such approach, it is necessary at national level to commit to systematically collecting relevant information - which requires the close multidisciplinary cooperation of all involved agencies, such as customs or health authorities.

[25] For more information, please see www.eutwix.org.

7.5 Harmonisation of definitions, standardisation of their interpretation and implementation of dissuasive penalties

Not only is there no uniform level of penalties for environmental crime in the European Union, but the definitions of offences and its components are also different in the various national legal systems. This can lead to 'forum shopping' by criminals and de facto prevent a harmonised approach to tackling environmental crime across the EU.

As with many environmental crimes, the fight against surface water pollution, trafficking in endangered species and illegal waste trafficking would benefit substantially from clarification and harmonisation of the definition of offences, but also from a common interpretation of the different specific texts existing under the label 'European environmental law' and from the introduction of similar levels of penalty across the European Union. This will probably only be made possible by a clear recognition, starting at national level, of the seriousness of those types of crime.

7.6 Confiscation of criminal proceeds

The incentives to commit environmental crimes are, in most cases, the same: to make money and/or reduce costs. The risk of detection and penalties are still relatively low while the profit margin is high. To remove this incentive from the equation and to reduce the 'attractiveness' of these particular crimes, measures to confiscate proceeds need also to be implemented on a more systematic basis.

It should, however, be stressed that, unlike the two other areas examined in this Report, surface water pollution is not intrinsically linked to organised crime. People, companies or municipalities usually commit these crimes because they are already in the position of having the opportunity to do so. But the effects of the crimes can be criminal and have great impact; and the manner in which perpetrators try to cover up their actions and use all legal instruments to prevent conviction certainly has an organised crime dimension.

Equally, a stronger focus on money laundering aspects could be considered during the investigation and prosecution of illegal waste shipments, trafficking in endangered species and surface water pollution to enhance the efficiency of the fight against environmental crime.

7.7 Cooperation with partners

The Project Team has, throughout the Strategic Project, been able to identify and cooperate with some of the major stakeholders combating environmental crime in the European Union and beyond, and is convinced that cooperation with the relevant existing stakeholders is of particular importance in fighting environmental crime.

- **Specialised national units fighting environmental crime**, whether law enforcement or judicial. Such units have unique expertise. JITs assisted by Eurojust or coordination meetings held at Eurojust should draw on this knowledge as much as possible.
- **Europol**. The possible future establishment of a Focal Point on environmental crime would enable Europol to collect, in a systematic manner, intelligence-based contributions made by national investigation units. In this case, Eurojust could step up its partnership with Europol (as it is currently doing in other crime areas benefiting from this type of tool). Additionally, Europol has close ties with EnviCrimeNet, which is a key law enforcement network in the area of environmental crime. Regular meetings between Eurojust representatives and Europol

experts could, in any case, be beneficial to both organisations and step up cooperation at EU and possibly at national level.

- **INTERPOL**. INTERPOL is a key partner as far as:
    - reaching out to third States to the EU, in terms of training/capacity building ,and
    - reaching out to investigative experience in source countries (Africa and South America, mainly) and customers' countries (China and United Arab Emirates, for instance) for trafficking in endangered species but also in destination countries (African and Asian countries mainly) for trafficking in waste.
- **Specialised prosecutors' networks** or projects on environmental crime such as the ENPE and the IMPEL. Eurojust should maintain the cooperation established during the Strategic Project with the ENPE and IMPEL to increase awareness among competent judicial authorities.
- Both the European Commission's **DG Justice and DG Environment** are decisive recipients of practitioners' contributions (*e.g.* the recent contribution from Eurojust on an EU approach to wildlife trafficking, *see* Annex 4) and are key sources of information as to the latest legislative and policy developments at EU level. Because of the difficulties mentioned earlier in the Report relating to implementation and understanding of the current legislation, it appears to be crucial to Eurojust to keep abreast of the newest developments in this field to assist, in the best way possible, practitioners confronted by practical and legal questions.
- **CITES and Basel Secretariats as well as the UNODC**. Eurojust should make increased use of the interesting information as to new trends and developments in the area of environmental crime available at these bodies.
- **Key third States.** Eurojust will explore the possibility of establishing contact points with key third States in Africa and Asia, in particular in the context of the illegal trafficking in endangered species and waste.

8. Conclusions and way forward

The Strategic Project aimed, in particular, to identify the main obstacles and issues concerning the efficient and successful investigation and prosecution of environmental crimes in the Member States and the specific role of Eurojust in assisting to overcome these obstacles. Resulting from the lessons learned in the three specific areas of environmental crime that were analysed in detail based on Eurojust's experience and the different activities that have been carried out during the Strategic Project, the following overall conclusions can be drawn upon:

Environmental crime needs to be considered and treated as a serious crime area, with the same emphasis and access to financial and human resources as any other serious crime, in particular when it contains cross-border elements. Environmental crime damages the environment, poses great risks to the health and wellbeing of human beings and the integrity of biodiversity, and undermines, in its organised form, the rule of law and sustainable development.

Due to the high profits generated, the relatively low risk of detection, and – quite commonly – lenient penalties, environmental crime is often linked to organised crime, in particular illegal trafficking or dumping of waste and trafficking in endangered species.

When environmental crime is not linked to organised crime (such as, generally speaking, surface water pollution), it should still be considered and handled by the investigating and prosecuting authorities as a serious crime that deserves the appropriate investigative tools and a cross-border approach, as necessary.

As in other serious and organised crime areas, the profits generated are significant and serve as the main incentive for committing such offences. Asset tracing, freezing and confiscation should therefore be applied on a more general and systematic basis.

The legislative framework for environmental crime, as well as its implementation measures, are complex and often of a technical nature. Specialist knowledge is required, not only through the involvement and availability of independent experts for investigations and prosecutions, but also through a certain level of expertise in the specific areas within law enforcement and prosecutorial personnel. Investigative resources must be secured and more training/ information sessions for investigators and prosecutors and judges are essential. Swift access to expertise is also essential.

The involvement of a broad range of national authorities, e.g. from customs officers to veterinary experts - demonstrates that a multidisciplinary approach is essential to fighting environmental crime and that, to tackle it efficiently, organised and systematic inter-agency collaboration and coordination needs to be developed and sustained at national, European and at international level.

Penalties for environmental offences can differ significantly between Member States. The maximum periods of imprisonment and the maximum amounts of financial sanction differ throughout the European Union, and the level of enforcement of such sanctions is diverse. Although applying only fines can be an efficient deterrent in some (minor) cases, it appears that, in general, the deterrent effect of penalties in Member States is not sufficient. Directive 2008/99/EC on the protection of the environment through criminal law that requires Member States to take the necessary measures to ensure that environmental offences are punishable 'by effective, proportionate and dissuasive criminal penalties' does not seem to be adequately implemented across the EU.

As legislation of the different Member States in this area is not harmonised, in particular in terms of penalties, Member States often struggle to use similarly coercive investigative techniques to those used in other serious crime areas. While waiting for more comprehensive EU legislation than Directive 2008/99/EC on the protection of the environment through criminal law (or its amendment), an alternative suggested by practitioners is to investigate those crimes under the label 'organised crime' and/or to use specific tools such as the Naples II Convention, to enable a broader spectrum of investigative techniques.

The sharing of best practice and of expertise is essential in environmental cross-border cases, where sufficient experience among investigators and prosecutors is sometimes still missing. A coordinated approach should be adopted to maximize results.

Intelligence gathering should – as in any serious crime area - become automatic. Better intelligence gathering at Member State level must be developed and Europol's expertise could be 'explored' within this framework at EU level.

Coordination of investigations and prosecutions should be carried out on a more regular basis through the early involvement of Eurojust. The use of joint investigation teams, coordination meetings and coordination centres could, in this context, be considered more systematically in cross-border environmental cases. The increased involvement of Eurojust could make the investigation and prosecution of serious cross-border environmental crime more effective.

The two prosecutorial networks – the ENPE and IMPEL - are very active in the field of environmental crime. Full use should be made of their experience, knowledge and awareness-raising activities and of their discussion platforms. Since the ENPE is creating a network across the EU and thus potentially linking a majority of prosecutors and magistrates working with environmental crime, it will hold a wealth of expertise of great value in developing the fight against this type of criminality. The IMPEL Transfrontier Shipment of Waste database should also be used by practitioners to increase their knowledge, raise awareness, share best practice and facilitate cooperation among practitioners. It could be used as an example in other environmental crime areas. Eurojust is asked by practitioners to examine the possibilities for institutionalised cooperation with these networks.

Eurojust's role to facilitate coordination and cooperation between national judicial authorities in environmental crime cases needs to be strengthened. The added value of Eurojust's assistance needs to be better known among practitioners working in this field of law.

Closer cooperation between European and other international stakeholders in this important field needs to be reinstated, in particular with the Commission, Eurojust, Europol, and INTERPOL.

The newly established Contact Point on Environmental Crime should ensure the continued commitment of Eurojust in this particularly important field. The Contact Point will provide a visible contact person at Eurojust for practitioners and external stakeholders in environmental crime matters. The establishment of such contact point should further raise awareness of the support available at Eurojust to the competent national authorities in this area and stimulate the development of expertise and the sharing of best practice among prosecutors in the area of environmental crime.

Annex 1 – Questionnaire (blank)

Strategic Meeting

Towards an enhanced coordination of environmental crime prosecutions across the EU: the role of Eurojust

QUESTIONNAIRE

QUESTIONNAIRE

A two-day meeting on combating environmental crime for practitioners, organised by Eurojust and the European Network for Prosecutors for the Environment (ENPE) will be held at Eurojust in The Hague on 27 and 28 November 2013. The aim of the event is to strengthen and improve cooperation and coordination between national judicial authorities in the fight against environmental crime. With this questionnaire, Eurojust's Financial and Economic Crime Team (FECT) and the Environmental Crime Project Team aim is to gather information on judicial cooperation and prosecutions of environmental crimes in general, and more specifically on illicit trans-frontier shipment of waste and trafficking in endangered species.

Responses to this questionnaire will be compiled and presented to the participants of the November 2013 Strategic Meeting. The Project Team will analyse the results and the conclusions will be shared and debated during the event.

Participants are invited to provide their contributions by 31 May 2013 via e-mail submissions to: envi@eurojust.europa.eu

1. Questions relating to Criminal Policy:

1.1. What are the main challenges you have experienced in your country in investigating and prosecuting environmental crimes in general?

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1.2. More specifically, what are the main challenges you have experienced in your country in investigating and prosecuting :

(a) trafficking in endangered species?

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(b) illicit trans-frontier shipment of waste?

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1.3. What subject areas should a prosecutor's network be focusing on to best support your work?

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1.4. Do you believe that Eurojust could further assist in investigations and prosecutions in the field of environmental crime?

(a) Yes ☐

If yes

☐ by assisting in setting up Joint investigation teams?

☐ by organising coordination meetings?

☐ by providing linguistic support in MLA requests?

☐ by providing a practical forum for practitioners to exchange their experience?

☐ by collecting best practices?

☐ by other means? *please specify*

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(b) No ☐

If no, why?

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2. Best practices, obstacles and possible solutions:

2.1. Does a web site (or central repository) of comprehensive data on all prosecutions and sanctions imposed in environmental crime (or specialised environmental crime areas) in your Member State, exist?

