Questionnaire – Administrative sanctions - orders and execution measures - in case of environmental infringements

AEAJ workshop in Riga 7 – 8 September 2017

Summary and introduction

To reach a sustainable development there is a need for an environmental legislation that is clear and progressive. But the legislation as such will merely have a function to point out the political ambitions behind the law, unless it is applied and enforced properly and executed in accordance to its purposes.

In this context, the function of supervisory authorities is vital for the enforcement and in order to monitor the state of the environment and the practical application of the law. It also can give the prerequisites to propose adjustments in the legislation, where it is found inadequate or containing gaps.

Not at least in an EU-context this mechanism has been noticed and highlighted. In September 2016, the EU-Commission delivered a Study to assess the benefits delivered through the enforcement of EU environmental legislation (Final Report 070203/2015/711789/ETU/ENV.D.2.). One conclusion from this report is that *"The enforcement action plays a key role in the protection of the rule of law, through ensuring correct transposition and application of the EU law. More broadly, it has a systemic impact on Member States implementation of EU environmental law. Finally, benefits are observed in terms of better governance, with improved visibility and better inclusion of citizens of the protection of their environment."*

The general topic for this year's AEAJ workshop on environmental law was "Administrative sanctions - orders and execution measures - in case of environmental infringements". To this end, and after the traditional presentations of the currently most nationally discussed environmental issues, the questionnaire concentrated on national reports of the respective legislation and a description of the organization of authorities with responsibilities for supervising the application of environmental law.

Another topic was to give a view of which instruments are available for these authorities in order to prohibit behavior that is detrimental for the environment or to enforce precautionary measures by the operator. Also focused in the questionnaire was whether the different countries had developed administrative fines in the field of environment, with the purpose to punish infringements undertaken.

Finally and connected to a case-study that was to be discussed during the workshop, the participants were asked to give a review of the national implementation and practice under Directive 2004/35/EC (on environmental liability with regard to the prevention and remedying of environmental damage).

The organization and competence for the authorities vary in the different countries, first depending on whether it is a federal state or not but also to which extent the authorities are independent or not to the Ministry. Also noticeable is whether the authorities competence is horizontal or specialized to certain areas.

The authorities may act with instruments of different purposes, with the aim to prevent, stop or to remedy environmental damage or threats to human health. The legal instruments are developed differently due to the specific traditions in respective country. Important are the possibilities to sharpen the tools and to make such decisions immediately executable and/or to combine them with a penalty sum – conditional fines. One conclusion that can be drawn after a comparison of the answers is the more obvious, that all countries have systems to enforce environmental law but some systems are more effective than others.

In the countries, the border differs between what are the tasks for the traditional bodies to handle criminal matters (the police and the prosecutors), respective issues allocated to administrative authorities responsible for monitoring and supervising environmental law. This is especially apparent when it comes to fines. In some but not all countries there have been an introduction of such fines, which have the purpose to look backwards and to punish already committed infringements of environmental law. In this regard issues of legal security or certainty are especially highlighted as, depending on the construction, such fines may be regarded as punishments according to the European Convention on Human Rights.

I. Give a short description of the most important issues on environmental law that you are dealing with or that are currently discussed in your country.

Austria:

1. Airport decision in Vienna. The judges decided that the airport should not have a third piste because of air pollution. They based the decision also on Kyoto- Protocol.
2. The requirements of the Water framework directive and its transposition in the light of CJEU decisions, particularly Schwarze Sulm (Austria) and Weser, are continuously debated.
3. An everlasting story: standing to sue in environmental matters – with the legislator still reluctantly transposing EU law and Aarhus requirements, and a discussion if the Austrian procedural law system has to be developed towards actio popularis.

Belgium: In the Flemish Region, much energy is going to the new environmental permitting system ('Omgevingsvergunning'), which integrates the former environmental permit with the building permit. Getting the new system started, is more troublesome than politicians have been willing to concede. The transition law rules have been amended twice between February and June, creating an utterly complex situation.

Specialists in environmental law, especially environmental law enforcement, are increasingly paying attention to the enforcement of rules protecting wildlife, including those countering illegal wildlife trade.

Bulgaria*:*
Subject matter of the legal regulation by the normative acts included in the field of environmental law are the public relations related to the protection of the environment from pollution as well as the public relations related to the rational use of natural resources. Of course, these social relationships are interconnected and can not be considered separately because of the dependencies between them. The subject of these social relations is any legal entity under Bulgarian law. Here we can point out that according to Art. 55 of the Constitution of the Republic of Bulgaria, the basic right of every Bulgarian citizen is the right to a healthy and favorable environment.

The policy on nature protection targets the management, control and conservation of biodiversity and protected areas. It is implemented in accordance with the international and national legislation – Environment Protection Act, Biodiversity Act, Protected Areas Act, Medicinal Plants Act, Genetically Modified Organisms Act and strategic documents – National Priority Action Framework for Natura 2000, Strategic Plan for Biodiversity, EU Strategy for Biodiversity, Global Strategy for Plant Conservation, National Plan for Protection of the Most Significant Wetlands, etc.
The the country there are 3 national parks, 11 nature parks, 55 reserves, 35 maintained reserves, more than 500 protected areas and 350 natural landmarks. In order to protect and effectively manage the protected areas, management plans are being developed and implemented. A large part of the protected areas of Bulgaria is included in various international networks – the Convention for Protection of World Cultural and Natural Heritage and the Programme for Biosphere Reserves of UNESCO, the Ramsar Convention on Wetlands, etc., that place additional responsibilities to ensure sustainable management of our natural resources.
Bulgaria is one of the richest in biodiversity among European countries and ranks third in the EU in percentage of national territory that is included in the European ecological network Natura 2000 (34.4%). As a contribution to the network, the Ministry provides the necessary care for long-term survival of endangered species and habitats in accordance with international agreements on environmental protection and biodiversity. In compliance with the European directives on protection of habitats, flora, fauna and

birds, our country protects more than 90 types of natural habitats and over 300 species of plants and animals.
In 1991 in Bulgaria was adopted the Environmental Protection Act (EPA), which was repeatedly amended and refurbished and completely renewed in 2002. This Act shall provide the public relations, connected with: 1. the environmental protection for the present and the future generations and protection of human health; 2. the preservation of the biological diversity in compliance with the natural bio-geographic characteristic of the country; 3. the preservation and the use of the components of environment; 4. the control and the management of the factors, damaging the environment; 5. the implementing of control over the status of environment and the sources of pollution; 6. the prevention and the restriction of pollution; 7. the creating and the functioning of the National system for monitoring of the environment; 8. environmental protection strategies, programmes and plans; 9. the collecting and the access to the information about environment; 10. the economic organisation of environmental protection activities; 11. the rights and the obligations of the state, the municipalities, the corporate bodies and the individuals regarding environmental protection.
Art.
The objectives of the Act shall be achieved by: 1. regulating of the regimes for preservation and use of the components of the environment; 2. control over the status and the use of the components of the environment and sources for its pollution and damaging; 3. establishing of admissible standards for emissions and for quality of the environment; 4. management of the components and the factors of the environment; 5. implementing of environmental impact assessment (EIA); 6. issuing of permissions for prevention, restriction and control of the pollution; 7. announcing and management of territories with special regime of protection; 8. development of the system of monitoring of the components of the environment; 9. introduction of economic regulators and financial mechanisms for management of the environment; 10. regulation of the right and the obligations of the state, the municipalities, the corporate bodies and the individuals.

The environmental protection shall be based on the following principles: 1. sustainable development; 2. prevention and reduction of the risk for human health; 3. priority of the prevention of pollution to follow-up removal of the damages, caused by it; 4. participation of the public and transparency in the process of decision taking in the field of environment;
5. informing of the citizens about the status of the environment; 6. the polluter shall pay for the caused damages; 7. preservation, development and protection of the ecosystems and their intrinsic biological diversity; 8. restoration and improvement of the quality of environment in the polluted and damaged regions; 9. prevention of pollution and damaging of the clean regions and other unfavourable impacts on them; 10. integration of the environmental protection policy in the sector and the regional policies for development of economy and public relations; 11. access to justice on issues, referring to environment.

Estonia: -Drainage of the peatland (impact on Natura areas, groundwater etc);
- Wind farms. For example Hiiumaa offshore wind farm project (Planned wind farm capacity is between 700 to 1100 MW, with a distance of 12 km from the coastline of Hiiumaa island. Depending on the turbine type more or less 100-160 wind turbines will be installed.);
- In the second half of 2017/18, the city of Tallinn will begin construction of the Reidi road. The new road, which will be situated right next to the Tallinn Bay, will connect the city center with the Pirita road.

Finland: In Finland discussed:

- Numerous laws requiring several permits per activity - reducing the number of these in favor of businesses – making the administrative system less complicated - Does this reducing mean impairment with environment protection or not? How could the system be developed more simple?

- Most environmental decisions from the whole country are appealed to Vaasa administrative court – we deal with e.g. mining, peat mining and building in water areas of the whole country like as the regional cases of our own area e.g. cases under the Nature Protection Act
- SK head of one of three departments taking care of e.g. peat mining (mainly because of impacts in water, actual are problems caused by acidity on areas that used to be under the ancient Litorina Sea) and quarrying&crushing (brytning och krossning; mainly because of noise) and Nature Protection cases

Germany:
1.1 Air pollution in cities caused by traffic remains one of the major issues – recently culminating in the spectacular decision of the Stuttgart Administrative Court of 28.07.2017 - 13 K 5412/15. The Court granted the claim of DEUTSCHE UMWELTHILFE for amending and updating an air quality plan by obliging the defendant LAND BADEN WÜRTTEMBERG to take specific measures as soon as possible for complying with the air quality limit values for NO2 in the environmental zone of Stuttgart where these values were exceeded at least since 2010. The Court remarkably went into detail when checking appropriate measures for achieving that aim until the end of 2017. Based on a comprehensive effectivity report submitted by the defendant it rejected all measures proposed by the defendant as insufficient including an improvement of motor management of older cars suggested by car companies. Instead it favoured exclusively a permanent ban on gasoline cars not complying with pollutant category EURO 3 and Diesel cars with category EURO 6 to enter the environmental zone of Stuttgart.

Because of the fundamental significance of the case a leap frog appeal to the Federal Administrative Court was admitted where similar cases are already pending.

1.2 The requirements of the Water framework directive and its transposition in the light of CJEU decisions, particularly Schwarze Sulm and Weser, are continuously debated. The problems arising from the concept of non-deterioration are regarded as not solved yet, e.g. the question if ecological quantities are to be related to the status of waters as a whole or to possibly detrimental effects of single industrial projects, furthermore the question which alternatives have to be taken into account by the operator (simply technical or also system alternatives), and which exceptions may have to be granted for overriding public interest, defined by whom in applying which margin of discretion: the legislator, regional or local administrative authorities? Or do the courts have to interpret and apply the indeterminate legal term – which also leads to the topic of separation of powers?

1.3 The relation between agriculture in terms of large scale manure and environmental protection has been a problematic field in Germany since a long time, and still is. Under the pressure of a respective infringement procedure the German legislator recently passed amendments of the manure act and the manure regulation aiming inter alia at reduction of nitrogen in waters. It is doubted if the new provisions limiting the use of manure, with a number of exceptions, will be sufficient. The continuing debate deals also with alternative economic instruments like certificates, taxes, and with introduction of the concept of best available techniques known from industrial emissions.

1.4 .Mining cases (especially coal und gravel) have become the most important environmental issue in Saxony.

1.5 An everlasting story: standing to sue in environmental matters – with the legislator still reluctantly transposing EU law and Aarhus requirements, and a discussion if the German procedural law system has to be developed towards actio popularis.

On 2 June 2017 the fourth version of the Environmental Appeals Act went into force. This amendment is the third attempt to bring the rules on access to justice in environmental matters in line with the requirements of EU law.

Lithuania: Currently, the discussions among law scholars and practitioners on possibilities to systemize, consolidate or even codify various environmental provisions prevail in order to unify and harmonize environmental regulation system prevail. First, one should note that legal provisions on environmental protection are embedded in a large number of various national laws and sub statutory legal acts. In addition to this, one should note directly applicable European Union regulations. Moreover, amending the national legal acts is not a rare practice. The provisions, which are set out in various national environmental laws, are quite isolated. The lack of strong united system of harmonious environmental regulation leads to negative consequences such as ambiguity of certain legal provisions, difficulties in applying the legal norms uniformly, and in turn problems in pursuing effective result.

Another important issue on environmental law is related to the ambiguity of essential criteria intended to determine whether the infringements of environmental provisions lead to criminal or administrative liability. Article 270 of the Criminal Code of the Republic of Lithuania establishes two essential criteria – the seriousness of environmental damage which is or threatened to be caused, or already exists. However, the case law analysis discloses that these criteria are not specified and defined enough. This lack of clarity in establishing the concrete size of serious environmental damage in legal regulation makes it difficult to assess and justify the fact of serious damage and it may lead to wrong prosecution. In some cases, such criteria are assessed by taking into account the analogy of the amount (250 minimum wages) imposed for crimes against property, economy and order of business. However, this is not always the case.

For example, the Supreme Court of Lithuania stated that such evaluation is not completely accurate and proportional. If environmental damage is caused, the financial damage might not always reach 250 minimum wages. On the other hand, this does not automatically mean that serious damage for environment has not been done. The Court pointed out that serious damage to wildlife could not be assessed only by counting the amount of fishes caught and converting this number to monetary expression, etc. The determination of wildlife damage requires considering other significant circumstances in every individual case (the Supreme Court of Lithuania, case number 2K-376/2006).

However, individual estimation of damages does not help to unite the case law. There are no definitions of certain criteria for assessing the seriousness of environmental damage. Legal acts do not establish concrete criteria for seriousness of adverse effects on environmental factors. Various operators, their lawyers, public authorities, courts consider the seriousness of environmental damages differently. Currently, such situation is intended to be solved by initiating legislative changes. The draft law proposing to define clearly the concept of serious environmental damage as the criteria of qualifying the criminal liability is being discussed. The Ministry of Environment is proposing the size of 250 minimum wages in such matter. This new regulation aims to create a uniform case law and clearly separate administrative and criminal liability in environmental field.

Netherlands: The answers regarding Netherlands are partly based on the book: Environmental Law in the Netherlands, by Michiel H. Heldeweg and René J.G.H. Seerden, Wolters Kluwer, 2013.
It is the intention of the Dutch legislator for the coming years to further (completely?!) integrate the legislation in the field of the environment in the broad sense (prevention of pollution, land-use/building and nature conservation). It is especially of relevance for the legal framework (prohibitions/permits/setting of rules/delegated legislation). Presently this process for the new

Environment Act (Omgevingswet), expected to come into force in 2020/2021 is in full progress. As for the legal framework of (administrative) enforcement: no big changes are expected.

Spain: Problems regarding the environment are recurrent in Spain so besides the same matters most countries have in common such as greenhouse effect, we in particular have to handle problems relating to water shortage, forest fires, extensive/massive housing, coastal erosion and air pollution, above all, in big cities. Other matters are aquifers overexploitation, land erosion, desertification and uncontrolled waste.

a) Water shortage. Because of overconsumption in the cities and the countryside, among others, water shortage is the main cause of land degradation if we take into account that Spain is country with poor rainfall.

b) Forest fires. Because of the dry and hot summers, the high temperatures, the desertification, the drought, the dereliction of rural areas and human negligence. A very important part of the forest fires -around 50%- are intentional.

c) Extensive/massive housing. As a result of economic concentration and industrial activities and therefore urban growth causes a heavy/intensive pressure on the natural resources.

d) Desertification. A vast area of the Spanish geography is potentially affected by desertification. In fact tow thirds of the territory belong to arid, semi-arid and dry sub-humid areas where there is a disproportion or imbalance between annual rainfall and potential evapotranspiration. The main causes are semi-arid climate in wide areas, seasonal droughts, poor soil, mountainous and rugged terrain, lost of land cover, land abandonment, water resources overexploitation

Sweden: There are proposals to change legislation due to ECJ-case connected to the WFD (the so called Weser-case) and a new political deal concerning hydro-electric power plants

II. Authorities responsible for the supervision of environmental and health issues and acting with tools related to administrative law, as orders, prohibitions, sanction fees, suspension and withdrawal of authorizations, etc.

Belgium:
Preliminary remark
Belgium is a federal state. With regard to administrative sanctions, the competence follows the material competence. Environmental policy is mainly a regional competence. Therefore, all three Regions – the Flemish Region, the Brussels-Capital Region and the Walloon Region – have administrative sanctioning systems regarding environmental infringements. But as the Federal State too has environmental competences, such as the competence with regard to product standards protecting health and the environment, the Federal State also has administrative sanctioning systems to counter environmental infringements.

My answers will be limited to the Flemish Region, with a few sideways comments on the other regional and federal sanctioning systems. The Flemish environmental enforcement law was dramatically improved in 2007-2009. The new legislation, Title XVI of the General Environmental Policy Act, applies to the whole of the environmental legislation (pollution control issues as well as nature conservation issues),

including EU-regulations. It entered into force in the Spring of 2009. The Brussels Capital Region (1999), the Walloon Region (2008-2009) and, to a lesser extent, the Federal State (2005), followed a similar path, with a codification of environmental enforcement law in one legal text, including a drastic improvement of the sanctioning toolkits.

II a. The organization - Describe your system of supervisory authorities and is there a certain hierarchy? Have the authorities a good reputation as regards impartiality, independency and qualifications in legal and technical/scientific matters?

Austria: In Austrian administrative organization and administrative procedure is principally the task of the Federal States, even if they execute federal law.
The 9 states feature a now (since 2014) one-tiered administration (before it was two and three-tiered): the ministries as the highest environmental authorities; in some states followed by government districts with monitoring powers at the intermediate tier; and in every state followed by counties or independent cities at the lowest administrative tier. As a general rule, most environmental tasks are delegated to the counties. As regards technical and scientific questions, they are usually supported by various special agencies that have only limited administrative responsibilities.

Administrative authorities must be impartial. But they are submitted to the upper administrative instance in case of dissenting opinion. Personal independence (as granted for judges) is not provided for civil servants dealing with environmental matters.

The staff (administrative and technical service) of the authorities must be professionally qualified. There are general rules on the composition of the staff and the professional suitability of the members.
The reputation in the public seems to be good. In the field of law execution corruption is not a problem.

Belgium: 1/ Traditionally, Belgian environmental law has three types of administrative sanctions:

- Sanctions linked to authorisations of whatever kind, such as environmental permits, namely the suspension and withdrawal of the authorisation, eventually partially
- Sanctions aiming at the factual situation the law infringement has been creating, such as cessation orders and regularisation orders
- Monetary sanctions, essentially administrative fines.

Authorization-linked sanctions have always been a competence of the authority that gave the authorization. Some author summed this up saying "The hand that gave, is the hand that takes". With regard to environmental permits, those authorities are local authorities, provincial authorities or regional authorities, depending on the scale and damaging potential of the project subject to authorization.

Fact-addressing sanctions are the realm of inspection authorities and, to a limited extent, province governors and local mayors. Inspection authorities exist at local, provincial and regional level. Two environmental inspectorates at regional level have a general enforcement competence: the 'Environmental Inspectorate' and the 'Nature conservation inspectorate', the first one dealing with pollution control issues at large, the latter with nature conservation issues at large. Both are specialized enforcers.

The administrative fining system we have since 2009 made the choice to centralize the fining competence at the regional level: one regional administration deals with the administrative fines punishing

environmental offences for the whole Flemish Region. Each environmental offence can, in principle, be punished with an administrative fine. The scope of the fining system is all-encompassing.

Since the environmental enforcement reform of 2009, fact-addressing sanctions are working that well that authorization-linked sanctions are in decline. One doesn't hear/read about them anymore. As practice stood before the reform of 2009, cases regularly showed political hesitations to act in situations without many complaints of the local neighbourhood.. The motor of sanctions imposed often were the environmental inspections, who had the possibility to overrule the local authorities by bringing the case to the regional authority (the minister competent fo the environment).

The inspectorates uses the sanctioning competence they have. Especially the activity level of the Nature conservation inspectorate is noteworthy. By lack of good sanctioning tools and capacity before the 2009-reform, little enforcement activity was developed in that area previously.

The regional Fining administration was set up in 2009. After a couple of years where it sought its way in its fining competence, it started to deliver. Fining is their core-job. They act. They have a good reputation regarding impartiality, independence and a correct level in legal and scientific matters. Note that the choice the Flemish Parliament made by creating this specialized administration separated the remedial administrative action from the punitive administrative action.

2/ Titel XVI of the General Environmental Policy Act distinguishes two categories of infringements: a limited number of small paperwork infringements, 'milieu-inbreuken', which are listed, and a residuary category of infringements, 'milieumisdrijven', gathering all other infringements of environmental laws, decrees, execution orders, authorizations and regulations.
'Milieu-inbreuken' are strictly administrative infringements; they cannot be pursued in the criminal courts. 'Milieumisdrijven' can be sanctioned in the criminal and in the administrative sanctioning tracks. When a notice of violation is drawn, it goes to the public prosecutor, who decides if he will handle in in the criminal track, eventually prosecute the case, of if he thinks fit that the Regional Fining Administration will deal with it. The public prosecutor is the game-maker, on a case-by case basis.
All appeals against definitive sanctioning decisions imposed by administrations – suspensions, withdrawals, cessation orders, regulatory orders, administrative fines, …- go the Council of State, our general administrative court, or to the Environmental Enforcement Court (administrative fining decisions only).

Bulgaria: Authorities and institutions performing functions under the protection of the environment for the conduct of State policy on the protection of the environment, the Bulgarian legislation provides separate powers of State bodies, as well as set up specialized institutions performing functions under the protection of the environment. It is built a solid structure of administrative bodies whose functions are related to the implementation and monitoring of the actions and events related to environmental law. According to art. 10 of EPA authorities for the purposes of the law are: Minister of environment and water; the Executive Director of the Executive Agency for the environment; the directors of the regional Inspectorate of environment and water (RIEW); Directors of basin directorates; Directors of directorates of national parks; the mayors of the municipalities, and cities with metropolitan counties and the mayors of districts; District Governors.

Environment Minister
Bulgarian environmental legislation instructs specialized body, as is the Minister of environment and water, an essential role in the implementation and monitoring of government environmental policies. (1) in accordance with the law for the protection of the environment, the fundamental obligation of the

Minister is to develop (along with the other Ministers) strategy of the Government in the field of the environment. It has been commissioned to manage the National Fund for environmental protection. The Minister of environment and water control the State of the environment of its land territory of the State, as well as in its maritime spaces. He coordinates the control functions in the field of the environment to the other ministries and departments, to inform the public of its activities (through the mass media, specialized publications or in any other possible way), prepares the annual report on the State of the environment and disables or stop environmentally-damaging activities. Together with interested ministries and other State bodies, the Minister of environment and waters: enshrine standards for emissions and concentrations of harmful substances in the areas, components of the environment and types of pollutants, as well as for the use of renewable and natural resources nevzobnovimite; special modes of areas with threatened environment, projects and events to restore the normal qualities of the medium in which it presents them for approval by the Council of Ministers; instructions for labelling of goods; instructions for transport, storage, use and disposal of hazardous substances; tariffs for charges for the use of natural resources and pollution tolerance. In addition, the Minister of environment and water Guide and supervise the conservation of biodiversity and natural ecosystems, by order declare some of the protected areas and protected places threatened by disappearing plant and animal species. He approves the methodologies for monitoring and assessment of environmental impact. It is responsible for the organisation of the national system for monitoring and control over the State of the environment. An important function of the legislative assigned Minister that he officially represents the country in intergovernmental organizations, as well as in meetings on issues of environmental protection. This is a specific issue and with very great importance in the development of modern-day interstate relations, given the ever-growing role of international cooperation in the field of the environment.
Competent authorities relating to the implementation of environmental legislation and Government policies in the sectors of transport, energy, construction, agriculture, tourism, industry, education, and other are defined in the relevant special laws. For example, according to art. 4 of the law on soils, the State policy on conservation, sustainable use and restoration of soils at the country level is carried out by the Minister of environment and water, Minister of agriculture and forests, the Minister of health and Minister of regional development and public works, according to art. 4 of the law on hunting and game management, the Organization of the hunting area, management of hunting and wildlife management controls are carried out by the Minister of agriculture and food. Minister of economy and energy shall issue licences for trading in ferrous and non-ferrous metals, issue permits for prospecting or exploration of certain types of minerals. Minister of health exercise health controls, resulting in the conservation of drinking water, control of activities associated with sources of ionizing radiation, validate alone or jointly with other ministries and departments on the State of the environment , exercise control over noise and vibration in urban areas and outside settlement areas, etc.

District Governor, local authorities, non-governmental organizations at the district level the EPA awarded to district governors control functions and the coordination of policies on the protection of the environment. However, to note the fact that the real powers of the Governor are quite limited and difficult to reach the desired efficiency.

