

The Network of Prosecutors on Environmental Crime

(ENPRO)

MANUAL

ON PROSECUTING ENVIRONMENTAL CRIME IN THE

BALTIC SEA REGION

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PREFACE

This Manual on Prosecuting Environmental Crime in the Baltic Sea Region is written by member states of the Network of Prosecutors on Environmental Crime (ENPRO). It is meant to serve as a handbook for prosecutors and other authorities who work at environmental crime and need information about the judicial systems and legislation of the other member states of the Council of the Baltic Sea States (CBSS).

The manual is based on two reports written out by the Expert Group on Environmental Crime in the Baltic Sea Region at the beginning of the 21st century. The 1st Report - May 2000 presented and analysed the actual legal and organisational structures relating to environmental crime. The aim of the 2nd Report - May 2002 was to create practical advisory in prosecution of oil pollution in the Baltic Sea States. These two reports are merged in this manual and the information is updated yearly.

The organisational structures of the member states, structures of their environmental criminal law, and their sanction systems for environmental infringements including additional sanctions like confiscation are presented in this manual. Because illegal discharges from vessels are one of the main concerns in the Baltic Sea Area, there's a specific section on special rules concerning oil pollution at sea. You can also find the list of international instruments and the information on their ratification, implementation etc. At the end of the manual there are some useful links to websites where you can find more information on the subjects of the manual.

MANUAL ON PROSECUTING ENVIRONMENTAL CRIME IN THE BALTIC SEA REGION

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ENPRO

1.1. What is ENPRO?

ENPRO is the Network of Prosecutors on Environmental Crime in the Baltic Sea Region. ENPRO works for practical cooperation and for regular and frequent professional exchange of information and discussions between prosecutors. It also collects information on legislation and on prosecuting environmental crime in member states. Most issues and problems that prosecutors meet concerning environmental crime are difficult but, however, similar in every country. ENPRO follows and analyses interesting cases on environmental crime in order to exchange information and experience on problems and solutions for the prosecution of environmental crimes. ENPRO works for the specialisation of public prosecutors in the field of environmental crime, because this specialisation will promote the prosecution of environmental crimes and specialised public prosecutors will be able to form a national knowledge base in this field. ENPRO also cooperates with other organs like HELCOM and the Council of the Baltic Sea States (CBSS).

1.2. History

Originally the Expert Group on Environmental Crime was established by the Prosecutors General at their meeting on 27 April 1999. The background of the mandate was the worry about environmental pollution. Environmental crime was seen as one of the biggest threats in the area in the future. However it was also seen as a national problem of which the consequences extend over the borders of the states. The Prosecutors General saw that in order to combat environmental crime it was necessary to improve cooperation between authorities and the quality of investigation and prosecution.

The main task for the expert group was to study different methods to investigate and prosecute environmental crime as well as prerequisites for a regular cooperation between the states in the Baltic Sea Region. An essential and initial part of the work was to make an inventory on the environmental laws in these states and on the problems in combating environmental crime as a consequence of the different legislations. On the basis of the result of the studies the group was supposed to draw conclusions and make suggestions on the future cooperation in the area.

OPC - the Operative Committee of the Baltic Sea Task Force had established several expert groups under its auspices. One of the expert groups was the Expert Group on Environmental Crime which was established in Helsinki 3-4 December 2001. Right from the beginning the Expert Group created contacts with the Network of the Prosecutors

General. On the 22nd of April 2002 law enforcement officials from the countries engaged in the Task Force on Organised Crime in the Baltic Sea Region and representatives of the Prosecutors General in the Baltic Sea region gathered for a seminar concerning environmental crime. The participants recommended the integration of the expert groups under the auspices of the Network of the Prosecutors General and the Task Force co-operation. On the recommendation of the seminar the expert groups were merged in 2002.

The Expert Group on Environmental Crime focused on oil pollution at sea as the OPC had decided when it established the Expert Group and as the Expert Group established by the Prosecutors General did before the merger. However it also worked on illegal waste management and on Cites i.e. illegal trade in endangered species.

The Expert Group was divided again in 2008 when the OPC announced that it won't have any permanent experts groups any more. The Prosecutors General decided in their meeting in Gdansk - Gdynia in February 2008 that the Expert Group on Environmental Crime will continue its work independently from the congruent Expert Group of the OPC with which it had been merged in the year 2002. This was beginning of the ENPRO. The Expert Group had its first meeting in Helsinki in September 2008. It was renamed as the Network of Prosecutors on Environmental Crime (ENPRO). So prosecutors continue working at environmental crime in the Baltic Sea Region.

1.3. Mandate

ENPRO works under the auspices of the Network of the Prosecutors General in the Baltic Sea region, i.e. the member states of the Council of the Baltic Sea States. The members of ENPRO are prosecutors appointed by the Prosecutors General of the Member States of the CBSS. ENPRO convenes once a year at a conference but the members at the Network work also between the conferences. ENPRO reports to the Prosecutors General yearly and the Prosecutors General also confirm ENPRO's plan of action on basis of the recommendations of ENPRO.