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2.2. Based on your experience, are cross-border environmental crimes (including inter alia illicit trans-frontier shipment of waste and trafficking of endangered species):

(a) the majority of the cases you are dealing with ☐

Please specify, if possible, an annual percentage estimate

.....
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.....

(b) the minority of the cases you are dealing with ☐

Please specify, if possible, an annual percentage estimate

.....
.....

2.3. Have you encountered cases showing links between environmental crimes and other forms of serious crime or offences (e.g. organised crime, corruption, fraud)?

(a) Yes ☐

If yes, *Please specify which forms of crime(s)*

.....
.....

(b) No ☐

2.4. Have you, when dealing with environmental crimes cases, made use of any international/ EU legal instruments of judicial cooperation (e.g. 2000 Convention on mutual legal assistance, European Arrest Warrant, joint investigation teams)?

(a) Yes ☐: Please specify the forms of crimes

.....
.....

(i) If yes, can you please specify which instruments you have been using?

.....

(ii) If yes, can you please describe the main problems or legal issues you have identified in your country with the implementation of those legal instruments in the field of environmental crime? *Please provide concrete examples*

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(b) No ☐

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2.5. What are, in your country, the main obstacles to the practical work of prosecutors when dealing with environmental crimes in general, and illicit trans-frontier shipment of waste and trafficking in endangered species in particular, including with regard to crime with a cross-border dimension? Please provide here a general overview

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2.6. What are, in your country, the best practices in the practical work of prosecutors when dealing with environmental crimes in general, and illicit trans-frontier shipment of waste and trafficking in endangered species in particular, including with regard to crime with a cross-border dimension? Please provide here a general overview

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2.7. Could you please elaborate further by providing specific examples of problems encountered in the following areas, including when dealing with crime(s) with a cross-border dimension?

☐ Crime definition (or absence of): *please specify*
.....

☐ Level of penalties: *please specify*
.....

☐ Admissibility of evidence: *please specify*
.....

☐ Jurisdiction: *please specify*

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☐ Time limits: *please specify*

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☐ Coordination of investigations and prosecutions: *please specify*

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☐ Language barriers: *please specify*

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☐ Any other problems: *please specify*

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2.8. Based on the problems identified, could you elaborate further by providing possible solutions?

☐ Crime definition (or absence of): *please specify*

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☐ Level of penalties: *please specify*

……

☐ Admissibility of evidence: *please specify*

……

☐ Jurisdiction: *please specify*

……

☐ Time limitation: *please specify*

……

☐ Coordination of investigations and prosecutions: *please specify*

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☐ Language barriers: *please specify*

……

☐ Any other problems: *please specify*

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2.9. Based on your practical experience, do you consider that a lack of common definitions and standardisation of penalties is a barrier to the effective fight against environmental crimes and/or more specifically in illicit trans-frontier shipment of waste and trafficking in endangered species?

(a) Yes ☐

(i) Can you provide examples of where this has caused difficulties for your authorities?

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(ii) In which areas should minimum rules be established?

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……

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……

(b) No ☐

2.10. Role of Eurojust: has Eurojust been involved in concrete cases you have been dealing with?

(a) Yes ☐:

(i) What was the exact nature of the crime(s) at stake?

……

(ii) What form has the assistance of Eurojust taken?

……

(iii) What has Eurojust's added value been?

……

(iv) Could Eurojust's involvement have been provided differently?

If yes, please specify why and how

……
……

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……

(b) No ☐

(i) Can you please explain the reasons why the involvement of Eurojust was not sought?

.....

(ii) Would you envisage in the future involving Eurojust?

.....

3. In April 2012, Eurojust has addressed to Member States, via the National Desks, the following survey:

1. Have your national authorities set up law enforcement units at administrative, police and/or judicial level, specialized in investigation / prosecution of environmental crime in general, and /or, in particularly in the matter of hazardous wastes (Basel Convention), chemicals and pesticides (Rotterdam Convention) and persistent organic pollutants(Stockholm Convention)?

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2. And if yes, can you please provide the contact details of these specialized units?

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The contributions received are attached to this questionnaire

1. If your country has replied:

Are the answers still correct and complete?

If not, please correct them in track changes in the table attached

2. If your country has not replied:

Could you add your contribution in track changes to the table attached?

4. Do you have any suggestions or issues as to the topics which you would like to see addressed during the Strategic Meeting (e.g. water pollution…)?

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Eurojust would like to thank you for your answers to this questionnaire.

Annex 2 – Summary analysis of Questionnaire

Strategic Meeting

Towards an enhanced coordination of environmental crime prosecutions across the EU : the role of Eurojust

Analysis of national contributions

1. Questions relating to criminal policy

1.1. What are the main challenges you have experienced in your country in investigating and prosecuting environmental crimes in general?

Cooperation with administrative authorities

An issue raised in a number of replies was cooperation with the administrative authorities, for instance, with veterinary authorities in the case of endangered species. To a certain extent, difficulties in cooperation might result from the fact that environmental authorities are primarily concerned with complying with the applicable legal frameworks. The establishment of a criminal case, including the correct securing of evidence, is not their main concern.

Some replies mentioned that they considered the overall number of public authorities involved was generally too high.

In this context, it was also reported that a key challenge for investigating agencies is to ensure that there is sufficient intelligence. However, if members of the public are not aware that what they have seen is a crime and do not report it, potential intelligence can be lost. Therefore, close cooperation between the police and non-police investigating agencies is needed to ensure that an accurate overall intelligence picture is maintained.

Lack of human resources with the necessary expert knowledge

Lack of human resources in the investigation and prosecution of environmental crimes was raised in many replies, particularly with regard to trained personnel with sufficient expertise. The prosecution of environmental crimes can be rather technical and complex, requiring specialist knowledge and training which is not always provided. Experience in the prosecution and investigation of environmental crimes has

not yet emerged in all Member States, and this will potentially affect the quality of the investigation, prosecution and outcome of the case.

Also, as environmental crimes tend to be of a technical nature and often very complex, they require a comparatively greater amount of work from investigators and prosecutors who may be inexperienced in such crimes.

Independent experts

It can be difficult to identify or find the competent and independent experts who are sometimes required for extremely specific aspects of environmental prosecution (e.g. PCB pollution, phytosanitary products, radioactive or asbestos waste).

"Organisational" obstacles

An "organisational" challenge in the fight against environmental crime was seen, for instance, when there is a specialised national "Environmental Protection Agency" without criminal investigative powers. "Regular" law enforcement and prosecution authorities, on the other hand, will have the investigative powers, but they do not always have the specialised knowledge and a specific interest in environmental crimes. They will always be less familiar with the applicable, often very technical, legislation.

One Member State also reported that it is possible for prosecutors to specialise in environmental crimes while this possibility was not mirrored in the police organisation. In addition, there were special courts for environmental cases, such as permits for hazardous activities. However, criminal environmental cases would still be within the competence of regular criminal courts. This will sometimes affect sentencing.

The availability of environmental inspectors can be an issue when police or customs detect an instance of environmental crime and the required expertise is not available on a 24/7 basis, and this can negatively affect the criminal investigation.

Retaining expertise in a specialised and complex area of law such as environmental crime can also be a challenge. A positive example of retaining such expertise is that of the Scottish Environment Protection Agency, which is a specialised organisation that investigates environmental offences; the Police Service of Scotland has specialised wildlife crime officers and the prosecution service in Scotland has a dedicated Wildlife and Environmental Crime Unit containing full-time, specialist prosecutors in this area. This allows specialist units to emerge at an organisational level, rather than relying on the knowledge of a handful of individuals.

Level of penalties

Some replies considered the penalties for environmental crimes too low, not reflecting the seriousness of the crime. The level of possible penalties can also affect the kind of investigative measures that can be used for an investigation into environmental crimes (e.g. interception of communications, seizure).

Drafting of environmental legislation

Another reply stressed that environmental legislation is often drafted in a manner which works for the administrative authorities but not in prosecutions. Criminal and administrative sanctions are provided for in the same regulation, but administrative authorities can apply legislation differently (e.g. burden of proof, wider interpretation possibilities).

Establishment of material damages

Another issue which was mentioned in several replies to the questionnaire was the difficulty of establishing the amount of material damage (such as the quantity of wood) and evaluating any financial gain. These difficulties result from the lack of clear (and legal) definitions of material damage (e.g. damage to air quality). Also, there can be challenges in proving the actual harm that has occurred to a local environment. For example, by the time of an investigation, toxins or dead organisms in the water may have been washed away.

Exchange of information

The exchange of information between the police authorities in different countries was raised as a challenge in a number of replies. Also, the absence of contact points and established communication lines can make cross-border investigations in environmental crimes particularly cumbersome.

Lack of understanding of the seriousness of environmental crime

Member States also mentioned that there is still often a lack of understanding of the economic significance and environmental impact of environmental crimes by national courts, which leads to sanctions that are too lenient.

Also, the limited resources of police and prosecution authorities tend to be used for the investigation and prosecution of traditional crimes that are considered more serious.

Burden of proof and evidence gathering

For some of the environmental crimes, the main challenge is to establish the identity of the persons of interest/offenders in the first place. It is extremely difficult to match the waste (that is usually dumped in illegally maintained waste deposit sites commonly used with other illicit waste managers leading to waste-mixing) to an individual.

The burden of proof in relation to the perpetrator's intent can be another obstacle in environmental prosecution. The accused will often argue that they were not aware of the illegal nature of the act or that the acts were carried out erroneously.

Offences derived from European instruments can be technical and challenging to prove. For example, possession of a CITES species is not always a breach of the law, but it can be once it is established how the specimen was obtained. Proving how someone came to be in possession of a specimen can be particularly challenging.

An additional complication can come from time limits in domestic law which apply to certain offences being brought before the court. If the investigation requires the obtaining of evidence from abroad, this may take time which can itself pose challenges to presenting a case within the time limits. In requests for information from abroad, it can be challenging to convey the procedural requirements in the laws of the requesting country that any evidence produced will have to meet (these requirements may be unknown in the foreign jurisdiction). For example, copy documentary productions may require appropriate certification to explain that they are copies.

Some Member States have also indicated that the burden of proof in relation to specific criteria in their legislation is particularly challenging. For instance, to prove the criterion a "potential danger of the

environment to a considerable degree", expert witnesses are necessary in most cases. As there are not many experts available in the environmental field the investigations consequently progress slowly.

1.2. More specifically, what are the main challenges you have experienced in your country in investigating and prosecuting trafficking in endangered species?

Lack of import records

One respondent raised the issue that when the possession of strictly protected species is determined during inspections of livestock owners by veterinary authorities/police, the suspicion of illegal importation is obvious. However, due to the lack of border controls within the Schengen area, there is no record keeping from where and when the animal was imported. Even evidence that the importation occurred through an airport is not helpful as the protected animal can easily be transported without any further border controls to other Member States.

Lack of understanding of the seriousness of environmental crime

Some replies suggested that this form of crime is not taken seriously enough by national courts. It was also mentioned that there appears to be a lack of understanding from the judicial authorities as to the legal quality of the CITES Convention and the requirements of State parties to fulfil their obligations under the convention. This can result in very lenient sanctions, even when professional traders are concerned.

Generally, a lack of public awareness of the seriousness of CITES offences was often mentioned.

