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# CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

## CCPE Opinion No. 17 (2022)

## on the role of prosecutors in the protection of the environment

## I. Introduction: purpose and scope of the Opinion

1. In accordance with the mandate given to it by the Committee of Ministers, the Consultative Council of European Prosecutors (CCPE) decided to produce the present Opinion on the role of prosecutors in the protection of the environment. The CCPE is conscious of the need to enhance responses to environmental crimes and related infringements, and as such to contribute to strategies for protecting the environment, public health and safety, and upholding individuals' right to a clean, healthy and sustainable environment[1]. This topic was selected by the CCPE plenary meeting with a view to highlighting the important role that can and should be played by prosecutors in protecting the environment, notably when pursuing the cause of justice, serving the public interest, creating an effective deterrence through prosecutions and enhancing respect for the law.

2. Environmental crimes and related infringements are a growing source of global concern and a pressing threat to individuals and society. They often have long-lasting and irreversible effects, including a global reach and impact on both existing and future generations, which may affect and involve different states and justice systems. It is equally important that such crimes can undermine the rule of law, good governance and fuel geopolitical conflicts. In this context, prosecutors' increased and sustained attention to environmental crimes and enforcement is essential to strengthen the rule of law that environmental governance is based on, and to set benchmarks and values in this respect.

3. Globalisation and enhanced cross-border trade, while bringing financial, economic, social and other benefits, also opened the door to evolving criminality, especially to environmental crimes and related infringements. Environmental crimes are widely recognised as among some of the most profitable forms of transnational criminal activity. Such crimes frequently converge with other serious crimes, such as human and drug trafficking, counterfeiting, cybercrime and corruption. Furthermore, proceedings relating to environmental crimes can often be complex, as these crimes can be perpetrated by a range of actors, from individuals, companies and corporations, corrupt officials, organised criminal networks or a combination of all of these actors. This, in turn, presents specific challenges for prosecutors that requires not only in-depth practical knowledge, capacities and capabilities, but also innovative collaborative approaches and strong aspiration to solve challenges and thwart environmental crime.

4. The present Opinion draws on the experience and approaches taken by prosecutors in Council of Europe member States, considering their role in the protection of the environment and their competences, with due consideration to the variety of legal systems. The Opinion also takes into account other major differences which impact on their experience, namely the differences in the type of environmental crimes they are

[1] A/HRC/RES/48/13 - UN Human Rights Council, Resolution 48/13 adopted on 8 October 2021, "The human right to a clean, healthy and sustainable environment", and UN General Assembly's adoption on 28 July 2022 of Resolution 76/300 which also recognises the right to a clean, healthy and sustainable environment as a human right, and calls to scale up efforts to ensure such environment for all.

faced with, their different organisational approaches, and that, under domestic law, environmental crimes and infringements may be considered and treated differently.

5. The Opinion identifies and describes the conduct, expected from prosecutors in the prevention, detection, investigation and prosecution of environmental crimes. Such crimes are usually complex, committed in a sophisticated and well-organised manner, secretive in nature, and require a multidisciplinary approach.

6. The Opinion aims to serve as a reference tool for prosecutors in combating environmental crime and protecting the environment.

7. The Opinion takes note of the need to review periodically existing legal instruments and mechanisms to sanction and remedy environmental crimes and related infringements whether through criminal, administrative or civil law, in respect of both natural and legal persons. The regular review of links between environmental crimes and other serious crimes, notably organised crime and corruption, as well as crimes committed in the context of armed conflicts through means of warfare and of the availability of adequate tools and channels for national inter-agency and international co-operation are also critical.

8. Member States tackle environmental crimes and related infringements through criminal, administrative and civil law. Criminal law is usually resorted to in response to more serious violations presenting a higher degree of danger and a corresponding higher level of social disapproval and condemnation. Although the legal systems and approaches to similar issues may vary in member States when a common value such as the protection of the environment is at stake, common goals, requirements and solutions can nevertheless be identified. Prosecutorial involvement remains vital for increasing the quality of the application of the law, for consistency and for bringing the perpetrators to justice.

9. The protection of the environment requires a holistic approach and the involvement of stakeholders representing both the private and public sectors, including judges, prosecutorial, police and investigating authorities, institutions entrusted with protecting the environment under domestic legislation, concerned governmental bodies and agencies, mass media, non-governmental and civil society organisations. Taking into account that the extent of prosecutorial involvement in protecting the environment may vary in member States and that other authorities may also play a significant role in this field, in addition to prosecutors, the present Opinion can also be useful, *mutatis mutandis,* to such authorities entrusted with protecting the environment under domestic laws and regulations, as well as to all interested and relevant actors.

10. The Opinion acknowledges the importance of the European Convention on Human Rights (ECHR), as well as of relevant case law of the European Court of Human Rights (ECtHR). It has been prepared on the basis of both the Recommendation Rec(2000)19 of the Committee of Ministers on the role of public prosecution in the criminal justice system and Recommendation Rec(2012)11 of the Committee of Ministers on the role of public prosecutors outside the criminal justice system. The Opinion also takes into account other legal instruments of the Council of Europe, as well as of the European Union, and other international legal instruments.