The regional governor provide the conduct of State policy on the protection of the environment within the territory of the region; coordinate the work of the bodies of the Executive power and their administrations on the territory of the region regarding the conduct of State policy on the protection of the environment;
•-coordinate their activities on carrying out of the policy on the protection of the environment between the municipalities on the territory of the region;
•-issuing penalties for acts drawn up by the order of art. 15, para. 1, item 8 of the EPA.

In line with the trend towards decentralisation of State power, and with more advanced inclusion of citizens in the implementation of State policies in the sphere of environmental protection legislation provides more power to the power seats and the non-governmental organizations. Municipalities have the following major features: standard-developing feature (ZMSMA) – power to municipal councils to adopt local ordinances; control in the cases laid down by law. The municipal authorities may be administrative punishing in certain cases specified by law; may impose coercive administrative measures in cases provided for by law; carry out management of activities related to waste on the territory of the municipality. 2 public participation in the management and conservation of the environment, through non-governmental organizations is one of the indicators for the democratization of society. After 1991. observed trend in our legislation as increasing the legal possibilities of non-governmental organizations to participate in the management of the environment. May be referred to the following major powers of the non-governmental organizations: the inclusion of the representatives of the organizations in the wrong departments of State bodies with advisory functions; alarm function for noticed by these offences; assisting in the development of programmes for the reduction of pollution from sources of excessive air pollution; involvement in the development of municipal waste management programs; involvement in the development of municipal programmes on the protection of the environment as a whole; the right of access to information on the State of the axis; voluntary participation in afforestation activities; participation in the procedures for environmental impact assessment and environmental assessments of plans and programmes.

According Art. 15. EPA, the mayors of municipalities shall: 1. inform the population about the status of the environment about the requirements of the law; 2. develop and control together with the other bodies plans for liquidation of the consequences of accident and volley pollution on the territory of the municipality; 3. organise the management of waste on the territory of the municipality; 4. control the construction, the maintenance and the correct exploitation of the treatment stations for waste water in the urban territories; 5. organise and control the purity, the maintenance, the preservation and the expansion of the local green systems in the settlements and the surrounding territories as well as the preservation of the biologic divergence, of the landscape and of the natural and the cultural heritage in them; 6. determine and announce publicly the persons, responsible for the maintaining of clean streets, pavements and the other places for public use on the territories of the settlements, and control the fulfilment of their obligations; 7. organise the activity of eco-inspectorates, created with a decision of the municipal council, including these, having right to compile acts for establishing administrative offences; 8. determine the officials, who can compile acts for establishing administrative violations under this Act; 9. implement their authorities according to the special laws in the sphere of environment. 10. determine the persons of the municipal administration, having the necessary professional qualification for implementation of the activities for management of environment. (2) The mayors of municipalities can assign the fulfilment of the functions of para 1 to the mayors of mayoralties and regions.

Estonia: In accordance with the Environment Supervision Act, the Environmental Inspectorate (EI) monitors compliance in collaboration with other state institutions in several domains, including the Environmental Board, the Technical Regulatory Authority, and the Tax and Customs Board. Municipalities are responsible for local environment-related decisions (particularly on water supply, sanitation and waste management), but rarely have sufficient capacity to monitor compliance. At the same time the EI has inspection powers over environment-related functions of local governments. The principal areas of the EI`s activity are environmental protection, nature conservation and fish protection. Over 60% of infringements in the area of environmental protection are related to waste. The compliance monitoring is largely reactive. Estonia does not have special body charged with horizontal environmental co-ordination. In General, there are no problems with good reputation, independency and qualifications in legal and technical/scientific matters.

Finland: Regional State Administrative Authority (Aluehallintovirasto, Regionförvaltningsverket) deal with permits and decide on administrative compulsion cases.

Centre for Economic Development, Transport and the Environment act as supervisions and have certain jurisdiction on administrative compulsion cases. They also decide on derogations from species protection according Nature Protection Act.

Municipal Environment Authority (kunnan ympäristönsuojeluviranomainen, den kommunala miljövårdsmyndigheten) decide on minor permit cases and act as supervising authorities.

These are all administrative authorities of first instance with separate tasks. Decisions may be appealed to administrative courts (mainly to Vaasa, in some cases to a regional administrative court) and further to the Supreme Administrative Court.

The administrative system is under extensive transformation these years. The details have not been confirmed yet. Environmental tasks of the authorities are also simplified if possible (this is more difficult as the legislation is complicated).

The final appeal is going to generally demand a leave. This amendment is under processing and will probably come soon into force.

All of these have in my opinion a good reputation of being independent and competent with specialized staff - though saving public money has meant less staff and less working hours in many of the authorities thus impairing effectiveness.

Naturally one who disagrees with a decision is often of different opinion.

Germany: In Germany administrative organization and administrative procedure is principally the task of the Federal States ("Länder"), even if they execute federal law[1].
The 16 states feature a three-tiered or two-tiered administration: the ministries as the highest environmental authorities; in some states followed by government districts (Regierungsbezirke) with monitoring powers at the intermediate tier; and in every state followed by counties (Kreise) or independent cities (kreisfreie Städte) at the lowest administrative tier. As a general rule, most environmental tasks are delegated to the counties or independent cities. As regards technical and scientific questions, they are usually supported by various special agencies that have only limited administrative responsibilities [2].
In Saxony such highly qualified state agencies were abolished in the course of a reform aiming at the "municipalization " (Kommunalisierung) of the administration. A reform which seems not to be helpful from a judge's point of view.

Administrative authorities must be impartial. But they are submitted to the upper administrative instance in case of dissenting opinion. Personal independence (as granted for judges) is not provided for civil servants dealing with environmental matters.

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1 See Basic Law Article 83 [Execution by the Länder]:
The Länder shall execute federal laws in their own right insofar as this Basic Law does not otherwise or permit.
2 Nils Ipsen, Environmental Policy and its Enforcement, in: Environment & Climate Change Law 2017, https://iclg.com/practice-areas/environment-and-climate-change-law/environment-and-climate-change-law-2017/germany#chaptercontent1.

The staff (administrative and technical service) of the authorities must be professionally qualified. There are general rules on the composition of the staff and the professional suitability of the members.
The reputation in the public seems to be good. In the field of law execution corruption is not a problem.

Italy: There are not in Italy authorities responsible for the supervision of environmental and health issues that can order suspension and withdrawal of authorizations.
But the Ministry of Environment has the general authority in the matter of protection, prevention and restoration of environmental damages.
The ministry can operate in cooperation with local authorities and every public organization.
The Ministry of Environment can in this scope:

- ask an operator to give information about whichever threat of environmental damage or about suspicious cases of such threat;
- order the operator to adopt prevention measures and specifying the procedure;
- if necessary adopt directly the necessary prevention measures. The expenses should be borne by the operator that has caused the danger.

If a damage has happened the Ministry can;

- order the operator to take the rehabilitation measures;
- if necessary adopt directly the necessary measures. The expenses should be borne by the operator that has caused the damage.

The operator has not to bear the expenses if the damage or the threat is caused by a third person and were adopted safety measures which were abstractly adequate.
The operator has to submit to the Ministry the proposal of measures that have to be taken.
The Ministry, if is obtained a complete environmental rehabilitation, can stipulate a settlement with the operator.
There are specific scopes where other public authorities are in charge to take measures of prevention or rehabilitation.
So, regarding the illegal disposal of waste, the town council is competent, regarding the reclamation of contaminated sites the province (local authority of middle level) is competent. If the contaminated site has national relevance, the Ministry is competent.
If an authorization is supposed to be illegal, there isn't an administrative authority that can quash the authorization. In this case other public authorities or environmental associations can challenge the act in the administrative courts.

Lithuania: The Ministry of Environment of the Republic of Lithuania is the main managing authority which organizes the national control of environment protection. The executive role of the environmental control is carried out by the regional environmental protection departments, the Environmental Protection Agency, Lithuanian State Forest Service, the directorates of parks and reserves, etc. The freelance environmental protection inspectors contribute to do better environmental protection and control of infringements by assisting the supervisory authorities. Article 4 of the Law on Environmental State Control stipulates that the performed control of these institutions and their officers is based on the principle of impartiality – the adoption of decisions and other actions must be impartial and objective. The officers make decisions independently and have a personal responsibility for them.

Netherlands: To understand the main rules concerning administrative enforcement – that is enforcement (*handhaving*) in a broad sense: supervision/inspection (*toezicht*), sanctions (*sancties*) and the execution (*executie*) of sanctions – in individual cases in environmental matters we need to understand how the General Administrative Law Act (*Algemene wet bestuursrecht, Awb*), the (more specific) Act on Environmental Licensing and General Provisions (*Wet algemene bepalingen omgevingsrecht, Wabo*) and the

(most specific) Acts within the field of environmental hygiene, spatial planning and nature conservation in this respect relate: The Environmental Management Act (*Wet milieubeheer, Wm*), the Water Act (Waterwet), the Spatial Planning Act (*Wet ruimtelijke ordening, Wro*) and Nature Conservation Act (*Wet natuurbescherming, Wnb*). See scheme.

Scheme Legal Framework of Administrative Enforcement in Environmental Matters
1.Legal Acts dealing with the organization of the State: '*Organieke wetten*': legislation made for different types of public bodies, following an explicit Constitutional assignment, such as the Provinces Act, the Water Boards Act and the Municipalities Act: each of which holds enforcement powers;
2.'The Awb': in Chapter 5 Awb general arrangements regarding supervision and enforcement have been established, including supervisory competences (if activated in other legislation – 1, 3 or 4), the requirement of a legal competence of administrative bodies to enforce, a competence to apply an order under penalty when an administrative body already has the competence to apply a rectification order.
3.'The Wabo': in Chapter 5 arrangements are made concerning (amongst others) coordination of use of enforcement powers in relation to Wabo-prohibitions and permits (article 2.1): (Article 5.4 and further), the withdrawal of an administrative permission (Article 5.19) and the binding ministerial request for use by an administrative body to apply its enforcement powers (Article 5.24).
4.'More specific Acts': such as the Wm (general rules), the Water Act (permits), the Wro (land-use plans), the Wnb (prohibitions and permits), hold even more specific provisions concerning enforcement; e.g., Article 18.2 et seq. Wm concerning the enforcement powers of various administrative bodies with regard to specific subjects – including, in Article 18.2f Wm, of the Emissions Authority. These Acts also (have to) provide for enforcement powers for the Minister since for this authority no general legislation as under 1 exists.

First-line and second-line supervision (inspection)
In supervision by the administration a distinction is made between 'first-line' and 'second-line' supervision. First-line supervision is on legal compliance (*toezicht op naleving*) by companies, organizations and citizens, and is executed by officers appointed on the basis of Article 5.10 Wabo. Second-line supervision is concerned with control over first-line supervision (*toezicht op de uitvoering en handhaving*), see Article 5.11 Wabo, which points at the Minister as the competent authority. Second-line supervisory officers also hold first-line supervisory competences (also against public authorities, with the exception of research of goods, transport (vehicles) and taking samples (see Article 5.11, section 2 Wabo jo. Article 5.18 and 5.19 Awb). Of course enforcement should start with first-line supervisory activities by which, either on the basis of a complaint or in line with an ex officio programme for periodical supervision, the competent administration ascertains (on the basis of its supervisors' reports) whether or not activities that are taking place are in conformity with environmental law: see the scheme for the relevant Acts.

The enforcement competence is mostly related to the competence of issuing environmental permits or responsibilities in relation to general rules, especially Wm-rules).
Generally speaking, the municipal Board of Mayor and Aldermen is the competent authority for the enforcement of the general Wm-rules (ex Article 18.2, section 1 Wm) – unless another authority is made competent (e.g., Article 18.2c Wm – the Minister concerning hazardous substances). This rule also applies for the Wro and Wabo. For the Wnb it is the Minister or the Provincial Board of Deputies instead of the municipal Board of Mayor and Aldermen. For the Water Act it is the executive organ of the Water Board or the Minister. See also below.
Recently (in relation to quality improvement) the Wabo and delegated legislation provides for (forced) cooperation in the field of environmental law supervision (and sanctioning) between municipalities in Regional Implementation Services (*regionale uitvoeringsdiensten*) coordinated by the provinces. Especially in

recent years the reputation of the authorities as regards impartiality / independency and legal and technical expertise) has become better. In addition to the before mentioned organisational aspects also the principle of the duty to enforce (see below) is relevant.

First-line supervisory powers
Chapter 5 Awb contains general provisions concerning supervisory powers, relevant also to environmental supervision. The main inspection competences (entrusted by the competent authorities to officials working for them) are: the power to ask for information, to ask for copies of various documents, to enter all places – except houses – with their equipment and to search vehicles and other property (see Article 5:15-5:19 Awb). Sometimes specific legislation can restrict or extend these competences. An example can be found in Article 5.13 Wabo, which provides inspectors, for instance when involved in supervision concerning hazardous waste, the competence to enter a house without prior consent of the resident (whereas normally such consent would be necessary – see the exception in Article 5.15, section 1 Awb). Some articles of the Awb hold general guidelines for the use of these competences (such as Article 5.12 and 5.13 Awb). According to Article 5:13 Awb supervisory competences may be exercised only insofar as this is necessary for a reasonable fulfilment of the duty of the officials concerned. Furthermore, general principles of natural justice, such as impartiality, will apply. By contrast, Article 5:20 Awb states that every citizen is under obligation to, within reason, cooperate (timely) with a supervisor who is active in the execution of his or her competences. If not, he or she risks that a rectification order (Article 5:22 Awb jo. Article 5.14 Wabo) or an order under penalty (Article 5:23 jo. Article 5.14 Wabo) is applied, but application of criminal prosecution (e.g., Article 184 Criminal Law Procedure Code) is also within the realm of possibilities.
For administrative sanctions: see below

Sweden: The supervisory authorities and their responsibilities are defined in the Environmental Code and/or in a Governmental Ordinance on supervision.

The authorities are structured in a hierarchy with specialized Governmental authorities with a national responsibility. On the regional level there are 21 governmental authorities, the county administrative boards and on the local level the municipalities are responsible for the supervision.

The responsibility for supervision or monitoring is divided in guidance (guidance towards the supervisory authorities at lower level) and operational supervision – supervision directly towards the operations or activities.
The national governmental authorities are responsible for certain sectors related to environment, e.g. the Swedish Agency for Marine and Water Management is responsible for managing the use and preventing the overuse of Sweden's marine and freshwater environments, the Swedish Chemicals Agency is working to reduce the risks to humans and the environment from being harmed by chemicals and the Swedish Environmental Protection Agency has a more general responsibility for environmental issues. That authority has the task to implement and coordinate environmental work for sustainable development based on the ecological dimension, inter alia climate change is an area of high priority.

A governmental authority may delegate its responsibility for operational supervision to the local authority, provided the municipality has requested this. If a state supervisory authority and a municipality are not in agreement on a matter concerning supervision being transferred, the matter must be determined by the Government if the municipality so requests. A municipality may reach agreement with another municipality for supervision tasks, completely or partially, to be managed by the other municipality.

In general the CA:s are competent, objective in their conduct and well prepared when they appear in court. As regards the competency you though can notice a rather big difference between the national, the regional and the local authorities. The national authorities have a very high level of expertise but the regional and local authorities are more diverse. In principle the regional authorities are well qualified but on local level its more coincidental and even the independence in the decision-making can sometimes be questioned, especially in minor municipalities the quality of the decisions can be rather low.

II b. Describe the borderline between what in your country is a matter for the police respective the administrative authorities and what is criminal matters for the general courts and what is tasks for the administrative courts

Austria: The police has a twofold mission: prevention and prosecution of infringements. Preventive measures are administrative acts (to be challenged before the administrative courts). Prosecution measures are to be challenged before the ordinary (penal) courts.

There are two kinds of infringements: Grievous offences (crimes) are prosecuted by the police and the public prosecutor. Infringements of lower importance, so called "Ordnungswidrigkeiten" (administrative offences are prosecuted by the competent administrative authority, supported by the police. The decisions in the latter procedure (fines only) are to be appealed before the ordinary court of first instance.

The prosecution of crimes is mandatory. The prosecution of administrative offences is at the discretion of the authority.

Bulgaria:

Environmental crime

In the last few decades, with the development of globalization processes, apparently the consumption of natural resources has increased and, on the other hand, environmental pollution has taken on a massive character not only on the domestic but also on the industrial level. This is also the reason most countries have begun to impose not only administrative but also punitive measures to prevent unfavorable practices harmful to the environment. European Union acts relating to environmental crime and criminal liability are fully applicable - 2008/99 / EC 2008 on the protection of the environment through criminal law and Directive 2009/123 / EC amending Directive 2005 / 35 / EC on ship-source pollution and on the introduction of penalties for infringements. They criminalize certain acts against the environment, aiming at more effective protection and better implementation of the Union's policy on environmental protection. All Member States, including Bulgaria, should synchronize their legislation in line with the directives.

Amendments to the Bulgarian Penal Code, which enter into force on 27 May 2011. In relation to environmental crime, is precisely the fulfillment of our state's obligation to align domestic legislation with Directive 2008/99 / EC and Directive 2009/123 / EC. On the one hand, existing criminal compartments have been amended and, on the other hand, new ones are provided for, respectively, in Chapter Eleven "General Crimes", Section III "Crimes against Public Health and against the Environment" and Chapter Eight "Crimes Against the Activity of State Bodies, Organizations and persons exercising public functions ", Section I" Offenses against the order of management ". Below, the report will look at the individual chapters (amended and new), which will be compared with the relevant requirements of the above-mentioned directives.

General pollution of air, soil and water (Art. 352 of the Criminal Code)
Firstly, the text of Art. 352 of the Penal Code is amended. The aim is, on the one hand, to cover the fully-targeted crime in Art. (3) (a) of Directive 2008/99 / EC, namely the release, emission or introduction of certain materials or ionizing radiation into the air, soil or water that causes or is likely to cause death or serious injury to any person Significant damage to air quality, soil quality or the quality of water or animals or plants. Therefore, the legislator, to the old text of the ICC 3552, and more specifically to the subject of criminal assault, the marine waters in areas defined by international Agreement, in which It participates in the Republic of Bulgaria. The subject remains the same - every criminal person. This crime can be committed both as a result of action (pollution) and as a result of inaction (admission to pollute). It is also effective. To have a crime it is necessary:
- the actions taken to render those elements unusable for their use for cultural, health, agricultural and other business purposes (the legislator has removed a national economic policy), or the listed items subject to the crime become dangerous to humans or animals and plants (Union added or). The old text of the provision reads people, animals and plants, which could have left the wrong impression that if an element is only plant-specific, it will not be consistency because cumulation is necessary, namely, it is dangerous for humans, And for animals and plants. The case law assumes that, objectively, the offending act of the offense is expressed as contamination or admission to pollute elements of the natural environment, as a result of which they become dangerous only for the animals, or only for plants or humans.

The legislator also made changes to the punishment. A minimum threshold of one year of imprisonment is set, with a maximum of five years being retained. The monetary sanction has been updated and ranges from one hundred to five thousand levs to five thousand to thirty thousand levs. The form of the wine is intentional (direct and eventual), which is in line with the requirements of the Directive.

Art.2 of Art. 352 CC remains in its version since 2004. On the other hand, para 3 and para. 4 have been completely amended. Al. 3 gives the qualified cases (the offenses under para 1 and para 2) in view of the criminal result: if the damage caused to the environment is not significant, the punishment shall be imprisonment of two to eight years and a fine of ten thousand to fifty thousand levs, if death or serious bodily injury is caused to one or more persons, the punishment shall be deprivation of liberty Five to twenty years and a fine of ten thousand to fifty thousand leva (the compositions of the severe bodily injury and the murder) are consumed here.
A lecturer, a privileged case against these crimes (under para 1 and para 2) is given in para. 4 of Article 252, where imprisonment of up to three years is imposed and a fine of two thousand to twenty thousand levs when the act is committed by negligence. As regards wines, the only requirements of Directive 2008/99 / EC are that the acts in question are constitutive when committed intentionally or with gross negligence. Our code covers the cases of both direct and potential intent and two kinds of negligence, making no distinction between punishment in self-conscience and negligence.

Pollution of marine waters with petroleum products or derivatives (Art. 352a of the Criminal Code)
Article 352a of the Criminal Code has been amended with a view to its synchronization with Directive 2009/123 / EC, which states that Member States shall ensure that the discharge of polluting substances from ships, including the minor cases of such discharge, into any Of the areas referred to in Article 3 (17) shall be considered a criminal offense if committed intentionally, with confidence or with gross negligence. Criminal liability is not sought in minor cases where the act does not cause a deterioration in the quality of the water.
The text of para. 1, Art. 252a has been retained, only the sentence has been updated - imprisonment of one year and fine of ten to fifty thousand levs. Any criminal person is a subject. The act of execution of the offense consists in the contamination or the admission to pollute waters (territorial or inland sea waters or marine waters in areas designated by international agreement in which the Republic of Bulgaria

participates) with petroleum products or derivatives. Where the act is committed by a captain on a ship, the court shall also declare deprivation of the right to exercise that profession / activity. It is noteworthy that Directive 2009/123 / EC does not only refer to petroleum products but to pollutants in general. Therefore, the legislator with the latest amendments has added paragraph 2, which states that the same punishment is imposed on the one who pollutes or admits to pollute the waters under par. 1 with harmful liquid substances in bulk, as defined in an international agreement in which the Republic of Bulgaria participates. The form of the guilt of these two offenses (under para 1 and para 2 paragraph 252a) is intent. Al. 4 provides that if the act is committed by negligence, the punishment shall be imprisonment of up to three years and a fine of two thousand to fifteen thousand levs.

Management of waste, hazardous waste and hazardous substances not in accordance with the established order (Article 353b, Article 353c of the Criminal Code)

The texts of Art. 353b and Art. 353c are new. Their purpose is to punish adequately and fairly all offenses referred to in Art. (3) (b) of Directive 2008/99 / EC - the collection, transport, recovery or disposal of waste, including the oversight of such operations, and the subsequent maintenance of waste disposal facilities, including actions taken as a trader or as an intermediary Of waste) that causes or is likely to cause death or serious injury to any person or significant damage to air quality, soil quality or water quality, or to animals or plants.

The first crime is waste management not in the established order (Article 353b). Any criminal person is again the subject. The act of execution is waste management not in the established order and creating danger to the life or health of another, or to causing notable damage to the environment. The crime is effective. Its criminal outcome is the creation of a danger to the life or health of another or to causing notable harm to the environment. The form and type of guilt are the intent - both direct and eventual intent is possible. The punishment provided is imprisonment of one to five years and a fine of five thousand to thirty thousand levs.

Qualified cases of the offense under consideration are available under para. Art. 353b. They are identical and provide for the same penalties as the qualified cases of the crime, the generally dangerous pollution of water, air and soil under Art. 352, paragraph 2 of the CC.

In para 3, the execution act is a violation or failure to fulfill its obligations to ensure the orderly functioning and proper operation of an installation or facility for disposal or recovery of waste. The crime is effective, it is necessary to cause death or serious bodily injury to one or more persons or to cause no significant damage to the environment.

The legalization of cases is the fact that a part of the composition of this crime or its qualified cases is committed not deliberately but by negligence. Then we have a light sanction - imprisonment of up to three years and a fine of two thousand to fifteen thousand levs.

The next crime is much like the previous one. The difference is in the subject of the crime of hazardous waste and that the executive act here is limited to managing it not in the established order. (Article 353c, para 1). Qualified events are given in view of the criminal outcome: para. 2: provides for the creation of danger to the life or health of another person or for causing notable damage to the environment; para. 3: causing death or grievous bodily harm to one or more persons or no significant damage to the environment.

It should be borne in mind that both waste management and the management of hazardous waste are activities for which a license is required. In view of this, the legislator to simulate this licensing process foresees in paragraph 4 a reduced liability for an official who violates or fails to fulfill his obligations to manage hazardous waste. The punishment is imprisonment of up to three years, compared to the general case where imprisonment is up to five years and a fine of two thousand to twenty thousand levs. Again,

we have legalized cases under the same precondition as in the provision of Art. 353b - the act was negligent.

Transfer of waste across the border in violation of established order (Article 353d of the Criminal Code)
The provision of Art. 353d was created with a view to harmonizing our legislation with the text of Art. (3) (c) of Directive 2008/99 / EC and the obligation to be assimilated to a crime - the shipment of waste where this activity falls within the scope of Article 2 (35) of Regulation (EC) No 1013/2006 Quantities that are not insignificant, whether they are made with one or several shipments that appear to be related. An entity under our law is any criminal person. Object is waste. The execution act - their transfer across the border of the country in violation of the established order. For minor cases no criminal liability is provided, which is otherwise imprisonment of up to four years and a fine of two thousand to five thousand levs. Al. 2 of Art. 353d changes the subject. We are not talking about waste, but about hazardous waste, toxic chemicals, biological agents, toxins and radioactive substances. The execution act is again their transhipment, but here in violation of international treaties to which the Republic of Bulgaria is a party. On the subjective side, guilt is intent in both forms. When the act is committed the penalty is reduced.