Lack of coordination

The lack of control and coordination among the different national administrative authorities was raised in some replies. This can result in the provision of incomplete information to the prosecutor once a criminal procedure is initiated.

However, more generally, lack of cooperation at national level was raised.

Level of penalties

It was reported in some replies that the level of penalty for this offence might not be high enough to allow for coercive or complex investigation techniques (e.g. interception of communications).

Also, if the offence is only punishable by fines, attempts are not punishable and no coercive measures such as search/seizure can be performed.

Lack of qualified personnel

Investigation and prosecution of the trafficking of endangered species requires special expertise which is not always available. The experts are needed, for example, to examine prey and the method of poaching in order to assist the investigators with necessary evidence.

It can be difficult to identify protected species and to assign a value to assets.

The lack of qualified personnel may also hamper the investigation in relation to the large number of offenders that may be under investigation. In these circumstances it might even be necessary to set up an entire investigative team to efficiently solve the case.

Lack of registration of endangered species

Investigations into the trafficking of endangered species face the difficulty that there is no obligation for breeders of endangered animals to register each animal. Regarding the category of so-called “B species”, the legality of acquisition can be sufficiently proved by any kind of EU document.

Expensive DNA paternity testing is necessary in order to confute intentional defence of offenders arguing they had their own breeding stations.

If an offender is detected and evidence collected, they will often use the argument that they were exercising good will and protecting animals endangered in their country of origin. Also, they may declare illegally acquired animals as legal without, however, observing the administrative procedure and legal framework. Law enforcement bodies and courts often accept these arguments and acquit the offender or impose inadequately low penalties.

Care of seized animals

There is also a specific problem with how to care for seized animals that were possessed illegally. Generally, animals are placed in short-term centres, but the capacity of such centres is not sufficient with regard to the length of criminal proceedings. Animals may be kept there for several years, which is costly and limits the space available for other animals that might be seized.

Cross-border cooperation

It was mentioned that international cooperation poses a problem as it currently operates mostly on the basis of personal contact rather than on an official, institutional basis.

There is also a need for the investigating agencies to be aware of legislation and the procedures for obtaining evidence from Europe and third States.

Advice and guidance across the EU by the authorities who regulate the movement of species is not always consistent and can depart from EU guidance. Record keeping of advice given to individuals is not always maintained, and it can therefore become challenging to dispute an assertion by a suspect that they had been told it was acceptable to carry out a certain action by the authorities.

It was also mentioned that in cases concerning the smuggling of protected species, it is important to have information about the identification of individuals who engage in such activity in third States.

Proving illegality of movement

It can be challenging to prove the illegality of the movement of protected species, as attempts are often made to establish that the movement of species occurred as the result of a gift rather than a commercial transaction.

Generally, offences derived from CITES can be technical and challenging to prove (for example, that a border has been crossed or there is commercial activity). Even if the possession of CITES species can be proven, it does not necessarily follow that a breach of the regulations has taken place.

More specifically, what are the main challenges you have experienced in your country in investigating and prosecuting illicit trans-frontier shipments of waste?

Cross-border cooperation

Cross-border cooperation was raised in the replies as a main challenge regarding the illegal trafficking of waste. If foreign freight carriers or waste shippers are accused, further investigations will regularly be needed to identify the persons initiating the waste shipment, to question them and determine the extent of their guilt. Procedures against foreign freight carriers or waste shippers will regularly be passed on to their respective home country. However, it can take months until a decision is made on whether the procedure will be taken over. In addition, the transferring Member State will subsequently often not receive information on the outcome of the proceedings.

There is therefore no way to know if the offence of a prohibited waste shipment is prosecuted with different severity in the various member states.

Concerning requests for information from other Member States, it can be challenging to convey the procedural requirements of the requesting jurisdiction, so any evidence will be gathered accordingly (including procedural requirements that may be unfamiliar to the foreign jurisdiction). It can also be a complicated process to ensure that the quantity, type and form of evidence provided is satisfactory and that time limits under national legislation are complied with.

Clarity of environmental legislation

A number of replies mentioned difficulties in relation to national implementing legislation. For instance, uncertainties exist regarding definitions – a good example of this is the distinction between waste and by-products.

Also, the interpretation of Regulation 1013/2006 was reported as challenging, in particular concerning the chapeau to Annex III and securing evidence as regards the nature and mix of the waste.

Lack of coordination between national authorities

Lack of coordination between the different national authorities involved was reported in a number of replies.

Level of penalties

As with the trafficking of endangered species, it was mentioned that the level of potential penalties might not be high enough to allow for coercive or complex investigation techniques (e.g. interception of communications).

Also, if the offence is only punishable by fines, attempts are not punishable and no coercive measures such as search/seizure can be performed.

Burden of proof and evidence gathering

The proving of the offence and the evidence gathering were considered a challenge in a number of replies. The direct perpetrator will typically claim to be unaware of the contents of a shipment or its illegal nature.

The securing of evidence from non-OECD countries can also prove to be particularly difficult, as well as Articles 36(g) and 49 of Regulation 1013/2006 prosecution cases.[26] In addition, in the absence of a reliable witness from that country, it is difficult to establish that waste has not been managed in an environmentally sound manner when it originates in a non-OECD country.

Since Regulation 1013/2006 is very complex, suspects will often claim that they were not aware of the illegal nature of their actions.

The requirement to prove the law of the destination country can be particularly challenging in proceedings for an offence under Article 36(f) of Regulation 1013/2006.[27]

Organisational structure

The organisational structure at national level can be challenging if the respective Environmental Protection Agency does not treat illegal shipments from a criminal law perspective and does not provide the necessary information to the investigating authorities.

Lack of qualified personnel

Replies indicated a lack of experts to decide if certain items qualified as waste or not or if an item is exported for recovery or re-use.

Also, any assessment of material and chemical composition has to be performed by an expert, which increases significantly the cost of evidence proceedings. Legal assistance is demanding and is not always executed with the necessary level of expertise.

The investigators often encounter the situation that the companies involved are located in several different countries, causing difficulty to identity the responsible individuals. An additional obstacle is also that the investigations concerning illegal shipment of waste can include many persons (in one mentioned case, there were 16 individuals prosecuted) which in principle would require a large amount of qualified personnel working with the investigation.

A large number of personnel are also required for instance when the case concerns a large amount of waste with correspondingly numerous deposit sites to be investigated.

Difficulty of assessing category of transported material

The absence of any border controls within the Schengen Area constitutes a major problem in relation to the investigation of illicit trans-frontier shipments of waste. Offenders are able to transport waste over the borders of several countries without facing any risk of detection. Very often, offenders falsely claim that the transporting of goods or raw material is for manufacturing. Officers who carry out controls are typically unable to assess the real category of material on-site. Also, offenders attempt to make their activities legal by means of legally obtained permission.

[26] Article 36 (g) prohibits the exporting of waste that the authority of dispatch has reason to believe will not be managed in an environmentally sound manner in the country of destination. Article 49 (1) requires the shipment of waste to be carried out without endangering human health. Furthermore, it reiterates that it has to be carried out in an environmentally sound manner. (2) In the case of exporting from the Community, (a) the regulation also requires and strives to secure an environmentally sound manner throughout the period of shipment, including in the third country of destination. (b) If there is reason to believe the prerequisite in point a) cannot be met then the export is prohibited.

[27] Art 36 (1) Prohibits export from the Community of waste destined for recovery in countries to which the OECD Decision does not apply when: (f) the importing of waste has been prohibited by the country of destination.

1.3. What subject areas should a prosecutor's network be focusing on to best support your work?

Many replies saw the role of the different networks in the field of environmental crime to be in the exchange on practical solutions and best practice on how different Member States deal with environmental crime. This should focus, in particular, on prosecution policies for practitioners.
A potential network could also serve as a support for specialized prosecutors as well as fostering the knowledge of environmental law among prosecutors in general. The possible provision of training was also mentioned.

Eventually, these efforts could even include the drafting of guidelines for punishment and the harmonizing of fines and other sanctions across Europe. The networks could produce guidance, tools, common standards and approaches to the prosecution of environmental offences. The networks should furthermore promote the development of environmental law as a substantial part of criminal law. Some replies mentioned as a possible role for the different networks the possibility to exchange information on current criminal cases, facilitate the collection of data, including operational information where possible. One respondent also suggested the creation of specialized teams.

In addition, it was also highlighted that Member States that have more expertise and experience than others in this field should play an important role in the framework of the networks.

The networks could also play an important role in relation to maritime pollution cases, where it can be difficult to contact suspects in distant locations. Also, the need for more support in prosecuting foreign criminals was raised, as well as the need to strengthen mutual cooperation.

An important issue that was raised concerned the discussion and development of similar definitions of concepts and levels of penalties. Respondents also expressed their interest in an overview of existing penal qualifications and, more generally, information on procedural and substantive aspects under national legislation.

Also, the sharing of existing case law and concrete information on fines and sentences was raised on several occasions.

The networks could also be used to provide information on experts dealing with damage evaluation.

Respondents expressed interest in holding discussions on the technical aspects of proving certain offences regarding EU instruments with a view to an internationally accepted methodology.

It was also mentioned that networks should enhance liaison in cross-border investigations and provide assistance in MLA requests.

Finally, one response suggested the networks act as "liaison" and contact the responsible persons or units in the national environmental authorities and the local/water/border police where the timeframe could be crucial. They could even provide technical assistance, including setting up videoconferences.

1.4. Do you believe that Eurojust could further assist in investigations and prosecutions in the field of environmental crime?

26 Member States and Norway replied to the question, "Do you believe that Eurojust could further assist in investigations and prosecutions in the field of the environmental crime?". Two Member States provided more than one reply, from different prosecution offices.

Of those 26 Member States, 25 replied that they believed Eurojust could further assist in investigations and prosecutions.

- Of 26 Member States, 17 replied that Eurojust could further assist by assisting in setting up Joint Investigation Teams.
- Of 26 Member States, 17 replied that Eurojust could further assist by organising coordination meetings. One Member State noted that these meetings could have the purpose of raising the awareness of magistrates about these problems.
- Of 26 Member States, 10 replied that Eurojust could further assist by providing linguistic support in MLA requests.
- Of 26 Member States, 18 replied that Eurojust could further assist by providing a practical forum for practitioners to exchange their experience.
- Of 26 Member States, 18 replied that Eurojust could further assist by collecting best practice. One reply raised doubts that one person acting on behalf of the different nationalities in Eurojust could cope with the task of being in charge of such task, but should be able to liaise efficiently with the correct organisation in their home State.
- Of 26 Member States, 11 replied that Eurojust could further assist by other means, such as:
  - Assisting in the initial stages of a European scheme to collaborate in the fight against environmental crime. Once the necessary networks of European Environmental Prosecutors have been set up, the role of Eurojust may be re-considered towards other perspectives.
  - Promoting the collection of investigative information from the national judicial authorities, in collaboration with Europol.
  - Promoting the collection and sharing of good investigative procedures.
  - Stimulating a coordinated approach to investigations by spreading appropriate input to the competent national authorities on the basis of the information received, in addition to the new provisions of Art. 13 EJD. Dissemination of jurisprudence of the Court of Justice related to environmental crime, i.e. on the definition of waste.
  - Assisting with contact with officials from third countries.
  - As different networks are discussing the establishment of databases for environmental crime cases, Eurojust might assist with a joint database for these matters.
  - Assisting in the understanding of requests for assistance in cross-border cases, particularly so that the issuing competent authority and the executing competent authority understand what each other wants/can provide.
  - Assisting by having an available, up-to-date contact list with details of designated points of contact in all of the authorities in a Member State which deal with environmental/wildlife crime and, in particular, those best placed to assist with the obtaining of information, evidence and knowledge of the different areas of environmental/wildlife laws in that Member State (for

example, some authorities deal with cross-border CITES issues and others deal with internal CITES cases).