11. The CCPE wishes to express its deepest gratitude to its President, Mr Antonio Vercher Noguera (Spain) for the initiation of discussions in the CCPE on the role of prosecutors in protecting the environment, for the preparation of the working document that served as a basis for the present Opinion, and for his constant efforts during the whole process leading to the adoption of this Opinion. The CCPE also wishes to thank Ms Kateřina Weissová (Czech Republic), CCPE expert, for her productive contribution to this Opinion.

## II. The concept of the environment and legal instruments for its protection

### A. The concept of the environment

12. It is important to identify the concept of "environment" from the outset, in order to better understand the scope of values, interests and goods that prosecutors and other relevant authorities are expected to protect within the framework of protecting the environment, and its operational understanding in the context of this Opinion.

13. Given the social relevance and vital importance of environmental issues, various legal instruments at national, regional and international level have included definitions of the environment. Taking a wide approach, the environment encompasses the surrounding external conditions influencing the sustainable development or growth of people, animals or plants, and living and working conditions of people. The environment belongs to all living beings and is thus important for all.

14. The environment includes natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage; and the characteristic aspects of the landscape[2]. The environment is defined not as an abstraction but as representing the living space, the quality of life, and the very health of human beings, including generations unborn[3], which is an essential aspect within the concept of sustainable development.

15. In order not to leave unprotected any object that should be covered by the concept of "environment", member States should favour a wide and comprehensive approach, as far as possible, while defining the term "environment" in line with the current national and international legal frameworks on the subject.

### B. International legal instruments and soft law standards for the protection of the environment

16. The interaction between human rights and environmental protection is increasingly being recognised. Even though the right to a healthy environment as such is not provided for by the European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR) nevertheless has some case law touching upon the environment because it was understood that the damage inflicted on the environment may undermine

[2] In accordance with Article 2 of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano, 21 June 1993).
[3] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of the International Court of Justice (ICJ) of 8 July 1996, ICJ Reports (1996) 226, para 29.

the enjoyment of some of the rights guaranteed by the ECHR[4]. The Council of Europe inter-governmental bodies also carry out work in this area[5]. Furthermore, the right to a healthy environment is guaranteed under the domestic legislation of the majority of member States, including at the constitutional level in some of them.

17. Along with growing and repeated concerns regarding the protection of the environment, numerous legal instruments have been adopted at various levels. Some of the instruments adopted by the Council of Europe relate closely to the protection of certain environmental components, while others relate to the activities posing a danger to the environment and cultural property, including access to the relevant information.

18. The following important instruments have been adopted by the Council of Europe in the last decades:

- 1977 Council of Europe Resolution (77) 28 on the contribution of criminal law to the protection of the environment;
- 1979 Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats, or Bern Convention;
- 1993 Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment;
- 1998 Council of Europe Convention on the Protection of Environment through Criminal Law[6];
- 2000 Council of Europe Landscape Convention, or Florence Convention;
- 2017 Council of Europe Nicosia Convention on Offences relating to Cultural Property.

19. Since more than half of the Council of Europe member States are also members of the European Union (EU), the CCPE wishes to emphasise also the relevance for the

[4] For example, *Guerra and Others v. Italy*, no 116/1996/735/932, 19 February 1998 (severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely); *López Ostra v. Spain*, no. 16798/90, 9 December 1994 (absence of a fair balance between the interest of the town's economic well-being – that of having a waste-treatment plant – and the applicant's effective enjoyment of her right to respect for her home and her private and family life); *Fadeyeva v. Russia*, no 55723/00, 9 June 2005 (absence of a fair balance between the interests of the community and the applicant's effective enjoyment of her right to respect for her home and her private life); *Giacomelli v. Italy*, no 59909/00, 2 November 2006 (absence of a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste and the applicant's effective enjoyment of her right to respect for her home and her private and family life); *Tătar v. Romania*, no 67021/01, 6 July 2009 (failure to assess, to a satisfactory degree, the risks that the activity of the company operating the mine might entail, and to take suitable measures in order to protect the rights of those concerned to respect for their private lives and homes, and more generally their right to enjoy a healthy and protected environment). Also see the Steering Committee for Human Rights (CDDH) Manual on Human Rights and the Environment (3rd edition, February 2022).

[5] In particular, the Steering Committee for Human Rights (CDDH) prepared the Recommendation of the Committee of Ministers to member States on human rights and the protection of the environment adopted by the Committee of Ministers on 27 September 2022, which called on the member States to actively consider recognising at the national level the right to a clean, healthy and sustainable environment.

[6] It should be noted that the plenary meeting of the European Committee on Crime Problems (CDPC), held on 14-15 June 2022, approved the Feasibility Study on the Protection of the Environment through Criminal Law which underlines the need for and appropriateness of a new Council of Europe Convention to replace the 1998 Convention on the Protection of the Environment through Criminal Law.

protection of the environment of the EU's legislation, such as the relevant EU Directives for protecting the environment through criminal law and regulations[7].

20. Some international treaties oblige the contracting States to penalise, in criminal or administrative proceedings, certain conduct or illicit activities[8].

### C. Legal framework for the protection of the environment at national level

21. The differences in the legal systems and traditions of member States are mirrored in the way they design their legislation to protect the environment and in the way they treat environmental crimes and related infringements.