It keeps not in the established order of dangerous substances or mixtures (Article 353e of the Criminal Code)

Art. (3) (d) of Directive 2008/99 / EC requires EU Member States to declare criminal offenses the operation of an installation where a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which causes or may Causes outside the installation of death or serious damage to any person or significant damage to air quality, soil quality or water quality or to animals or plants. In the responsible legislator, Art. 353e, where the main constitution (para.1) of the offense is provided. Anyone with a criminal responsibility is again a subject. The act of execution consists in keeping not the established order of dangerous substances or mixtures and thereby creating a danger to the life or health of another or to causing notable damage to the environment. The crime is effective. The form of guilt intentional and negligent.

In paragraph 2 the subject is changed. It is a plant or plant for the use of dangerous substances or mixtures. The act of execution is in the form of a release or an order to launch such an undertaking, as a result of the act has had the harmful consequences of society - the risk to the life or health of others or of causing notable damage to the environment. The punishment provided is imprisonment of one to five years and a fine of five thousand to twenty thousand levs. The same shall apply in the cases of para 3 of Art. 353e NPC - who, in the established order, does not release or commissions the putting into operation of an establishment or installation the functioning of which may create danger to the life or health of another or to cause non-significant damage to the environment. In the cases under para 2 and para . 3 the form of guilt is intentional, and in the course of acts of negligence, reduced penalties are envisaged.

Action not in the established order with substances that disturb the ozone layer (Article 353f of the Criminal Code)
Art. 353f of the Criminal Code almost reproduces verbatim the text of Article 3 (i) of Directive 2008/99 / EC, which defines the manufacture, import, export, placing on the market or use of ozone-depleting substances as a crime. An entity under our law is any criminal person. Substances of substances that deplete the ozone layer. The act of execution is the act of producing, using, distributing, importing or exporting across borders such substances. The punishment shall be imprisonment of up to four years and a fine of one thousand to five thousand levs. Again, the cases where the act has been committed by negligence - imprisonment of up to one year or probation - are more damaging. The crime is formal.

Art. 353g and Art. 353h of the Criminal Code

Two very short and clear provisions are those of Art. 353g and Art. 353h of the Criminal Code. The subjects of both crimes are all criminally liable. Both are formal. Subject of Art. 353u water abstraction facility or facility for use of surface or groundwater. The execution act is the construction of such a facility in violation of the law. Subject of Art. 353h is the mineral water. Any person who uses mineral water in violation of a law shall be punished by imprisonment of up to one year and a fine of up to five thousand levs.

Destruction, damage, acquisition, possession or expropriation of a specimen of a protected species (Article 278d and Article 278e of the Criminal Code)
Art. 278d and 278e, meets the requirement set out in Art. (F) the killing, destruction, possession or acquisition of specimens of protected species of wild fauna or flora, except in cases where, in accordance with Article 4 (3) (f) of Directive 2008/99 / EC, The act affects small quantities of such species and has a negligible impact on the conservation status of the species; (G) trade in specimens of protected wild fauna or flora species, or parts or products thereof, except where minor quantities of these species are involved in the act and have a negligible impact on the conservation status of those species.

Subject of the crime under Article 278, para. 1 of the Criminal Code, as in almost all of the cases examined so far, is any criminal person responsible. The subject is a specimen of a protected species from the wild flora or fauna. The act of execution is the unlawful destruction, destruction, acquisition, possession or expropriation of such specimen. The crime is formal. The form of guilt is intent - direct and eventual. Acts must not be an unimportant case, otherwise we will not have a crime.

The following offense under para. 2 is trade in such specimens or in parts or products thereof. Again, the crime is formal. Acts must not constitute an insignificant case. When the act of both crimes has been committed by negligence, the punishment is reduced.

Subject of the crime under Art. 278e is a specimen of European or World Endangered Wild Vertebrates or a specimen of Appendix 3 to the Biodiversity Act marked with a sign (*). Here, obviously, we have a blanket disposition to specify the content of the offense and, in particular, the subject matter, refer to a norm in another act - the Biodiversity Act. The execution act is unlawful destruction, damage, possession, acquisition or expropriation of such specimen.

Liability of legal persons
Both directives, 2008/99 / EC 2008 on the protection of the environment through criminal law and Directive 2009/123 / EC amending Directive 2005/35 / EC on ship-source pollution and on the introduction of penalties for infringements, outlining The limits of environmental crimes speak not only on the criminal responsibility of individuals but also on the punishment of legal persons. The Directives provide that Member States shall ensure that legal persons can be held responsible for the offenses described therein when those offenses are committed for their benefit by a person in a managerial position within the legal person acting individually or as part of a body of A legal person based on: (a) a mandate to represent the legal person; (b) a power of decision on behalf of the legal person; Or (c) the power to exercise control within the legal person. Member States shall also ensure that a legal person can be held liable in the event that the lack of supervision or control by a person referred to above has made (...) for the benefit of the legal person by a person under his / her responsibility. The liability of legal persons ... does not exclude the prosecution of natural persons who are perpetrators, instigators or accomplices in the offenses (...). .).

The divisibility of legal persons covers liability for crimes, administrative offenses and civil delinquencies. The known as collective, corporative criminal liability or criminal liability of legal entities is not known in

our doctrine. However, the idea of criminal liability of legal entities is perceived by more and more countries with developed legal systems. One of the most important reasons for this is the expansion and internationalization of international businesses and organizations, as well as crime and the use of legal entities as a tool for the commission of crime (whether ecological or otherwise). It is assumed that the activities of the legal persons are carried out not directly by them but by the persons appointed in their governing bodies and by the persons working for the legal person as immediate contractors. The criminal behavior of these persons is attributed to the criminal behavior of the legal person.

In Bulgaria, the right now excludes the possibility for legal persons to incur criminal liability, based on the idea that criminal responsibility can only be sought for personal acts.

With regard to the requirement of European Union acts to provide liability for legal entities where the respective conduct is performed by the natural persons authorized to represent them and manage them in effect from 27.05.2011. An amendment to Art. 83a, para. 1 of the Law on Administrative Offenses and Penalties. According to this provision of the Law Enforcement Act, which has enriched or would be enriched by one of the crimes dealt with above (environmental crimes), a pecuniary sanction of up to BGN 1 000 000 is imposed, but Not less than the equivalent of the benefit when it is property, and where the benefit is not of a property nature or its size can not be established, the sanction is from 5000 to 100 000 levs. These crimes need to be committed by: a person empowered to form the will of the legal person; a person representing the legal person; a person elected in the control or supervisory body of the legal person, or an employee to whom a legal person has assigned a particular job where the offense was committed in the course of or in connection with the performance of that work.

The pecuniary sanction of a legal person is imposed regardless of the criminal responsibility of the perpetrator of the criminal act. The benefit or its equivalent shall be forfeited to the State if it is not subject to return or reimbursement or forfeiture under the Penal Code.

Estonia: The EI also carries out pre-trial criminal investigations of environmental violations under the supervision of a prosecutor. Criminal offences (entailing "significant or major damage") are punished by a financial penalty for both physical and legal persons or imprisonment. The EI has developed internal guidance on identifying criminal offences. The failure to obtain an environmental permit is also considered a criminal offence, which is excessive in most cases.
Administrative courts are competent to adjudicate disputes arising in public law relationships (administrative acts and actions of an administrative authority). County courts hear all civil, criminal and misdemeanor matters.

Finland: Criminal and administrative tasks are strictly separated.

The general courts handle (after police and prosecutor) with criminal cases and penalties. Connected to a criminal case can also damages and in principal (it has turned out that maybe not in practice) even restoration be settled. Also damages resulting from violation of a permit or law without a connection to a criminal case are handled by general courts. The decisions may be appealed in general court way: Court of Appeal and the Supreme Court (the latter requires a leave).

Administrative authorities deal with supervision and administrative compulsion including ordering measures of restoration. If health is threatened or other serious risk takes place, the supervision authority may act immediately itself.

Germany: The police has a twofold mission: prevention and prosecution of infringements. Preventive measures are administrative acts (to be challenged before the administrative courts). Prosecution measures are to be challenged before the ordinary (penal) courts.

There are two kinds of infringements: Grievous offences (crimes) are prosecuted by the police and the public prosecutor. Infringements of lower importance, so called "Ordnungswidrigkeiten" (administrative offences[3]) are prosecuted by the competent administrative authority, supported by the police. The decisions in the latter procedure (fines only) are to be appealed before the ordinary court of first instance.

The prosecution of crimes is mandatory. The prosecution of administrative offences is at the discretion of the authority.

There are two kinds of infringements: Grievous offences (crimes) are to be prosecuted by the police and the public prosecutor. Infringements of lower importance, so called "Ordnungswidrigkeiten" (administrative offences) are to be prosecuted by the competent administrative authority, supported by the police. The decisions in the latter procedure (fines only) are to be appealed before the ordinary court of first instance.

Lithuania: The Code of Administrative Offences and specialized environmental laws are the main measures regulating the administrative law. The main legislation regarding criminal environmental law is the Criminal Code. However, it should be noted that environmental criminal liability rarely is applied. The key instruments in enforcement of environmental law are the Code of Administrative Offences, which is applicable in majority of cases of infringements of the environmental legislation committed by natural persons (as well as officials, e.g. managers of legal entities and heads of municipal institutions), and other specialized environmental laws, which establish administrative liability for legal persons.

In most of the cases regarding the infringements of the Code of Administrative Offences and other environmental laws, the administrative authorities exercise discretionary powers of decision-making. The Code of Administrative Offences also establishes cases where only the courts of general jurisdiction have competence to decide certain questions (e.g. when the maximum of the established fine exceeds 1 500 Euro or confiscation of registered belongings might be incurred). The main criteria determining competent courts over the disputes regarding other environmental laws is the nature of the legal dispute, e.g. the dispute will be heard by administrative courts when it is established that the contested decision is adopted in the area of public administration. When it is not clear, whether the case is amenable to judicial review carried out by the courts of general jurisdiction or administrative court, the special chamber of judges determines which questions prevail, e.g. civil or administrative, and then directs the case to the court, which is competent to hear particular issues.

Under a general rule, administrative courts in Lithuania carry out a full review of administrative acts. This means that national administrative court will conduct examination for compatibility with respective principles of law in any dispute concerning environmental protection. In addition, administrative courts strive to interpret national legislative provisions in a way, which is in line with general principles established in the European Union law and international law. It is also notable that the legal regulation concerning respective environmental matters may establish the requirement of contesting the decisions adopted by administrative authorities before the institution for preliminary extrajudicial examination of disputes instead of applying to administrative court directly. Meanwhile, the disputes regarding the

[3] They are always regulated in a separate chapter at the end of the respective environmental act.

environmental liability for remedying environmental damage fall within the competence of the courts of general jurisdiction.

Criminal liability arises where an infringement of the environmental legislation is too serious to be dealt with the Code of Administrative Offences or other environmental laws. Criminal procedures are chosen by pre-trial investigation institutions while assessing the degree of dangerousness of a committed act, the extent of damages incurred or other peculiarities of the environmental infringement. An essential test dividing criminal and administrative liability for the environmental infringements is the qualitative and quantitative evaluation of the consequences of illegal activity. Pursuant to Article 270 of the Criminal Code two essential criteria for criminal liability are important – the threat to cause serious damage to environment and the serious damage, if it already exists. The administrative procedures are chosen for a less serious environmental infringement, e.g. when consequences of illegal activity are less significant and / or the conduct was less dangerous for the public.

Nevertheless, the cases involving high financial penalties, administrative sanctions are considered equal to criminal cases in terms of human rights protection under the European Convention on Human Rights. Thus, a person or an entity can invoke Article 6 of the Convention. Consequently, the court or a quasi-judicial authority must comply with generally accepted principles of criminal procedure, such as the presumption of innocence, the right to defence, etc.

Netherlands: Apart from the administrative law competences to enforce the violation of environmental legal provisions, there are also criminal law competences to enforce by punishment for such violations. It is not the competent administrative body, but the public prosecutor (*officier van justitie*) who initiates the criminal law prosecution. Here also the inspection competences of the police (*politie*) are (more) relevant. The public prosecutor has the competence to initiate the (criminal) sanctioning of the violation of environmental law provisions. He or she is not obliged to do this. If an interested party does not agree with the decision not to prosecute, he or she may launch a complaint at the Court of Appeal (*Gerechtshof*) pursuant to Article 12 Criminal Law Procedures Code (*Wetboek van Strafvordering*, Sv). Under criminal law (as is the case under civil law) the ordinary courts (criminal and civil law sections) are competent (District Court, Court of Appeal and Supreme Court).

In recent years, the perspective on criminal law as an *ultimum remedium* has become less dominant. The public prosecutor is more active and increasingly regards it as his or her own responsibility to enforce legislation against environmental pollution contrary to criminal law provisions. One of the main reasons for this change of heart is possibly the fact that at most of the administrative action in the field of environmental law, law making, licensing, *etc.*, is complete and there is now a need to step up in enforcement, preferably on all legal fronts. So it is not only the administration (anymore) that enforces the violation of environmental law.

To date the category of criminal law offences that are only based on the sectoral environmental legislative Acts is very small. Criminal law enforcement of environmental law mostly falls within the Economic Offences Act (*Wet op de economische delicten*, Wed). Article 1a Wed holds an enumeration of public environmental law provisions, the violation of which can be regarded as Wed offences.

The Wed holds several categories of environmental offences, with varying seriousness. Examples of Wed offences are offences against provisions stated in or on the basis of the Wabo (Articles 2.1, 2.2, 2.3, 2.3a, 2.24 and 2.25 Wabo),[4] the Wm (amongst many others, Articles 8.40, 8.41, 8.42, 8.42a and 8.43 Wm), the Spatial Planning Act (Article 7.2 Wro) and (before 1-1-2017) the Flora and Fauna Act (Articles 8, 9, 10, 11,

[4] In different categorizations under Article 1a, 1–3 Wed – categorizations relevant as to the severity of the offence and respective punishments (see Article 6 Wed).

12, 67, 68) and the Nature Conservation Act 1998 (Articles 16, 19, 19d) and (after 1-1-2017) the counterparts in the Wnb.

The Economic Offences Act contains a standard regime for punishment, for competences related to investigating and prosecuting and also for the competences of the judge concerning the criminal law enforcement of public environmental law. Because the substantive provisions are found in public environmental law and not in the specific criminal law provisions, the criminal law enforcement 'depends' on substantive administrative environmental law, such as general rules and permits.

Apart from the Wed offences, the Criminal Law Code (*Wetboek van strafrecht*, Sr) allows for the criminalization of a few environmental offences. The most important substantive provisions are found in the Articles 173, 173a and 173b Sr. They deal with the (*dolus* and *culpa*) pollution of (drinking) water, air and soil with hazardous substances. It is especially this part of criminal law that holds the implementation of EU Directive 2008 / 99 on the protection of the environment through criminal law).

Also general offences, such as committing forgery (Article 225 Sr), can be the basis for the criminalization of environmental offenders. Sometimes the use of these general criminal law offences leads more easily to a punishment than if the offences need to be tackled with complicated or technical environmental law provisions (in administrative regulations, such as permits).

The most important difference between the Economic Offences Act and the Criminal Law Code regards the applicability of powers for the prosecution. In the Criminal Law Code system the prosecuted party needs to be a 'suspect' of a crime, whereas this requirement is not included in the Wed and this allows for a broader prosecutorial range of actions.

As a rule in criminal law, the public prosecutor prosecutes and the criminal court decides on the criminal charge (i.e., on its competence to judge, standing of the prosecution, proof of the facts, proven facts being an offence, blameworthiness, and punishment). There are however two important exceptions to this rule; exceptions where a criminal charge may never come before a court.

The first is that of a criminal transaction. In such a case the public prosecutor offers the suspect a legal transaction – which upon acceptance leads to a legal agreement between the suspect and the prosecutor – by which the suspect makes payment and the case is not brought to court (see Article 74 Sr). The competence to offer and enter into such a transaction is limited to criminal offences and to felonies punishable to a maximum of six years imprisonment. The transaction may involve (amongst others) a fine, seizure of goods, compensation for damage, and community service.

Although the competence to enter into criminal transactions rests with the public prosecutor, within environmental law, an experiment was held in which a small number of administrative authorities (mainly municipalities) were bestowed with the power to arrive at a criminal transaction with the offender for simple and frequently occurring environmental offences. The experiment has led to an arrangement, albeit limited in scope, enshrined in the Transaction Decree Environmental Offences (*Transactiebesluit milieudelicten*). This is in 2012 integrated in a Decree with a much broader perspective for the public prosecution to deal with enforcement (*Besluit om-afdoening*). [5] Apart from the public prosecutor also some administrative authorities have a similar competence for this type of decision, the so called criminal order (*bestuurlijke strafbeschikking*) but only in minor / not serious cases.[6]

Spain: Under the provisions of Criminal Code crimes against spatial planning, urban planning, preservation of historical heritage and environment and natural resources as well as protection of flora and

[5] Crown Decree of 8 July 2000 (*Transactiebesluit milieudelicten*) *Stb.* 2000, 320 and Crown Decree of 4 July 2007, *Stb.* 2007, 255 (linked to *Stb.* 2006, 330 (*Wet OM-afdoening en bestuurlijke strafbeschikking*) and 5 April 2012, *Stb.*2012, 150.
[6] *Richtlijn bestuurlijke strafbeschikkingsbevoegdheid milieu- en keurfeiten*, *Staatscourant* 2012, 8342.

wildlife exist. The borderline between what a criminal matter is and what an administrative offense is, so the matter that has to be tried in general courts or administrative courts, will depend on the seriousness of the offense and if this is or not described or defined in the Criminal Code.

The Spanish Constitution provides for those who violate the environment "according to the provisions of the law criminal penalties will be established, or where appropriate, administrative sanctions, as well as the obligation to repair the damage". As happens in other countries the administrative authorities are responsible for the persecution of the minor infringements leaving the repression of major offenses to the courts, phenomenon known as "decriminalization". By law 5/2010 further criminal offenses were defined in our Criminal Code in accordance to 2008/99/EC Directive on "the protection of the environment through criminal law".

Sweden: Chapter 29 of the Environmental Code contains a number of penal provisions criminalizing different offences of the Code.

The supervisory authorities are obliged to notify the prosecutor or the police of any offences regarding these provisions and irrespective if the authority regard the offence as minor or coincidental.(Chapter 26 Article 1) The prosecutor then is responsible for the investigation whether a criminal offence has been executed or not. The general courts then are responsible to try a case.

The supervisory authority can be engaged in the investigation. The fact that an offence has been notified does not mean that the authority must leave the case. It still may act and order the operator to rectify, e.g. by decontaminate a polluted area. The authorities though may not issue an environmental sanction fee regarding that same offence, covered by an order to rectify.

Chapter 30 of the Code contains regulations on Environmental Sanction Fees. These fees are issued by the authorities and their decisions may be contested at the land and environment court. The fees are to be regarded as administrative penalties, though are to be seen as criminal sanctions in relation to the European Convention on Human Rights and the special considerations e.g. on no self-incrimination is applicable.

II c. The "tool-box" - Which kind of administrative measures/sanctions do you have, related to prevent, stop or repair environmental disturbances and violations?

Austria: In case of violations the toolbox comprises the following measures:

- Stop of a prohibited activity, a formal offence (beginning without a permit, disregard of a permit and its conditions) is enough.
- Prohibition to use a completed project, a formal offence is enough.
- Order to restore damage
- Order to eliminate a completed illegal project (in case of substantial illegality only).
- Withdrawal of a permit (under detailed conditions)
- Imposition of additional conditions to a permit

In this context it must be underlined that for all these measures a margin of discretion is recognized. So there is principally no strict obligation to act.

Belgium: The toolbox was already sketched above.

More completely:

- Fact-oriented sanctioning tools include the warning (a so-called soft tool, very efficient), the regularisation order (tailored to the infringement, proportional by its very essence), the cessation order and the administrative constraint (where the administration acts and presents the bill to the offender), or a combination of those. The warning is the most highly performing instrument. As regards the tools that legally qualify as sanctions, the regularization order is by far the most popular instrument. Its inherent proportionality most probably explains its success. Regularization orders can be backed up by penalty payments, when the case seems to ask for it.
- Monetary tools include the administrative transaction offer (for simple cases, without discussion about the facts and the identity of the offender), the aforementioned fine and the administrative forfeiture of illegal benefits. All three tools are in hands of the same Regional Fining Administration.

Bulgaria:

Compulsory administrative measures for environmental protection

Pursuant to Art.159 of the EPA, the compulsory administrative measures for protection of the environment can be classified as: preventive - aiming at prevention of harmful effects on the environment, discontinuing - aiming to stop the already harmful impact; And restoration - aiming to reduce the impact on the environment.

An example of a preventive administrative measure is the ban on the placing on the market of fuels not complying with the quality requirements under Article 343 of the Clean Air Act. Another example of preventive administrative measures is contained in the Water Act. For example, Art. (1) Penalties shall be imposed by a fine, or a sanction, unless there is a heavier penalty, the physical or legal person who: (...) (2) uses water bodies, water-supply facilities and systems or builds them without the need for This reason or in deviation from the envisaged conditions in the permit - from BGN 2,000 to BGN 10,000; 3. pollute the waters, destroy the beds or river banks in violation of the prohibitions contained in Art. 132, 134, 143 and 144 - from BGN 5000 to BGN 15 000. 21. builds or uses a building outside the purpose of the granted right to use the waters at a distance of 50 m from the water flow - from 2000 to 10 000 BGN; 23. Produces spilled gold or inert materials in the beds of rivers and gullies with mechanization and without permit for use of a water body - from 10 000 to 50 000 levs,

In the Soil Act, Art. 364, administrative measures are used to stop the harmful impact on the environment. Another example of administrative measures with discontinuing action can be taken from the Clean Air Act: Art. 33a. The Minister of Environment and Waters or an official authorized by him shall apply coercive administrative measures in accordance with the ordinances under Art. 9a, para. 1, Art. 9b, Art. 11a, para. 1 and Art. 17, para. 1 and 2 in the cases of: 1. Accidents caused by actions or omissions by operators of sites and territories; 2. occurrence of imminent danger of contamination or damage to the environment or for damage to the health or property of the people; 3. prevention or cessation of administrative violations related to the protection of the environment as well as prevention and / or elimination of the harmful consequences of these violations.

According to the provision of Art. 33b of the Clean Air Act The coercive administrative measures are: 1/ Temporary suspension or limitation of operators activities, limiting access to operators' installations, including sealing or sealing; 2/ Mandatory written instructions to suspend certain actions or to take such action within a specified period; 3/ an order to perform: (a) analyzes, expertise, checking, testing of substances and products, installations, facilities, parts, systems or components, (b) supplementing or modifying curricula and courses and conducting additional training, Knowledge and skills; 4/ Restrict, prohibit the placing on the market, distribution, use or withdrawal from the market of substances,

products, equipment and installations from the scope of the regulations and ordinances under Art. 9a, para. 1, Art. 9b, Art. 11a, para. 1 and Art. 17, para. 1 and 2.

The text of Article 37 of the Soil Act illustrates an example of remediation measures following pollution: A person who, as a result of his activity resulting in soil damage or damage caused by it, does not restore the soil in a state determined by the competent authorities Shall be liable to a fine of BGN 500 to BGN 2,000 or to a pecuniary sanction amounting to BGN 5,000 to BGN 10,000 respectively.

Imposition and appeal of coercive administrative measures
Coercive administrative measures are imposed by the bodies specified in the EPA as well as in the special laws. Such bodies may be: the Minister of Environment and Waters or persons empowered by him, the directors of the RIEW, the directors of the national parks and the directors of the basin directorates, the district governors, as well as the ministers and officials mentioned in special laws. Implementation of the compulsory administrative measures is done through a motivated order, which is issued by the competent authority and is served under the Civil procedure code (CPC). The order may be appealed by the person concerned under the procedure of the Administrative Procedure Code (APC). Of particular importance is the fact that an appeal to the order does not stop its action.
This is a guarantee of cessation of the environmental impact while running the appeal procedures of the administrative act. This is evidenced by the case law5. This is not the case when the order for the enforcement of coercive administrative measures is appealed by the Minister of Environment and Water or an authority authorized by him. Pursuant to Article 161 (2) of the EPA, the appeal stops its action 6.