2. Best practices, obstacles and possible solutions

2.1 Does a web site (or central repository) of comprehensive data on all prosecutions and sanctions imposed in environmental crime (or specialised environmental crime areas) in your Member State, exist?

A minority of countries have replied positively to this question. 4 countries or Landers have a specific database or tool (electronic journal, for instance) that lists all prosecutions and sanctions imposed in environmental crimes. 10 countries replied negatively. 7 countries stressed the existence of a general database or other tools that are allowing for the retrieval of information relating to environmental crime prosecutions and sanctions. For instance, some reports are containing statistics on environmental crime prosecutions or some countries are producing internal reports available to the prosecution services only on the outcome of environmental cases.

2.2 Based on your experience, are cross-border environmental crimes (including inter alia illicit trans-frontier shipment of waste and trafficking of endangered species):

(c) the majority of the cases you are dealing with ☐

Please specify, if possible, an annual percentage estimate

(d) the minority of the cases you are dealing with ☐

Please specify, if possible, an annual percentage estimate

An overwhelming majority of the countries that have replied to the questionnaire are stating that environmental crime cases constitute a minority of the prosecution cases they have had to deal with. When percentages are indicated (9 countries), these figures vary between less than 1% and 10% of the total number of cases dealt with.

Some countries have preferred mentioning the exact number of environmental crime cases rather than percentages. For instance, Finland has indicated that between 2007 and 2011 an average of 16 cases relating to endangered species have been dealt with and an average of 100 cases on illicit trans-frontier shipment of dangerous goods. The total number of environmental crimes detected in Finland in 2011 was 3600.

The Netherlands indicates a total amount of 8000 environmental crime cases a year (many hundreds of them cross-border).

Poland indicates that in 2012, 300 cases of illicit trans-frontier shipment of waste were registered (number increasing every year) and 115 cases on trafficking in endangered species).

Two countries have clearly stated that although the number of cases is low in their country the complexity of the cases is increasing. A higher level of expertise of the criminals in these areas requires also a higher level of expertise amongst law enforcement and the judiciary.

2.3 Have you encountered cases showing links between environmental crimes and other forms of serious crime or offences (e.g. organised crime, corruption, fraud)?

(c) Yes ☐

If yes, *Please specify which forms of crime(s)*

(d) No ☐

A majority of countries have identified links with Organised Crime (16 upon 26). Environmental crime is then linked to a wide array of forms of organised crimes, the most commonly mentioned being: fraud (including forgery of documents and manipulation of invoices, by 7 countries), financial crimes (including money laundering, tax evasion and counterfeiting, 7 countries), waste crimes (3 countries), and corruption (4 countries). In some cases, links have been made with violence (2 countries), arms and drug trafficking (1 country).

2.4 Have you, when dealing with environmental crimes cases, made use of any international/ EU legal instruments of judicial cooperation (e.g. 2000 Convention on mutual legal assistance, European Arrest Warrant, joint investigation teams)?

(c) Yes ☐: Please specify the forms of crimes

(iii) If yes, can you please specify which instruments you have been using?

(iv) If yes, can you please describe the main problems or legal issues you have identified in your country with the implementation of those legal instruments in the field of environmental crime? *Please provide concrete examples*

(d) No ☐

Most countries have not referred to an international instrument in the reply given (16 upon 27). When international legal instruments were mentioned, the CITES convention (protection of endangered species), the United Nations Convention on the law of the sea (maritime pollution case), the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, the 1959 European Convention on Mutual Assistance in Criminal Matters and international instruments relating to transfrontier shipment of waste (no specific name though) were identified.

Problems or legal issues encountered were not developed much by answering countries. With regards to the UN Convention on the law of the sea, one country mentioned that clarification as to certain articles of the Convention has been needed (notification of these prosecutions to the State of the ship's flag). The implementation of that Article leads to transfers of competence in the States where illegal discharges in the

sea are a lot less severely addressed. Harmonisation of practices and prosecutions in maritime pollution is necessary.

Another country mentioned the difficulty in hearing witnesses in cross-border cases.

2.5 What are, in your country, the main obstacles to the practical work of prosecutors when dealing with environmental crimes in general, and illicit trans-frontier shipment of waste and trafficking in endangered species in particular, including with regard to crime with a cross-border dimension? Please provide here a general overview

Countries that have replied to the questionnaire have generally answered this question by sharing multiple obstacles.

- **General obstacles linked to investigating and prosecuting environmental crimes**:
  - General lack of investigation of those crimes,
  - Large number of cases linked to trafficking of endangered species,
  - Lack of intelligence,
  - Lack of complaints on environmental crimes,
  - Lack of awareness leading to underestimation of this type of crimes,
  - No general methodology applicable for investigating environmental crimes.
- **Absence of specific expertise**
  - Difference in organisation of the police and prosecution services. Police officers being sometimes more specialised in this particular field,
  - Absence of coordination between different authorities,
  - Lack of human resources available for investigations and prosecutions.
- **Obstacles linked to legislation**
  - Complexity,
  - Difficulties of interpretation, in particular of EU legislation on waste. This difficulty is often linked to a lack of clarity and precision,
  - Too frequent changes of legislation leading to the absence of accurate knowledge of practitioners,
  - Gaps in legislation (see also below difficulties linked to evidence). One country has for instance mentioned the need for a legislative change to be able to prosecute directors of companies,
  - Differences in legislation between countries.
  - These legislative difficulties consequently lead to problems in implementation of legislation in particular when different types of authorities (administrative/criminal law oriented) have to apply it.
- **Obstacles linked to evidence**
  - Difficulties in the identification of the protected species,
  - Difficulties in detecting environmental crimes,
  - Difficulties in proving environmental crimes (such as illegal logging, waste dumping...)
  - Difficulties in proving the organised aspect of the crime (for instance for organised poaching cases)
  - Difficulties in proving the relationship between the charges under EU legislation,
  - Necessity to use experts' advice. However, experts are not always available,
  - Usual investigative tools (such as interception of telecommunications, etc.) are not used for these types of crimes,

- Difficulties relating to collection and securing of cross-border evidence,
- Difficulties in establishing the link between the material damage and the criminal offence (linked also to the absence of legislative criteria and legislative gaps),
- Difficulties to prove the intent of suspects.

- **Obstacles linked to international cooperation**
  - Absence of an international approach in the investigations and prosecutions on environmental crimes,
  - International legal assistance is time consuming,
  - Obtaining information on ongoing investigations can be difficult,
  - Translation difficulties,
  - Absence of will to cooperate and problems of corruption in certain countries,
  - Difficulties in collecting and securing evidence in cross-border cases (see also difficulties linked to evidence above).
- **Specific obstacles linked to companies**
  - Difficulties to prove the accurate competency of the legal person/ board,
  - Companies can change their composition prior to the prosecution.

2.6 What are, in your country, the best practices in the practical work of prosecutors when dealing with environmental crimes in general, and illicit trans-frontier shipment of waste and trafficking in endangered species in particular, including with regard to crime with a cross-border dimension? Please provide here a general overview

The overwhelming majority of countries have stressed the following two main aspects:

- **Organisational elements** involving:
  - Specialisation in environmental crime of both police units and prosecutors. For instance, some countries have highly specialised prosecutors (such as when public health is at stake), some are even specialised in either trafficking of waste or trafficking in endangered species,
  - Coordination /co-operation of different units involved. This inter-agency cooperation involves for instance police, port authorities, environmental inspectors, border guards and prosecutors. Some countries, such as Belgium have set up specific teams (task force). Guidelines can also be issued as a result of the inter-agency cooperation,
  - Centralisation of environmental cases under one chief prosecutor,
  - Good cooperation with existing networks (ENPE, IMPE TFS, INECE...).
  - Rapidity of police cooperation
- **Specific training** for law enforcement (police but also customs) and prosecutorial authorities.

Additionally, the following points have been stressed:

- Good cooperation with NGOs specialised in the preservation of environment,
- Guidelines for investigating and prosecuting environmental crimes,
- International cooperation of law enforcement officers in cross-border cases,
- Specialisation in certain environmental elements is also considered an asset: such as illegal hunting and fishing, offences against forest environment,
- Proceeds of crime legislation applicable to environmental crimes cases.

2.7 Could you please elaborate further by providing specific examples of problems encountered in the following areas, including when dealing with crime(s) with a cross-border dimension?

- ☐ Crime definition (or absence of): *please specify*
- ☐ Level of penalties: *please specify*
- ☐ Admissibility of evidence: *please specify*
- ☐ Jurisdiction: *please specify*
- ☐ Time limits: *please specify*
- ☐ Coordination of investigations and prosecutions: *please specify*
- ☐ Language barriers: *please specify*
- ☐ Any other problems: *please specify*

Many countries replied encountering issues with crime definitions and levels of penalties.

Listed below are problems mentioned more specifically:

- Crime definition (or absence of):
    - There are many different environmental crimes and therefore it is difficult to find a unified definition,
    - Need for more EU harmonisation of criminal law regulating environmental disasters and organised traffic of waste,
    - Definitions are too general and lacking provisions for cross-border crime,
    - Problems with 'waste' definition *(mentioned several times),*
    - Different interpretations in Member States of WSR 1013/2006,
    - Difficulties in proving/determining:
        - the type of waste – household waste or not,
        - the 'intent' and 'knowledge of law' of the perpetrator,
        - 'significant damage to environment'/potential danger to a considerable degree,
        - volume of illegally mined mineral sources, as it is a prerequisite of the crime.
    - Insufficient EU-legislation on cross-border movement of waste,
    - Differences in criminal provisions of Member States regarding illicit transnational waste shipments,
    - Waste being sent to a non-OECD Country. The waste is illegal no matter whether it is being sent for disposal or recovery, but the "purpose" is crucial as it determines the charge. It would be useful if the sending of this waste to the country was *per se* illegal, whatever the purpose,
    - Defendants argue that waste can be contaminated (before it is called mixed) up to a certain tolerable level.