22. The present Opinion does not intend to express a preference for a particular system, but rather intends to underscore the risk that a deficiency or leniency of domestic legislation on the protection of the environment, possible loopholes of such legislation, lack of concrete action or inaction may result in the use of the territory of a State as a "safe haven" by perpetrators.

23. The following reasons possibly make environmental crimes attractive to criminal groups and networks:

- relatively low possibility for detection either because of de-prioritisation of environmental crimes and related infringements by competent authorities or because of the leniency or lack of harmonisation of the domestic legislation;
- technical deficiencies in legislation, policies and procedures which inhibit law enforcement action;
- lack of or insufficient co-operation of relevant competent authorities at domestic level;
- poor capability or insufficient co-operation with neighbouring and/or other countries on environmental crimes;
- 'low risk, high reward' nature of environmental crime.

24. In order to prevent environmental crimes committed by organised criminal networks, member States should take necessary steps at national level, starting by strengthening their legal framework, addressing legal shortcomings, and ensuring its effective implementation in practice. For instance, introducing the involvement of organised crime or corruption as an aggravating circumstance may be considered as one of the possible ways to strengthen the legislation.

25. It is worth reiterating that the protection of the environment requires a holistic approach and the quality of the legislation constitutes one of the core elements of this approach. Domestic legislation should be designed in a manner that allows member States' authorities to respond better to the challenges encountered within the framework of the protection of the environment and to keep pace with developing international standards, which become more demanding as the environment deteriorates.

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[7] E.g. Directive 2008/99/EC, Directive 2005/33/EC, Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.
[8] Such as the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES Convention.

26. To that end, domestic legal frameworks relevant for environmental protection should be subject to periodical reviews by competent authorities. This may entail the need to amend or adopt new legislation, including establishing new categories of offences to best address the most harmful unlawful activities, in order to adequately address the needs for environmental protection, and take into account changing and more demanding international standards.

27. Prosecution services should be consulted or be directly involved in processes whereby new legislation or rules are being designed, or legal reforms are being undertaken by the executive or legislative authorities.

## III. Guiding principles regarding the protection of the environment

28. One of the relevant principles is *the general precautionary principle* introduced by the Rio Declaration on Environment and Development[9] . It takes into account the fact that it is often difficult, if not impossible, to assess the precise impact of human action on the environment and that some actions can cause irreparable harm and sets out that where there are threats of serious or irreversible damage, the lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation[10].

29. The principle "*in dubio pro Natura"* is applicable from a preventive perspective. Accordingly, in case of doubt in establishing whether an activity can be harmful to the environment or not, it should be resolved in favour of the protection of the environment.

30. Another principle is that *of corporate liability*. As stressed earlier, there is a growing trend in the involvement of legal persons in committing violations against the environment which, in turn, requires mechanisms to hold legal persons liable.

31. The vast majority of member States have already introduced provisions on corporate liability, either under criminal, administrative or civil law. Therefore, the validity and credibility of the principle "*societas delinquere non potest"* is being abandoned. In this regard, the CCPE wishes to emphasise that whatever approach towards environmental crimes and related infringements is adopted, the liability of legal persons should always be established by law.

32. Another principle applicable is *the principle of absolute liability*, in particular for civil and administrative liability. Any person who owns hazardous or dangerous substances or objects creating a potential risk to humanity is to be liable for any damage caused, irrespective of the person's intent in causing such damage or harm.

33. It is also worth referring to *the principle of enforceable rights applicable to nature*, leading to deliberation over whether nature should have its own rights in contrast with the

[9] Principle 15 of the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil, 1992.

[10] The precautionary principle is one of the principles on which the EU policy on the environment is based (see the Judgment of the Court of First Instance (Third Chamber) of 11 September 2002. Pfizer Animal Health SA v. Council of the European Union), and it has been gradually incorporated into the EU legislation and national legislation (in line with the first subparagraph of Article 191(2) of the Treaty on the Functioning of the European Union (TFEU)), as well as into various international legal instruments.

concept of people's rights to nature. Even though this principle has not been clearly stated in the case law, it is an evolving principle.

34. The principle that *the polluter pays*[11], which requires the party responsible for the pollution to pay for the damage caused to the environment, and *the principle of sustainable development* should also be mentioned.

35. *The principle of prevention* which is a general principle in different areas of law is also important in the context of environmental crimes and related infringements, and it is as important as bringing perpetrators to justice. Prevention allows avoiding long lasting, costly and often irreversible effects of environmental crimes and related infringements, resulting in obvious social and economic benefits. Prevention also reduces long-term costs related to the criminal justice system and the workload of the bodies dealing with such violations, including prosecution services.

## IV. Environmental crimes and penalties

### A. Environmental crimes

36. While it is difficult to know the exact scale of illicit proceeds from environmental crimes, estimates available indicate that environmental crime is among the most profitable crimes in the world, generating around USD 110 to 281 billion in criminal gains each year[12], rising by 5-7 % annually. Illegal trade in wildlife products alone accounts for USD 7-23 billion[13]. This makes environmental crime the fourth largest criminal activity in the world after drug smuggling, counterfeiting, and human trafficking.