For violation of environmental law, individuals are subject to administrative punishment - a fine if the violation is not a crime or if they are not subject to more severe punishment.
Art. 162. (1) For violations of this law which do not constitute crimes, physical persons, district governors, mayors of municipalities, mayors of regions, mayors of mayoralties and officials shall be punished with fines from 100 to 6000 levs, and legal persons and sole traders shall be subject to pecuniary sanctions from BGN 1,000 to BGN 20,000. (2) In case of a repeated violation the amount of the fine or the property sanction shall be in the double amount under para. (3) In cases of gross minor cases of violations committed by natural persons, the fine shall be BGN 100.
From the text of Art. According to Article 162 of the EPA, the subject of fines is as wide as possible, and for repeated infringements the fine is doubled. A positive trend is also the coverage of minor cases in the administrative-penal norm, thus enhancing the vigilance of compliance with the environmental legislation. In many cases, on the pretext of minor importance, violations remain unintended, thus ignoring the lack of respect for environmental standards. This leads to a number of minor disturbances that accumulate and lead to significant harmful effects.
According to Art. 167 of the EPA, the acts for the establishment of administrative violations shall be drawn up by officials designated by the Minister of Environment and Water, respectively by the directors of the RIEW, the directors of the basin directorates or the directors of the national parks, and the penal decrees shall be drafted by the order of And are issued by the Minister of Environment and Waters or persons empowered by him, by the directors of the RIEW, the directors of the basin directorates or the directors of the national parks. In relation to the tendency of the public to participate in the environmental protection processes, the EPA allows for acts of administrative violations to be compiled by representatives of the public and non-governmental organizations.
Art. 169. (1) Acts for establishing administrative violations under this Act may also be made up of representatives of the public and non-governmental environmental organizations designated by the Minister of Environment and Waters. (2) The penal decrees under para. 1 shall be issued by the Minister of Environment and Waters or persons authorized by him.

Estonia: Administrative enforcement tools include penalty payments (preceded by a written warning and imposed if corrective measures prescribed in the warning have been ignored) and substitutive enforcement (having a third party execute the corrective measures as the expense of the offender). Misdemeanours are punished by fines, whose upper limit was increased in 2015 to EUR 400 000 per offence for legal entities. However, in practice these fines are quite low: in 2014, the average fine was just EUR 248 per offence. A higher rate of pollution taxes is charged for exceeding emission/effluent limit values or limits for the use of natural resources specified in a respective environmental permit, or operating without such permit. This could be from 5 to 100 times the basic rate depending on the hazardousness of activity or substance emitted.

Germany: In case of violations the toolbox comprises the following measures:

- Stop of a prohibited activity, a formal offence (beginning without a permit, disregard of a permit and its conditions) is enough.
- Prohibition to use a completed project, a formal offence is enough.
- Order to restore a damage
- Order to eliminate a completed illegal project (in case of substantial illegality only).
- Withdrawal of a permit (under detailed conditions)
- Imposition of additional conditions to a permit

In this context it must be underlined that for all these measures a margin of discretion is recognized. So there is principally no strict obligation to act.

Lithuania: Administrative penalties may be threefold (Articles 22-26 of the Code of Administrative Offences). First, a warning is a formal written condemnation of an administrative offence committed by a person. Second, an administrative fine (not less than 5 and not more than 6 000 Euro) may be imposed. Third, community service is unremunerated administrative penalty to the administrative fine or a part thereof.

Meanwhile, the most common administrative sanctions embedded in specialized environmental laws are fines, suspension or withdrawal of special granted rights and licenses, etc. Regarding economic sanctions, the Constitutional Court of the Republic of Lithuania has stated that the annulment of special licenses, in particular, does not infringe the principles of the rule of law and justice (the Constitutional Court of the Republic of Lithuania, ruling of 17 September 2008). The law provides specific requirements that have to be respected by entities and individuals on the market, otherwise, economic sanctions may be imposed. Some infringements may invoke the imposition of a fine only while others may invoke both, the imposition of a fine and the economic sanction, such as the annulment of a license for a specific activity. It is notable that the suspension of economic activity is a ground for withdrawal of a special granted license for such activity and *vice versa* (the Supreme Administrative Court of Lithuania, case No. A^{662}-2605/2011).

The Law on Environmental State Control provides that the remedies for certain infringements should be applied only as an *ultima ratio* measure. In addition to this, Article 36(4) of the Law of Public Administration establishes that no measures should be taken against the economic operators during the first year of activities where these remedies would amount to the limitation of their activities, e.g. withdrawal or suspension of licenses or permits. In these cases, a reasonable time limit (normally no less than one month) should be set for the economic operator to rectify the infringement. However, this rule does not apply in the situations where such measures are necessary in order to avoid damage for interests of the society or other people, or the environment.

Interestingly, in a recent ruling of 30 May 2017, the Constitutional Court of the Republic of Lithuania recognized that the impugned provision of the Law on Waste Management is not in conflict with the Constitution, insofar as it provides that the license shall be withdrawn if the person who has this license has received a notice of suspension of the license three times in the last two years. The Constitutional Court considered that not only necessary requirements for obtaining a license, but also requirements regulating the order of using such license, as well as the order of withdrawal of the license have to be determined by legislator. The Constitutional Court drew attention to the fact that a mere notice (so-called warning) on the suspension of licence creates legal consequences – the duty to eliminate the causes of such notice. Therefore, such notice is a sanction. The situation where two previous notices have not been cancelled by the ruling of courts can cause a withdrawal of such license. The Constitutional Court pointed out that such regulation has no risk to be in conflict with the Constitution if such notice on the suspension of licence is considered as a sanction, which can be reviewed in a court and shall not be imposed for insignificant environmental infringements (the Constitutional Court of the Republic of Lithuania, ruling of 30 May 2017).

Netherlands: Chapter 5 Awb deals with general administrative law aspects of enforcement. It holds definitions of offence/violation (*overtreding*) and offender/violater (*overtreder*). It deals with administrative sanctions (to restore: *herstel*) and criminal sanctions (to punish: *straffen*) by the administration. The main legal instruments of administrative enforcement are:

- the rectification order (*bestuursdwang*);
- the order under penalty (*dwangsom*);
- the withdrawal of a privilege/permit (*intrekking*);
- the administrative fine (*bestuurlijke boete*).

They may be applied when somebody's conduct infringes upon provisions of environmental law (at large). Take for example, erecting or operating an establishment without the proper environmental (building or nature conservation or prevention of pollution) permit, or acting against the provision(s) of a general rule (such as on certain environmental emission standards or building requirements).

In most cases these instruments have the aim of *restoration* rather than *punishment*. The core of these instruments is an administrative order to correct the wrongdoing. Once the offender, or someone else who has been designated to intervene effectively, complies with this order (for instance by removing illegally stored barrels with toxic waste), the sanction's objective has been fulfilled.

Important to mention here is that an administrative sanction aimed at restoring (*herstelsanctie*) can be imposed when there is an actual threat of an offence (Article 5:7). It then has a preventative character.

In other cases the administrative instrument is of a *punitive* nature (*bestraffende sanctie*) and aim: that is certainly the case when the offender is being fined (*bestuurlijke boete*). One can argue whether that is when a certain privilege (for instance a permit) is withdrawn. Of course, punitive action may lead to a move towards lawful conduct (and restoration of ill-effects of prior unlawful actions), and perhaps the fear of being punished may deter some potential offenders from illegal conduct and as such serve the aim of promoting lawful conduct.

Here the focus lies on the legal instruments in the hands of the administration and with the aim of restoration. By the way, in environmental matters this is in most cases the available way. So far not in all situations (specific legislation) the competence to fine (*bestuurlijke boete*) is given. In the combination with this fine and criminal law sanctions double criminalization / *ne bis in idem* / *una via* / *nemo tenetur* is at stake.

As to *administrative* fining (see below) in Article 5:44 Awb a coordination mechanism is provided for between the administration and the public prosecutor.

Rectification Order

The most authentic administrative sanction in Dutch environmental law is included in the competence to issue an 'administrative order of rectification' (*last onder bestuursdwang*) by an administrative body, as defined in Article 5:21 Awb as a reparatory sanction involving:

(a) an order to fully or partially rectify a violation;
(b) the competence of the administrative office to itself to factually execute the order, if and when the order is not or not timely executed.

This order, on the basis of a statutory title (see table A under 1 and 4), primarily holds that a particular illegal violation – either an activity or passiveness where action is legally required – has to be rectified by the offender (often the owner of the establishment): the one who is able to undo the violation. If the offender fails to comply with the order, the competent body can by itself put a stop to the offending activity and recover the costs from the offender (ex Article 5:25 Awb).[7] We must keep in mind, however, that the administrative order of rectification is a legal act, and the factual implementation, if necessary aided by police force, is merely a factual act (that must, of course, be performed within the limits of the law).

Article 5:7 Awb stipulates that an order of rectification may also be issued if and when an imminent danger of a violation (that may be sanctioned with a rectification order) exists. Hence the competent authority may avoid that, despite clear preparations to a violation, it must wait until the violation actually commences and causes damage.

In acute cases the order of rectification may be executed without prior notice holding the order to cease the violation (according to Article 5:31 Awb). In such cases the competent authority must as soon as possible after execution give notice of the order.

Generally speaking an order of rectification must hold a specified '*terme de grace*' as the period of time within which the offender may rectify his or her behaviour without being sanctioned: see Article 5:24, section 2 Awb.

Article 5:4 Awb stipulates the need for a specific statutory basis underpinning the competence to issue a rectification order. Decentralized authorities find this specific competence in the legal acts which lay down the general governance structure to which their office belongs, such as a municipality, province or water board (*Gemeentewet*, *Provinciewet*, and *Waterschapswet*: see scheme).

In case of the Wabo, when none of these authorities is competent, the Minister for Infrastructure and Environment has the competence to issue such an order (Article 5.15, sub b Wabo).

Articles 18.2 et seq.) of the Environmental Management Act hold specific provisions showing which public office holds the powers of administrative enforcement as to a particular subject (such as of the Minister for the Environment in Article 18.2d Wm, concerning Genetic organisms and chemical substances), and hence is competent (following Articles 5.2, section 1 jo. 5.14 Wabo). Generally speaking, the Boards of Mayor and Aldermen are the competent authorities (ex Article 18.2, section 1 Wm) – unless another authority is made competent (e.g., Article 18.2c Wm – the Minister concerning hazardous substances). This rule also applies for the Wro and Wabo. For the Wnb it is the Minister or the Provincial

[7] The action towards reclaiming costs is (since 2009) arranged in Articles 4:112 et seq. Awb. Before, this was a civil law issue. See further under: execution.

Board of Deputies instead of the municipal Board of Mayor and Aldermen. As stated earlier, for the Water Act it is the executive organ of the Water Board or the Minister.

The enforcement competence is mostly related to the competence of issuing permits (or responsibilities in relation to general rules).

Order under Penalty

Second, the competent administrative body can issue an 'administrative order under penalty' (*last onder dwangsom*) on the basis of Article 5:32 Awb. In case of non-compliance with the order, the offender has to pay a sum of money if he or she remains unwilling to end his or her violation of environmental regulation in accordance with the administrative order that does so require. Article 5:31d Awb reads that the administrative order under penalty is a rectification sanction which involves:

(a) an order to fully or partially rectify a violation;
(b) the obligation to pay a penalty, if and when the order is not or not timely executed.

The competence to issue an order under penalty is an accessory to the competence to issue an administrative order of rectification. According to Article 5:6 and Article 5:32 Awb a combination of these two administrative instruments at the same time for the rectification of the same unlawful conduct is not acceptable.

As in the case of the order of rectification, the order under penalty must hold a specified '*terme de grace*' within which the offender may rectify his or her behaviour without being penalized – see Article 5:32a, section 2 Awb.

Furthermore, one should consider that in cases of major offence with acute risks to for instance public health, the order under penalty may not offer the adequate response. The same may, of course, be said when the offender fails to respond to the sanction; in such a case a rectification order (possibly amounting to shutting down) may be the only proper alternative (see also Article 5.7 Awb).

Generally speaking the order under penalty is presently the most frequently used administrative sanction in environmental matters and is applied in all areas (prevention of pollution, nature conservation and land-use planning/building).

Withdrawal of an Administrative Privilege/Permit

A third instrument of enforcement that is at times applied – but not very often because of its far reaching consequences is that of (a full or partial, definite or temporary) 'withdrawal of an administrative privilege' (*intrekking van een begunstigende beschikking*), in which case a previous administrative act beneficial to a citizen, such as a permit, is withdrawn on the grounds that the permit-holder has acted unlawful, for instance against or outside the permit.

It depends on the specific legal context, whether withdrawal can be considered an instrument of *rectification* or an instrument of (administrative) *punishment*. If the withdrawal does not directly serve to end the offence but primarily to inflict harm, then the punitive aspects dominate (as is the case with the fine, *bestuurlijke boete*, see below) and double criminalization / *ne bis in idem* / *una via* / *nemo tenetur* is at stake.

This instrument is not further addressed here.

Administrative Fine

The previously mentioned administrative order under penalty should not be confused with the (fourth type of) administrative sanction, the issuing of an 'administrative fine' (*bestuurlijke boete*) (see also remarks

under 3). With these administrative penalties the aim of the sanction is not primarily to end the offence (cessation, restoration or rectification), but (primarily) to punish the offender. With that objective, a subsequent change in conduct for the better (such as making restorations or providing compensation) will, as a rule, have no effect on the obligation to pay the penalty – different from the administrative order under penalty (where the penalty is only applied if indeed the offender continues not to comply with the given order within a certain period of time). The administrative fine is no more and no less than a response to the fact that an unlawful act has taken place and should not have taken place, and on the view that hence the offender should be punished.

One may assume (or hope) that the prior knowledge that certain unlawful acts may cause the administration to respond with a penalty will deter certain members of the public from committing such offences. Otherwise, penalties may serve to satisfy the public opinion that certain offences, regardless of redress and or restoration and compensation, should not go unpunished (as a matter of retributive justice).

Applying a punitive sanction does not affect the competence to, at the same time, apply a reparatory sanction (as discussed in the above). Bear in mind that in case of punitive sanctions certain principles come is such as the right to remain silent and *nemo tenetur*.

Presently, Title 5.4 Awb holds some general rules on administrative fines – both general principles (such as 'no punishment without blameworthiness' – see Article 5:41 Awb) and procedural rules (such as giving notice to the offender – see Article 5:48 Awb).

At this moment in time, the Wabo holds no references to the administrative fine. Some other specific Acts do. For instance in Articles 18.16a (et seq.) Wm, the competence of the Dutch Emissions Authority (Nea) is provides to apply an administrative fine, in case of an infringement of certain articles of Chapter 16 Wm on emission allowances and emissions trading; with fines ranging from EUR 450,000 to 10% of a yearly turnover of over EUR 4.5 million – see Article 18.16e Wm.

Also Article 154b, section 1, sub b of the Municipalities Act can be mentioned. It holds the possibility to use the administrative fine as a sanction with which to respond to wrongful activities concerning the transfer of (domestic and other) waste for collection and treatment, as stipulated in Article 10.23 Wm.[8] Quite new is Article 7.6 Nature Conservation Act, that gives the Minister the competence to fine (in certain cases). Also in the field of legislation dealing with manure (*Meststoffenwet*) the administrative fine is used. As to the administrative fine, the Act on which it is based (mostly) holds maximum amounts. For the height of the penalty in case of the order under penalty that is not the case. There is (more) discretion.

Spain: According to the Spanish Constitution public authorities shall ensure the rational use of all natural resources, what this means is that the administrative authorities are allowed to place conditions and limit the activities of individuals to ensure a sustainable development. We have to bear in mind that any restriction regarding the freedom and rights of citizens should be made under the law.

From this point of view the limits of a potentially dangerous activity to the environment, could be, among others: a) previous measures: authorization, inspections and entries in official books; b) simultaneous measures: on-site inspections, monitoring systems and orders; c) subsequent measures: bans, restrictions and sanctions.

[8] See also (Article 3 of the) the Crown Decree Administrative Fine concerning Public Inconvenience (*Besluit bestuurlijke boete overlast in de publieke ruimte*, Official Journal (*Staatsblad, Stb.* 2008, 580).

II d. How are these rules regulated? Which measures can be challenged in court and what can the court do – which is the frame for the process in such cases? Who has the burden of proof?

Austria: The rules are set out by parliamentary acts or governmental ordinances.
• All the above listed measures can be challenged before the administrative court. Partly (depending on the subject) a preliminary proceeding (re- examination by the administrative authorities) is provided.
• The court is allowed to replace the contested decision by another one.

The burden of proof: who must prove: the claimant, the administration or the judge?
• The Austrian system of administrative justice is based on the inquisitorial principle. Thus in general, it is the judge to take ex officio all evidence. Austrian procedural law provides for the obligation of a judge to set all facts and ex officio search for all evidence.
• By jurisprudence and by some provisions of substantive administrative law, it it foreseen that the party to the case has the duty to actively co-operate and also contribute to the effective evidence taking of the judge (must not contravene or stay totally inactive), or that the burden of proof is changed by specific provisions of law (e.g. party has to give proof of special interest etc….).
• This investigatory principle is also based for proceedings in administrative criminal law (which also fall under the competence of administrative courts). In this respect, the opinion of General Advocate concerning division of adversarial systems and investigatory systems is interesting to read (see case C-685/15). This Austrian case is still pending before the CJEU concerning this problem of position of the judge and problem of conversion of role of the judge with the role of the public prosecutor (in administrative criminal proceedings).
• Background of this case: SAC found that there is no problem of Art. 47 FRC with the inquisitorial principle for judges (gambling case) and quashed a decision of first instance. The judge of first instance referred the case to CJEU: the admin judge must take full evidence, even when the administrative authority is not active at all, after the SAC had in detail decided which evidence must be taken (difficult issue in the pending case, because it concerns the legality of monopoly in gambling area) on public health criteria to avoid addictions with gambling machines by having a monopolist….
• judge and public prosecutor in one function? Possible? Piersack? ECtHR: there is case law on the "confusion of the roles of prosecutor and judge" and the ECtHR has – on a case by case basis – already delivered some judgements if in cases of unclear roles of the prosecutor/judge impartiality of the court was still given.
• The administrative authority is party to the case: it represents the prosecutor. However, it is more passive, there is another party by law: representatives of the financial police (which does check the gambling monopoly: they have more interests in the procedure, but do not represent the prosecutor).
• Opinion of General Advocate C-685/15: court systems have either adversarial or the inquisitorial system. She notes that both might make difficulties as regards compliance with Article 6 of the ECHR and Article 47 of the Charter. In the adversarial case, weak representation of an accused may infringe the right to equality of arms. In the inquisitorial system, a failure properly to distinguish between what is the task of the prosecutor and what is the task of the judge may lead to the two functions get too close. But, if managed properly, each is a system for ascertaining the truth; they simply do so in different ways. So in principle, Inquisitorial principle is in line with Art. 6 ECHR and 47 FRC. In these circumstances, deciding about justifications for a system of monopoly (against the fundamental freedoms of EU treaties), the task of putting forward that justification can be a matter only for the Member State concerned. It is not for other parties to proceedings, including the national court or the party seeking to challenge the validity of the national measure giving effect to the derogation in question, to do so.

Belgium: Every definitive unilateral administrative sanctioning decision can be challenged in court.

As warnings and transaction offers are operating on a consensual basis, they cannot be challenged in court. Their informal way of operating contributes to their efficiency, together with their place in a wider system: where they are not successful, enforcers move to unilaterally imposed and legally binding tools.

In punitive cases, basically fines but also transaction offers and forfeitures of illegal benefits, the burden of proof rests with the fining administration. Case-law of our Constitutional Court confirmed this.
In remedial cases, there is just is this general rule of administrative law that an authority cannot act is all conditions to use its competence are not met. With regard to remedial administrative sanctions, those conditions include the existence of an infringement of the law.

Estonia: The penalty payments and substitutive enforcement could be challenged in Administrative court. The court may, in the operative part of the judgment: 1) annul the administrative act in part or in full; 2) order that an administrative act be made or an administrative measure be taken; 3) prohibit the making of an administrative act or the taking of an administrative measure; 4) award compensation for harm caused in a public law relationship; 5) issue an enforcement order requiring elimination of the consequences of the administrative act or administrative measure; 6) ascertain that the administrative act is null and void, that the administrative act or measure is unlawful, or ascertain a fact that is of material importance in the public law relationship. The court may, at any stage of the proceedings, on the basis of an application of the applicant which states its reasons, or of its own motion, enter a ruling ordering a measure of interim relief to give provisional protection to the applicant's rights. A ruling ordering interim relief may suspend the validity or enforcement of the administrative act or actions of an administrative authority. An Administrative authority has to proof that administrative act or actions has in accordance with law.

Finland: Supervising authority starts with guidance, suggest and ordering. If these are not enough, administrative compulsion with penalty payment takes place. Supervising authority has certain obligations to make request for investigation to the police.

The orders may cover measures needed in the actual case, e. g. ceasing the illegal activity or restore damaged environment. Even prevention may be ordered if there is a concrete risk of illegal action.

Every environmental law has its own rules on how to act in case of a violence - the newer the law the more detailed are these rules. These are completed with general laws concerning administrative proceedings and penalty payments.

We do not usually talk of burden of proof but rather who has the burden of giving the information needed as the process is mainly based on the principle of judicial investigation. Naturally somebody demanding something has to give some information to start with. In case of illegal action it has to be considered that the offender should be obligated to stand for the costs, not the neighbor.

Germany: The rules are set out by parliamentary acts or governmental ordinances.
The burden of proof as a general rule lies with who is invoking a provision he would be benefiting from. So the burden of proof (that the preconditions for the order are met) lies on the administrative authority.

All the above listed measures can be challenged before the administrative court. Partly (depending on the subject) a preliminary proceeding (re- examination by the administrative authorities) is provided.
In these cases the court is principally empowered only to annul the administrative act[9] (rescissory action). The court is not allowed to replace the contested decision by another one. Any review on expediency is

9 See Code of Administrative Court Procedure (**VwGO**) section 113 (1) first sentence:

not conferred to the court. If a discretionary administrative act is at stake, the court's review is restricted on the lawfulness only[10].

Lithuania: The general rule sets out that the burden of the proof lies upon the one who affirms, not the one who denies (*onus probandi incumbi ei, qui affirmat, non ei, qui negat*). This rule requires a party to prove every submission it takes. Every party of the process has a right to submit evidences and express their position of them (the Supreme Administrative Court of Lithuania, case number A[4]-1212/2006). The supervisory authorities have to produce factual information related to their decision restricting the rights and liberties of the person. In administrative cases of granting damages for losses (pecuniary and non-pecuniary kind) actually sustained, it is for the injured party to prove that the damage has occurred. There is no obligation for the court to interpret and assess the given evidence in a way the parties propose. It is worth noting that administrative courts are not limited to the review of evidence submitted by the parties; it has an active role of requiring the important evidence itself.
Lithuania: Besides the measures mentioned above, under a general rule, the persons concerned are entitled to challenge any final administrative act causing him adverse legal consequences. Meanwhile, the administrative act that is not a final act of a particular administrative procedure or when it does not provide any legal consequences or does not legally oblige a person concerned is not subject to judicial review.

The courts have quite broad competences. They may decide on both, the questions of facts and the issues of law. The courts have the supervisory role and they are also competent to reform or adopt the administrative sanctions imposed by an administrative authority. The judicial review of administrative sanctions is based on both, the legality of the decision and also on factual questions and circumstances. Administrative authorities have certain discretion attributed to them by different specialized laws and the administrative courts can review the discretion exercised by various administrative authorities. However, the court shall not offer any assessment of the disputed administrative acts and acts (or omission) from the point of view of political or economic expediency and shall only establish whether or not there has been in a particular case an infringement of a law or any other legal act.

Nehterlands: See earlier.

Spain: The Administrative authorities have very different forms of intervention to protect the environment, bearing in mind that the measures or limits may be imposed to the public administration itself when it comes from activities that can cause damage to the environment and the Administration has the competence to do it, as is the case of major infrastructures (roads, urban plans, reservoirs).

For instance local public administration can be responsible for their actions giving a building permission/license against the law but also can be responsible for omission/failure to act neglecting its official duties.

Insofar as the administrative act is unlawful and the plaintiff's rights have been violated, the court shall rescind the administrative act and any ruling on an objection.
10 See VwGO section 114 first sentence:
Insofar as the administrative authority is empowered to act in its discretion, the court shall also examine whether the administrative act or the refusal or omission of the administrative act is unlawful because the statutory limits of discretion have been overstepped or discretion has been used in a manner not corresponding to the purpose of the empowerment.

Generally administrative intervention must be coherent and proportionate with the aim pursued -public interest- according to its own competence, above all when as it was said above the measures may affect the freedom and rights of citizens.

- Is there a formal hierarchy of oppressive measures meaning that for example in order to force an operator to undertake some precautionary measures or to stop the operation, the authority first must have given some kind of warning or obtain a preliminary decision?