II THE ORGANISATIONAL STRUCTURE

2.1. Summary

As to the organisational structure, the countries in the Baltic Sea Region can be divided into three subgroups representing three different model structures:

1. Where environmental crime is investigated by the police and prosecuted by the prosecution service in the same way as other criminal cases - as in Denmark and Finland.
2. Where environmental crime is handled by a special branch of the police and prosecution service or special sections within the above mentioned - as in Germany, Norway, Russia and Sweden.
3. Where special authorities outside the police and prosecution service take care of the preliminary investigation before handing the case over to the police and prosecution service - as in Estonia, Latvia and Poland.

In Estonia The Environmental Inspectorate is an institution dealing with environmental violations and since September 1st, 2011 also carries out investigations in criminal cases. So preliminary investigation is totally under special authorities outside the police. If the preliminary investigation has conducted, the case is handed over to prosecution service.

Germany has examples of organisational structures both after mode 1 and 2, depending on the structure in the individual Land.

For those countries which have a system of administrative sanctions, the administrative environmental bodies generally have the right to fully investigate and assess the case as well as impose administrative penalty. All countries noted that in environmental cases special attention shall be given to close co-operation between the police and prosecution service and the different environmental authorities and bodies.

2.2. Powers of prosecution services - specific information from:

DENMARK

The tasks and the organisation of the Prosecution Service are described in Part 10 (sections 95 - 107) of the Danish Administration of Justice Act.

It is the task of the Prosecution Service in cooperation with the police to prosecute crimes in pursuance of the rules of the Danish Administration of Justice Act. The overall objectives of this task are described in Section 96(2) of the Danish Administration of justice Act.

This provision states that the Prosecution Service shall proceed with every case at the speed permitted by the nature of the case. In this connection the Prosecution Service shall ensure that those liable to punishment are prosecuted and that the innocent are not prosecuted (“The principle of objectivity”).

The Prosecution Service is governed by the Minister of Justice who supervises the public prosecutors. The Prosecution Service is composed of The Director of Public Prosecutions, the State Prosecutors and the Chiefs of Police.

The Director of Public Prosecutions (Prosecutor General) conducts criminal cases before the Supreme Court and, in addition, takes part in the hearing cases put before the Criminal Cases Review Commission. The Director of Public Prosecutions is superior to the other prosecutors and supervises their work, and the Director of Public Prosecutions processes complaints of decisions made by the State Prosecutors in the 1st instance.

Two Regional State Prosecutors conduct criminal cases before the high courts and supervise the handling of criminal cases by the Chiefs of Police. Furthermore, the Regional State Prosecutors process complaints against decisions made by the Chiefs of Police regarding prosecution. Finally, the State Prosecutors deal with cases of compensation with regard to criminal prosecution.

Complaints against the police are primarily dealt with by the Independent Police Complaints Authority.

A special State Prosecutor is responsible for prosecuting major financial crimes as well as international criminal cases committed abroad including cases concerning genocide, crimes against humanity and war crimes.

The Chiefs of Police act as prosecutors before the city courts (1st instance) and thus - in addition to the management of the police - are responsible for the inquiries and investigations conducted by the police districts as well as the operation of the local Prosecution Service.

ESTONIA

The Prosecutor's Office is a government agency within the area of the Ministry of Justice, which participates in the planning of surveillance

necessary to combat and detect criminal offences, directs pre-trial criminal procedure and ensures the legality efficiency thereof, represents public prosecution in court.

The Prosecutor's Office is divided into the Public Prosecutor's Office and 4 district prosecutor's offices: Southern District Prosecutor's Office, Western District Prosecutor's Office, Viru District Prosecutor's Office and Northern District Prosecutor's Office.

The distribution of tasks in the Prosecutor's Office:

- The Prosecutor General directs the activities of the Prosecutor's Office at national level;
- Chief State Prosecutors control the Prosecutor's Offices work in the field of criminal procedure by managing the respective departments; District Prosecutor's Offices are administered by a Chief Prosecutor
- State Prosecutors deal with cross-border, international and advanced level priority crimes;
- Departments of the District Prosecutor's Office are managed by Senior Prosecutors;
- Special Prosecutors work in district prosecutor's offices and deal in a project based manner with specific crimes (e.g. organised crime);
- District Prosecutors deal with so called "ordinary crime" in the region; Assistant Prosecutors have the same powers as prosecutors, except for the right to participate independently in adversarial procedures.

The Prosecutor's Office leads the pre-trial proceeding ensuring the legality and effectiveness of it and represents public prosecution in court. Prosecutors decide:

- whether the police must start criminal proceedings or to initiate these proceedings himself/herself;
- in what manner and how much evidence must be gathered;
- whether to apply any sanctions;
- whether to close a criminal case or send it to the court;
- in which form the criminal case must be processed in the court.

FINLAND

Under section 104 of the Constitution of Finland, the prosecution service is headed by the highest prosecutor, the Prosecutor General. The Prosecutor General is the superior of all prosecutors and may take up for consideration any matter belonging to a subordinate prosecutor. The Prosecutor General heads the Office of the Prosecutor General. 13 State Prosecutors work at the Prosecutor General's Office and they are responsible for prosecuting criminal cases of greatest significance for society. Local prosecution offices prosecute most of the criminal cases, which are committed in their geographical area. Yet a prosecutor has the competence to prosecute anywhere within the country and accordingly specialised prosecutors occasionally run cases also in other areas than

within their office area.