37. As noted earlier, environmental crimes and related infringements may be treated differently by member States. However, following the evolving nature and seriousness of violations against the environment, criminal law began to be resorted to more often in fighting them.

38. There is no universally agreed definition of environmental crimes. Numerous legal instruments, including the 1998 Council of Europe Convention on the protection of the environment through criminal law, set out provisions to establish certain criminal offences. The 1998 Convention was the first supranational instrument to consider the criminal law treatment of behaviour that is environmentally damaging. It provided that environmental violations with serious consequences must be treated as criminal offences subject to appropriate sanctions, and incorporates a list of offences, including those of an intentional nature and those which are only the result of negligence. According to that instrument, sanctions must take into account the serious nature of these offences. As a minimum, imprisonment and pecuniary sanctions must be available. It is also recommended to include the reinstatement of the environment either as a sanction or as a civil liability attached to the environmental violation.

39. It is worth noting that the devastating impact of crimes against the environment can be differently classified, such as ecological (loss of biodiversity and natural habitats,

[11] Principle 16 of the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil, 1992.
[12] RHIPTO, INTERPOL and GI (2018) World Atlas of Illicit Flows.
[13] UNEP-Interpol Rapid Response Assessment: the Rise of Environmental Crime (June 2016).

deterioration of the ecosystem), economic loss of legitimate incomes by states and fair-playing business actors, unfair competition and social impact (on the health of individuals and unemployment triggered by unfair competition circumstances).

40. In order for an unlawful act against the environment to constitute a crime, several elements should be present. In particular, a certain level of gravity and/or substantial damage is required. Although these terms are widely used at national level, they are interpreted differently in member States. Some jurisdictions prefer to link the damage directly with the financial impact of an unlawful act in order to determine whether the act results in substantial damage or not. In this case, the monetary benefits of the perpetrator and the amount required to remedy the damage are used as measures to calculate the total amount of the damage.

41. Other jurisdictions link the damage with the ecological impact of an unlawful act for the same purpose. In some member States, the application of both approaches at the same time for the determination of substantial damage is possible. In doing so, the duration of an unlawful act, its reversibility and impact are taken into account. It should however be noted that even when the impact of an unlawful act may be reversible, if it requires substantial budget allocation, lasts long, or is reversed as a result of permanent disturbance of the ecosystem, it is still to be classified as an act causing substantial damage[14].

42. Although the CCPE does not express a preference for any of the aforementioned approaches, it wishes to highlight, in relation to the general terms such as “substantial or significant damage”, “negligible impact” and “irreversible damage inflicted to the environment”, that further and precise clarification for these terms should be provided with an aim of maintaining consistency of implementation and not leaving unjustified or unacceptable leeway for their discretionary interpretation in practice.

### B. Penalties for environmental crimes

43. In view of the fact that member States set the criminal sanctions in accordance with their domestic legal traditions and needs, the CCPE does not intend to recommend minimum or maximum level sanctions or recommend the introduction of certain types of sanctions. However, it wishes to underscore that sanctions applicable to both natural and legal persons in the environmental context should be effective, proportionate and dissuasive.

44. For a sanction to be effective, the results gained through its imposition should respond to its objectives. When assessing the effectiveness of a sanction, the extent of the compensation of the damage caused by the violation, whether the sanction served as a discouragement for potential perpetrators and other possible elements can be taken into account.

45. The proportionality of a sanction means its full correspondence to the nature, gravity and circumstances of a violation. To satisfy the proportionality requirement, a wide range of different possible sanctions to be applied for violations of varying nature and severity should be available.

[14] See also https://www.eea.europa.eu/help/glossary/eea-glossary/irreversibility-of-environmental-damage.

46. A dissuasive sanction should discourage violations and prevent their recurrence. In addition, it should be enforceable and fully address the alleged violation. In this way, there should be appropriate and possibly simple enforcement procedures.

47. In order to provide prosecutors with the necessary toolbox for sanctioning, the law should provide an adequate range of sanctions of both monetary and non-monetary nature applicable to environmental crimes, and also the possibility to order the reinstatement of the environment.

48. Respecting the differences of national legal systems, the following best practices in combating environmental crimes may be highlighted, including but not limited to:

- tracing, freezing and confiscating assets and/or proceeds and instrumentalities of environmental crimes;
- using the fines imposed on perpetrators for environmental crimes in the public interest or in favour of environmental protection and rehabilitation;
- obliging the perpetrators to take measures to remedy the environmental harm and restore the environment;
- keeping pace with sophisticated environmental offenders by piercing the corporate veil to reach the legally accountable individuals behind a corporate entity;
- imposing suspension or other limitations concerning the activities on the perpetrator.

49. In order to ensure effective deterrence, the monetary sanctions applicable to environmental crimes should be set taking into account the economic situation of the perpetrator. Such intrusive sanctions as imprisonment may be applied in the case of serious consequences as a result of unlawful actions of an individual or a group of individuals. Relevant competent institutions should be able to order restorative measures, where appropriate.

50. Guidelines designed for prosecutors and other stakeholders distinguishing an environmental crime from an administrative violation, and addressing the peculiarities of investigations into environmental violations, sentencing principles, case law examples and other related issues can be produced and disseminated by prosecution services and other relevant actors.