Generally interim measures must be taken by the competent administrative authority, usually the authority that has competence to initiate the proceeding.
We can take into account two different scenarios:

> a) Measures adopted after the initiation of the procedure. After initiating an infringement procedure the administrative authorities are empowered to adopt interim measures in order to ensure the final decision so as to avoid or prevent the harmful effects against the environment. The measures must be adopted in any case within the proceeding and the hearing of the person concerned;
>
> b) Measures adopted before the initiation of the procedure. According to Spanish law the administrative authorities are also empowered to take measures before the proceeding when there are serious offences against the environment and it is absolutely necessary to stop the operator activity and the decision cannot be postponed. In such cases -"ex ante"- the measures must be confirmed, amended or cancelled by the administration within fifteen days. These measures may be only adopted under the law in urgent cases.

As an example of these kind of urgent measures the administrative authorities are authorized according to the waste and soil pollution law (22/2011) to seal the equipment and devices, close down whole the establishment, completely or partly, cancel and stop the activities concerned. These kinds of measures should be taken by the competent authority under the principle of proportionality in any case.
In principle all measures taken by the Administration can be challenged in the court where interested parties can apply for interim measures before the final decision. The burden of proof will depend on the case.

Sweden: A supervisory authority may, by applying the principle of proportionality, issue *orders and prohibitions* necessary in an individual case to ensure compliance with the Environmental Code or regulations, permits, conditions or other decisions issued under the Environmental Code (Chapter 26 Article 9). An order or prohibition though may not limit a judgment or decision concerning a permit that has entered into legal force, if not to avert health risks or serious environmental damage. Such orders or prohibitions may be combined with *conditional fines* (Chapter 26 Article 14) and the supervisory authority may decide that a decision taken by it shall take *effect immediately*, even if it is appealed against (Chapter 26 Article 26). The fines can be formulated either as prospective, connected to a certain activity, or as a periodic prospective fine that relates to a specified period.

In order to stop the addressee from impeding an injunction related to property, a supervisory authority may send the decision to the *registration* authority to be recorded in the real estate register (Chapter 26 Article 15). Where the injunction or prohibition is recorded, it shall apply to any new owner of the property.

If the authority has issued an order or a prohibition and it is not complied with, and if its combined with a penalty sum. The authority shall apply to the land and environment court in order to get the sum imposed. It may also apply at the enforcement service to *enforce the decision* (Chapter 26 Article 17). Instead of requesting *execution*, the supervisory authority then may decide that rectification will be effected at the expense of the defaulting party Chapter 26 Article 18).

Chapter 26, Article 21 provides that a supervisory authority may order a person who pursues an activity or takes a measure that is governed by the provisions of this Code or rules issued in pursuance thereof to *submit any information and documents* to the authority that are necessary for the purposes of supervision. The same shall apply to a person who is otherwise required to mitigate any adverse effects of such activities.

In a similar way Article 22 provides that persons who pursue activities or take measures that are liable to cause detriment to human health or affect the environment or who are otherwise obliged to mitigate any adverse effects of such activities must also carry out any *investigations* of the activity and its effects that are necessary for the purposes of supervision in cases other than those referred to in chapter 14, section 7. The same shall apply to a person who leases a building for residential or general purposes, where there is cause to assume that the state of the building may be deleterious to health. Where appropriate, the supervisory authority may decide that such an investigation shall be carried out by another and may appoint another to carry it out. The person who is required to carry out the investigation shall pay the cost of an investigation carried out by another person appointed for the purpose in the amount fixed by the supervisory authority. A *prohibition against transferring the property* in question or other property until the investigation is completed may be attached to the decision requiring the investigation.

Important to notice is the regulation on *charges* in respect of the costs of the authority for examination and supervision. The supervision will, as a main principle, be financed by charges. The Government, other authorities and the municipal assembly will determine tariffs for a number of activities. Chapter 27 and a governmental ordinance regulates the possibilities to levy charges.

Also precondition for the supervision is that authorities are entitled to *access* to real property, buildings, other installations and modes of transport to fulfil their tasks under the Environmental Code. Compensation must be paid for damage and other intrusion arising. (Chapter 28).

In all cases – except criminal cases - and according to Chapter 2 Article 1 of the Environmental Code, the operator has the burden of proof to show that the operation or activity is in compliance with the requirements in the Code:

"In connection with the consideration of matters relating to permissibility, permits, approvals and exemptions and of conditions other than those relating to compensation, and in connection with supervision pursuant to this Code, persons who pursue an activity or take a measure, or intend to do so, shall show that the obligations arising out of this chapter have been complied with. This shall also apply to persons who have pursued activities that may have caused damage or detriment to the environment. For the purposes of this chapter, 'measures' shall mean measures that are not of negligible significance in individual cases."

In principle all the previously mentioned decisions can be challenged at the land and environment court. The court then is bound by the claims forwarded but not the causes of action invoked by the parties. The court is by the so called ex officio principle set in the same position as the first deciding authority and by a reformatory process may alter the contested decision or put a new decision in its place.

II e. Is there a formal hierarchy of oppressive measures meaning that for example in order to force an operator to undertake some precautionary measures or to stop the operation, the authority first must have given some kind of warning or obtain a preliminary decision?

Austria: According to the general rules, laid down in the Administrative Procedure Act the addressee must be heard at first. This hearing serves as a warning, too.

There is no explicit strict formal hierarchy, but the principle of proportionality mandates that the measure has to be taken that is, if appropriate, the least burdensome.

A phased procedure is not provided generally. But it is usual in some fields of law. E. g. in soil protection cases the polluter may be charged at first to obtain an expert opinion about the extent of the pollution and/or to present a plan how to decontaminate the soil. The second step may be an order by which the plan is declared binding.

Belgium: With regard to remedial administrative sanctions, no formal hierarchy exists. Informally, warnings are most often used before considering binding sanctions. Empirical research shows that they solve the problem in 80% to 95% of infringement cases.
With regard to punitive administrative sanctions, 'milieumisdrijven' have to get through the prosecutor's office first, as descried above. The criminal track has priority in the system.

Estonia: By making a precept (for example to stop operation) is administrative authority considerable amount of discretion, also how to proceed an administrative procedure. However, an administrative authority shall, before issue of an administrative act, grant a participant in a proceeding a possibility to provide his or her opinion and objections in a written, oral or any other suitable form.
A coercive measure (penalty payments and substitutive enforcement) is applied if a precept of an administrative authority is not complied with during the term indicated in a warning. A coercive measure may be applied repeatedly until the objective sought by a precept is achieved. A coercive measure may be changed.

Finland: First kind speech and informal request, then formal proceedings.

Germany: According to the general rules, laid down in the Administrative Procedure Act [11] the addressee must be heard at first. This hearing serves as a warning, too.

There is no explicit strict formal hierarchy, but the principle of proportionality mandates that the measure has to be taken that is, if appropriate, the least burdensome.

A phased procedure is not provided generally. But it is usual in some fields of law. E. g. in soil protection cases the polluter may be charged at first to obtain an expert opinion about the extent of the pollution and/or to present a plan how to decontaminate the soil. The second step may be an order by which the plan is declared binding.

11 See section 28:
Hearing of participants
(1) Before an administrative act affecting the rights of a participant may be executed, the latter must be given the opportunity of commenting on the facts relevant to the decision.

Lithuania: In most of the cases covered by environmental laws, the public authority is firstly obligated to give a notice of e.g. suspension or withdrawal of special granted license in order to force operators to eliminate the infringement without suspending or withdrawing their activity. In this regard, the Supreme Administrative Court of Lithuania has pointed out that the administrative authority before adopting the decision to withdraw the integrated pollution prevention and control permit has to give a notice for an operator in order to eliminate the infringements in given time limit. The Court stated that the claimant has received such notice ordering to eliminate infringements related to the requirements of granted integrated pollution prevention and control permit. There was no data in the case of the possible technical impossibility to accomplish the order. Therefore, the Court stated that the withdrawal of permit was carried out by public authority properly (the Supreme Administrative Court of Lithuania, case number A[525]-2334/2011).

Netherlands: See earlier
See also below: procedures and additional aspects: sometimes a warning is at hand.

Sweden: In principle not but to prohibit an operation or an activity is regarded as the ultimate step and ought to be preceded by steps in order to rectify any misconduct.

In order to get a conditional fine imposed, the addressee must be and the authority must prove that the order has not been complied with. In practice often a procedure may start with the authority asking the operator for information regarding e.g. an installation for treatment of sewage water and when its not clear that the installation fulfils the requirements it may order the

The operator of the activity shall continually plan and control the operation to prevent damage and nuisance. Furthermore, for environmentally hazardous activities that are subject to a permit obligation, an environmental report must be submitted annually to the supervisory authority.

III. Orders/injunctions

III a. Which instances (authorities – courts) takes the first decision on such measures?

Austria: As a rule the lowest instance takes the decision both on administrative and on judicial level. But in cases of major importance, like the challenge of great projects of infrastructure, upper courts are competent as first instance.

Belgium: General outline: see above.

Estonia: A person who finds that his or her rights are violated or his or her freedoms are restricted by an administrative act or in the course of administrative proceedings may file a challenge according to the Administrative Procedure Act. That is voluntary proceeding, you can go also directly to the court. Unless different jurisdiction is provided by law, a challenge shall be filed through the administrative authority which issued the challenged administrative act or took the challenged measure with an administrative authority which exercises supervisory control over the administrative authority which issued the challenged administrative act or took the challenged measure.

Finland: Please look before. First instance is always an administrative authority whose decision may be appealed to a court. Only in criminal cases and damages resulting from illegal actions the first instance is a court.

Germany: As a rule the lowest instance takes the decision both on administrative and on judicial level. But in cases of major importance, like the challenge of great projects of infrastructure, upper courts are competent as first instance.

Lithuania: The discretion to take the first decision on orders / injunctions, such as suspension of environmentally harmful activities, withdrawal of integrated pollution prevention and control permits, waste permits, etc. is given to supervisory authorities, performing the executive role of the environmental control (Environmental Protection Agency, regional environmental protection departments the directorates of parks and reserves, etc.) and their offices. As has been already mentioned, the legal regulation concerning respective environmental matters may establish that before applying to administrative court, the decisions adopted by such authorities shall be contested before the institution for preliminary extrajudicial examination of disputes. The latter's decisions shall be challenged in the court.

Italy: We have in Italy 2 instances. For each instance there is a precautionary proceeding. The order (or the rejection of the requested measure) shall be given in the first instance and can be appealed to the second instance (the State Advice). So normally the decision in the second instance of the precautionary proceeding finishes before the merits decision in the first instance.
The precautionary measure can consist in the suspension of the permission or in an injunction of paying money for compensating damages that could be caused by exercising the permission before the ruling.
The precautionary measure can be subordinated to a deposit for compensating damages that could be caused by not exercising the permission before the ruling.
The lodge of the recourse to the court doesn't suspend the permission. But before the precautionary measure has been given, the president of the court can bring it forward. This presidential precautionary measure lasts till the collegiate decision about the precautionary measure and is not binding for the court.
The presidential precautionary measure shall not be appealed to the second instance.
The precautionary measure (or its refusal) is not binding for the court in deciding the merits of the case.
In Italy the criteria to consider in giving (or not) the precautionary measure are:

a) the damage which could have the claimant or the environment in case of environmental associations. If there isn't damage, the precautionary measure can not be given;
b) the probability of a good outcome of the claim.
It's always possible, has or not the claim a probability of good outcome, that in deciding about the preliminary measure, the court decides the merits of the case. This depends if the case is mature.

Netherlands:

Condoning and duty to enforce

An important, though often hidden phenomenon in administrative enforcement is that of 'condoning' (*gedogen*). Given that competences for administrative enforcement are often discretionary powers, the competent authority has, once a 'sanctionable' offence is committed, the duty to weigh the interests involved.[12] Hence, upon the offence, for instance the interest of the environment against the interest of the entrepreneur acting in violation of rules, must be weighed. This, of course, opens the possibility of not

[12] The most 'recent' formulation from the ABRS is from 5 October 2011, ECLI:NL:RVS:2011:BT6683 (earlier in 1998 and 2004).

making use of enforcement competences or only very modestly, even though an offence has been committed and was registered.

During the last decades the (initially) widespread practice of condoning, has met a more critical appraisal. Much aided by case law, condoning is now generally regarded as something to be applied only in very exceptional cases. With sanctioning as the default setting – that is to say, that upon an offence in principle a sanction should follow – condoning is only an option if and when:

– (*transitionally*) there is a clear prospect of legalization,[13] within a short period of time (so not entailing procedures in which interests have yet to be weighed against each other, let alone that other administrative decisions have yet to be taken); or

– (force majeure) to enforce would be impossible or would result in a state of affairs that is even less desired from an environmental standpoint (for instance: by shutting down a waste disposal unit it would become impossible to continue collection of domestic waste, which would then pile-up in the streets).

If an administrative body decides to condone, it should do so by issuing an administrative act that holds this decision and sets the conditions under which the offence will be condoned and for what period of time. The (written) decision to condone is a decision that can be appealed.[14]

So generally there is a duty to enforce that is formulated in the following way and is a clause that is mostly referred to in all enforcement cases of the Judicial Department of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State* (ABRS) and the (lower) District Courts (Administrative Law Section):

"In light of the general interest that is served with the enforcement of legislative provisions the administrative authority, that is competent to give a rectification order or an order under penalty, is as a rule obliged to make use of this competence. Only under special circumstances it may be demanded from the competent authority not to do this. This can be the case when concrete sight on legalization is at hand. Enforcement can also be so disproportionate in relation with the interests served that there should be refrained from that order in the specific situation."

So normally in the case of the violation of rules the authority, that has to prove the (non) violation, is obliged to enforce. This means that legitimate expectations by the administrative authority not to enforce (in case no legalization is at stake) should be overruled.[15] Whether or not legalization (for instance handing out a permit) is possible is often up to the administration and needs a formal application. In case of very small / minor violations it can be not proportionate to enforce. Note that once a non-enforcement decision is overruled in an administrative (court) procedure (see below) and an enforcement decision is / has to be taken, this cannot have retrospective effect. This can lead to lengthy situations of violations.

Procedures and additional aspects

Apart from the specific rules regarding the use of administrative sanctions in the general and sectoral environmental legislation and regulations, as well as in Chapter 5 of the Awb, the so-called general

[13] An exception to the rule of 'transitionality' ('*zicht op legalisatie*'; legalization is imminent / concrete sight) is made for the situation where cessation of building activities (*bouwstop*) is demanded; see ABRS 10 July 2013, ECLI:NL:RVS:2013:228.

[14] Because this decision implies that (partially) not will be enforced. To make it complex: It is decided in case law of the ABRS that the refusal to condone is not a decision that can be appealed (since this implies that will be enforced and that enforcement decision can be appealed).

[15] See ABRS 28 November 2012, ECLI:NL:RVS:2012:BY4425. Maybe financial compensation by the administration is required.

principles of natural justice apply. Some of these principles are included in Chapters 3 and 4 of the Awb (such as the proportionality-principle and the principle of proper preparations) and apply because the administrative acts by which sanctions are being legally applied, fall within their realm. Other principles of natural justice, such as the equality-principle and the principle of good faith, are still unwritten and apply because the courts consider them to be legally binding nonetheless.

The use of an administrative sanction may take place *ex officio*, possibly as a follow-up on a periodical supervisory activity, which has brought an offence to the administration's attention. The sanctioning may also result from a complaint from a third party, giving rise to an official inspection, which then delivers proof of an offence. In case a third party feels that the designated administrative body is failing to take appropriate action, by applying a sanction, this person can put in a *request* for sanctioning. The response by the administration to this request is an administrative act against which there is the possibility of administrative and judicial review. Article 5:31a, section 1 Awb, refers to a situation where a request for an order of rectification was made. It goes on to say that the applicant or another interested party may request that the order be made effective (i.e., through factual rectification). According to section 2 of this article such a request for factual rectification may be issued once the *terme de grace* (of Article 5:24, section 2 Awb) has passed. In conclusion, section 3 of Article 5:31a Awb explicitly states that the competent authority shall decide upon such a request within four weeks and that this decision is a '*beschikking*' (an administrative order for an individual case as described in Article 1:3, section, 2 Awb). The latter is relevant, as this means this order must be in keeping with procedural and substantive norms hitherto (see Chapters 3 and 4 Awb plus unwritten principles of proper administration). Its relevance also lies with the fact that a rejection upon this request or not responding timely may be grounds to launch an administrative appeal.[16] As stated earlier a decision may be provoked with a penalty (*dwangsom*).

As we touch on the subject of administrative and judicial review, it should be noted that an administrative act containing an administrative sanction is (also) a decision against which the addressee (in general the presumed offender) may to seek administrative review and (if necessary, subsequently) judicial review.

It is important to consider that in the Dutch system of legal protection, one should make a sharp distinction between the legal act containing a sanction, which is fit for administrative appeal, and the factual execution of a sanction, such as when in case of a rectification order the administrative body takes the actions that the offender was ordered to undertake. If in the factual execution the administrative body acts unlawful, for instance by causing a disproportional amount of collateral damage through its enforcement activities (e.g., in demolishing an illegal extension to a building the already existing, lawful part of the building suffers irreparable damage), the administrative body may be held liable in a civil court – not in an administrative court. As we saw earlier the reclaiming of costs (related to the penalty) fall partly under administrative law. Decisions have to be taken. To collect the penalty factually other requirements exist (see for instance Articles 4:114 onwards Awb) and eventually civil law can comes in.

As administrative enforcement acts are administrative acts with an individual scope (*beschikkingen*), they are mostly governed by the standard procedure for administrative orders under Chapter 4 of the Awb.

Often the procedure to enforce (*ex officio*) starts with a informal warning to the offender that a violation is at stake and that he / she should end that. If this does not happen, the next step - this step is mostly the first step in case of *a request of a third party* - is that an intention-decision (*voornemen*) is taken to which parties (offender / requested party) can do there saying (Article 4:8 Awb). When the violation is ended within the set time: (at some point) a non-enforcement decision will be taken. When there is still the violation: (at some point) the enforcement decision (primary decision, *primair besluit*) will be taken. These are very crucial moments. A formal complaint at the authority that took the decision is possible (decision on complaint (*beschikking op bezwaar*) and against that appeal is possible to the District Court

[16] Given Article 1:3 *jo.* 6:2 *jo.* 8:1 Awb.

(Administrative Law Section) (*rechtbank*) and higher appeal to the Judicial Department of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*). In some cases the latter in first and only instance is competent. See in this respect chapters 6, 7 and 8 Awb and Annex 2 (for instance in case of the Soil Protection Act).

According to Article 3:40 Awb, which is also applicable to administrative orders holding sanctions, an administrative (enforcement) order enters into force only once officially promulgated – according to for instance Article 6.1, section 1, Wabo, as a rule the day after publication. As the request for administrative or judicial review of a decision (not) to sanction does not automatically suspend this legal forc, according to Article 6:16 Awb, raising objections with the competent authority or launching an appeal with an administrative court does not suspend its legal force. For this to happen the provisional relief / injunction procedure (of Articles 8:81–87 Awb) is to be used.

Apart from the aspect of delineation of judicial competence, we need to consider that the general framework for judicial review in administrative law holds, that in order to have standing before an administrative court, the claimant will have to lodge an appeal for administrative review before the administrative body that is responsible for the contested decision (see Article 7:1 Awb). An important exception to this rule of administrative review preceding judicial review, is the circumstance under which the contested administrative decision was prepared according to the elaborated procedure laid out in paragraph 3.4 Awb. As a general rule this is not the case in enforcement decisions.

Generally speaking the objections have to be raised within six weeks after the administrative decision has been published and the appeal has to be lodged within six weeks after the decision on the complaint has been published (Article 6:7 and 6:8 Awb).

It is also important to mention the possibility of a procedure for provisional relief on the basis of the General Administrative Law Act, namely a provisional relief (or a suspension of the decision) from the 'relief judge' (*voorzieningenrechter*) of the District Court (Article 8:81 Awb). One can only ask for such a temporary arrangement when an appeal is lodged with the court or when objections are raised at the administrative body pending these procedures.

The right of appeal against (non) enforcement / execution decisions is attributed only to (legally speaking) interested parties (*belanghebbenden*), regardless of the preparatory procedure. As for the interests of legal personalities such as environmental groups, these interests are regarded as the general and collective interests they protect on the basis of their aims and actual activities (Article 1:2 sub 3 Awb). In this way their admissibility in administrative legal proceedings - also enforcement decisions - is well arranged for – although the requirement that they have been and are actively involved in activities concerning the protection of the interests they aim to foster, more than by way of seeking redress by appealing for court judgments, should be mentioned here. For government bodies, interests legally entrusted to them are regarded as legal interests (Article 1:2 sub 2 Awb). This implies that government bodies also have access to Awb- and environmental procedures (to stand up for these interests). Restrictions under the so called Crisis and Recovery Act (*Crisis- en herstelwet*, Chw), which explicitly restricts (Article 1.4 Chw) possibilities for 'lower government', so that they can appeal only against decisions which are directed at them is not further addressed here.

In Chapter 8 Awb the rules for appeal are given. It goes beyond the scope to elaborate fully on this. Apart from aspects of procedural law, such as the submission of documents, etc, it is important to indicate some competences of administrative courts (e.g., the District Courts and the Judicial Department of the Council of State):

(a) the courts can (partially) nullify the administrative act, and have the competence to settle the dispute, but the latter is generally restricted to situations where only one solution is possible (Article 8:72 Awb);

(b) the courts can also give compensation to the appellant when the act is nullified (Article 8:73 Awb). The administrative authority can be ordered to pay certain legal costs made by the appellant (8:74 and 8:75 Awb);[17]

(d) in complicated environmental matters the court (or the 'relief judge' when asked to make a provisional arrangement) may ask the advice of an independent advisor dealing with environmental appeals (*Stichting advisering bestuursrechtspraak* - see Article 6.5b Wabo jo. paragraph 20.2 Wm). This advice has a strong influence on the outcome of the case.

So far, mediation or other alternative ways of dispute settlement in environmental enforcement cases law do not play a substantial role in the Dutch administrative law system.

Spain: The first decision can be taken by the administrative authority in an administrative proceeding or by the judge when there is a judicial proceeding.

Sweden: The designated Supervisory Authority, for the area in question, takes the first decision to make an injunction to the operator. The injunction is often formulated to adjust something like take away something from a property or adjust noice or temperature etc. The most common Authority to have this function is on the municipality-level.

III b. If challenged at court, what can you do

- **if the addressee of the order challenges the decision and wants it quashed or at least be less strict?**

- **if a neighbor challenges a decision not to intervene or want an injunction to be more strict (prohibition, shorter time-limit, more strict conditions, a higher penalty sum etc.)?**

Austria: See answers to question II d.
The court is allowed to replace the contested decision by another one.
A neighbour can lodge an enforcement action even in case of omission to decide on the request.

Belgium: The Council of State handles these cases.
Its classic decisions are annulment and suspension of the decision that is attacked, for motives of illegality. It can impose to the administrative authorities to take into consideration some well-defined elements when re-deciding the case. The decision options are the same whomever is complaining: the addressee of the order, neighbours, …

Estonia: Court has the usual powers (annul the administrative act in part or in full etc) also apply the interim relief.

A person may have recourse to an administrative court only for the protection of his or her rights. For other purposes, including protection of rights of another person or protection of a public interest (higher penalty sum), a person may only have recourse to the court in the cases provided in the law. Everyone is

[17] Apart from the compensation of limited costs of legal representation, the costs for starting an appeal (*griffierechten*) – in the Netherlands in environmental cases these amount (beginning of 2017) to EUR 168 for individuals and EUR 333 for legal entities – will be refunded in the event that the appeal is granted (general rule: 2 points of EUR 495: 1 point for the written appeal and 1 point for being at the court session). By the way, legal representation by lawyers is not obligatory in administrative law court proceedings. Costs from experts can also be refunded in case of a successful appeal (*gegrond beroep*).

entitled to expect that the environment concerning them directly meets the health and well-being needs. The environment concerns a person directly if the person often stays in the affected environment, often uses the affected natural resource or otherwise has a special connection with the affected environment. One can demand that the administrative authority spare the environment and take reasonable measures to ensure the compliance of the environment with the health and well-being needs.

Finland: The measures may be take place quite slowly if decisions are appealed. Only in case of serious risks immediate intervention is possible. On other hand the addressee must enjoy legal protection, too.

The neighbor should demand these in the first instance with an own claim. He may then appeal if not satisfied of the decision.

Germany: See answers to question II d. and footnotes 9 and 10.
According to section 42 Code of Administrative Court Procedure (VwGO)[18] the neighbour can lodge an enforcement action even in case of omission to decide on the request.
If there is an obligation to intervene, the court orders the issue of the requested administrative act. If a margin of discretion exists, the court orders the authority to take a fresh decision and to take into consideration the reasoning of the judgement[19].