Prosecutors and the police (or other pre-trial investigating authority) cooperate actively under pre-trial investigation. The role of prosecutor was emphasized in the Pre-Trial Investigation Act that entered into force on 1.1.2014. Investigation may be closed or transferred to consideration of charges upon the approval of a prosecutor. A prosecutor can order additional investigations and is always responsible for the completed investigation report. However, it is always a person from the investigating authority, usually from the police, who conducts the pre-trial investigation in Finland and decides the tactics and the techniques which will be used.

GERMANY

Environmental violations fall under two different categories: criminal offences and administrative offences.

Competent authority for the investigation of criminal offences is the Public Prosecutor's Office, mostly assisted by the Water Police of the Laender, the Federal Police or the Federal Criminal Police Office.

Which Prosecutor's Office is competent, depends on the place of offence, the place of residence of the defendant, the place of arrest in the event of his being detained, or the home port if the offence was committed by a German ship outside German territory. If no other venue is specified, the Public Prosecutor's Office in Hamburg is in charge of all offences against the environment which have been committed outside German territory in the sea region.

The competent prosecution agency accepts as evidence testimony of police officers or other witnesses, statements of the offenders, photographs of oil spills or photographs taken on board the ships, expert's opinions on samples taken from tanks, machinery space or oil spill and copies of the Oil, Cargo and Garbage Record Book.

Criminal proceedings have to be closed by the prosecution agency if there is a lack of evidence. If there is a complete chain of evidence normally the prosecutor will start a written court procedure that ends with a penalty order or, if the case is more serious, he will accuse the defendant. In the latter case the proceedings will end with a court hearing and a verdict.

Competent authorities for the investigation as well as for the prosecution of administrative offences are various administrative environmental bodies. These authorities also have the power to impose an administrative fine. Mostly these are agencies of the Laender. The competent authority for the important maritime contraventions (e.g. violations of the duty to keep an Oil, Cargo or Garbage Record Book) is the Federal Maritime and Hydrographic Agency in Hamburg.

LATVIA

The Prosecution Office is an institution of judicial power which functions

are determined by special Law on the Prosecution Office.

The task of the Prosecution Office shall be to react to violation of law and to ensure the deciding of matters relating to such in accordance with the procedures prescribed by law.

The Prosecution Office shall supervise pre-trial investigation and operative activities, initiate, and conduct pre-trial investigation in cases specified by law, initiate and conduct criminal prosecution, maintain charges of the State, supervise the execution of sentences, protect the rights and lawful interests of persons and the State in accordance with the procedures prescribed by law, take part in the adjudication of matters in court in the cases specified by law.

The Prosecution Office shall be a single, centralized three-level institutional system under the management of the Prosecutor General.

The Prosecution Office shall be composed of the Prosecutor's General Office, Prosecution Offices of judicial regions, Prosecution Offices of districts, and specialized Prosecution Offices.

The Prosecutor General shall manage and control the operations of the institutions of the Prosecution Office, determine their internal structure and staff positions in conformity with allocated State budgetary funds, as well as directly manage the work of the Prosecutor's General Office and deal with other responsibilities specified by the Law on the Prosecution Office.

The Prosecutor's General Office shall be composed of departments and divisions which shall be managed by head prosecutors. The head prosecutors shall control the direction of activities in all institutions of the Prosecution Office in the country.

The Prosecution Offices of judicial regions shall be established by the Prosecutor General in conformity with the territorial division determined by the Law „On Judicial Power” and they shall perform all functions of the Prosecution Office in the territories of the judicial regions.

The Prosecution Offices of districts (cities of the Republic) shall be established by the Prosecutor General in conformity with the established district (city) courts.

If necessary, the Prosecutor General may establish the Prosecution Office for a specialized field. Specialized Prosecution Offices may have the status of the Prosecution Office of a district or the Prosecution Office of a judicial region.

by the Constitution of the Republic of Lithuania and the Law.

Prosecutor's Office, considering rights of an individual, society, state and effectiveness of the justice system, helps to assure lawfulness and assists courts in administration of justice.

According to article 118 of Constitution of Lithuania, Prosecutors Office is an independent institution, obligated to conduct pre-trial investigation, organize and head it and to prosecute on behalf of the State.

Prosecutors organize and direct pre-trial investigation, and prosecute criminal cases on behalf of the State. When discharging their functions, prosecutors shall be independent and shall observe only the law. The Prosecutor's Office of the Republic of Lithuania comprises the Office of the Prosecutor General and regional prosecutor's offices. There are 5 regional (Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys) Prosecutors Offices in Lithuania. Functions of prosecutors are:

- to organize and direct pre-trial investigation;
- to control the activities of pre-trial investigation officer in criminal proceedings;
- to prosecute on behalf of the State
- to supervise the submission of the judgements for enforcement and the enforcement thereof;
- to co-ordinate the actions of the pre-trial investigation bodies; to conduct the pre-trial investigation or individual actions of the pre-trial investigation;
- to protect the public interest;
- to examine petitions, applications and complaints submitted by individuals;
- to take part in the drawing up and implementation of national and international crime prevention programs;
- to take part in the legislative process;

To pursue these functions prosecutors decide:

- whether the police must start criminal proceeding or to initiate (or make) these proceedings himself / herself;
- in what manner, of what kind and how much evidences must be gathered during pre-trial investigation;
- whether to apply any sanctions;
- whether to close a criminal case or to present it before court;
- which way the criminal case must be proceeded in court (by usual or simplified procedure).