## V. Role of prosecutors in protecting the environment through criminal law

51. As stressed by the CCPE Opinion No. 10 (2015)[15], prosecutors play an essential role in criminal investigations. Depending on the national legislation, prosecutors might be entrusted with the oversight over the investigation carried out by other law enforcement agencies, conducting an investigation by themselves, as well as participating in trials.

52. No matter in what capacity and to which degree they are involved in criminal proceedings, prosecutors should ensure, when it is within their authority, that an investigation into environmental crimes is conducted thoroughly, that all the targets in the chain of responsibility (natural and legal persons, perpetrators, co-perpetrators and

[15] Opinion No. 10 (2015) of the CCPE on the role of prosecutors in criminal investigations.

accomplices) are identified and that they establish all incidences of unlawful acts and any possible links with organised and violent crime and associated offences.

53. Prosecutors should strive to ensure that not only the direct perpetrators of environmental crimes, but also the offenders acting in other capacities, such as masterminds, instigators, abettors and those who benefit from these crimes, are brought to justice.

54. As noted earlier, prosecutors should be aware of the link between environmental crime and organised and violent crime, corruption, financing of terrorism[16], or with crimes committed in the context of armed conflict through warfare methods and means. They should understand how to detect and investigate such crimes, and in particular money laundering associated with environmental crimes[17].

55. As stressed by the CCPE Opinion No. 11 (2016)[18], special investigative techniques such as electronic surveillance and undercover operations that have been shown to be effective tools to combat terrorism and organised crime are being made available to prosecution offices in other areas as well, at least in jurisdictions where prosecutors have investigative powers.

56. It is of utmost importance to put the necessary legal tools, such as freezing and seizure of assets and covert investigative techniques at the disposal of prosecutors in order to combat environmental crime. Depending on the national context, prior judicial authorisation might be required to apply special investigative techniques to this effect.

57. It is also important to determine the level of gravity[19], as well as the volume of the damage caused by a criminal act committed against the environment. In many jurisdictions, in order to decide whether an environmental violation should be classified as a crime or not, the level of gravity and the damage it caused are crucial. It should also be borne in mind that the impact of an environmental violation may emerge decades after the date it was actually committed and its effects may be continuous and long lasting.

58. In order to ensure the thoroughness of an investigation in this regard, prosecutors, no matter whether they are directly conducting it or in charge of its supervision, should seek forensic expertise and other specialists and experts. This might be the case, even if there is a specialisation of prosecutors on environmental cases, when a particular issue in an investigation goes beyond their knowledge and experience.

59. Parallel financial investigations focusing on both environmental crimes and connected money laundering offences simultaneously are an effective tool to identify larger criminal

[16] There is evidence that armed groups and terrorist organisations do, to varying extents, rely on certain environmental crimes to support and finance their operations. See CTED Trends Alert, Concerns over the use of proceeds from the exploitation, trade and trafficking of natural resources for the purposes of terrorism financing (June 2022).
[17] Illegal logging, mining, waste trafficking and wildlife trade were considered as the main predicate environmental offences for money laundering, see Financial Action Task Force (FATF) Report on Money Laundering from Environmental Crime (July 2021), and the FATF Report on Money Laundering and the Illegal Wildlife trade (June 2020).
[18] Opinion No. 11 (2016) of the CCPE on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime.
[19] Sometimes the environmental crime is based on the concept of gravity that it represented, even if damages were not caused.

networks and disrupt financial flows. Financial intelligence units' capacities to detect, analyse and report suspicious transactions in connection with suspected environmental crimes and, where appropriate, exchange information in this respect with their foreign counterparts, as well as their co-operation with prosecutors are critical to enhance investigative efforts in this area. Prosecutors should be able to receive and make use of qualitative financial intelligence and other forms of relevant information to support investigations and prosecute perpetrators[20].

60. The principle of specialisation gained more importance in the light of the growing concerns for the protection of the environment[21]. It is worth noting that every piece of legislation, regardless of how perfectly it is formulated and worded, carries the risk of becoming "dead letters" without proper application. Enforcement of legislation on the environment requires sufficient budgetary allocation, well-trained and specialised staff, and as a significant step, the establishment of specialised multidisciplinary units and bodies.

61. The complexity of the subject, its special nature and diversity, association with other disciplines, requirement of special in-depth knowledge and possible involvement of organised criminal groups and legal persons are only some of the reasons necessitating the specialisation of prosecutors dealing with environmental cases. In addition, given the evolving nature of violations against the environment, the specialisation should be accompanied by continuous training provided to prosecutors[22]. Joint training of investigating authorities with other key actors could also have a positive impact, as it would enhance authorities' skills and understanding of factors that influence whether violations should be addressed through administrative, civil, criminal law or a through a combined approach.

62. Establishment of specialised prosecutors and/or multidisciplinary units, particularly within the prosecution system, is highly dependent on the national context and factors such as the size, workload and budget of the prosecution service. Accordingly, the establishment of specialised prosecutors and/or units dealing with the environment should not be required of prosecutorial bodies. However, it should be seen as a priority for the States where it is feasible.