However, German law provides a restriction pertaining to the scope of judicial review. The plaintiff cannot challenge the lawfulness in every respect. According to the so called "protective norm doctrine" the plaintiff must rely on law which aims to protect interests of the plaintiff. Even in such a case a margin of discretion is not excluded automatically under German doctrine. But discretion may "shrink to zero". If an operation infringes "protective law", a right to demand a remedial administrative measure is usually conferred on the applicant, absent exceptional circumstances.

In this context a recent decision [20]of the Federal Administrative Court is worth being mentioned. The plaintiff, an NGO, wanted that the defendant, a county and project owner, stops the use of a cycle path, which crosses a "natura 2000" site. It was not disputed that the cycle path was built without the necessary performance of an appropriate assessment of the implications for the site according to Article 6 (3) FFH - Directive. The Court approved standing to sue but found that the formal illegal use of the project does not automatically lead to a shrinking of the discretion in favour of the NGO. The case was remitted to the Court of Appeal in order to investigate the impact on the site by the cycling traffic and the consequence of a closure in terms of security.

Lithuania: The courts have broad powers in respect of quashing the challenged decision or mitigating the sanction. If the addressee of the order challenges the decision and wants it quashed or be less strict, the courts are also competent to reform or adopt the administrative sanction imposed by an administrative authority. The judicial review of the administrative sanctions is based on both, the legality of the decision

18 The rescission of an administrative act (rescissory action), as well as sentencing to issue a rejected or omitted administrative act **(enforcement action)** can be requested by means of an action. Unless otherwise provided by law, the action shall only be admissible if the plaintiff claims that his/her rights have been violated by the administrative act or its refusal or omission.
19 See section 113 (5):
Insofar as the rejection or omission of the administrative act is unlawful and the plaintiff's rights are violated thereby, the court shall announce the obligation incumbent on the administrative authority to effect the requested official act if the case is mature for adjudication. Otherwise, it shall hand down the obligation to notify the plaintiff, taking the legal view of the court into consideration.
20 Judgement of 1June 2017 (BVerwG 9 C 2.16).

and also on factual questions and circumstances. However, only in cases initiated by a neighbour who has an interest, e.g. is adversely affected or likely to be adversely affected by environmental infringement, the court has jurisdiction to hear the dispute.

Netherlands: See earlier (order under penalty)

Spain: It will depend on what kind of decision has been adopted by the administration and if that decision is according with the law.

The interim measures can be challenged by the addressee in the administrative procedure where they were taken and in such a way the Administration, as said above, can amend or cancel his own decision. If the Administration confirms or only amends the measure, the addressee can apply to the court against the decision adopted. If the administrative decision has been adopted violating the rights of the person concerned the court can amend or cancel the decision.

A neighbor as a third party can challenge a decision if he/she has sufficient interest or it maintains the impairment of a right.

The Spanish Supreme Court recognizes sufficient interest to a neighbour who challenged a decision taken by local public administration regarding dumping sewage, as well as a neighbor that challenged an administrative authorization given to a farm because of the bad smell/stink it caused in the neighborhood.

In such cases the court can confirm, amend or cancel the administrative decision.

Sweden: The injunction can be quashed or changed to be less strict but in this case not more severe. The decision not to intervene can be changed to an injunction, or more common, send back to the Authority to make an injunction. An injunction can be changed to be more strict.

III c. Can the authority combine an order with a penalty sum, to put extra pressure on the addressee to comply with the order? Which are the prerequisites?

Austria: The administrative authorities have a variety of administrative enforcement instruments at their disposal to compel the addressee to comply with the order. They may threaten an enforcement fine (Zwangsgeld) or to carry out substitute performance at the expense of the addressee (Ersatzvornahme). These are preventive measures which may be combined with the order. The threatening is regarded as an administrative act. The enforcement fine is to be paid, substitute performance is possible, when the addressee does not follow the order in time.

A prerequisite for enforcement measures is enforceability of the order. The order must be final or immediately executable. The first measure is an enforcement fine. If it is not successful, then substitute performance at the expense of the addressee (Ersatzvornahme) may be carried out.

Belgium: See above. It is possible since 2013. Up till now, only a dozen of cases have given rise to the use of penalty payments, all in the realm of Nature conservation.
A penalty payment can be added to an order if that order is "not or not timely" (legal requirement) met. It has to be motivated, as all administrative decisions have to.

Estonia: There is some discretion in penalty sum.

In the event of failure to comply with a precept the maximum penalty payment imposed in accordance with the procedure provided for in the Substitutive Enforcement and Penalty Payment Act is 32 000 euros.

Finland: An administrative compulsion order needs normally to be combined with a threat, most often a penalty payment but in some cases entitling something made by authority and the costs covered by the addressee.

Germany: The administrative authorities have a variety of administrative enforcement instruments at their disposal to compel the addressee to comply with the order. They may threaten an enforcement fine (Zwangsgeld) or to carry out substitute performance at the expense of the addressee (Ersatzvornahme). These are preventive measures which may be combined with the order. The threatening is regarded as an administrative act. The enforcement fine is to be paid, substitute performance is possible, when the addressee does not follow the order in time.
A prerequisite for enforcement measures is enforceability of the order. The order must be final or immediately executable. The first measure is an enforcement fine. If it is not successful, then substitute performance at the expense of the addressee (Ersatzvornahme) may be carried out.

Lithuania: In accordance with the existing specialized legal regulation, a penalty from 600 Euro to 8 000 Euro may be imposed on a legal person who ignores or negligently avoids accomplishing the orders given by the administrative authority. If an operator refuses to implement the decision of suspension of illegal activity, a penalty from 850 Euro to 10 000 Euro may be imposed (Articles 126, 127 of the Law on Environment Protection). According to Article 33 of the Law on Environmental State Control, if after receiving a notice of suspension of illegal activity the natural or legal person increases negative impact on the environment, such activity can be suspended before the term stated in the warning notice expires.

In order to implement administrative penalties imposed by the Code of Administrative Offences, administrative enforcement measures may be applied. They include, for instance, the withdrawal of granted rights and confiscation of property (Article 27 of the Code of Administrative Offences).

The principle of legality is considered to be breached when, among other instances, an entity receives a bigger sanction than it is embedded in the law or there are no criteria submitted in support of an application of the sanction in the administrative decision (the Supreme Court of Lithuania, case number eA-2330-520/2016).

Netherlands: See earlier (order under penalty)

Spain: Not that I am aware of.

Sweden: Yes, the injunction is often combined with a penalty sum if it is not followed in time. The prerequisites for this are that it is possible for the addressee to comply and that it is assumed that a penalty is required for enforcement. Furthermore, consideration shall be given to the ability to pay.

III d. Can the authority decide that the order shall be directly executable even if the decision still can be challenged and does not have legal force?

Austria: The authority can order immediate enforcement of an administrative act. This decision requires a particular public interest or an overriding interest of a party concerned in the direct enforceability of the administrative act. This particular public interest has to be explained in writing in the order.

Belgium: Remedial orders can be challenged higher up in the administrative system, namely with the minister competent for the environment. This appeal does not suspend the original decision (Art. 16.4.17, par. 2, Title XVI General Environmental Policy Decree). The decision the minister takes in administrative appeal can be appealed with the Council of State. Appeal does not suspend the decision.

Estonia: Yes.

Finland: This is possible though in practice exceptional.

Germany: The authority can order immediate enforcement of an administrative act according to section 80 (2) no. 4 Code of Administrative Court Procedure (VwGO). This decision requires a particular public interest or an overriding interest of a party concerned in the direct enforceability of the administrative act. This particular public interest has to be explained in writing in the order.

Lithuania: Under the general rule, the appeal against the decision adopted by the public authority does not have a suspensive effect. The same is true for the environmental cases. However, one should bear in mind that the court ex officio or upon the motion submitted by the parties has the power to take interim measures for securing the claim, e.g. to order the suspension of the validity of the contested act. Such measures related to the suspension or withdrawal of permits (licenses) are quite common. The Supreme Administrative Court of Lithuania has also drew attention to the fact that the legal acts are silent on the suspension of the execution of the contested administrative decision to withdraw the hazardous waste management license. The Court pointed out that the withdrawal of such license can be suspended only by interim measures taken by the court (the Supreme Administrative Court of Lithuania, case number A822-2357/2011).

Administrative courts apply an interim measure of suspension in order to avoid possible negative consequences. It should be noted that, in particular cases, such measure might be justified even if the decision of the public authority is recognized as reasonable and legitimate at the later stages. For example, in administrative case No. A525-844/2010 the Supreme Administrative Court of Lithuania recognized that the withdrawal of integrated pollution prevention and control permit was reasonable. However, the Court considered that the withdrawal of such permit meant that the operator lost the right to use the waste elimination device in the biggest dump of the municipality. The Court pointed out that in such circumstances the immediate execution of the withdrawal of permit may cause difficulties to eliminate waste in a secure way, without risk of endangerment of the health of people and the environment. The Court also drew attention to the legal regulation establishing the rules regarding the cancellation of the dumps, emphasizing that such acts must be planned and carried out strictly in accordance with particular rules. The Court decided that one year is a sufficient term to solve such questions (the Supreme Administrative Court of Lithuania, case number A822-989/2013).

Netherlands: See earlier / below (speedy rectification order / suspension can be asked at the court)

Spain: Administrative decisions adopted in a legal proceeding -interim or final decision- are immediately executable and have legal force notwithstanding the fact that the persons concerned can challenge the decision in court.

Sweden: Yes.

III e. If the addressee does not comply with the order, which consequences may it create?

Austria: The administrative authorities have a variety of administrative enforcement instruments at their disposal to compel the addressee to comply with the order. They may threaten an enforcement fine (Zwangsgeld) or to carry out substitute performance at the expense of the addressee (Ersatzvornahme). These are preventive measures which may be combined with the order. The threatening is regarded as an administrative act. The enforcement fine is to be paid, substitute performance is possible, when the addressee does not follow the order in time.

Apart from enforcement measures the administrative authorities may impose an administrative fine (Bußgeld) for the violation of an order. This is a kind of punishment. That is why the procedure is different from the general administrative procedure. Although not concerning a crime, but an administrative offence only, it is governed by the principles of criminal procedure. So a precondition for a sanction is personal responsibility.

Belgium: If the addressee does not comply, a penalty payment can be imposed.
Additionally, non-complying with regularisation and cessation orders is a 'milieumisdrijf' in its own regard, punishable with imprisonment (one month to one year) and/or fines (100 to 100.000 euro, corrected for inflation, now 800 to 800.000 euro) (Art. 16.6.1, §2, Title XVI General Environmental Policy Act).

Estonia: A coercive measure may be applied repeatedly until the objective sought by a precept is achieved. A coercive measure may be changed.

Finland: The addressee may appeal.

If the addressee does not obey a decision of legal force, the penalty fee is sentenced to be paid and decision of a new one is made hoping this will make the addressee to act. This proceeding can be repeated.

If authority is entitled to act (and charge the addressee later), a decision of this is made.

Germany: See answers to question II c.
Appart from enforcement measures the administrative authorities may impose an administrative fine (Bußgeld) for the violation of an order. This is a kind of punishment. That is why the procedure[21] is different from the general administrative procedure. Although not concerning a crime, but an administrative offence only, it is governed by the principles of criminal procedure. So a precondition for a sanction is personal responsibility.

Lithuania: Pursuant to Articles 126, 127 of the Law on Environmental Protection, if the legal person does not comply with the order, the penalty sum can be imposed. According to Article 99 of the Law on Administrative Proceedings, once a court decision concerning the complaint becomes effective, the transcript of the decision is to be sent for execution to the entity of administration whose actions or omission have been complained about, and to the claimant. If the decision is not executed within the time limit set by the law, the appropriate administrative court shall issue the claimant, at his request, a writ of execution which is subject to enforcement in accordance with the procedure established by the Civil Procedure Code. Respectively, unexecuted court decision ordering compensation of damage as well as the

21 Laid down in the Administrative Offences Act (Gesetz über Ordnungswidrigkeiten)

exaction of sums awarded by the court and of unpaid fines has to be executed in accordance with the procedure established by the Civil Procedure Code. In such cases, after the court decision becomes effective, the claimants are also issued writ of execution.

It is notable that the administrative courts of Lithuania do not have a specific or separate power of injunction ordering the authority to enforce administrative court's judgment. One may argue that there is no need for such a mechanism, because, as described above, if the judgment of the court is not complied with voluntary, an interested person may receive enforcement order and submit it for compulsory execution to the bailiff.

The execution of nearly all decisions of the administrative courts is entirely in the hands of the administrative decision-maker who made the original decision. Administrative authorities usually would not decline to carry a judicial decision into effect. However, if the institutions fail to carry non-monetary decision ordering to do or refrain from something into effect voluntarily and through court enforcement proceedings, the law provides respective measures. A fine in the amount of up to 300 Eur for every day of delay to enforce order may be imposed. If the defendant fails without a good reason to take the steps required, the bailiff shall apply to the district court of general jurisdiction which is entitled to impose aforementioned fines in accordance with the rules set in the Civil Procedure Code. Paying the fine does not exempt the institution from the duty to carry the decision into effect. In addition, criminal prosecution may be instigated against the persons (state officials and servants too), who do not comply with the final judgment of the court. An offender may be sentences to the arrest of up to 45 days.

Netherlands: See earlier (an order under penalty can be replaced by a rectification order with cost recovery) and below (execution measures)

Spain: Under Spanish law if the person concerned does not comply with the order given within the deadline, this can be enforceable and the administration can execute the order itself, at the expense of the addressee, or impose on him/her a periodic penalty payment. This kind of measure may only be adopted under law and it is independent of the final sanction that could be imposed.

Sweden: The Authority may apply to the Court for the penalty sum to be sentenced.

III f. Can it create new cases for your court in the stage of execution? What is the role for the court then? Do you have possibilities to mitigate in such cases and which criteria's are relevant?

Austria: The court is allowed to replace the contested decision by another one.

Belgium: The decision imposing a penalty payment can be contested with the Council of State, which will control its legality. Proportionality can be an issue. Proportionality control is included in the legality control.

Estonia: Usually court deals with such issues in interim relief proceeding.

Finland: Yes, these decisions may also be appealed. Right to appeal is important but has sometimes created a next to endless processing.

Mitigation of the fee may take place if the actions covered by the order have mainly been fulfilled or if the addressees financial standing has fallen or if there is some other justifiable reason.

Germany: As mentioned before (see answers to question II d) enforcement measures (exactly speaking: the threatening of such measures) are regarded as administrative acts which may be subject to appeal. But such an appeal may only be based on the violation of specific rules on enforcement. Even if the enforcement act is pronounced after the issue of the order the lawfulness of this order can not be reviewed again.

According to the general rules (see the answers to question II.4.) the court can not replace the enforcement measure by another one. So the court is not allowed to reduce an enforcement fine, because the calculation of the amount is regarded as a discretionary act. If the court finds that the amount is too high, e.g. because not in compliance with the principle of proportionality, it must annul the decision. Then a new decision on the amount may be taken concerning the reasoning of the judgement.

Netherlands:

Execution

In 2009 the General Administrative Law Act was changed in the way that also a part (not everything) of the financial execution came within the field of administrative law (before, that was a civil law issue). It primarely concerns title 4.4 dealing with administrative financial debts. In the field of enforcement it mainly concerns the reclaiming of costs in case the administration itself executes the rectification order (*kostenverhaal*) or claims the penalty that is combined with the order under penalty (*invordering*). Separate Awb-decisions (*beschikkingen*) are necessary in this respect. Especially in relation to claim the penalty – this penalty is for the administration and for instance not for the third party that made the request for the enforcement – various formal requirements exist. Bear in mind that the penalty is related to the *terme de grace* and is directly lost / forfeited (*verbeurd*) within 6 weeks after that time limit and should in principle be reclaimed within a one year (*verjaring*). The claim for the cost-recovery of the rectification order expires after 5 years: Articles 5:33and 5:35 Awb.

It goes beyond this contribution to elaborate further on this. Important to mention is that third interested persons (mostly the ones that requested the administration to enforce) can also ask the administration to reclaim the costs. For these third persons and off course the offenders the same procedures and judicial review possibilities exist as in relation to the enforcement decisions itself. For efficiency reasons legal provisions exist in which it is stated that procedures about (not) enforcement and (not) reclaiming penalties should be combined (Article 5:39 Awb). As for the enforcement also for the execution there is in principle a duty for the administration to claim and do that fully.[22] If the administration is reluctant to do that a decision can be provoked under a penalty and appeal is possible (*beroep en dwangsom niet tijdig beslissen*). This penalty is for the person who asks for the decision (Articles 4:17 and 8:55a onwards Awb).

By the way: case law exists in which the requirements are formulated for the enforcement decision and the reclaiming decision (how should a -ongoing- violation be reported, documented *etc.*).[23]

Sweden: Yes an application to sentence the penalty is a new case in the Court. At this stage, no assessment is made as to whether the order is good or not. That issue has already been tested if and when the decision itself was appealed. Now it remains to check whether the purpose of the penalty remains and if there are special reasons to adjust the amount.

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[22] See ABRS 24 December 2013, ECLI:NL:RVS:2013:2626.
[23] See for instance very recently ABRS 3 May 2017, ECLI:NL:RVS:2017:1179.

IV. Fines/sanction-fees

IV a. Do you in your country have administrative fines or sanction fees that can be imposed for certain environmental violations?

Austria: The frame for administrative fines (Bußgelder) is regulated by law. In some fields of law there exist detailed administrative rules ("Bußgeldkatalog") fixing the amount according to the respective infringement. These rules are binding for the administration, and also for the courts.

Belgium: Yes, see above.

Estonia: Usually such environmental fines are implied through the regulation of misdemeanors.

Finland: No, in environmental matters only the penalty fees aiming to encourage the addressee to fulfil the order settled in administrative compulsion process. These are not considered to be punishments.

Germany: The frame for administrative fines (Bußgelder) is regulated by law. In some fields of law there exist detailed administrative rules ("Bußgeldkatalog") fixing the amount according to the respective infringement. These rules are binding for the administration, but not for the courts.

Italy: The sanctions and the implementation of the European directive 2004/35/EC are dealt in the appendix.

a) These are the administrative sanctions that aim to take safety measures or rehabilitation measures about a situation of pollution that is necessary to eliminate. The jurisdiction about these sanctions belongs in Italy to the administrative judge.

b) There are also administrative fees that order only the payment of money. They have the indirect aim to eliminate a situation of pollution in the way to convince the operator to behave correctly. For example if an undertaking has a permission for discharging waters, they have to pay fines only because they have discharged more waters than they could. The fines is to pay even if there is not a damage in the environment. The jurisdiction about fees belongs in Italy to the civil judge.

c) There are also criminal sanctions. The criminal sanctions are strictly linked to the person that has committed the crime. The first aim is to punish the delinquent. So it's opportune that administrative sanctions have not to be influenced by criminal matters because criminal punishment depends on conditions that regard criminal punishments and not administrative sanctions, for example the prescription.

Administrative sanctions aim on the contrary to remediate a situation of pollution, there is not prescription and so they are more effective.
Therefore there can't be a problem of "ne bis in idem" between administrative and criminal sanctions.

Netherlands: See earlier

Spain: Fines are normal sanctions in many cases of violation of the environment law. The level and amount of the fee will depend on the seriousness of the infringement and the law where the fine is regulated.

Sweden: Yes, provisions regarding environmental sanction fees can be found in Chapter 30 of the Swedish Environmental Code (miljöbalken) and the Regulation on Environmental Sanction Fees (förordningen om miljösanktionsavgifter).

IV b. If so, how is your system structured – how are the offences defined – how detailed are they and are the offences regulated directly in the law?

Austria: The offences must be regulated by law. The constitutional principles on the precision of penal rules apply.

Belgium: See above

Estonia: Usually offences are defined whether in penal code or in the respective part of specific laws (for example Environmental Liability Act).
Germany: The offences must be regulated by law. The constitutional principles on the precision of penal rules apply[24].

Lithuania: The sanctions applied to the citizens and other natural persons are codified in one legal act – the Code on Administrative Offences. Meanwhile, the sanctions applied to the economic operators are not codified. The sanctions and the rules are mostly distributed in various laws dealing with a particular sector of economic activities.

The provisions of the Code on Administrative Offences provide a rather detailed set of rules on how the choice among several types of remedies should be made. The Code sets out a combination of circumstances that must be regarded as aggravating or mitigating the administrative liability. However, the rules on the procedural requirements of sanctions provided by the special legal regulation are not uniform. In this respect it should be noted that mainly every law concerning the application of procedural guarantees provides that the decision-maker should adhere to the principles of objectivity and proportionality (e.g. the Law on the State Control of Environment Protection). In addition to this, one should note that it is not unusual that certain laws are completely silent on the matter inasmuch as it concerns the choice among sanctions. Meanwhile, the executive provides for more detailed rules how the decision concerning respective remedy should be made.

It is true to say that in Lithuania the legal regulation on the matters is highly diverse. Having regard to this, one should not wonder that the judiciary is taking an active role while ruling on the disputed sanctions. Therefore, the principles of proportionality, objectivity and fairness have become indispensable tools in delivering justice. In this regard, a particular source for developing the case law concerning the procedural guarantees of the parties has been the case law of the European Court of Human Rights. This is especially so in the situations when administrative cases concern administrative sanctions that are close to criminal sanctions.

Netherlands: See earlier

Spain: According to the Spanish Constitution punishment or a disciplinary penalty cannot be imposed on account of any act or omission without being described by the law as a criminal offence or administrative infringement under the national law at the time when it was committed -lex certa, lex scripta-. The act or

24 Article 103 (2) Basic Law (Grundgesetz). See the decision of the Federal Constitutional Court from 17.November 2009 (1 BvR 2717/08)

omission must be defined within the scope of the law with its particular elements for each type of offence or infringement.

In such a way the laws regarding environment matters have to set out the infringement in detail.

Under the chapter "infringements and penalties" in the Spanish Waters Law -1/2001 amended by law 62/2003 on inland surface waters, transitional waters and coastal water protection- first describes the infringements, afterwards specifies the seriousness of the infringement: a) minor offence, b) serious offence and c) very serious offence, and finally sets the framework of the amount of the fine/sanction, all that depending of the environmental impact, the safety of the people concerned, the circumstances of person responsible, his/her/its intent, his/her/its involvement, the benefit achieved and the damage caused on natural resources.

In addition the person responsible may be forced to repair the damage caused including natural recovery or the return of damaged natural resources to baseline condition and the elimination of any significant risk of adversely affecting human health.

Sweden: The infringements that can cause a sanction fee are generally described in Chapter 30 Section 1 of the Code. The infringements are in detail de-scribed in the Regulation on Environmental Sanction Fees, which also contains the amounts that can be imposed for different infringements.

IV c. Which instance imposes such fines and if by an authority, can they be challenged in court?

Austria: See the answers to question II.b.

Belgium: See above.

Estonia: If it is administrative fine not fine for misdemeanor, the imposer is administrative office and fines can be challenged in administrative court.

Germany: See the answers to question II b.

Lithuania: The administrative authorities have discretion to adopt the decisions and impose fines for most of the infringements established in the Code of Administrative Offences and other environmental laws (e.g. the Law on Environmental Protection). These decisions can be challenged before courts.
If there is a fine which was imposed according the Code of Administrative Offences the decision taken by an authority can be challenged in the ordinary court.
If there is an economic sanction which was imposed according the Law on Environmental Protection the decision taken by an authority can be challenged in the administrative court.

Netherlands: See earlier

Spain: Fines can be imposed by the administrative authority depending of the seriousness of the amount. With regard to Waters Law the competent authority to impose sanctions/fines will be the basin authority (minor offense), Minister for the Environment (serious offense) and the Council of Ministers (very serious offense).

The decision of the administrative authority can be challenged in court by the person concerned and the competent court for judicial review depends of the administrative authority that imposed the sanction. In this way the competent court for judicial review when the sanction has been imposed by the Council of Ministers -very serious offence- is the Supreme Court.

Sweden: The fines are imposed by the supervisory authorities, which in this case means the municipal authorities. A decision by a municipal authority can be appealed to the Land and Environment Courts and from there to the Land and Environment Court of Appeal.

IV d. Are such decisions immediately executable – directly by law or by a decision in the specific case?

Austria: In case of an objection ("Einspruch") the administrative decision (Bußgeldbescheid) gets void . The procedure continues automatically at the ordinary (penal) court of first instance. The fine has not to be paid before the court's decision is final.

Belgium: An appeal with the Environmental Enforcement Court suspends the fining decision.