- Level of penalties:
    - Penalties are too low *(mentioned several times).* There is therefore no deterrent effect,
    - Low penalties/fines result in impossibility to use/conduct complex investigative techniques (costly),
    - Different (types and levels of) penalties used in the Member States create possibility of forum shopping,
    - Other offences are taken into account to 'increase' the level of sanctions.
- Admissibility of evidence:
    - Some types of evidence are not admissible because offences are not considered serious enough,
    - Evidence from other countries:
        - Admissibility of digital evidence,
        - Use of documents of non-OECD countries without a witness to speak to, is difficult,
        - MLA requests need to be sent several times before the evidence meets the requirements of the national law.
- Jurisdiction:
    - No specialised courts or specialised knowledge in courts,
    - No knowledge on EU-legislation in courts,
    - Cases too complex to prosecute,
    - Cases are dealt with by 'lowest courts' which generally do not impose maximum penalties.
- Time limits:
    - Delay in prosecutions because of evidence needed from other countries,
    - Term of limitation too short,
    - Lack of police investigators resulting in long lasting investigations.
- Coordination of investigations and prosecutions:
    - Coordination between prosecutors and police,
    - No overlap in national systems between on the one hand, persons having the competence to execute criminal investigations and on the other hand, persons with specific knowledge, experience and interest,
    - Need for expertise from specialised entities, not available after normal working hours.
- Language barriers:
    - Communication between prosecutors from different countries,
    - Issues in cases with other countries (suspect, evidence, requests for legal assistance, etc.),
    - Translation (costs),
    - Lengthy investigations
- Other:
    - Corruption

2.8 Based on the problems identified, could you elaborate further by providing possible solutions?

☐ Crime definition (<u>or absence of</u>): *please specify*

☐ Level of penalties: *please specify*

☐ Admissibility of evidence: *please specify*

☐ Jurisdiction: *please specify*

☐ Time limitation: *please specify*

☐ Coordination of investigations and prosecutions: *please specify*

☐ Language barriers: *please specify*

☐ Any other problems: *please specify*

- Crime definition:
  - Further harmonization of legislation (criminal acts and penalties),
  - Develop specific provisions for cross-border crimes,
  - Seminars, trainings for prosecutors and judges,
  - Develop common waste definition in EU,
  - Exchange information on waste definitions/sanctions in Member States,
  - IMPEL TFS prosecutors network outlining differences and facilitating cooperation
- Level of penalties:
  - Increasing the level of penalties/raise minimum levels of sanctions,
  - Higher penalties resulting in possibility to use special investigative techniques,
  - The level of penalty should be based on amount of unjust enrichment.
- Admissibility of evidence:
  - Simple method of communication to obtain more easily documents from non-OECD countries or from a representative based in the EU who could give evidence in relation to those documents
  - Further development of instruments of MLA (European Investigation Order) and of the mutual recognition principle.
- Time limits:
  - Competent authorities to comply with an agreed time frame for responding to requests
- Coordination of investigations and prosecutions:
  - Give environmental authorities power to conduct criminal investigations,
  - On call availability of experts,
  - Eurojust to support in cross-border cases; coordinating and assisting in obtaining evidence,
  - Immediate international coordination when a cross-border element appears.
- Language barriers:
  - Updated official list of available translators
- Other:
  - More budget, material means and personnel for environmental investigations

2.9 Based on your practical experience, do you consider that a lack of common definitions and standardisation of penalties is a barrier to the effective fight against environmental crimes and/or more specifically in illicit trans-frontier shipment of waste and trafficking in endangered species?

(c) Yes ☐

(iii) Can you provide examples of where this has caused difficulties for your authorities?

(iv) In which areas should minimum rules be established?

Regarding Question 2.9 of the Questionnaire the answers were almost equally divided. Thirteen out of twenty- five countries answered that a lack of common definitions and standardisation of penalties is a barrier to the effective fight against environmental crime. The countries emphasised the difficulties which arise out of a missing definition of waste on EU level or the lack of a common approach regarding the criminal liability of legal persons. Also, the problem of very different penalties for the same offences was mentioned and it was proposed to advise the courts in suggested penalties for crimes within the EU. The countries where difficulties occurred agreed that a minimum rule regarding the definitions should be established. They also agreed that the criminal penalties should have the same levels when dealing with cross-border dimensions.

However, the rest of the countries did not experience difficulties with the above mentioned issues. It was even mentioned that strict definitions could cause problems and could complicate the application of some Articles of the Criminal Code.

2.10 Role of Eurojust: has Eurojust been involved in concrete cases you have been dealing with?

(c) Yes ☐:

(v) What was the exact nature of the crime(s) at stake?

(vi) What form has the assistance of Eurojust taken?

(vii) What has Eurojust's added value been?

(viii) Could Eurojust's involvement have been provided differently?

If yes, please specify why and how

(d) No ☐

(iii) Can you please explain the reasons why the involvement of Eurojust was not sought?

(iv) Would you envisage in the future involving Eurojust?

The majority of countries replying to the Questionnaire did not yet involve Eurojust in concrete cases. The reason for this is the very low occurrence of relevant environmental cases whether at national or European level. Consequently the need to involve Eurojust has been so far limited.

However, all countries confirmed to envisage involving Eurojust in future cases where the need occurs. They all see the involvement of Eurojust as desirable in the fight against crimes on the EU scale.

Only five countries involved Eurojust in concrete cases. The exact nature of the crimes was *illegal disposal or export of waste*, *transportation of hazardous waste*, *maritime pollution* and *commercial activities regarding protected species*. Eurojust helped the countries to identify criminals, gave recommendations and enabled communication between the parties involved.

Do you have any suggestions or issues as to the topics which you would like to see addressed during the Strategic Meeting (e.g. water pollution…)?

- Maritime pollution from ships, oil spills, shale gas extraction into the sea.
- Definition of "significant amount" of chemicals and/or (hazardous) waste.
- River pollution affecting other Member States and third countries.
- Pollution remediation methods.
- Presentation of sea networks.
- Air pollution.
- Experience of other countries and legal regulations regarding the evaluation (calculation) of damages caused (incurred) to the environment (in the case of air, water, soil pollution).
- Dissemination of information on how to investigate the smuggling of protected species in other Member States, including the type and level of expertise that can be carried out and how long it takes to obtain the results of such expertise.
- Caviar trafficking, water pollution, garbage disposal, toxic waste management.
- Documentation of the extent of water and air pollution: Since the pollutants move and dissolve very quickly in air and water, it is impossible to specify the direct chain of consequence between pollutants and the impact caused far away (e.g. dry trees). It would be desirable to discover how other Member States deal with this issue and which solutions they have.
- Investigative methods regarding illegal shipment of waste as well as the evidentiary issues in these cases (e.g. examination methods of forged documents).
- Examination methods and challenges for water and soil pollution cases.
- Sanctions and punishments available in different Member States and how they are applied. Additional information about the special measures in place for these crimes (e.g. liability of legal entities, special measure for repairing the detrimental consequences of crime).

Annex 3 – Strategic Meeting report

COUNCIL OF THE EUROPEAN UNION

Brussels, 24 March 2014 (OR. en)

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ENV 315

NOTE

From:	Eurojust
To:	Delegations
Subject :	Report of the Strategic Meeting towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust

Delegations will find enclosed the "Report of the Strategic Meeting towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust".

Strategic Meeting towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust

The Hague, 27-28 November 2013

Report

1. Introduction

This strategic meeting was organised jointly by the European Network of Prosecutors for the Environment (ENPE) and Eurojust in The Hague on 27 and 28 November 2013. Around 100 participants from the national prosecution services as well as from European Union and international institutions came together to consider challenges in the successful prosecution of environmental crimes as well as possible solutions and best practices.

The first day focused on a general introduction of the state of play of environmental crime and its prosecution in the EU from different perspectives. The second day aimed at a more in-depth discussion among participants to look into three different aspects of environmental crimes: illegal trafficking of waste, trafficking of endangered species and surface water pollution. The key findings of the workshops were taken into account to conclude the meeting and to look into future perspectives in the area of environmental crime.

2. Day 1: Presentations and discussions

The general introduction of the meeting was jointly provided by *Michèle Coninsx, President of Eurojust and National Member for Belgium, and Jonathan Robinson, Presidency of ENPE*. The importance of the effective fight against environmental crime was highlighted as it is a crime which affects society as a whole as it damages not only the health of humans, fauna and the state of flora but also the quality of air, soil and water. It was also identified as a specific emerging threat which requires intensified monitoring by the 2013 SOCTA. As the nature of environmental crime is rather technical, the establishment of contacts and the exchange of expertise were considered crucial to more effectively fight against it. The closer involvement and cooperation of Eurojust and ENPE in this particular field should ensure not only a more efficient prosecution of cases but also the sharing of knowledge and best practices to create a bigger pool of experts in environmental crime across Europe.

The meeting was chaired by *Leif Görts, National Member for Sweden and Project Manager of the Environmental Crime Project,* who stressed in his overall introduction that it was the first time that Eurojust organised a meeting on environmental crime. Even though environmental crime is a broad area, it concerns everyone and a coordinated response is crucial to effectively combat it. International law as well as extensive European Union legislation regulates this area; however, questions are still open as, for instance, to how a "*serious infringement*" or a "*substantial damage*" should be understood. Another issue relates to the way in which domestic legislations interpret the EU obligation to have "*effective, dissuasive and proportionate*" penalties. Within this context, Mr. Görts recognised that very different implementations of the Directive on environmental crime in the Member States would be problematic to effectively fight these

offences and that interface between administrative control and sanctions on the one side and criminalization on the other side should be discussed. Leif Görts stressed further that prosecution services have, in recent years, been more and more involved in fighting environmental crime, thereby joining an existing "archipelago of stakeholders". This stronger involvement of prosecution services also confirms the need to urgently fight serious environmental crimes in particular as clear indications exist as to the growing involvement of organized crime. Finally, it was noted that this is where the added value of Eurojust becomes obvious, namely in the coordination of a multitude of actors and countries involved and in further developing and sharing working methods in environmental crime investigations.

ENPE, the co-organiser of the meeting, was introduced by *Anne Brosnan, Chief Prosecutor from the Environmental Agency in England and the Presidency of the ENPE*. ENPE is a network of practitioners with the purpose of promoting the enforcement of environmental criminal law in addition to supporting the operational work of the prosecutors for example by sharing best practices and knowledge. It was underlined that legislation such as the Environmental Crime Directive 2008/99 sets general standards; but the prosecutors must be familiar with the legislation for a successful prosecution. Moreover, in environmental cases the aspect of protection and prevention is particularly important, thus preventing the crime from occurring should always be considered a priority. This is crucial as convicting a criminal is only done after the damage to the environment has already occurred and cannot be undone in many cases. In order to successfully fight this crime it is vital that cooperation and coordination between prosecutors, judges and other competent authorities is enhanced at the national and European Union levels. It is also crucial that professionals in the field share best practices and learn from the experience and knowledge of each other. In this respect the assistance of Eurojust is particularly useful concerning, for example, the setting-up of Joint investigation Teams, the facilitation of Mutual Legal Assistance request and the execution of European Arrest Warrants. Another very active and well established network in this field is the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), which was introduced by *Rob de Rijck, Prosecutor from the Netherlands and Chair of the IMPEL Trans-frontier Shipment Prosecutors' Project (TFS).* IMPEL is a network created for the implementation and enforcement of environmental law and its members are Member States, acceding and candidate countries to the European Union, EEA and EFTA countries. IMPEL's main focus is the administrative enforcement of environmental law, such as inspectorates. A priority area for the network is the illegal shipment of waste which is an important environmental problem. Mr. de Rijck noted that despite the fact that the regulations on shipments of waste are regulated at an EU level, this crime area is far from being harmonised as the enforcement is done at national level, *i.e*. in each of the 28 Member States. With different criminal law systems in each Member State dealing with the enforcement of the waste shipment regulation it is easy to see the need for a systematic exchange of information and practices among countries. To this end, IMPEL is working on the establishment of a case law database. The importance of such a database and information was demonstrated with a few concrete examples at a judicial level: an English appellate court made references to a Dutch case concerning the definition of "transport" and a court in Göteborg, Sweden, used the Dutch experience as a tool to establish an appropriate penalty in a case concerning the illegal shipment of waste.