NORWAY

The Norwegian Prosecuting Authority is organised on three levels:

- The Director of Public Prosecution (national level)
- The Public Prosecutors (regional level)

- The Prosecuting Authority in the Police (local police districts)

The Public Prosecutors and the Director of Public Prosecutions are called the Higher Prosecuting Authority. The Prosecuting Authority is responsible for the handling of criminal cases, i.e. investigation, deciding whether to prosecute, and to prosecute the cases that go to court. The Prosecuting Authority in the police decides prosecution of cases where the maximum sentence may be up to one year, whereas prosecution of the more serious crimes are decided by the Public Prosecutor or by the Director of Public Prosecutions (the DPP). The DPP is directing the handling of criminal cases, which implies deciding the targets and the priorities for the Public Prosecutors and the police districts. The Public Prosecutor in a region supervises the police districts in that region. The DPP has instructed that serious environmental crime shall be among the top priorities of the police.

ØKOKRIM (the National Authority for the Investigation and Prosecution of Economic and Environmental Crime) is a resource centre for the police and the prosecution services in combating these types of crime. ØKOKRIM is both a police special agency and a Public Prosecutor's office with national authority. The formal rules for ØKOKRIM can be found in chapter 35 of the Prosecution Instructions. ØKOKRIMs tasks are:

- to uncover, investigate and bring to trial cases
- to assist the national and international police and prosecuting authorities
- to boost the expertise of the police and the prosecuting authorities and provide information
- to act as an advisory body to the central authorities to participate in international cooperation.

POLAND

Prosecutor's Office:

- In January 2016, the organizational structure of the public prosecution service in Poland had been changed. According to the Law on Prosecution, Act of 28 January 2016, operated since 4 March 2016 the functions of Minister of Justice and Prosecutor General have been combined. The General Prosecutor's Office has been replaced by the National Prosecutor's Office, and the appellate prosecutor's offices have been replaced by regional prosecutor's offices.

The public prosecution comprises:

- Prosecutor General
Minister of Justice performs the function of the Prosecutor General
- National Prosecutor – deputy Prosecutor General
- Deputies of the Prosecutor General
- prosecutors of ordinary organizational units of prosecution
- prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation

The unit of the public prosecution service in Poland is divided into four levels:

- The General Prosecutor's Office;
- Regional Prosecutor's Offices;
- Circuit Prosecutor's Offices;
- District Prosecutor's Offices.

The tasks of the prosecution service are: to prosecute crimes and uphold the rule of law.

RUSSIA

Prosecutors, dealing with the environmental protection within the limits of a relevant constituent entity of the Russian Federation, have the following powers:

- supervision over the compliance with the laws on the environmental protection and the nature management, supervision over the observance of environmental rights of citizens;
- supervision over the execution of laws during the acceptance, registration and settlement of applications, which contain information about environmental or other crimes, resulted in the violation of laws on the environmental protection and of environmental rights of citizens, and which contain information about the crimes committed on service by officials of controlling authorities for the environmental protection; supervision over the legality of conduction of operative- and search activity, inquires and preliminary investigation;
- participation in court hearings on criminal, civil and arbitration cases;
- co-ordination of the crime-control activities of the law enforcement agencies;
- settlement of complaints (submitted by citizens and legal entities);
- compilation of statistical reports and performance of evaluation on the state of the law and order.

Where a prosecutor, in the course of exercising his/her powers, has established that the environmental legislation was violated, he/she has a right to file an act of a prosecutor's response: appeal, decree, warning and recommendation.

SWEDEN

The Prosecutor-General is the highest-ranked prosecutor in the country and the only public prosecutor in the Supreme Court.

The Prosecutor-General is also the head of the Swedish Prosecution Authority.

The Swedish Prosecution Authority comprises all prosecutors in Sweden (about 900) with the exception of approximately 85 prosecutors who are employed at the Swedish National Economic Crimes Authority. The Prosecutor-General, however, is also the highest-ranked

prosecutor for the prosecutors attached to the Economic Crimes Authority.

Apart from support departments for the operative prosecution activities, the Head Office consists of departments with responsibility for legal development, legal supervision and the operations in the Supreme Court.

The Legal Department has an overall responsibility for the Prosecutor-General's actions in the Supreme Court, as well as general international issues.

The Supervision Department is responsible for the Prosecutor-General's legal supervision and control.

The operative prosecution activities are conducted at seven Public Prosecution Areas and the National Public Prosecution Department. The prosecution areas consist of the country's 32 public prosecution offices, with a geographical sphere of operation that is approximately equivalent to a county.

The National Public Prosecution Department has one international public prosecution office with specialist competence in order to combat organized cross-border crime and to permit international co-operation between prosecutors.

The National Public Prosecution Department also consists of all prosecution offices with a national responsibility – one for combating corruption, one for dealing with environment and work environment cases (REMA) and one for security-related cases.

REMA is a highly specialized office with 23 prosecutors and administrative personnel stationed in various parts of Sweden. The head office is located in Malmo in the south of Sweden. REMA, established in 2009, emerged from efforts back in 2000 to appoint specialized prosecutors for dealing with environmental crimes. In addition to environmental crimes, the unit also responds to crimes against health and safety in work environment.