Estonia: Yes. Court can stop execution through interim relief measures
Germany: In case of an objection ("Einspruch") the administrative decision (Bußgeldbescheid) gets void. The procedure continues automatically at the ordinary (penal) court of first instance. The fine has not to be paid before the court's decision is final.

Lithuania: The legal regulation establishes a general rule that the decisions imposing fines are not immediately executable. Pursuant to Articles 50, 52 of the Law on Environmental Protection, a decision to impose a fine comes into force within 30 days counting from the day when such decision has been adopted. An appeal against a decision imposing a fine suspends the execution of such a decision. The fine shall be paid within 3 months after the decision comes into force.

According to Articles 635, 667 of the Code of Administrative Offences, the decisions of the courts of first instance come into force within 20 days after the announcement unless the appeal has been made. The decisions adopted by authorities (officers) come into force after the term of appeal expires; if they have been challenged before the court – when they have not been abolished by the ruling of the court. The fine must be paid within 40 days after the decision of authority or in case it was appealed – the decision of the court, has been sent or given to the person brought under administrative liability.

Netherlands: See earlier

Spain: The question has already been answered.

Sweden: A sanction fee shall be paid within thirty days of the date of the decision imposing it or within the period specified in the decision, if that is longer. A decision concerning a sanction fee may, after the due date, be enforced as a judgement that has gained legal force (Chapter 30 Section 5 of the Code).

IV e. Is there an area for the court to mitigate e.g. if it finds the sanction disproportional?

Austria: The ordinary (penal) court is empowered to reduce or to raise the fine.

Belgium: The Environmental Enforcement Court has the unusual competence to decide on the level of the fine after it partially annulled the fining decision on the ground of a non-proportional fine level. The motive it gave to partially annul the fine will impact on the fine level the court decides upon.

Estonia: Yes.

Germany: The ordinary (penal) court is empowered to reduce or to raise the fine.

Lithuania: The legal regulation concerning economic activity and establishing specific infringements for which administrative liability may be invoked may provide the possibility of imposing a smaller penalty than the specified minimum of the law. For example, pursuant to Article 52 of the Law on Environmental Protection, the court has discretion to impose even smaller fine than the specified minimum of the law, if along particular circumstances finds out that the imposed fine is too large and not proportional (not adequate) to the gravity of the infringement, therefore unjust. It is notable that the exceptional non-applicability of a sanction provided by law is only possible when it is evidently disproportionate to the committed infringement and consequently is unjust (the Supreme Administrative Court, case number A^{248}-1707/2008).

Full disclosure compels to add that the Constitutional Court of the Republic of Lithuania, regarding the legislator's provision of the possibility to invoke liability which is less strict than the minimum penalty provided by law, pointed out that such possibility is also available in cases regarding the application of other types of sanctions imposed in the same specific area of economic activity. The courts, even when dealing with the matters associated with environmental infringements invoking withdrawal of special granted license, have to take into account the nature of the infringement, the extent of mitigating circumstances, other significant factors and principles of justice and reasonableness and to decide whether a penalty should or should not be applied because of certain very important circumstances it may be obviously disproportionate (inadequate) to the committed environmental infringements. In this sense, courts have a right to decide whether additional sanctioning is necessary and whether the disputed administrative act should be annulled or amended (the Constitutional Court of the Republic of Lithuania, ruling of 21 January 2008).

The individual concerned may also mitigate his position by making use of one or few judicial remedies of a general kind. According to the Law on Administrative Proceedings, administrative court revokes the contested administrative decisions (or part thereof) or obligates the respective administrative authority to amend the committed violation or carry out other orders of the court. In addition, the court may satisfy the claim for damages caused by public authorities. The court will carry out the control of the compatibility of administrative acts with the principles of proportionality, objectivity, legitimate expectations and other principles of public administration as they are set down in the legal regulation and developed in the jurisprudence of the national and international courts. The contested act (or a part thereof) may also be annulled on other grounds recognized as material by the administrative court. However, as it was mentioned before, the court shall not offer any assessment of the disputed administrative acts and acts (or omission) from the point of view of political or economic expediency and shall only establish whether or not there has been in a particular case an infringement of law or any other legal act.

One should also note that administrative court settlements or peace agreements are possible under Lithuanian law. Pursuant to Article 51 of the Law on Administrative Proceedings of Lithuania, at any stage of the proceedings the parties can end the proceedings by the means of peace agreement, if the nature of the dispute allows it.

Netherlands: In the case of fines this is possible because proportionality is at stake (article 6 ECHR). In other cases there is more discretion for the administration. By the way: the court only deals with such issues in case this is brought forward by the claimant not ex officio.

Spain: In its judgment the court can confirm, mitigate or cancel the sanction/file imposed by the administration.

Sweden: According to Chapter 30 Section 2 of the Code a sanction shall be payable also where the infringement did not occur deliberately or through negligence. However, the sanction does not have to be imposed – or it can be mitigated – if it is unreasonable due to

1. sickness causing the person who is liable for payment not being able to pay the sanction,
2. the infringement being caused by circumstances that the person who is liable for payment did not have any influence on,
3. what the person liable for payment has done to avoid the infringe-ment, or
4. criminal penalty being imposed for the same infringement.

IV f. After execution, which instance will keep the money when the fines are paid?

Austria: The money gets normally the legal entity to which the administrative authority belongs.

Belgium: The payment level is significantly better (more than 85%?) than with criminal court fines (around 60-65% in environmental cases). The money goes to a special fund that funds environmental projects (Milieu- en natuurfonds).

Finland: The State takes the money to its public coffer when penalty fees are paid. It happens rarely that the penalty fees need to be sentenced to be paid.

Germany: The money gets normally the legal entity to which the administrative authority belongs.

Lithuania: Pursuant to Article 54 of the Law on Environment Protection, the fines are collected to the state's budget and are used as a financial source of the Environment Support Program. The execution of the fines imposed for the infringements of the Code of Administrative Offences are controlled by the State Tax Inspectorate (Article 673 of the Code of Administrative Offences).

Netherlands: See earlier

Spain: The competent administration.

Sweden: The sanction fee accrues to the state.

IV g. How is your system to be regarded in relation to the European Convention on Human Rights and the discussion on double criminalization, ne bis in idem?

Austria: The enforcement fine (Zwangsgeld) is a tool of execution, the administrative fine (Bußgeld) is a kind of punishment. When the addressee follows the order, the execution stops, but an infringement procedure is not blocked. The ne bis in idem principle does not apply.

Belgium: The system has been designed so as to exclude Bis in idem. 'Milieu-inbreuken' cannot be punished in the criminal sanctioning track. 'Milieu-misdrijven' are punished or in the criminal track, or in the administrative track. When a public prosecutor decides to send the case to the fining administration, this decision puts an end to the possibility of any public prosecution on the same grounds (art. 16.4.34 Title XVI General Environmental Policy Decree).
Problems with Ne bis in idem can come from other legislations, such as the EU-regulations providing subsidies for extensive farming, with mandatory subsidy cuts when infringing subsidy-conditions. As in the Netherlands, the Belgian case law now states that this isn't a Ne bis in idem-situation, as the subsidy cuts are remedial by nature.

Estonia: N/A in principle as there are specific misdemeanor articles usually used for imposing fines.

Finland: It has already been challenged in the Supreme Administrative Court whether penalty fee related to an order given in administrative compulsion process is impair with ne bis in idem in case a punishment has already been settled in criminal process concerning the same incident. Such relation is not considered to be as penalty fee is not considered to be a punishment.

Germany: The enforcement fine (Zwangsgeld) is a tool of execution, the administrative fine (Bußgeld) is a kind of punishment. When the addressee follows the order, the execution stops, but an infringement procedure is not blocked. The ne bis in idem principle does not apply.

Lithuania: Although it is not possible to be sentenced twice for the same infringement, the Lithuanian legislation allows for the accumulation of criminal and civil liability. It is, for example, possible to impose a criminal sanction, such as a fine or imprisonment, and to oblige the person to pay damages for the harm caused to the environment.

Ne bis in idem principle does not imply that generally different types of legal liability cannot be applied. This principle does not preclude the application of other forms of liability which has the purpose other than punishment (for example, civil accountability), additionally, it does not preclude the punishment of different persons liable for the same offence or the punishment of the same person liable for different offences (the Supreme Administrative Court, case number A858-2651/2011).

Netherlands: See earlier (for instance duty to mitigate fine and coordination between administrative authority and public prosecutor)

Spain: After the Spanish Constitution -1976- the Constitutional Court stated without a doubt the principle according to "no one shall be liable to be tried or punished again in administrative or criminal proceedings for an offence for which he/she has already been finally acquitted or convicted in accordance with the law". In this regard there is not any problem at present.
It is allowed as an exception in some disciplinary cases -and not always- double criminalization. For instance when the person concerned is punished for a fault against the environment law and he/she is a civil servant and the offense was committed in the exercise of his/her functions/duties. In such a case he/she can be sanctioned with disciplinary measures as well. However it is a very controversial issue.

Sweden: As said above, a sanction fee, which is not considered a criminal penalty, cannot be imposed if the same infringement has already caused a criminal penalty. However, The Supreme Court ruled in 2004 (NJA 2004 s. 840 I och II) that the ECHR does not prevent the authorities from bringing a charge on criminal liability based on the same objective circumstances as the sanction fee was based on (and the other way around). In 2013 The Supreme Court and The Supreme Administrative Court ruled again in a similar case concerning double sanctions due to tax offences (NJA 2013 s. 502 and HFD 2013 ref. 71). The courts decided this time that double sanctions, tax surcharge (skattetillägg) and criminal penalty, is not compatible with the ECHR. So the legal situation is not crystal clear.

V. The EU Directive 2008/99 (on the protection of the environment through criminal law)

Has this Directive had any influence on the legislation in your country? So far, do you in your country have had any problems regarding the implementation or the application of the Directive, if so, which are the main problems?

Austria: Apparently the implementation did not raise problems. In the "juris" database not any judgement is to be found under this headline.

Belgium: Yes, the Ecocrime-Directive had an influence on the phrasing of incriminations in Title XVI General Environmental Policy Decree. Inspiration was sought in Art. 3 of the directive.

The Eco-crime directive had to be implemented at the Federal level and in each of the three regions. Gaps or potentially unsatisfying implementation were extremely limited. There was, for instance, an issue with the maximum-fine level in the federal law incrimination infringements of the CITES-regulation (Art. 3, g) directive). That maximum-fine is 50.000 euro (with inflation correction now 400.000 euro). Because of the increasingly organised crime schemes existing in illegal trade of protected species, the question was raised if this fine was dissuasive, proportional and effective, as required by Art. 4 Directive.

Estonia: We renewed almost all our environmental legislation starting from 2010 and certainly the positions od Directive 2008/99 were taken into account in this procedure. NO substantial problems by now what can be seen.

Finland: Unfortunately, I'm not familiar with this matter. In Penal code there has been a special chapter for crimes against environment since 1995. The chapter has been amended several times. The Directive has influenced to amendments concerning offenses against hunting rules and offences against rules related mercury as waste. I am not aware whether there have been problems regarding the implementation.

Germany: Apparently the implementation did not raise problems. In the "juris" database not any judgement is to be found under this headline.

Lithuania: Lithuania has transposed the EU Directive 2008/99/EC through amendments to the Criminal Code of the Republic of Lithuania. The Code prior to the introduction of the Directive 2008/99/EC already contained a Chapter XXXVIII titled "Crimes and Misdemeanors against the Environment and Health". It provided criminal liability for natural and legal persons where the violation of environmental legislation causes or could cause damage to the fauna, flora or other serious or negligible effects on the environment. Law No. XI-579 of 17 December 2009 amended the Criminal Code for the purpose of transposition of the Directive 2008/99/EC. This amendment came into force on 5 January 2010. The

Criminal Code was amended a second time by the Law No. XI-1901 of 22 December 2011. This amendment came into force on 1 January 2012.

Lithuania has transposed the Directive 2008/99/EC mostly through a catch-all provision in the Criminal Code. The Criminal Code covers various elements of particular conduct as defined by the Directive. The transposition of the Directive 2008/99/EC has been found satisfactory so far, no fundamental difficulties regarding the application of amended legal regulation have been raised. Nevertheless, the main observation is that the provisions of the Criminal Code setting up criminal sanctions for violations of environmental requirements in most cases are quite general and do not specify clearly infringements of particular provisions in respect of each legal act.

Netherlands: See earlier. There were some aspects about the height of fines but it has been not really an issue

Spain: The Directive 2008/99 has been implemented into Spanish legislation by law 5/2010 and law 1/2015 amending the Spanish Criminal Code with aggravation of the penalties and incorporating the measures established in the Directive in order to protect the environment more effectively.
The Spanish law -Criminal Code- also regulates in detail and takes the necessary measures to ensure the liability of legal persons when offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as an organ of the legal person.
As far as I know there have not been any problems regarding the implementation of the Directive.

Sweden: Sweden's standpoint is that the Swedish legislation is in line with the directive (SOU 2017:63 s. 105) and has therefore not taken any legislative measures except for one minor clarifying change (SFS 2016:341).

VI. The Directive 2004/35/EC (on environmental liability with regard to the prevention and remedying of environmental damage)

How is this Directive implemented in your legislation? Do you have any national case-law regarding issues covered by the Directive? Do you have any practical experience from working with issues covered by the Directive?

Austria: A study by the national agency of the environment (Umweltbundesamt) from 2002 had shown that environmental liability was covered by quite a number of different federal laws and by some state legislation at that time.

Belgium: The directive is implemented at the federal and regional level. In Flanders, it was implemented in Title XV General Environmental Policy Decree.
To my knowledge, we have no national case law in this field. Title XV has not been uses once, as far as I know, because of the too restrictive application conditions. Authorities are happy to counter infringements with the well-equipped and legally clear Title XVI-toolbox.

Bulgaria: Package of Measures for Reducing the Regulatory Burden (measure under item 9 of the Annex) is an Amending Bill to the Environmental Protection Act. The project confirms compliance with Directive 2001/42 / EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment.

This bill also transposes Art. 30 of Directive 2012/18 / EC on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82 / EC introducing a new entry for "heavy fuel oil" to the entry "Petroleum products" In Part I of Annex I to the Directive, respectively. Table 1 of Annex № 3 to the EPA. The measure was included in the Council of Ministers Decision No 635 / 22.10.2013 approving the Second Package of Measures to Reduce the Regulatory Burden of the Council of Ministers.
The bill also proposes amendments to the Liability for Environmental Damage Prevention and Remedy Act to fully comply with national provisions with Directive 2004/35 / EC on environmental liability with regard to the prevention and remedying of environmental damage.
• The proposed amendments to this bill are based on the following reasons and include:
Implementation of Decision No. 484 / 15.08.2013 of the Council of Ministers approving the Package of Measures for Reducing the Regulatory Burden (measure under item 9 of the Annex);
• Confirmation of full compliance with the provision of Art.3 (3) of Directive 2001/42 / EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment;
• Regulation of the validity period of the administrative acts for environmental assessment, which shall be issued by the competent environmental authority in order to achieve equal treatment of all administrative acts, issued by the order of Chapter Six of the Environmental Protection Act. The administrative acts for environmental assessment, which are issued by the competent environmental authority, are currently without validity, as opposed to the other administrative acts under Chapter Six of the EPA (EIA decision and decision on the assessment of the need to carry out an EIA). In essence, these administrative acts have the same status of co-ordination by the environmental authorities before approving the plan or program concerned. Subsequent non-approval of a plan or program within a period of more than 5 years after the environmental authorities have given their opinion or decision may call into question the relevance and applicability of the conclusions, motives, measures and conditions laid down in The administrative act under the EPA.
• Refinement of the administrative act concluding the environmental assessment under Chapter Six of the Environmental Protection Act.
• Defining the competences of the Minister of Environment and Water for deciding on the need to carry out an EIA for investment proposals falling within the territory controlled by two or more RIEWs. The specific cases in which the Minister of Environment and Waters is the competent authority to decide on the need to carry out an EIA are specified in the EPA and there is no explicit provision for an investment proposal falling within an area controlled by two or more RIEWs . Such a specific provision is made in relation to the competences of the Minister of Environment and Waters when making an EIA decision. Although there is the general provision of the EPA, according to which the Minister of Environment and Waters is the competent authority for taking action under this Act in case of affecting two or more RIEWs, there should be an explicit regulation regarding the assessment of the necessity , To achieve greater clarity and to ensure correctness and indisputability in the implementation of the Act.
• The draft EPA of the EPA transposes the provision of Article 30 of Directive 2012/18 / EC on the control of major-accident hazards involving dangerous substances, amending and repealing Council Directive 96/82 / EC, which "Heavy fuel oil" is added to the entry "Petroleum products" in Part I of Annex I to the Directive, respectively. Table 1 of Annex № 3 to the EPA, respectively with higher thresholds for classification of the risk potential of the enterprise. Earlier implementation of the provision was proposed by the MOEW as a measure to reduce the regulatory burden and is included in paragraph 60 of the Annex to paragraph 1 of the Council of Ministers' Decision No 635 / 22.10.2013 approving the Second Package of Measures To reduce the regulatory burden.
• Proposals are made to refine the control provisions and the administrative penal provisions of the law related to the fulfillment of the obligations of enterprises with low risk potential for major accident occurrence in the handling of hazardous substances related to the safe operation of these enterprises. With

the latest amendments to Chapter Seven, Section I of the Act, the operation of these enterprises is no longer subject to authorization by the Minister of Environment and Water but subject to a notification regime to the Director of the RIEW and the measures developed by the operators in the Policy Report Prevention of major accidents are subject to control by the commissions under Art. 157a of the EPA, consisting of representatives of the regional and regional subdivisions of MoEW, MoI, IA GIT and municipalities.
• Amendments to the Liability for Responsibility for Prevention and Remedy of Environmental Damage arising from Commitments in connection with an inquiry by the European Commission in the framework of EU Pilot No 4236/12 / ENVI to discuss issues to determine the completeness of transposition of Directive 2004/35 / EC on environmental liability with regard to the prevention and remedying of environmental damage in national legislation. Their implementation ensures that the Bulgarian legislation is fully in line with Directive 2004/35 / EC.

Estonia: In the end of 2016 The Environmental Liability Act was passed to implement Directive 2004/35 and some others and act became into force in 01.01.2017. No yet real practice.

Finland: The process and content of needed decisions have been ruled in a special act on environmental liability and partly in several environmental acts e.g. the Environment Protection Act, the Water Act and the Nature Protection Act.
There have been only few accidents that have been suspected or considered to meet the requirements of these rules. As far as I know in only 2 cases the competent authority has made decisions upon these rules (a dam accident in Talvivaara mine; acting against the Nature Protection Act in Lapland when making investigations for mining) and at least one may still be under process (an industrial emission to the river Kokemäenjoki). A couple of accidents have been suspected to meet these requirements but after discretion where found not to do so. One of the 2 decisions was not taken to court (Talvivaara) but the other was if I remember right – I don't know whether the case has been settled yet (not in the area of my court).
My practical experience is from my period in the Ministry of the Environment 2013-2014. The Ministry is well informed of these cases and offers its help for the administrative bodies concerned. The Directive included once-only report to the EU Comission in the spring 2013. Finland reported the 2 cases that have now been decided.
In my opinion the ELD has brought very little new to our legislation as we already had quite an advanced regulation on administrative compulsion. The only really new thing is restoration somewhere else than on the place that accident happened, but this may be very difficult to put into practice for several reasons.

Germany: A study by the national agency of the environment (Umweltbundesamt) from 2002 had shown that environmental liability was covered by quite a number of different federal laws and by some state legislation at that time. Practically all of those laws have been changed during the last two decades, but there is still no codification for all aspects of liability in one law (Environmental Code - Umweltgesetzbuch) as it was proposed a few years ago.

The Directive was transposed into German Law by the Environmental Damage Act of 10 May 2007 (Umweltschadensgesetz). The liability under civil law is still regulated by the Environmental Liability Act from 19 December 1990 (Umwelthaftungsgesetz).

Under "Environmental Damage Act "the "juris" database contains 17 decisions since 2012, 16 of them by administrative courts. Several lawsuits were initiated by environmental NGOs. The cases concerned various questions of interpretation, e.g. as to the terms damage, operator, occupational capacity (denied

for administrative authorities), and measures for prevention of damage as well as for recovery. Compliance with the Directive was not a crucial problem.

Lithuania: The requirements of the Directive has been transposed by making amendments and incorporating the provisions of the Directive in the Law on Environmental Protection, the Law on State Control of Environmental Protection, the Law on Protected Areas, the Law on Waste Management, etc. The universal principles of environmental protection and liability for infringements of environmental requirements are implemented in the Law on Environmental Protection. According to Article 34 of this Law, the civil liability arises from activities causing environmental harm or real threat of it, regardless the guilt element. The legislator established the duty of the users of natural resources and entities to take all measurements in order to avoid environmental damage; in case the damage appears – if it is possible, to restore the state of environment to its primarily state and recover all losses.

The national courts in cases related to the environmental liability apply national laws and note that the provisions of legal acts which are applicable in the case are in harmony with the appropriate cited provisions of the Directive. For example, the Supreme Court of Lithuania in its ruling on the dispute related with restoration of environmental damages was deciding whether the operator made environmental damage by polluting the surface of the soil. The Court interpreted the provisions of the Directive concerning direct or indirect occurring of damage, the definition of environmental damage and stated that in national legal regulation the analogous provisions are implemented. The Court pointed out that the concept of environmental damage meets the general concept of damage found in the civil law. Therefore when the question of environmental damage arises, it is important to state one of these elements: 1) the adverse change of the elements of nature or 2) the adverse effect on the functions of these elements which are useful for environment and people. The Court noted that in this case there were no evidences affirming the adverse effect for the soil on which the paved square was made. The Court drew attention to the lack of evidences of destroying any flora or adversely affecting human health. The Court pointed out that the storage of building material on the private property and later the use of such material for legal construction does not automatically indicate the environmental damage. The fact of real damage and a causal link between such damage and the activities of individual operators are necessary to be proved (the Supreme Court of Lithuania, case number 3K-3-433/2008).

In another ruling of the Supreme Court of Lithuania, a necessity of a request for preliminary ruling to the Court of Justice of the European Union on the interpretation of Directive‘s provisions related to the remedies on environmental damage was analysed. The question arose whether due to the Directive the primary remedy has a priority over compensatory remedy and whether operator can be obligated to make environmental damage good by paying compensation. The Court noted that the provisions of the Directive are transposed into the Law on Environmental Protection. The Court drew attention to the fact that both the Directive and the Law on Environmental Protection *expressis verbis* establishes the duty to the responsible individual whose activity has caused the environmental damage to restore the damaged natural resources and / or impaired services to, or towards, baseline condition. The complementary and compensatory remedies are to be used when primary remedies do not result in fully restoring the damaged natural resources and / or services. Under these circumstances, the Court pointed out that there were no reasonable doubts of the interpretation of provisions of the Directive regarding the remedies for environmental damage. The Court recognized the request for preliminary ruling to the Court of Justice of the European Union unreasonable (the Supreme Court of Lithuania, case number 3K-3-61/2014).

Netherlands: The Netherlands have implemented this directive by means of one general arrangement, included in Chapter 17 Wm, more precisely in Title 17.2. Thus the alternative of piecemeal regulation in

separate legislation concerning water, soil, protected species and natural habitats has been put aside, as has the alternative of linking implementation to the provisions concerning liability in the Civil Law Code. The latter choice is due to the consideration that the liability directive is mainly concerned with the powers of competent public authorities to respond to (the threat of) environmental damage by requiring preventative or reparatory measures and by reclaiming costs (and not the possibility for private persons to claim compensation for damages).[25]

The rules of Title 17.2 Wm are (following Article 17.7 Wm) limited to environmental damage or the imminent threat thereof insofar as caused by activities as listed in appendix II of the liability directive. In other words, the Dutch legislator has chosen 'dynamic reference' by which changes in the appendix will automatically be incorporated in Dutch law. In addition activities may be listed in a Crown Decree, but no draft of such a decree is in the making (as the prevailing view on implementation is that in principle no more limitations should be introduced than the directive requires).[26] Furthermore, the provisions of Title 17.2 Wm are relevant to (imminent threat of) damage to natural habitats and protected species in as far as the operator has been at fault or negligent. As to designating the competent public authority Article 17.9 distinguishes between occupational activities within or outside an establishment and seeks to allocate competences to authorities that already play a dominant role within these categories (with the Minister for Infrastructure and Environment as the competent authority regarding GMO's).

Article 17.10 Wm lists the powers of the designated authorities to require information or have the operator take preventative or reparatory measures, or to take measures itself or have a third party implement measures. On the other hand Articles 17.12 and 17.13 Wm oblige the operator to take preventative or reparatory measures, in case of damage or an imminent threat of damage, as well as to inform the competent authorities and to list and seek consent with the proper authority for intended reparatory measures (such as controlling, restricting, removing, or otherwise managing the hazardous substances or factors).