The issue of environmental crime from a law enforcement perspective was tackled by two presentations: *Roel Willekens, Programme Manager Environmental Crime from the Netherlands,* presented the EnviCrimeNet. This informal network was created in 2011 in order to connect police officers and other experts in the field of environmental crime all over Europe. It aims at

sharing non-operational information to improve the fight against environmental crime and to build up expertise in this complex crime area. It also aims at establishing relevant risk assessments that can be exchanged among the participants and at raising awareness of the fight against environmental crimes in the Member States at strategic level. The state of play and latest developments concerning environmental crimes in the European Union and the recently published Environmental Crime Threat Assessment 2013 were presented by Sascha Strupp from Europol. It showed that environmental crime covers a wide range of offences and that it is frequently linked to different fraud and financial offences and the use of fraudulent documents and certificates. The most prominent aspect of environmental crimes is the involvement of organised crime in the area of trafficking in illicit waste and the trafficking of endangered species. The presentation provided an insight into the modus operandi of trafficking of illicit waste and showed that a large market exists for the illegal disposal of waste with low prices and little oversight, also due to the growing demand for illicit waste disposal services. It also highlighted the regional dimension and the link to organised crime groups. As to the crime-relevant factors, corruption, trade and transportation, internet and e-commerce were mentioned.

The outcome of the questionnaire sent by Eurojust to Member States and to the USA and Norway was presented by Nadja Long, Analyst, Eurojust. The aim of the questionnaire was to prepare the Strategic Meeting by asking practitioners questions relating to both substantial and practical issues. This questionnaire and the Strategic Meeting as such fall within the Strategic Project initiated by Eurojust before the summer of 2013 on the fight against environmental crime. Although the agreed scope of the Strategic Meeting was environmental crime in general, illicit trafficking in waste, trafficking in endangered species and surface water pollution in particular, the questionnaire does not cover the last sub-topic. The great number of replies to the questionnaire (27) was noted.

Common elements were first analysed:

- environmental crime cases represent a minority of cases dealt with by judicial authorities. Those cases are however, more and more complex and links with organised crime are confirmed by a majority of 'replying' countries;
- fighting environmental crime requires a multidisciplinary approach and multiple types of expertise from the start of the cases;
- environmental crimes are not considered serious crimes in all countries consulted. As a consequence, investigative techniques used in other serious crime areas can often not be used in environmental crime cases. Consequences can also be felt on the level of penalties generally considered too low and on the strong need to strengthen the knowledge of stakeholders in this – often technical – area.
- establishing the material damage in such cases can be challenging, also in terms of gathering of evidence.

Then, specific issues linked to illicit trafficking in waste and trafficking in endangered species as well as organisational features of investigative and prosecutorial structures dealing with environmental crime at national level were detailed. The replies to the questionnaire suggested possible roles for networks and the enhancement of current activities and possible new roles for Eurojust. Finally, suggestions for other environmental crimes sub-topics were made for future discussions.

The current state of play of the implementation of Environmental Crime Directive 2008/99 based on a study commissioned by the Commission was presented by *Jeroen Blomsma and Heiko Wagner from Directorate General Justice of the European Commission*. It showed that many Member States

have not yet fully implemented the Directive, in particular due to the incomplete criminalisation of environmental crimes. The interpretation of notions such as *significance*, *deterioration*, *substantial damage* or *non-negligible quantity* was found to be inconsistent among Member States. It also showed that the severity of sanctions differ in the Member States. This can hamper international cooperation if the same offence is not punishable by a maximum penalty of at least one year of imprisonment in both Member States. As it concerns the enforcement of environmental crimes in practice, the study of the implementation of the Environmental Crime Directive also revealed that national authorities seem to prefer to apply administrative law where possible or consider the application of criminal law rather as a last resort. Obstacles might also be an insufficient involvement of and flow of information to prosecutors and also to an insufficient level of expertise and training of the personnel involved. With regard to the cases brought to court, the preservation of evidence is particularly challenging for instance due to the quick dilution of pollutants in water but also to the lack of technical expertise and to limited resources. As possible room for improvement, the following areas were highlighted: training, specialisation, reinforcing cooperation between prosecution and environmental authorities and the publishing of convictions.

The challenges concerning the protection of birds and habitats and its regulation by European Union legislation was introduced by *Mr Joseph van der Stegen from DG Environment*. Natura 2000 is an EU wide network of protected areas, the legal framework of which consists of two Directives: the Birds and the Habitats Directives. The aim of the Directives is to preserve species and habitats across the European Union. They offer a strong legal protection but also a certain degree of flexibility. Considering the importance of the network (18% of the EU terrestrial territory) and the need for managing the Natura 2000 sites, the stakeholders are key to succeed in reaching the goals of the directives. The objective of these Directives is furthermore to avoid within Nature 2000 sites activities that could deteriorate the habitats or disturb the species for which the site has been designated. Regarding the implementation of Directives it was noted that the transposition by Member States has been done. The designation of sites has also been carried out except for the sea where it is still on-going. Some achievements of Natura 200 were presented: protected areas in the European Union have more than tripled, some endangered species have been brought back from the brink of extinction, some large-scale destruction of high value areas has been halted and greater cooperation between countries has been initiated, to mention a few. Enforcement of the Birds and Habitats Directives is primarily a responsibility of Member States and is key for the success of Natura 2000.

The key note speaker, *Professor Richard Macrory*, invited the participants to “re-think environmental sanctions”. In order to determine the most adequate and efficient sanctions for breaches of environmental law he suggested one should start by recapitulating the goals of sanctions: to change behaviour, to eliminate financial gain if applicable, to be responsive and proportionate, to restore the harm caused if applicable and to deter future non-compliance. The regulator and other law enforcement bodies must consider how to best achieve these aims. In this context, Professor Macrory presented the advantages of an “integrated approach” which considers the application of criminal and administrative sanctions within a single system of responses to beaches of environmental regulation. In some cases (where for example a legitimate industry had breached regulations through negligence at the most) it may be appropriate that offenders offer their own ‘self-imposed’ sanction by formal undertakings in lieu of an imposed sanction. These could include payments to third parties such as environmental charities to ensure no profit was made by the industry from non-compliance. Such undertakings must be made public. Equally, enforcement policies should be published which reflect the full range of sanctions. A more integrated approach would focus penal investigations and sanctions to environmental offences constituting “true criminal

behaviour" while allowing for the use of non-criminal sanctions in appropriate cases. In most countries this type of integrated approach will require new levels of cooperation between those responsible for enforcing criminal law and regulatory bodies handling administrative responses.
The issue of trafficking in endangered species was presented by Cornelis Van Duijn from Interpol, The role of Interpol in fighting international offences against environmental crime was explained and illustrated with case examples. Interpol has set up an Environmental Crime Programme covering various fields such as wildlife, pollution, forestry, natural resources and climate change. Organised crime is often involved in trafficking endangered species according to Interpol's experience. Also, it is linked to other types of crimes such as money laundering, tax evasion, theft, corruption, terrorism and murder. Even though crimes against endangered species are often committed outside of the European Union (e.g. killing of elephants or rhinoceros), the European Union is a transit and destination zone and constitutes a market as far as wildlife is concerned. Interpol uses its 'notices' system (in particular red notices) against environmental criminals. Fighting trafficking in endangered species requires a multidisciplinary approach although sharing of information can sometimes be problematic.

The role of Eurojust and added value of its involvement was illustrated by a case example presented by Koen Hermans, Assistant to the National Member for the Netherlands, Eurojust. In this case, involving five Member States, a number of persons linked to numerous companies traded in and transported animal manure both inside the Netherlands and abroad. In The Netherlands, manure transport and the discharge of fertilizer require transparent records. Recurrent breaches of the Fertilizers Act had put the investigated actors in a position where they could compete below the market price. Dutch authorities observed that in the region of Brabant, regulations were not adhered to. This led to the suspicion that stocking up and de-stocking animal manure in silos had been taking place, that proper accounts were missing, thus avoiding the payment of tax related to the Fertilizers Act. The illegally obtained advantage was estimated at about €8-9 million.

Eurojust facilitated coordination of the investigative and prosecutorial actions by setting up a Level II meeting within Eurojust before organising a Coordination meeting (Level III) bringing together investigators and prosecutors from the different Member States involved. An action day was planned and Eurojust also provided assistance by facilitating mutual legal assistance before, during and after the planned action day. Several seizures of illegally obtained assets and administrative documents were made. Witnesses were heard in order to collect evidence. Eurojust set up and ran an operational coordination centre, in order to monitor the ongoing actions in the respective countries. Eurojust assisted solving legal and practical obstacles in the respective meetings but also during the action day.

3. Network activities

After the official end of day one, the participating networks ENPE and IMPEL invited the participants to attend their general assembly (ENPE) and the presentation of a database of case-law on trans-frontier shipment of waste (IMPEL).

Firstly, the ENPE general assembly provided information on the mission and mandate of ENPE which was created in October 2012. The activities of the ENPE included for instance the establishment of contacts with Interpol and the US Federal Prosecution Services and the US environmental agency and the participation in a round table on the Access to Justice Convention. Also, meetings were held with the Fiscal General de Yucatán and the International Criminal Court, as well as with the Flemish High Council of Environmental Law. Ongoing initiatives include the establishment of a Secretariat

and the setting up of a website. As for future perspectives, a close cooperation with IMPEL is planned concerning the implementation of EU Regulations and Directives, as is a connection with the Latin American Prosecution Network for the protection of the Environment and ongoing work with acceding states in the implementation of European Union Environmental legislation will be continued. ENPE aims furthermore at collecting relevant data in this area and envisages close cooperation with the European Commission.

Secondly, IMPEL presented its ongoing project to create a database of case-law on environmental crime, with a special focus on trans-frontier shipment of waste and the enforcement by the different Member States of the European Waste Shipment Regulation 1013/2006. The database will be operational as of spring or summer 2014 and will comprise a collection of national judgments submitted by the prosecutors in the network. The full text of each judgment will be available in its original language, accompanied by a short summary in English provided by the submitting Member State (names of defendants will be omitted). The database will also allow the use of keywords and some additional information (*e.g.* domestic reference of the case, the name of the prosecutors involved, etc.). In its initial stage, the database shall be accessible only to the prosecutors who are part of the IMPEL network. However, in the long term, the aim is to make it accessible to prosecutors around Europe to share knowledge and experience, and to establish common practices in the fight against environmental crime across European countries.

4. Day 2: Workshops

4.1. Workshop 1: Trafficking in endangered species

Chair: Leif Görts, National Member for Sweden
Co-chair: Kate Fleming, Specialist Prosecutor, Crown Office and Procurator Fiscal Service, United Kingdom

Kate Fleming and Leif Görts presented the Scottish and the Swedish sides of a cross-border case involving illegal trafficking of protected birds' eggs. The Scottish and Swedish investigations were then followed by a Finnish investigation linked to the same network of criminal collectors.