63. As regards the stage of the trial, the CCPE wishes to reiterate that the proper performance of the distinct but complementary roles of judges and prosecutors is a necessary guarantee for the fair, impartial and effective administration of justice. Judges and prosecutors must both enjoy independence in respect of their functions and also be

[20] See for example, ECOFEL, Egmont Centre of FIU Excellence and Leadership, Financial investigations into wildlife crime (January 2021).

[21] As the European Network of Prosecutors for the Environment (ENPE) pointed out, environmental specialisation should be available for each and all environmental offences (no distinction in the judicial system between "less" and "more" serious offences, where only the latter ones would benefit from specialist prosecutors and judges), see Sanctioning Environmental Crime (WG4). Final report: key observations and recommendations, 2016–2020 of the ENPE, para 28.

[22] Council of Europe Resolution (77) 28 on the contribution of Criminal Law to the Protection of the Environment. See also Sanctioning Environmental Crime (WG4). Final report: key observations and recommendations, 2016–2020 of the European Network of Prosecutors for the Environment (ENPE), para 70, which sets out that training must above all aim to create knowledge and understanding of environmental crime and the harm it causes or can cause. Such knowledge and understanding are essential for commitment to the prosecution and sanctioning of environmental offences.

and appear independent from each other[23]. They must therefore refrain from any action and behaviour that could undermine confidence in their independence and impartiality[24].

## VI. The protection of the environment in administrative and civil law

64. The quality of the legislative framework on environmental protection cannot be assessed solely on the basis of the availability of criminal law measures. Carefully formulated and duly implemented administrative and civil law is as important as criminal law in protecting the environment.

65. Considering that in several jurisdictions, prosecutors fulfil functions outside the criminal justice system, this part of the Opinion deals with the role of prosecutors in protecting the environment through administrative and civil law.

66. Administrative law sets standards for providing licensing, special permissions and authorisations, as well as for the inspection and monitoring of compliance. Considering the wide and growing range of issues covered by administrative law, its proper formulation and implementation are important to deter potential perpetrators from committing environmental crimes and related infringements.

67. Although administrative sanctions may not express the same degree of social disapproval as criminal sanctions and are imposed for violations that don´t amount to criminal offences, they may usefully complement the latter according to the practice of the European Court of Human Rights, and they may provide a certain degree of flexibility enabling a tailored approach towards diverse environmental violations.

68. The environment can and should be protected by all available means, including through administrative and civil law[25]. In fact, the combination of all possible means of protection may prove to be most effective if the systems are compatible, open for co-operation and complement each other.

69. Legal systems in which criminal and administrative sanctions co-exist and are adequately applied ensure a better protection of the environment. However, as stated earlier, clear boundaries should be set between the two fields of law in order to prevent possible ambiguities and legal uncertainty. Prosecutors, where they are entitled to do so under domestic legislation, may ensure that the boundary between administrative and criminal law is respected by those who are responsible for their implementation.

70. Legal uncertainty, ambiguous wording of the domestic legal framework, overlap of powers of different stakeholders or lack of coordination between the competent authorities could in some cases result in violations of the principle of *non-bis in idem* (also referred to as the double jeopardy principle). Thus, a body responsible for

[23] Opinion No. 4 (2009) of the CCPE on the relations between judges and prosecutors in a democratic society, Bordeaux Declaration, clause 3.
[24] Opinion No. 4 (2009) of the CCPE on the relations between judges and prosecutors in a democratic society, para 40.
[25] In accordance with the Council of Europe Resolution (77) 28 on the contribution of Criminal Law to the Protection of the Environment.

administrative sanctioning and a body responsible for penal sanctioning could sanction a perpetrator for the same violation.

71. While concurrent application of criminal and administrative sanctions should not be ruled out, it is important to ensure that those should be complementary and not result in penalising the perpetrator twice for the same offence. Accordingly, prosecutors, where it is within their mandate, should ensure that parallel application of administrative and criminal law is in accordance with the existing legal framework and traditions and does not represent a denial of the legitimate interests of the affected persons, either natural or legal persons.

## VII. Internal co-operation and coordination in protecting the environment

72. Successful environmental protection requires cross-disciplinary and interagency co-operation. The environment can be protected more comprehensively when all concerned actors representing both public and private sectors are involved in its protection, and an adequate level of cooperation and coordination among them is duly ensured.

73. Lack of co-operation and coordination among the bodies entrusted with the application of the legislation on the protection of the environment may negatively affect the whole mechanism for the protection and may even violate the rights of concerned persons.

74. There are prosecution services in member States where civil, administrative and criminal functions are incorporated within their activities, whereas prosecution services in other member States do not have such extensive duties; they only handle environmental cases in the field of and by means of criminal law. In the latter model, however, there should be specific authorities entrusted with such tasks and responsibilities in civil and administrative matters.

75. In those systems where the prosecution service incorporates civil, administrative and criminal functions, it is important that close co-operation is ensured among the prosecutors handling cases in these different fields. Such internal co-operation should be institutionalised by regulations, internal rules and guidelines, thus making such a complex approach efficient and effective, including through regular exchanges of information.