Prosecutors of REMA as well as prosecutors in general, lead investigations of crimes, decide on various coercive measures, institute proceedings and appear in court. The prosecutor steers the progress of the case, both during the investigative phase as well as during the court hearings. The investigations are carried out by the police or - in case of illegal discharge from ships at sea - by the Coast Guard.

Each year about 350 - 400 cases of environmental crime are brought to court or result in fines by prescription of a prosecutor. A majority of these convictions are penalized with corporate fines.

2.3. Special branch of police /prosecution dealing with environmental crime
- specific information from:

DENMARK All cases of environmental crime are investigated by the police in one of the 12 Danish police districts in the same manner as criminal cases in general.

ESTONIA In Estonia the environmental criminal offences can be investigated only by the Environmental Inspectorate and prosecuted by the prosecutor's offices. Extract from Estonian Criminal Procedures Code:

§ 212. Investigative jurisdiction

(1) Pre-trial proceedings shall be conducted by a Police and Border Guard Board and the Security Police Board, unless otherwise provided for in subsection (2) of this section.

(2) In addition to the investigative bodies specified in subsection (1) of this section, pre-trial proceedings are conducted by:

7) the Environmental Inspectorate in the case of criminal offences relating to violation of the requirements for the protection and use of the environment and the natural resources.[entry into force 01.09.2011]

For reasons of expediency, a Prosecutor's Office may alter the investigative jurisdiction provided for in subsections (1) or (2) of this section by an order in a particular criminal matter.

Environmental misdemeanours can be investigated also by the Environmental Inspectorate. As a general rule these institutions can also impose sanctions and represent the state later at the court stage, if necessary. In many cases different institutions are working together.

Special branch of police/prosecution dealing with environmental crime

In Prosecutor's Offices there are some specialized prosecutors in all districts but they all are dealing with other offences as well.

The Environmental Inspectorate

The Environmental Inspectorate is investigating all environment related offences described in environmental acts and in the Penal Code. Other institutions have a limited power of investigating environmental offences.

The Environmental Inspectorate comprises its centre located in Tallinn and 15 county offices.

Environmental supervision is carried out by county offices. The Nature conservation department, the Environmental protection department and the Fisheries protection department coordinate the main activities of the Environmental Inspectorate. There is special department of investigation which subordinates directly to the direktor general and has divided into 4 offices like Police prefectures and prosecutor Offices (North, South, West and East)

The Environmental Inspectorate cooperates with other institutions such as the Estonian Maritime Administration (Veeteede Amet), The Border Guard Administration (Pirivalve Amet) and The Tax and Customs Board (Maksu- ja Tolliamet). The Environmental Inspectorate works closest together with The Estonian Maritime Administration (Veeteede Amet) that has the right to stop a foreign ship and control it. They also deal with the safety at the sea. The Border Guard Administration is arranging the detection of the sea pollution and liquidation of it and also is taking part of rescue operations at sea. A lot of oil pollutions are discovered by the Border Guard flight unit.

FINLAND

Finland has only one specialized police unit for environmental crime investigation. This unit operates in the Police District of Itä-Uusimaa in south of Finland. Unit is also specialized in economic crimes.

Mainly, despite of the nature of the offence, local police investigates all kinds of criminal cases. In more serious cases or cases that have international implications, the responsibility rests with the National Bureau of Investigation.

The Finnish Border Guard is also a competent authority to carry out pre-trial investigation into environmental offences and natural resources offences. The Border Guard is responsible for monitoring compliance with, for example the Hunting Act, the Fishing Act and the Act on Environmental Protection in Maritime Transport.

The National Board of Customs monitors importing, exporting and transiting of protected plants and animals. The Customs is also responsible for monitoring transports of hazardous waste and international waste.

The environmental authorities, police, border guard service, national board of customs and rescue authorities co-operate in environmental matters on a case-by -case basis.

Finland has no prosecutors who would prosecute only environmental crime cases. There are a few prosecutors who have worked a lot with environmental cases among their other duties and they have special knowledge. They monitor development of legislation, judgements and literature in their field, provide training and participate in development projects in their field of expertise. They prosecute most of the environmental crime cases of their location unit, consult other prosecutors in difficult cases and prosecute the most challenging environmental crime cases among their other prosecution duties.

GERMANY

There are special sections at all police (criminal) investigation departments and public prosecution offices in the 16 Laender for environmental criminal matters.

Parts of investigations are carried out also by the Land Criminal Police offices (in certain circumstances by the Federal Criminal Police Office in Wiesbaden, too) and by special technical investigating authorities in Laender.

LATVIA

In Latvia, in accordance with Section 387 of the Criminal Procedure Law on institutional jurisdiction, all criminal cases regarding crimes against environment shall be investigated by the State Police. Since July 2009 in the State Police a group of specialists has been established which deals with the investigation of crimes against environment. Its prior directions of activity are prevention, establishment, and resolving of criminal offences and other violations related to violation of provisions for liquidation of dangerous waste, unauthorized burial of hazardous substances in waters and depths of the earth, seas, and pollution and littering of forests, waters and the air of the atmosphere.

Investigation of all crimes against environment is carried out within the same procedural regulations as investigation of other crimes, and it is specified by the Criminal Procedure Law.