This case triggered a discussion amongst participants first with regard to the expertise needed to identify the protected species and throughout the trial and the availability of this expertise. Indeed of a large quantity of eggs, only a few hundred could be identified as protected under the CITES convention (and its European Union mirroring provisions) or under national legislation. Participants also discussed the difficulty in assessing the value of protected species in general and recognised that the damage to the environment can still be huge even if protected species are traded without payment. Some countries have established a pricing of endangered species but there is no common pricing system across the European Union, even though some sources exist (such as the EU TWIX database).

Participants stressed the need to exchange knowledge and best practices amongst law enforcement and judicial authorities of different countries. Intelligence should be gathered systematically in the field of environmental crime as it is in other crime areas. There is also a need for coordination of investigations and prosecutions which could be fulfilled by Eurojust. Indeed, rather than working only nationally and exploiting the international links of a case at a later stage, coordination meetings at Eurojust or the setting up of joint investigation teams supported by Eurojust, could enhance the information exchange and the prosecutorial needs/directions.

Finally, participants regretted that although these cases are very technical and resource intensive, , they do not necessarily lead to deterrent penalties. This situation creates an imbalance with other crime areas in terms of investigation techniques but also in terms of resources dedicated to solving the criminal cases.

4.2. Workshop 2: Illegal Trafficking of Waste

Chair: Renske Mackor, Public Prosecutor Functioneel Parket, The Netherlands
Co-chair: Francesco Lo Voi, Eurojust National Member for Italy

The participants of this workshop, which also comprised the IMPEL prosecutors' workshop 2013, discussed the main obstacles identified in the prosecution of environmental crimes after introductory presentations by Maurizio De Marco from the Procura della Republica di Napoli and Leonora Mullet from Dublin City Council, both IMPEL members, on the legislative framework of the illegal shipment of waste in Italy and Ireland respectively... The problems included in particular:

a) Differing definitions and interpretations of the legal framework, *e.g.* in respect of the categorisation of waste, but also the different level of penalties foreseen in national legislation and which are subsequently domestically enforced;
b) Prosecutions often focus on the producer alone and with a purely national perspective which can hamper an effective fight against this criminal phenomena which has by nature cross-border elements;
c) Mutual legal assistance, especially outside the European Union, and international judicial cooperation can be difficult and time consuming;
d) Links between waste trafficking and organised crime, and the involvement of Organised Crime Groups but also the engagement of legitimate companies in the illicit trafficking of waste;
e) Environmental legislation proves to be complex and technical. This can be challenging to non-specialised law enforcement and judiciary personnel.

The participants also discussed possible solutions such as closer international cooperation (including a list of contact points), the use of joint investigation teams, the exchange of case law (IMPEL database), the involvement of Eurojust, a multidisciplinary and international approach, the harmonisation of definitions and penalties and the confiscation of the proceeds of criminal gain, including a focus on money laundering. The closer involvement of Eurojust and the participating networks (IMPEL and ENPE) in order to build up expertise and gather best practices was considered essential.

4.3. Workshop 3: Surface Water Pollution

Chair: Lorna Dempsey, Head of Legal Services, Environmental Protection Agency, Ireland
Co-chair: Henri Tillart, Assistant to the National Member for the Netherlands, Eurojust

After an introductory presentation by Lars Magnusson, Senior Prosecutor from Sweden and Secretary General of ENPE and Katalin Serfőző from the Prosecution Office of Szeged, Hungary, the participants discussed the nature of surface water pollution and the character of this particular crime which is rather different from other environmental crimes. Water pollution is generally not a profitable crime, unlike, for instance, the illegal trafficking of waste. It was therefore considered unlikely that it would attract organised crime groups. However, those who pollute water make significant financial savings by not complying with regulations.

When investigating and prosecuting surface water pollution, prosecutors face many challenges which were touched upon in the workshop. Firstly, the need for experts to determine what kind of pollution or chemical, etc. has been emitted, assessing the damage caused. Also the identification of the source of the pollution was mentioned. An additional difficulty is when there are several sources making emissions to the same body of water. Also, there are often several regulators and numerous regulations coupled with a lack of clarity about the roles which each regulator has to play in each case. As a result of these obstacles (which are often very expensive to resolve), the prosecutors of such cases would choose to prosecute another, perhaps lesser crime that is easier to prove. For example, instead of prosecuting a case of pollution in the river, factories have been prosecuted for exceeding their emission limit values. Finally, different enforcement actions and a variety of defences are available in different Member States. While some prosecutors can only prosecute individuals, others can also prosecute companies or municipalities.

5. Conclusions and future perspectives

The meeting was closed by *Michèle Coninsx, the President of Eurojust, Jonathan Robinson, from the presidency ENPE and Leif Gorts, Eurojust National Member for Sweden*, who presented the final conclusions of the two days meeting and future perspectives:

- The seriousness of environmental crime is still underestimated even though it affects society as a whole and damages the health of humans, fauna and the status of flora. It should be considered a serious crime area as any other "traditional crimes" such as drug trafficking or human trafficking, in particular when it includes a cross border element.

- Environmental crime is often linked to organised crime, in particular in illegal trafficking or dumping of waste and trafficking of endangered species. Similar techniques and routes are being used by traffickers as in other crime areas (such as drugs). When it is not linked to organised crime (*e.g.* surface water pollution) it should still be considered a serious crime due to its grave consequences and because the nature of such cases often merit cross-border handling.

- Environmental crime attracts organised crime groups in particular due to the high profit it can generate, the relatively low risk of detection and the low level of penalties. In order to fight the crime more effectively, further focus on asset confiscation should be considered.

- The legislative framework is very complex and technical which requires expert knowledge from the authorities involved. An increasing level of training and/or facilitating the access to expertise is essential. This is a multidisciplinary area which benefits clearly from cross agency collaboration and coordination.

- Penalties are applied very differently from one Member State to the other. This can impede the effective fight against environmental crimes. The lack of a harmonised approach concerning the level of penalties hampers the effect of proportionate and dissuasive sanctions across the European Union.

- Because the legislation of the different Member States is not harmonised, in particular in terms of penalties, Member States often cannot use similar investigative techniques as they would use in other serious crime areas. The investigation of those crimes under the label "organised crime"

or the use of specific tools such as the Naples II Convention could enable the use of a broader spectrum of investigative techniques.

- The sharing of best practices and of expertise is essential in those cross-border cases. A coordinated approach should be adopted to maximize results. The coordination of investigations and prosecutions should be done on a more regular basis through the early involvement of Eurojust.

- The further use of joint investigation teams, coordination meetings and coordination centres would contribute to a more efficient handling of cross border environmental cases.

- The networks involved, such as ENPE, and specific initiatives such as the IMPEL transfrontier shipment of waste case database should be used by practitioners to increase their knowledge, raise awareness, share best practices and facilitate cooperation amongst practitioners.

- Eurojust will continue its work in this particularly important field, in collaboration with Europol and all relevant partners.

Annex 4 – Eurojust's contribution to the Commission Communication on the EU approach against wildlife trafficking

EUROJUST'S CONTRIBUTION

THE EU APPROACH AGAINST WILDLIFE TRAFFICKING

On 7 February 2014, the European Commission issued a Communication to the Council and the European Parliament on the EU Approach against Wildlife Trafficking. This Communication contains a number of questions to stakeholders on the future approach to wildlife trafficking.

Based on the results of this consultation and the outcome of the Expert Conference on Wildlife Trafficking to be held on 10 April 2014[28], the European Commission will review the existing policies and measures at EU level to fight wildlife trafficking.

With this Contribution EUROJUST aims at giving response to the launched consultation and provide a practitioner's point of view.

EUROJUST expresses its availability to offer any further advice, in the light of its operational and strategic experience, to the European Commission, if required at a later stage.

The Contribution has been divided into three parts:

Part I – Introduction

This chapter provides a brief overview of the activities of EUROJUST in this area.

Part II – General remarks relating to the questions raised

This chapter provides a brief overview of the scope of the answers provided.

Part III – Contribution to specific questions

This chapter contains the comments of EUROJUST on some of the questions raised

The Commission is also provided with the following documentation:

Annex - Summary Report of the Strategic Meeting "Towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust", 27-28 November 2013

[28] Eurojust will participate in this Conference.

PART I – INTRODUCTION - ONGOING WORK AT EUROJUST:

Fighting wildlife trafficking is essential at EU and at international levels. Reports of seizures are high[29] and links to organised crime more and more highlighted[30].

Illicit trafficking in endangered plant species and varieties, illicit trafficking in endangered animal species as well as environmental crimes are explicitly listed amongst the crime types that EUROJUST is competent for[31]. For reasons explained below, Eurojust's assistance in environmental crime operational matters has, so far, only been requested to a limited extent by prosecutors or magistrates. However, given the growing indications of the seriousness of this crime area, EUROJUST has for more than a year been running a Strategic Project on environmental crime (the Strategic Project).

Within this project, in November 2013, EUROJUST organised jointly with the European Network of Prosecutors for the Environment (ENPE) in The Hague a Strategic Meeting for practitioners[32] (the Strategic Meeting). Around 100 participants from the national prosecution services as well as from the European Union and international institutions came together to consider challenges in the successful prosecution of environmental crimes as well as possible solutions and best practices. The Strategic Meeting focused in particular in illicit trafficking in endangered species.

On the basis of the expertise gathered, EUROJUST believes that the questions raised by the Commission deserve particular attention and is grateful for the opportunity given by this consultation.

PART II – GENERAL REMARKS RELATING TO THE QUESTIONS RAISED

The questions raised to stakeholders by the Commission are the following:

1. Is the policy and legislative framework currently in place in the EU against wildlife trafficking adequate?
2. Should the EU enhance its approach to wildlife trafficking by developing a new EU Action Plan, as called for by the European Parliament?
3. How could the EU increase political commitment at all levels against wildlife trafficking? What diplomatic tools would be best suited to ensure coherence between different international initiatives?
4. What tools at international level should the EU focus on to enhance enforcement against wildlife trafficking and strengthen governance?
5. What tools are most suitable for EU action to address international and EU demand for illegal wildlife products? What role could civil society and the private sector play in this regard?

[29] Reference by the European Parliament in its Resolution of 15 January 2014 on wildlife crime to the report compiled by TRAFFIC for the European Commission, *Overview of important international seizures of CITES-listed specimens in the European Union January to December 2012,* April 2013.

[30] *SOCTA 2013 EU Serious and Organised Crime Threat Assessment*, Europol, p. 30.

[31] Annex to *Council decision of 6 April 2009 establishing the European Police Office (Europol)* and Article 4.1(a) of the consolidated version of *Council Decision on the strengthening of Eurojust and amending Decision 2002/187/JHA*.

[32] *Strategic Meeting Towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust*, 27-28 November 2013, The Hague.

6. How can the EU best add value to address the peace and security implications of wildlife trafficking?
7. How could the EU cooperation instruments better support the reinforcement of the capacities of developing countries for wildlife conservation and action against wildlife trafficking?
8. What measures could be taken to improve data on wildlife crime in the EU so as to ensure that policy-making can be more effectively targeted?
9. What measures could be taken to strengthen enforcement against wildlife trafficking by environmental authorities, police, customs and prosecution services in the Member States and to reinforce cooperation between those authorities? How could awareness of the judiciary be raised?
10. How could existing tools against organised crime at EU and Member States level be better used to address wildlife trafficking? What additional measures should be envisaged, e.g. regarding sanctions? What contribution could Europol and Eurojust make in that regard?