76. In systems where civil and administrative duties do not fall within the remit of the prosecution service, the latter should co-operate with the relevant authorities. Co-operation should be guaranteed by laws and regulations, which should set out clearly the legal basis for this co-operation, including the exchange of information and, where appropriate, the exchange of intelligence among relevant stakeholders.

77. The following examples of good practices in this field could be highlighted:

- establishing inter-coordination groups, national environmental expert groups or regional groups, with the participation of prosecutors;
- setting up well equipped technical units at the disposal of prosecutors;
- maintaining a situational overview of environmental crimes and related infringements, issuing annual reports of the state of play of environmental crimes;

- establishing mechanisms for co-operation between law enforcement authorities, possibly including specialised environmental police, and public institutions in charge of environmental monitoring;
- long-term co-operation of prosecutors with other specialised bodies[26] and conducting investigations in co-operation with them and the police;
- providing opinions, suggestions or comments/objections to any strategic documents or action plans elaborated to prevent and combat environmental crimes, and actively contributing to the formulation of environmental protection related legislation to ensure that it takes into account prosecutors' views and expertise.

78. Non-governmental and civil society organisations also play a very important role as stakeholders in the implementation and enforcement of environmental law[27]. They can contribute to the enforcement of domestic legislation by monitoring, for example, compliance with environmental regulations and detecting violations, including crimes committed. They may also, if allowed by the national legal framework, take action in the interest of society or of certain groups in the protection of the environment (e.g. *amicus curiae*, *actio popularis*) and raise awareness on environmental issues.

79. Co-operation ensures that an environmental case is examined from various aspects, and this improves efficiency. Irrespective of the model of a prosecution service, the conclusions and recommendations of the Opinion No. 14 (2019) of the CCPE also apply *mutatis mutandis* to prosecutorial activities in the field of environmental protection[28].

80. The CCPE also wishes to highlight the importance of collecting and analysing annual or semi-annual investigative data on the protection of the environment, in order to have a clear overview of the trends, achievements and further action to be taken. The relevant process should include the collection of data on the number of offences detected, investigations initiated, cases discontinued, referrals to courts, final convictions or acquittals, type of sanctions imposed on the perpetrators, etc. The data should be as detailed as possible and preferably be collected at a centralised level.

81. Depending on the national context, collection and processing of relevant data might be entrusted to prosecutors' offices. However, when this is not the case, the process should involve them. The results of data collection and processing should regularly be made public and should contribute to further actions such as the adoption of national strategies, as well as lead to revising the legislative framework where appropriate. This data should also be used for increased awareness-raising, so that not only prosecutors but also the general public understand the scale of environmental criminality and the role of the prosecution in protecting the environment.

## VIII. International co-operation in protecting the environment

82. Environmental crimes are frequently international by their nature which calls for collective action. The increased involvement of criminal groups and networks in environmental crimes, as well as their likely association with terrorism and organised and other serious

[26] Such as environmental inspectorates, customs, administrative authorities, financial investigation units.
[27] Without prejudice to the independence and autonomy of the prosecution services.
[28] Opinion No. 14 (2019) of the CCPE on the role of prosecutors in fighting corruption and related economic and financial crime, Chapter I, para 4.

crimes, were also among the concerns expressed during the 2022 European Conference of Prosecutors[29], which called for enhanced international co-operation among prosecutors in this regard.

83. Even if an environmental crime is committed within the territory of one member State, its consequences may affect other member States, confirming the maxim that "pollution knows no borders". This requires close bilateral and multilateral co-operation among member States, and measures to ensure that gaps in legal frameworks for environmental crimes do not inhibit such co-operation.

84. Prosecutors should always show willingness to co-operate and should treat international co-operation requests on environmental matters within their jurisdiction with the same diligence and priority level as other criminal matters both at national and international level[30]. It is an asset that the tools for cooperation in environmental cases are the very same as those for cooperation in all types of cross-border crime[31].

85. For international co-operation to be effective, there should be a common understanding of environmental crimes and related infringements and their impact. Joint and cross-border investigative teams and techniques are particularly useful, where coordinated action is required. Their use is also beneficial as not only it would limit risks of duplication of prosecutors' work, but also facilitate securing the necessary evidence, exchanging information and carrying other extensive measures in the States concerned[32]. Prosecution services should have adequate resources at their disposal for such activities.

86. With regard to the previously mentioned profits from environmental crime and observing the principle "crime must not pay", international co-operation should also cover assistance in tracing, freezing and confiscating the proceeds of environmental crime including, where possible, asset returning or asset sharing. Whenever possible, this should also involve the provision of assistance in non-conviction-based (NCB) confiscation proceedings, as well as the enforcement of foreign forfeiture decisions irrespective whether they were issued in connection with the conviction of a natural or legal person or in an NCB-forfeiture.

87. In systems, where assets forfeited in mutual legal assistance (MLA) proceedings are located in the requested State, legislation should provide for the sharing of assets with or the return of assets to the jurisdiction where the environmental crime was committed or where the damage stemming from that crime occurred.

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[29] The European Conference of Prosecutors was co-organised by the CCPE in close co-operation with the Italian authorities, on 5-6 May 2022 in Palermo, within the framework of the Italian Presidency of the Committee of Ministers of the Council of Europe. The Conference brought together Prosecutors General and other legal professionals from 46 member States of the Council of Europe, as well as 8 non-member States, and focused on the prosecutorial independence, autonomy and accountability, investigation and prosecution of environmental crimes and financial crimes in the virtual environment.