In Latvia since January 2011 by the order of the Prosecutor General the new sphere of activity was established for the Specialized Multi-Branch Prosecution Offices – fulfilment of supervision, criminal prosecution, maintenance of charge of the State and other functions of the prosecutor provided for in the law, i.e., criminal offences against environment specified in separate sections of the Criminal Law.

The Specialized Multi-Branch Prosecution Office conducts the criminal prosecution if the following violations of the provisions have been committed: the utilization of natural resources of the sea (Section 99); pollution of the sea (Section 101); unauthorized burial of hazardous substances in waters and depths of the earth (Section 100); pollution of the earth, forests and waters, pollution of the air of the atmosphere (Section 103) if such criminal offences have caused serious consequences or substantial harm is caused to the environment, property or economic interests. Regarding other criminal offences against environment the criminal prosecution is conducted by the district Prosecution Office in which territory the criminal offence has been committed.

LITHUANIA

In Lithuania cases of environmental crimes and criminal offences agreeably to Code of Criminal Procedure (CCP) are being investigated by the police. Prosecutions on behalf of the State in these cases are usually being made by regional prosecutor's offices. Environmental misdemeanours, which are intended in the Code of the Administrative Offences usually, are investigated by the police as well as by Departments of Regional Environmental Agency at the Ministry of Environment. These institutions are as well authorized to impose administrative fees in cases of environmental misdemeanours. In addition, the Departments of Regional Environmental Agency are

authorized to hand civil claim to court in order to exact damage made to nature or to its components.

Police

According to article 165 of Code of Criminal Procedure, in Lithuania the police is the body authorized to conduct pre-trial investigation in all cases of crimes or criminal offences not excepting environmental crimes and criminal offences. For these purposes in some of District Police Offices special sections have been established for investigating of environmental crimes and criminal offences (for instance - a section for prevention of ecological crimes was established in Vilnius by the regional police office). So far, it is not common in all districts or regions. Environmental offences made under Code of the Administrative Offences are mostly being investigated and punished by the Departments of Regional Environmental Agencies and their sections in districts.

Departments of Regional Environmental Agencies and their sections

According to article 165 of Code of Criminal Procedure, Departments of Regional Environmental Agencies and their sections have no right to conduct a pre-trial investigation in cases of environmental crimes or criminal offences. Therefore, as soon as any attributes of crimes or criminal offences of any kind are adjusted, the case is promptly to be given to police or prosecution service. However, according to article 259(1) of Code of the Administrative Offences the Departments of Regional Environmental Agencies are empowered to investigate all environmental offences intended in this Code as well as other offences described in different environmental acts.

Conducting this kind of administrative offences the Departments of Regional Environmental Agencies and their sections in districts cooperate with other institutions such as the Lithuanian Maritime Safety Agency, Inland Waters Transport Inspection, Inland Water Roads Directorate, Service of Protected Areas, the Lithuanian Fire and Rescue Department, Regional Prosecutor's office, Klaipeda's Harbour Directorate and others.

NORWAY

ÖKOKRIM has an Environment Team with a national responsibility. It investigates and brings to trial the larger and more complex cases with foreign ramifications and cases of legal principle. The Team also has an obligation to give support. It provides the 12 Norwegian police districts with assistance and advice in environmental crime cases, so that most of the cases can be handled by the police district in question.

Each police district has a designated environment coordinator and an environment lawyer.

POLAND

Neither police nor public prosecution have divisions specialised in combating environmental crime.

In cases of serious crime with a significant threat to the environment there is a general obligation of urgent reporting to the police and public prosecution enabling them to participate with the Environmental Inspection in preliminary examinations.

RUSSIA

In compliance with the orders of the Prosecutor General of the Russian Federation, Specialized Environmental Prosecutor's Offices have been established on the territory of the Russian Federation. In the absence of a Specialized Environmental Prosecutor's Office on the territory of a constituent entity of the Russian Federation, city and district prosecutors are empowered to exercise supervision over the protection of environment.

In addition to the functions, enumerated in paragraph 2.2., prosecutors exercise supervision over the safety of navigation, fulfilment of requirements of the ship operation regulations by ship owners, ship crewmen, legal entities and self-employed entrepreneurs, dealing with the navigation in water ways, and also exercise control over the opportune and comprehensive execution of instructions by persons to whom they are given.

In order to uphold the interests of the general public in the sphere of the environmental safety, prosecutors submit to courts applications for protection of social rights, freedoms and legitimate interests of citizens, including in the sphere of the right to favourable environment.

Moreover, prosecutors have a right to submit applications in order to contest regulatory legal acts, which regulate relations in the sphere of protection of environment and management of nature, applications for the suspension and prohibition of activity in the sphere of management of nature, appeals against the actions and decisions of bodies of power and managerial bodies, and to contest deals in respect of the nature objects. The Prosecutor's Offices, dealing with the protection of environment, monthly provide the Prosecutor's Office of a constituent entity of the Russian Federation with reports on the activity, secured for them.

SWEDEN

As described in the previous section (2.2), the Prosecution Authority has a specialized unit for dealing with environmental crime.

Since January 2015, Sweden has a national police, The Swedish Police Authority. It is divided into seven police regions. Each police region has full responsibility for all police activities within its geographical area. A police region may also be assigned the responsibility for police development activities or certain national support and core activities.