EUROJUST will not provide a contribution to questions 3 and 6 as well as to the second part of question 5. Indeed those issues clearly fall outside of the mandate of EUROJUST.

Also, EUROJUST considers that it can provide the Commission with short answers to questions 1, 2, 4, 7, 8 and to the first part of question 5 as EUROJUST has gathered information that could assist in shedding a light on those issues.

Finally, questions 9 and 10 are key questions for EUROJUST, deserving therefore more extensive answers.

PART III – CONTRIBUTION TO SPECIFIC QUESTIONS

1. Is the policy and legislative framework currently in place in the EU against wildlife trafficking adequate?

The EU has adopted a number of legal instruments relating to wildlife protection, in particular through the integration of the CITES Convention in the EU legal framework. During the Strategic Meeting of November 2013, practitioners raised the issue of the implementation and enforcement at national level of EU instruments rather than the adoption of additional instruments. Indeed, in spite of the existing EU legislation, many Member States seem to consider that the area of environmental crime (including wildlife trafficking) is not as serious as "traditional crime areas" (such as drugs, trafficking in human beings). This situation results, in particular, in a diverse implementation of EU legal instruments. The practical negative consequences of such lack/ or diverse implementation can hamper the efficient fight against environmental crime in general and wildlife crime in particular: low penalties, the absence of possibilities to use traditional investigative tools, the difficulties in finding the right expertise, the diverse interpretation of certain legal terms and definitions etc.; but also mechanically diminish the possibilities for EUROJUST to coordinate investigations and prosecutions at EU level (see also replies to questions 3, 9 and 10 below).

2. Should the EU enhance its approach to wildlife trafficking by developing a new EU Action Plan, as called for by the European Parliament?

Practitioners to the Strategic Meeting expressed the wish that environmental crime, including wildlife crime, be considered as a serious crime, thereby deserving special attention by Member States and the EU.

EUROJUST is involved in implementing EU Action Plans. For instance, the EU Action Plan on drugs 2013-2016[33] lists a number of deliverables and actions with timeline indications and identified actors in charge. The added value of concrete Action Plans cannot be denied from a strategic and operational point of view. However, it is important to note that without the setting up of a monitoring mechanism, the impact of those concrete actions cannot be fully assessed.

Furthermore, the possibility of considering environmental crime as a priority crime at EU level within the next policy cycle would pave the way to an Operational Action Plan (OAP). (see also answer to question 5 below).

It should however be stressed that any EU action in this field – an Action Plan and/or an OAP (see reply to question 5 below), for instance – cannot efficiently enhance the actual fight against wildlife crime if Member States are not aware of the seriousness of the offence. The concerns and experience expressed by practitioners in this field could therefore be recognised at national level and consequently voiced out by Member States at EU level (see reply to question 1) while potentially also tackled by further EU action.

3. What tools at international level should the EU focus on to enhance enforcement against wildlife trafficking and strengthen governance?

Participants to the Strategic Meeting suggested that difficulties linked to investigating complex and cross-border environmental crimes (see also answer to question 1 above and answers to questions 9 and 10 below) could be overcome by using instruments on organised crime, such as the Palermo Convention[34] (the Convention). However, this Convention is applicable to "serious crimes" which, for the purpose of the Convention is defined as a "*conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty*". The penalty threshold set by this international instrument is often not met for environmental crimes at national level.

5. What tools are most suitable for EU action to address international and EU demand for illegal wildlife products?

EUROJUST has been participating actively in the Policy cycle discussions relating to crime priorities at EU level. Should environmental crime be considered in the future as a crime priority, it would benefit in the next four years' policy cycle from a Multi Annual Strategic Plan (MASP) and consequently from an OAP[35] which would be implemented by Member States and other

[33] EU Action Plan on drugs 2013-2016, Council, (2013/C 351/01).
[34] United Nations Convention against Transnational Organized Crime, 2004.
[35] One OAP per year each of those four years.

relevant stakeholders. OAPs tackle a broad range of issues aimed at fighting the particular crime type using a multidisciplinary approach. Within this frame, tackling EU demand for illegal wildlife products could possibly be addressed.

7. How could the EU cooperation instruments better support the reinforcement of the capacities of developing countries for wildlife conservation and action against wildlife trafficking?

On the one hand, from its cooperation with Interpol, EUROJUST knows that capacity building programs, targeting the judiciary, are organised by Interpol in developing countries. However, the mandate of EUROJUST does not include training as such.

On the other hand, there is a need for efficient judicial channels of cooperation between the EU – EUROJUST in particular – and source, transit and destination developing countries in the field of wildlife crime.

8. What measures could be taken to improve data on wildlife crime in the EU so as to ensure that policy-making can be more effectively targeted?

Effective policy-making relies on accurate information being collected and analysed. One of the elements that were stressed by practitioners during the Strategic Meeting of November was that an intelligence-lead approach should, similarly to other serious crime areas, also be deployed in this field. The lack of precise knowledge on organised wildlife crime is today problematic. Wildlife crime has no “victims” and the possibilities of detecting those crimes is often limited to the action of customs authorities or rely on random checks (for instance within the frame of another investigation, a wildlife crime is detected). For that reason, a structured intelligence gathering is needed on Member State level. Since many different agencies and or public bodies are involved in inspecting and investigating wildlife offences, this intelligence gathering should by nature be multidisciplinary. Legal channels of communication of information should also therefore exist at national level to ensure a smooth handling and sharing of intelligence.

Collection of intelligence at national level would trigger a more efficient sharing and analysing of intelligence at EU level. The opening of a Focal Point at Europol on environmental crime (including wildlife crime) would clarify trends, links with other crime areas, allow for precise threat assessments and ultimately also support coordination of investigations/ prosecutions at judicial level.

9. What measures could be taken to strengthen enforcement against wildlife trafficking by environmental authorities, police, customs and prosecution services in the Member States and to reinforce cooperation between those authorities? How could awareness of the judiciary be raised?

According to the information gathered by EUROJUST in the Strategic Project, the national organisation of both law enforcement and the judiciary handling environmental crime cases is extremely diverse. Schematically, two different approaches are being followed: the existence, or

not, of specialised units, at both levels. It seems though, that law enforcement environmental crime specialised units are more numerous than specialised judicial units across Member States. Multidisciplinary cooperation between bodies involved in the detection and investigation of wildlife crime (*e.g.* customs, border guards, health, and transport authorities, police, judiciary) is, in any case, essential (see reply to question 8 above and following paragraph below). Indeed, as highlighted by the Strategic Meeting, beyond the diversity of national organisation set up to fight wildlife crime, one of the main difficulties in fighting trafficking in endangered species is the necessity of using specialised expertise. Expertise at law enforcement level and at judiciary level should be available rapidly. This is currently not commonly the case across the EU[36].

A multidisciplinary approach in tackling wildlife crime is needed at national level to address the different challenges raised by wildlife crime cases. For instance, customs could bring a specialised knowledge in identifying the species at stake when health authorities might also be involved to determine the conditions in which seized animals should be kept or assess the risk to public health. Efficient and smooth cooperation amongst all competent authorities is therefore an essential point raised by practitioners in EUROJUST's Strategic Project (see also reply to question 8). Within this frame, practitioners to the Strategic Meeting insisted on the fact that wildlife offences do not always deserve a criminal approach but could, in minor cases, be handled through administrative investigations and sanctions, such as fines. However, when the damage (or potential damage or risks) is high and/or the cross-border nature demonstrated, and/or other serious elements (such as organised structure of the criminals and/or high amount of profits and/or link with other crime types) present, the case would deserve to be handled by competent criminal law authorities with the assistance/cooperation of administrative authorities, as the case may be[37].

Best practices in fighting wildlife crime could also be shared in a more structured and systematic way across practitioners of the different EU Member States. Specialised networks play an important role in this matter. A project led by the IMPEL network (the Trans-Frontier Shipment of Waste project) was presented during the Strategic Meeting. It aims at providing access to case-law in the field of waste to judges and prosecutors in Member States. An easier access to relevant case-law would indeed provide judicial authorities with a clearer picture of sanctions applied in the different Member States and of factual and legal specificities encountered. A similar project for wildlife crime could be relevant.

Furthermore, the ENPE confirmed during the Strategic Meeting the need to share best practices and this question was, in particular, debated in the workshop of the Strategic Meeting dedicated to the question of illicit trafficking in endangered species[38]. ENPE also mentioned that a closer cooperation of EUROJUST and ENPE should ensure a better sharing of knowledge and best practices to create a bigger pool of experts in environmental crime across Europe.

[36] Some existing tools such as EUTWIX could also be used at a greater extent and promoted.

[37] According to the information gathered in the Strategic Project, NGOs or national public bodies have been given an essential role in some national judicial proceedings, providing, for instance, expertise needed in identifying the species at stake.

[38] The Strategic Meeting revealed for instance that some Member states have established a pricing list for endangered species which could serve as a basis for the competent authorities to establish the damage at stake.

10. How could existing tools against organised crime at EU and Member States level be better used to address wildlife trafficking? What additional measures should be envisaged, e.g. regarding sanctions? What contribution could Europol and Eurojust make in that regard?

The question of existing international tools relating to organised crime has been partly dealt with in EUROJUST's answer to question 3 above.

Unlike water pollution for instance, which is usually a serious crime and can be cross-border without being organised[39], wildlife crime, when cross-border, is essentially organised. Using organised crime tools would enable practitioners to use the investigation tools traditionally used for other serious crime areas (searches, interviews, controlled deliveries, interception of telecommunications, DNA testing, etc.) and would consequently enable EUROJUST to provide additional assistance to national investigations as cases would be reported to them on a more regular basis.

Using "organised crime" as an alternative to "environmental crime" or "wildlife crime" as such was nevertheless mentioned by participants in the Strategic Meeting as a way to compensate the existing gaps at national level (low penalties, lack of resources allocated to investigate etc.). However, even if other crimes, "easier" to investigate and prosecute, were discovered during a wildlife crime investigation, they could only be so if there was sufficient intelligence gathered in the first place on the wildlife crime itself, which brings back the question of an effective and systematic collection and analysis of intelligence in this particular field (see reply to question 8).

Nonetheless, practitioners have stressed the importance of recognising 1) that wildlife crime to a very large extent has links to other crimes such as corruption, theft, forgery of documents (in particular CITES certificates), money laundering, terrorism and that 2) the profits deriving from trafficking in endangered species are particularly high. Within this context, applying low and varied penalties across the EU to such crimes makes them even more attractive to criminals.

Practitioners have also confirmed to EUROJUST that there is a need for coordination of investigations and prosecutions in complex cross border cases relating to wildlife trafficking. EUROJUST could use its coordination expertise (*e.g.* coordination meetings, coordination centres, joint investigation teams) to assist national competent authorities. EUROJUST could also assist national authorities in facilitating admissibility and transfer of evidence between Member States in this technical crime area.

Finally, should the fight against wildlife crimes be stepped up at national level, the embryonic cooperation between EUROJUST and EUROPOL in this particular field would grow, and a stronger assistance would consequently be provided to national investigations and prosecutions in cross-border wildlife crime cases. This future established cooperation would then mirror the one already existing between both agencies in most other serious crimes areas.

[39] Strategic Meeting Report.

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