[30] Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Article XX.

[31] Sanctioning Environmental Crime (WG4). Final report: key observations and recommendations, 2016–2020 of the European Network of Prosecutors for the Environment (ENPE), para 25.

[32] See also the Report on the Eurojust's Casework Environmental Crime, issued on 29 January 2021.

88. The CCPE would also like to emphasise the role at European level of both Europol and Eurojust in facilitating cross-border co-operation in criminal or administrative matters, as well as the role of professional networks such as the European Network of Prosecutors for the Environment (ENPE), European Judicial Network (EJN) and the EnviCrimeNet. Prosecutors in member States should be encouraged to participate, whenever possible, in the activities of these bodies.

89. In addition to existing networks and taking into account the role of designated contacts for international co-operation, other official mechanisms and procedures for swift and effective cross-border co-operation are still needed, as very often official documents, evidence and other materials have to be transferred from/to prosecutors of different member States who are involved in corresponding criminal cases.

90. Co-operation and collaboration for the protection of the environment, in all its dimensions and in particular across borders, are essential given the growing sophistication of environmental criminals and their defence strategies. In order to prevent investigative and prosecutorial efforts being hindered or undermined, it is of utmost importance that the domestic legal framework in the member States adequately implements international standards for the protection of the environment. It is equally necessary to move towards a harmonised legislative framework, especially regarding the definition of crimes, sanctions and investigative tools.

## IX. Recommendations

**Whereas:**

- there is a pressing need to enhance responses to environmental crimes and related infringements which are a growing source of global concern;
- environmental crimes often have links with other serious crimes such as human and drug trafficking, counterfeiting, cybercrime, corruption and financing of terrorism;
- consequently, the complexity of the proceedings relating to environmental crimes requires a holistic approach and the collaboration of various stakeholders;
- such holistic approach requires availability of adequate tools and channels for effective co-operation at both national and international level;
- prosecutorial involvement in the protection of the environment remains vital for increasing the quality of the application of the law and bringing the perpetrators to justice;

**the CCPE agreed on the following recommendations:**

1. A wide and comprehensive approach should be favoured while defining the term “environment” in line with the current national and international legal frameworks on the subject.

2. It should be kept in mind that the damage inflicted to the environment may undermine the enjoyment of some of the rights guaranteed by the European Convention on Human Rights.

3. Prosecution services should be consulted or be directly involved when new legislation is designed or legal reforms are undertaken as regards the protection of the environment.

4. While there is no universally agreed definition of environmental crimes and this term is interpreted differently in member States, the general elements of these crimes such as the concepts of gravity and damage and other relevant elements should be precisely and clearly established at national level.

5. The sanctions for environmental crimes applicable to both natural and legal persons in the environmental context should be effective, proportionate and dissuasive, including those of monetary and non-monetary nature, as well as the possibility to order the reinstatement of the environment.

6. Prosecutors should ensure that an investigation into environmental crimes is conducted thoroughly, that perpetrators, co-perpetrators and accomplices are identified and that all possible links with other types of crime are established.

7. Prosecutors should also strive to ensure that not only the direct perpetrators of environmental crimes, but also the offenders acting in other capacities, such as masterminds, instigators, abettors and those who benefit from these crimes, are brought to justice.

8. Prosecutors should have at their disposal the necessary legal tools and investigative techniques in order to combat environmental crime. Parallel financial investigations focusing on both environmental crimes and connected money laundering offences simultaneously are one of the effective tools to identify larger criminal networks and disrupt financial flows.

9. Prosecutors dealing with environmental crimes should receive relevant training. Furthermore, enforcement of legislation on the environment requires sufficient budgetary allocation, well-trained and specialised staff, and also the establishment of specialised multidisciplinary units and bodies.

10. The environment should be protected by all available means, including through administrative and civil law, and prosecutors may have a role in this process as well.

11. Although administrative sanctions may not express the same degree of social disapproval as criminal sanctions, they usefully complement the latter.

12. Successful environmental protection requires cross-disciplinary and interagency co-operation among prosecutors themselves, as well as between prosecutors and other relevant actors, including both state institutions and non-governmental and civil society organisations.

13. Prosecutors may play a role in the prevention of environmental crimes and related infringements, since it allows avoiding their long lasting, costly and often irreversible effects, and it also reduces long-term costs related to the criminal justice system, including prosecution services.

14. Since environmental crimes are frequently international by their nature, prosecutors should always treat international co-operation requests on environmental matters with the same diligence and priority level as other criminal matters.

15. The important role of both Europol and Eurojust which facilitate cross-border co-operation in criminal or administrative matters at European level, as well as of professional networks such as the European Network of Prosecutors for the Environment (ENPE), European Judicial Network (EJN) and others should be emphasised.

16. In addition to existing networks, and taking into account the role of designated contacts for international co-operation, other official mechanisms and procedures for swift and effective cross-border co-operation are still needed, as very often official documents, evidence and other materials have to be transferred from/to prosecutors of different member States who are involved in corresponding criminal cases.