The environmental crimes are now handled at the regional level, instead of

a local level. The new organization has led to a concentration of the police resource and a more uniform handling of the investigations.

All police investigators in the field of environmental crime have a special education in environmental law and natural science.

Cases of water pollution from ships (mostly oil pollution) are investigated by The Swedish Coast Guard.

2.4. Role of environmental authorities and others - specific information from:

DENMARK

The initial detection of a violation of the environmental legislation in most cases rests with the local environmental authorities. If the police receive a complaint from others than the environmental authorities, the police are obliged to inform the environmental authorities of the content of the complaint.

In most cases the environmental authorities are responsible for the collection and analysis of the first samples. If at any given time the environmental authorities deem, there might be basis for a criminal investigation, they must hand the case over to the police.

In cases regarding oil pollution regulated in the Danish Act on Protection of the Marine Environment both the public prosecutor and the Minister of Defence can enforce the act. The Minister of Defence has delegated the contingency functions to Defence Command Denmark. It is possible for Defence Command Denmark to issue administrative fines. In cases where this is not possible, the case will be sent to the police with all the evidence collected by Defence Command Denmark.

ESTONIA

It is common that the investigations are started by The Environmental Inspectorate (local District Offices) who make the first procedures (collect the samples etc.). In some cases the investigation is started as a misdemeanour, because it is not always clear in the early stage of the investigation how large the damage is. If it turns out to be a criminal offence instead of a misdemeanour, Inspectorate opens a criminal case and hands it over to a investigator. According to the CCP it is optional to make investigation teams with members of different institutions like police, The Environmental Inspectorate etc.

There are common rights and duties. When there are signs of a criminal offence, the investigation is obligatory.

FINLAND

In Finland regional environmental authorities (Centres for Economic Development, Transport and the Environment) and municipal environmental protection authorities carry the main responsibility for monitoring the compliance with environmental regulation. The Finnish Environment Institute has also supervision duties regarding CITES regulation and oil spills. All these bodies can be called on for expertise in environmental issues under the

criminal process. Centres for Economic Development, Transport and the Environment can also be parties in criminal process if public interest has been violated.

GERMANY

Sometimes the Federal Environmental Agency in Berlin or agencies of the Laender may take part in the technical investigation.

LATVIA

Offences against environment provided for in the Administrative Violations Code shall be investigated by regional institutions in Latvia, which are responsible for ensuring and preventing the activities for environmental security and nature protection, the State Environment Service, the State Forest and Hunting Inspection, the State Forest Service, parish municipalities, the Municipal Police, the Sea and Interior Waters Authority. The responsibilities of the named state services include supervision of environment in the country within the scope of their competence. They are entitled to collect primary initial materials regarding the possible offence against environment if it immediately does not have the constituent elements of crime. The rights to perform examinations, analysis, to examine documents. When all the necessary materials are collected, the competent authorities shall decide what kind of liability shall be applied for the offence. Usually it is administrative liability in the form of a fine.

LITHUANIA

It is common, that investigations on environmental crimes are started by the Departments of Regional Environmental Agencies or their sections in districts as investigation of administrative environmental offences (misdemeanours). This is because at the beginning it is not always clear how large the damage to environment has been. This unprejudiced criterion is common in the Lithuanian criminal and administrative law to separate misdemeanours from crimes and criminal offences. If it turns out to be a crime or criminal offence instead of misdemeanour then the police and / or District Prosecutors Office takes over the further investigation. According to section 3 of article 171 CCP the prosecutor is enforced to found an investigation team, combined of members from different pre-trial institutions.

NORWAY

In matter of investigation this is fully taken care of by the police. However there is normally a very close co-operation with the different environmental bodies involved.

POLAND

Certain administrative authorities can commence criminal proceedings themselves for certain infringements (forestry legislation, hunting offences, fisheries legislation, custom affairs).

The role of primary evidence securing body is played by the National Inspection of Environmental Protection. The staff of above said organ is obliged to collect and secure all evidences necessary in criminal proceedings. The key tasks of the Inspection of Environmental Protection on this field are:

- ordering the cessation/suspension of activities performed in violation of environmental regulations or environmental permit conditions;
- cooperating with other bodies, law enforcement bodies, police, public prosecutors, courts;
- imposing fines upon individuals and legal collective entities.
- The Chief Inspector for Environmental Protection heading the Inspection for Environmental Protection is the central organ of government administration.

The tasks of the Inspection are performed by the Chief Inspector for Environmental Protection assisted by the General Inspectorate for Environmental Protection and Voivodes supported by Voivodship Inspectors for Environmental Protection, as heads of Voivodship Inspections for Environmental Protection, constituting a part of combined voivodship administration.

The major tasks of the Inspection for Environmental Protection include: controlling compliance with environmental protection regulations, examining the state of the environment under the programme of the National Environmental Monitoring and preventing major accidents. These tasks are performed by, among others:

- controlling compliance with environmental protection regulations and sensible use of natural resources;
- controlling compliance with the decisions specifying the conditions of using the environment;
- participating in the proceedings related to the location of investments;
- participating in the commissioning of the structures or installations that may have a significant impact on the environment;
- controlling the use of installations and facilities protecting the environment against pollution;
- taking decisions suspending the activity violating environmental protection requirements or the principles specifying the use of the environment;
- cooperating with other inspecting authorities, prosecution authorities, justice and government administration, the organs of local government and civil first response administration as well as social organizations in the area of environmental protection;
- organizing and coordinating National Environmental Monitoring, conducting environmental quality tests, observing and assessing the state of the environment and the changes taking place in the environment;
- preparing and implementing analytical and examining methods as well as controlling and measuring methods;
- initiating activities with the purpose to establish the conditions preventing major accidents, helping to eliminate their consequences and restoring the environment to its proper condition.