In turn the competent authorities need to, in as far as relevant, inform other authorities and offer both these authorities and other interested parties the opportunity to offer advice or present their views on what measures should be taken. Subsequently, (according to Article 17.14 Wm) the competent authority determines who is to be held responsible for the damage and the extent of the damage, and which measures should be taken – either ex officio or on the basis of the operators suggestions ex Article 17.13, section 6 Wm.

Article 17.15 Wm establishes the right of private interested parties and relevant other authorities to request of the competent authority that measures are taken – a consequence of this right is a possibility to seek judicial review of the refusal to take any of these measures.

As to the compensation of the cost of preventative or reparatory measures with regard to environmental damage or the imminent threat thereof, Article 17.16, section 1 Wm puts forth a qualitative or risk-liability of the (causal) operator in that he or she must bear the personal costs made for preventative or reparatory measures. The operator can escape this burden only if he or she offers proof:

- of causation by a third party regardless of his or her having taken suitable measures; or
- of causation of the (threat of) damage by a compulsory instruction by a public authority.

Section 2 of Article 17.16 Wm enables the competent authority to recoup the costs of the preventative or reparatory measures taken by this authority itself or assigned to execution by third parties, from the operator, through the procedure of paragraph 4.4.4.2 Awb. Under certain specific conditions there is room for not seeking such compensation, such as when costs of recoupment are likely to be higher than

[25] Private persons will have to seek compensation through Article 6:162 Civil Law Code.
[26] Parliamentary documents 2006/2007, 30 920, no. 3, chapter 1, paragraph 5, 4.

the costs themselves or when recoupment would be unreasonable considering the operator (proven) 'due diligence'.

Although title 17.2 Wm has entered into force on the first of June 2008, so far this is (almost) no case law about in relation to this and whether or not the legal arrangements will prove suitable or indeed a fully satisfactory implementation of the liability directive. So far no national case law is available.

Bear in mind that in the Netherlands, based on the Soil Protection Act, instruments are available such as orders by the administration (mostly the provincial Board of Deputies) to clean-up polluted soil. Especially in the 1990's and the beginning of 2000 this was a major issue in cases where the operator/owner was not the polluter and cost-recovery by the State for clean-up actions was at stake.

Summary

Making rules is one thing, enforcing these rules is another thing. One can see that in the last fifteen years enforcement of environmental law has become more dominant. The focus in most cases lies with administrative law enforcement. Legislation about who is competent and which supervision and enforcement instruments are available is sharpened and uniformed (Chapter 18 Wm and at this time Chapter 5 Wabo). In case law 'a duty to enforce' is introduced and similar lines in the field of execution are also set. Although there is some room for the administrative authorities to not enforce and enforcement cases can be complex and lengthy in time we can speak of a system that works. Access to the administrative courts is fairly easy.

With the relevant legal provisions on administrative enforcement more or less the same goal can be reached as with the legal regime dealing with the implementation of the 2004/35 EC-Environmental liability directive. This is maybe a reason that this instrument is not (often) used. In this respect also the link with civil law liability comes in the picture. Civil law seems less important and with some exceptions (soil pollution) merely plays in the relation between individuals/companies and not between the administration and individuals/companies.

For some areas punitive sanctions (criminal law) are the only sanctions, since restoration – the main goal of administrative sanctions – is not possible or the prime target (for instance in the field of nature protection: the protection of species). In the last years we can see that the clear lines between administrative law enforcement and criminal law enforcement disappear (administrative fines – criminal orders). There is an ongoing discussion in this respect also in light of the fact that procedures differ and the impact of criminal law is seen as different from administrative law enforcement (for instance criminal law sanctions are registered). Also different time limits exist in which possibilities to enforce expire.

Spain: The Directive 2004/35/EC has been implemented into Spanish legislation by law 26/2007 on environmental liability and by regulation 2090/2008. This law was amended by law 11/2014 which implemented the Directive 2013/30/EU in some issues (financial security), and by law 33/2015.

Sweden: The directive is implemented through changes and additions to Chapter 10 of the Environmental Code concerning environmental damages and a new regulation on serious environmental damages (*förordningen om allvarliga miljöskador, SFS 2007:667*). The new provisions came into force on 1 August 2007.

Appendix

Cases referred to by Italy

Italy: 1) JUDGMENT OF THE EUROPEAN COURT OF JUSTICE 4 March 2015 C 534/13: Directive 2004/35 must be interpreted as not precluding national legislation, which, in cases where it is impossible to identify the polluter of a plot of land or to have that person adopt remedial measures, does not permit the competent authority to require the owner of the land (who is not responsible for the pollution) to adopt preventive and remedial measures, that person being required merely to reimburse the costs relating to the measures undertaken by the competent authority within the limit of the market value of the site, determined after those measures have been carried out.

2) STATE ADVICE n° 1089 2017: the safety measure doesn't have a sanctioning or rehabilitation purpose and doesn't require the check of the willful misconduct or of the fault.

3) ADMINISTRATIVE COURT TURIN N° 1543/2016: for declaring the relationship of cause and effect it's not required to reach a level of probability next to 100 per cent, but it's sufficient to demonstrate a level of probability higher than 50 per cent.

4) ADMINISTRATIVE COURT VENICE N° 65 AND 468/2017: the source of the obligations for safety measures and for reclaim the land is the agreement with the 2 participation of the company itself and therefore the claimed orders have a legal title, that is the negotiation. In this case it's not required to prove the responsibility of the pollution.

5) ADMINISTRATIVE COURT VENICE n° 196/2013: due to Italian law the owner of a polluted area is responsible as the holder and therefore the general rule applies that requires the owner to pay for damages that are caused by things in their custody.

6) ADMINISTRATIVE COURT BRESCIA n° 48/2017: due to European law, the older of the waste has to remove it, without checking if they have produced it.

7) ADMINISTRATIVE COURT VENICE n° 313/2017: if a company conducts the same activity which was conducted before by an other company at the same site, the new company is responsible for the pollution that was caused by the previous operator.

8) ADMINISTRATIVE COURT VENICE n. 1346/2014: the responsibility of the owner company is due to the omission of the measures that had to be carried out at the end of the rental agreement, and, before the end of the rental agreement, in the scope of the contractual relationship with the tenant.

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9) ADMINISTRATIVE COURT FLORENCE n. 1635/2016: the expenses of reclamation are not expenses that have the aim of urbanizing the areas and so they can't be deducted from the contribution that must be paid when the building permission is granted.

10) ADMINISTRATIVE COURT ANCONA n. 83/2017: the relationship of cause and effect between the specific kind of industrial activity and the pollution has to be proved and not presumed from the subsisting relationship between other industrial activities and the pollution.

11) ADMINISTRATIVE COURT FLORENCE n. 739/2016: regarding to the "polluter pays" principle, the obligation to install some piezometer is not justified by the only circumstance that in the past the land, that is today reclaimed, was once contaminated.

12) ADMINISTRATIVE COURT PALERMO n. 2675/2016: the knowledge, the absence of surveillance and of measures for avoiding illegal disposals of waste by a third party determines the fault of the holder.

13) ADMINISTRATIVE COURT VENICE n.1504/2012: the public administration has not to give compensation to the owner for bearing expenses to carry out an order to dispose of waste. The action of the public administration is justified when facing a serious situation and therefore is in absence of fault.

14) ADMINISTRATIVE COURT BRESCIA n. 38/2017: if the bankrupt entrepreneur disposed illegally waste, the public administration can't order the insolvency administrator to remove waste and the reclamation of the land.

15) ADMINISTRATIVE COURT BRESCIA n. 146/2017: the order for giving information about the pollution in the land is not damaging for the company.

16) 16) ADMINISTRATIVE COURT SALERNO n. 2311/2016: the managing institution of the public street has to remove waste without checking if they have caused the illegal disposal of waste or the fault, because they have in every case to grant the security of the street.

INTRODUCTION: THE PROBLEM

Article 192 of the Italian environmental code establishes that the owner of an area where waste has been illegally disposed, is not obliged to remove it, if they aren't at fault. Article 244 of the same code establishes that the public administration can order the rehabilitation of contaminated land only whom is responsible for the pollution. Due to article 253 of the same code the owner of the land, that isn't responsible for the pollution, has to pay the expenses of the rehabilitation (that should be done by the public administration), but in the limit of the market value, that is

determined after the rehabilitation. Article 8 paragraph a) of European directive n. 2004/35 establishes that the operator has not to pay the costs of prevention and of rehabilitation, if he can prove that the environmental damage or the imminent threat of such damage was caused by a third party and occurred despite the fact that appropriate safety measures were in place. Article 14 of the European directive n. 2008/98 states that the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders. Member States may decide that the costs of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such product may share these costs.

Although these regulations above, it's not easy in the concrete case to decide if an operator can be obliged to remove waste or to decontaminate the land. It's therefore necessary to analyze the jurisprudence. The conclusion will be that the obligation to remove waste or to decontaminate the land occurs more often than thinking of the only proof of having caused pollution.

1) JUDGMENT OF THE EUROPEAN COURT OF JUSTICE 4 March 2015 C 534/13

From the 1960s to the 1980s Farmoplant SpA and Cersam Srl —two companies belonging to the industrial group Montedison SpA (now Edison SpA)—operated an industrial site for the manufacture of insecticide and herbicide in a municipality of the Province of Massa Carrara, in Tuscany (Italy). As the land covered by that site had been seriously contaminated by various chemical substances, including dichloroethane and ammonia, some of that land was decontaminated in 1995. Since the 'decontamination' proved to be inadequate, the land was classed in 1998 as the 'Massa Carrara Site of National Interest' for the purposes of its rehabilitation. In 2006 and 2008, Tws Automation and Ivan, two private companies, became the owners of various plots of land on the site. Tws Automation's corporate purpose is the sale of electronic devices. Ivan is a real estate agency. In 2011, a private company called Nasco Srl ('the Fipa Group') merged with LCA Lavorazione Compositi Apuana Srl, thereby becoming the owner of another plot of land on the same site. Fipa Group is active in the construction and boat repair business. By administrative acts of 18 May 2007 and 16 September and 7 November 2011, respectively, the competent directorates of the Environment Ministry, the Health Ministry and Ispra ordered Tws Automation, Ivan and Fipa Group to adopt specific 'emergency safety' measures, for the purposes of the Environmental Code, consisting in the erection of a hydraulic capture barrier in order to protect the groundwater table and the submission of an amendment to a project, dating back to 1995, for the rehabilitation of the land. Those decisions were addressed to the three undertakings, in their capacity as 'guardian[s] of the land'. Relying on the fact that they were not responsible for the pollution, those companies brought proceedings before the Regional Administrative Court of Tuscany, which, by three separate judgments, annulled the acts in question on the ground that, by virtue of the 'polluter pays' principle, specific to EU law and the national environmental legislation, the administration could not, on the basis of Title V of Part IV of the Environmental Code, impose the measures at issue on undertakings which bear no direct responsibility for the contamination observed on the site. The Environment Ministry, the Health Ministry and Ispra brought an appeal against those judgments before the Consiglio di Stato. The Environment Ministry, the Health Ministry and Ispra submit that, on a proper construction of Title V of Part IV of the Environmental Code in the light of the 'polluter pays' principle and the precautionary principle, the owner of a polluted site may be compelled to adopt

emergency safety measures. In those circumstances, the Consiglio di Stato decided to stay proceedings and to refer the following question to the Court for a preliminary ruling: 'Do the European Union principles relating to the environment, laid down in Article 191(2) TFEU and in Articles 1 and 8(3) of Directive 2004/35 and recitals 13 and 24 thereto —specifically, the 'polluter pays' principle, the precautionary principle and the principles that preventive action should be taken and that environmental damage should be rectified at source as a matter of priority—preclude national legislation, such as the rules set out in Articles 244, 245 and 253 of [the Environmental Code], which, in circumstances in which it is established that a site is contaminated and in which it is impossible to identify the polluter or to have that person adopt remedial measures, do not permit the administrative authority to require the owner (who is not responsible for the pollution) to implement emergency safety and rehabilitation measures, merely attributing to that person financial liability limited to the value of the site once the rehabilitation measures have been carried out?' The Court of Justice observes that the second sentence of recital 2 to Directive 2004/35 states that the fundamental principle of that directive should be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable.

In that regard, it should be borne in mind that, under Article 8(3)(a) of Directive 2004/35, read in conjunction with recital 20 thereto, the operator is not required to bear the costs of preventive or remedial action taken pursuant to that directive if he can prove that the environmental damage was caused by a third party, and occurred despite the fact that appropriate safety measures were in place, or resulted from an order or instruction emanating from a public authority. Where no causal link can be established between the environmental damage and the activity of the operator, the situation falls to be governed by national law. In the present case, it can be seen from the documents before the Court and from the very wording of the question referred that the respondents in the main proceedings did not contribute to the occurrence of the environmental damage at issue, which is a matter for the referring court to confirm.

Admittedly, Article 16 of Directive 2004/35 allows Member States, in accordance with Article 193 TFEU, to maintain and to adopt more stringent measures in relation to the prevention and remedying of environmental damage, including the identification of additional responsible parties, provided that such measures are compatible with the Treaties.

In the present case, however, it is common ground that, according to the referring court, the legislation at issue in the main proceedings does not permit the competent authority to compel owners who are not responsible for pollution to adopt remedial measures, merely providing in that regard that an owner may, in those circumstances, be required to reimburse the costs relating to the actions undertaken by the competent authority, within the limit of the value of the land, determined after those measures have been carried out.

In the light of all the foregoing considerations, the answer to the question referred is that Directive 2004/35 must be interpreted as not precluding national legislation such as that at issue in the main proceedings, which, in cases where it is impossible to identify the polluter of a plot of land or to have that person adopt remedial measures, does not permit the competent authority to require the owner of the land (who is not responsible for the pollution) to adopt preventive and remedial measures, that person being required merely to reimburse the costs relating to the

measures undertaken by the competent authority within the limit of the market value of the site, determined after those measures have been carried out.

This ruling of the European Court of Justice has to be understood only for stating that the European law doesn't hinder the mentioned Italian legislation. But the Court of Justice didn't analyze the fact, because the Court gave for granted the circumstance, referred in the preliminary ruling of the State Advice, that the company didn't cause the pollution. The particular fact is that the owner bought land that was contaminated and the owner knew that it was contaminated land. Therefore it's not possible to invoke the action of a third party that caused the pollution. The doubt is that the knowledge of the owner (or of the holder) about the pollution allows the consideration that they are at fault. The consequence would be that in this case the owner could be obliged to rehabilitate the land.

It's also necessary examine the most recent jurisprudence.

2) STATE ADVICE n° 1089/2017

The town hall of Sarzana ordered a characterization plan and safety measures in the area of property of the claimant, that is used as store of polluted mud to be submitted. A high concentration of nickel, chromium and asbestos have been found in the mud that had been deposited and guarded in the inside of the productive area of the claimant, with danger of polluting the ground and the environment. The company complains the 'polluter pays' principle, assuming that this principle implies the verification of the liability of the person that pollutes and therefore the evidence of the causality and the evidence of the fault.

The company admitted to have deposited mud, but they had received the mud used in the production cycle after the analysis of samples that excluded the presence of pollutant factors. So they were not to blame.

The State Advice observes that the safety measure is a prevention measure of the damages and so it's a task of the owner or of the holder of the site from where the damage to the environment originated. So the safety measure has not a sanctioning or decontaminating purpose and doesn't require the check of the willful misconduct or of the fault.

There isn't the evidence of the fault, but there is the evidence of the relationship of cause and effect, because the company has deposited pollutant material in their production site and so they contributed objectively to cause the threat of pollution for which prevention has been ordered the contested measure.

The 'polluter pays' principle doesn't admit the responsibility without the causation of the damage and doesn't require the evidence of the fault. The directive 2004/35 configures the environmental responsibility as an objective responsibility. This is an interpreting criterion of the national regulations that doesn't require the evidence of the willful misconduct or of the fault, as those regulations of the Italian environmental code that foresees the possibility for the public administration to order interventions of safety measures of the contaminated sites.

3) ADMINISTRATIVE COURT TURIN N° 1543/2016

In checking the relationship of cause and effect, in the respect of the ‘polluter pays’ principle, the more applied criterion is that of the "more probably than not". For declaring the relationship of cause and effect it's not required to reach a level of probability next to 100 per cent, but it's sufficient to demonstrate a level of probability higher than 50 per cent.

The criminal criterion, that requires the certainty beyond every reasonable doubt, is excluded.

In application of these principles above, the public authority can presume a relationship of cause and effect if there are plausible clues, such as the vicinity of the plant of the operator to the pollutants and the correspondence between the founded pollutant substances and the components that have been used by this operator.

These clues are present in the case: the position of the laboratory used by the company in the area where pollution is greater, the correspondence of the substances in the activity of industrial production of shock absorber (for example chromium) and the pollutant substances.

The company is responsible too for omission because as owner of the area did not act to eliminate the damage.

4/A) ADMINISTRATIVE COURT VENICE N° 65/2017

The claimant company received an order of the safety measures and the submission of a project for the rehabilitation of the land in an area that they hold in the Venice lagoon.

The company claims that in the past the area had been owned by Montedison and that between the State and Montedison it had been stipulated a settlement for the environmental damage.

With this settlement the State had given up on every reason or action of damage that could be referable to the industrial plants that are included in the area of the so called Petrochemical of Porto Marghera.

The claimant observes: Montedison payed 750 Million Euros to finance the embanking of the isle where the industrial site is. The State received from the main polluter only 2 per cent of the damages and would try to take the remaining 98 per cent from the groups that contributed to the pollution, without having prepared a final project of total depollution.

The court observes that it's not pertinent to check if the embanking of the area of the claimant company had been carried out with the money coming from the settlement, because there are different titles that justify the obligation of decontamination. These different titles can't be superimposed.

The company participated in the agreement with the State (program agreement for the chemistry of Porto Marghera approved by the Minister on the 15th November 2001). In this agreement the company promised to rehabilitate their own grounds. The ministry ordered the company specific prescriptions for safety measures and to decontaminate the groundwater table and the land and for hygienic – sanitary safeguards of the people who operate in the area. The ministry advised that if the company didn't do this, the State would do this and the expenses would be payed by the company.

The source of the obligations of the company is the agreement with the participation of the company itself and therefore the claimed orders have a legal title, that is the negotiation.

4/B) ADMINISTRATIVE COURT VENICE N° 468/2017

The claimant company, according to the article 245 of the Italian environmental code, that allows the interested people to carry out the decontamination interventions, activated itself spontaneously, since the public administration didn't impose at the beginning on it. It presented to the Environment Ministry some decontamination projects, that were approved on the 27th June 2011 although with prescriptions. The company stipulated a settlement on the 23th September 2014 in which it would participate in the public system of safety measures and decontamination of the groundwater table.

Due to the settlement, the company decided to shoulder all the burdens of running and maintenance of the systems of drainage of the groundwater table that were in connection to the embanking of safety measures and the burdens of treating the waters and generally the burdens of the hydroequilibrium in the own area. The duty of rehabilitation has also been assumed willing by the claimant company and therefore doesn't require the check of the responsibility of the pollution.

5) ADMINISTRATIVE COURT VENICE n° 196/2013

The owner of a polluted area in the Venice lagoon is obliged to carry out safety measures consisting in the embanking along the perimeter of the area and in the treatment of the waters.

The owner of a polluted area is responsible as the holder and therefore the general rule applies that requires the holder to pay for damages that are caused by things in their custody.

6) ADMINISTRATIVE COURT BRESCIA N° 48/2017

The claimant company had bought a polluted area and had stipulated an agreement with the town council for building and running a commercial center. Due to European law, the holder of waste has to remove it, without checking if they have produced it. The owner is the holder because they are in possession of waste (article 3 Par. 1 number 6 European directive n. 98/2008). The expenses of disposing of waste are up not only to the producer, but to the holder too. Due to article 14 par. 1 of the directive n. 98/2008 holding the waste involves a) the prohibition to abandon waste and b) the correct disposal of it. Only who is not the holder of waste can invoke the absence of fault. This is the owner that has suffered the deposit of waste in his ground against his will. Who has bought an area and knew the existence of waste can not invoke the absence of fault. In this position they have responsibility for the correct disposal of waste. Therefore the impossibility to build the commercial center, with the subsequent inefficacy of the above mentioned agreement, can not exempt the company from removing waste.

7) ADMINISTRATIVE COURT VENICE n° 313/2017

If a company conducts the same activity which was conducted before by an other company at the same site, the new company is responsible for the pollution that was caused by the previous operator. In fact the company has shared the activity that had been conducted before. The

pollution is a permanent situation that is constant till the moment in which the causes are left and the correct environmental parameter have been reestablished. The Italian Constitution (articles 2, 3, 9, 32, 41 and 42) requires that whoever is conducting a production activity, that is dangerous for the environment and the health, has to undertake, previously, all the cautions for avoiding damages, in the environment too, and, afterwards, all the measures for reestablishing the previous environmental situation.

8) ADMINISTRATIVE COURT VENICE n° 1346/2014

The claimant company is the owner of an area that was rented for the running of an activity for storage and trade of oil products. They have received back the area from the tenant. Once had the activity ended, the company had to remove the cisterns and the other installations that contain hydrocarbons. In fact they knew the environmental danger of the activity and the consequences of the abandonment of the storages. After the company had again the possession of the area, they had to take measures so that the installations and the contained substances couldn't cause and aggravate the pollution.

The company had to know the contamination, that is connected with the presence of the cisterns in the subsoil. The responsibility of the owner company is due to the omission of the measures that had to be carried out at the end of the rental agreement or, before the end of the rental agreement, in the scope of the contractual relationship with the tenant.

9) ADMINISTRATIVE COURT FLORENCE n. 1635/2016

A company that sells areas to the town council, has to sell them free from burdens and so it's up to the company the decontamination of the area. The expenses of decontamination are not expenses that have the aim of urbanizing the areas and so they can't be deducted from the contribution (for urbanizing the area) that must be paid when the building permission is granted.
10) ADMINISTRATIVE COURT ANCONA n. 83/2017

Near the river Chienti the land has been contaminated by factories that make shoes. The claimant company has been obliged to contribute to the decontamination of the land. But they build furniture. So the public authority didn't demonstrate the relationship of cause and effect between this specific kind of industrial activity (building furniture) and the pollution. The proximity to the contaminated site is not a valid clue, considering that the company had bought the land recently. Therefore the order of the public administration has to be quashed.

11) ADMINISTRATIVE COURT FLORENCE n. 739/2016

The company works marble in an area where in the past there was a contamination caused by other companies that worked coke. The area is now decontaminated, but the public administration ordered to the claimant company to install some piezometer to check if the groundwater table could be polluted.

This order is illegitimate. In fact regarding to the "polluter pays" principle, the obligation to install some piezometer is not justified by the only circumstance that in the past the land, that is today decontaminated, was once contaminated.

12) ADMINISTRATIVE COURT PALERMO n. 2675/2016

The town council ordered the company safety and decontamination measures. The area was held by the company and became an unchecked deposit of dangerous waste. The company knew that other people deposited waste illegally in the area. The knowledge, the absence of surveillance and measures for avoiding the illegal disposal of waste by a third party determines the fault of the holder. The company has therefore to carry out the ordered measures.

13) ADMINISTRATIVE COURT VENICE n. 1504/2012

The owner of the area was not responsible for the illegal disposal of waste. The public administration ordered the owner to remove waste. The owner claimed for compensation of the expenses that he had for removing waste, after they said that they had carried out the order only to avoid a serious situation. The claim was rejected because the public administration faced a serious situation with fire risk. The action of the public administration was also in absence of fault, regardless if the order was legitimate or not.

14) ADMINISTRATIVE COURT BRESCIA n. 38/2017

If the bankrupt entrepreneur disposed illegally waste, the public administration can't order the insolvency administrator to remove waste and the rehabilitation of the land. In fact the insolvency proceeding aims to liquidate and not to continue the enterprise. The obligation of the bankrupt entrepreneur remains. The public administration has to dispose waste and has to claim the credit in the insolvency proceeding. This rule finds exceptions only if: a) the illegal disposal of waste was made by the insolvency administrator; b) the bankrupt court gave the insolvency administrator a permission to carry out the enterprise provisionally and the illegal disposal of waste was made in the scope of the provisionally enterprise.

15) ADMINISTRATIVE COURT BRESCIA n. 146/2017

The company has claimed against orders of giving information about the completion of the disposal of waste.

The claim has been rejected because the order for giving information is not damaging for the company.

16) ADMINISTRATIVE COURT SALERNO n. 2311/2016

The managing institution of the public street has to remove waste without checking if they have caused the illegal disposal of waste or the fault, because they have in every case to grant the security of the street.