Further, in more complicated cases the public prosecutor or the police may be assisted by an expert of environmental issues or a competent

institute.

RUSSIA

The bodies of state administration of the state authority of the Russian Federation, local self-government authorities and economic entities conduct activity aimed at securing the execution of legislation on protection of environment and its particular objects.

The following structure of the federal bodies of executive power in the sphere of ecology was established as the result of reorganizations conducted in the field of the environmental protection.

1. The Ministry of Natural Resources and Ecology of the Russian Federation shapes the state policy and conducts the normative and legal regulation in the area of protection of environment and in the sphere of the study, renewal and conservation of natural resources.

The following bodies are within its jurisdiction:

- The Federal Nature Management Supervision Service (Rosprirodnadzor) performs the state ecological control and ensures the compliance with the ecological requirements of the legislation of the Russian Federation, norms, regulations, including international ones.
- The Federal Service for Ecological, Technological and Nuclear Supervision (Rostekhnadzor) exercise control in the sphere of the safe conduction of works, industrial safety: grants permissions aimed at limitation of harmful anthropogenic impact on environment, conducts the state ecological examination.
- The Federal Water Resources Agency (Rosvodresursy) implements measures aimed at the protection of water resources for securing drinking and industrial water supplies.
- The Federal Subsoil Resources Management Agency (Rosnedra) renders services in the sphere of subsoil use.
- The Federal Service for Hydrometeorology and Environmental Monitoring (Rosgidromet) conducts monitoring of the state of the environmental pollution (atmospheric air, water bodies, sea).

2. The Ministry of Agriculture of the Russian Federation performs the creation of regulatory acts in the sphere of commercial fishery; protection, study, preservation, propagation and use of wildlife; and in the area of the forestry management.

The following bodies are within its jurisdiction:

- The Federal Service for Veterinary and Phytosanitary Supervision (Rosselkhozadzor) performs control and supervision in the sphere of the forest regulation, protection of the wildlife reproduction.
- The Federal Agency for Forestry (Rosleskhoz) renders state service and conducts management in the area of forest relations.

3. The Ministry of Healthcare and Social Development of the Russian Federation (Minzdravsotsrazvitiya) implements state policy and normative and legal regulation in the sphere of healthcare, social development, labour and the consumer rights protection, including sanitation and epidemiological safety, medical-biological evaluation of the effects of physical and chemical hazards on the human organism.

The following body is within its jurisdiction:

- The Federal Service for the Oversight of Consumer Protection and Welfare (Rospotrebnadzor) performs control and supervision over the execution of the requirements of the legislation of the Russian Federation in the sphere of securing of sanitary and epidemiological welfare of population, protection of consumer rights and consumer market.

4. The Ministry of Economic Development, which has the Federal Service for Registration, Cadastre and Cartography within its jurisdiction, exercises its powers in the sphere of the state land control in part of the land management and the land cadastre.

5. The Federal Agency for Fishery exercise the state control over the compliance with the legislation in the sphere of fishery and preservation of marine biological resources.

6. The Federal Security Service implements the organization of the activity in the sphere of defence and protection of natural resources of inland sea waters, the territorial sea, the exclusive economic zone, the continental shelf, and, beyond the limits of the exclusive economic zone of the Russian Federation, of reserves of anadromous types of fish, created in rivers of the Russian Federation.

The Federal Customs Service of the Federal Security Service of the Russian Federation exercises protection of biological resources of the territorial sea, the exclusive economic zone and the continental shelf of the Russian Federation.

There are no specialized courts, dealing with the cases on violation of legislation on the environmental protection, in Russia.

SWEDEN

Different central, regional and local administrative environmental authorities have a supervisory function over factories, companies and other activities that could affect the environment and nature. The initial detection of a violation of the environmental penalty law is therefore often made by such authorities. If so they are obliged by law to report the suspected crime to the prosecution or the police. In case of for instance major illegal discharge the police will directly get knowledge of it by the emergency call. Some cases are reported by

private persons.

Regardless of how a suspected environmental crime has come to the attention of a prosecutor it's the prosecutor's conclusive decision under the law to initiate an investigation and eventually bring the case to court.

Even if prosecutors and police regularly cooperate with administrative authorities these take no formal part of the investigation or the trial.

Individuals from the authority might appear in the process as witnesses and/or experts. For that reason it is important to cooperate with high integrity.

As will be mentioned in section 3.1.1.3. administrative authorities handle a system of administrative fees that apply to less serious infringement of the environmental law.

III STRUCTURES OF THE SANCTIONAL SYSTEM FOR ENVIRONMENTAL INFRINGEMENTS

3.1. The structure of the environmental criminal law

3.1.1 Summary

3.1.1.1 Environmental crime in the Penal Code

All countries have sections in their Penal Codes dealing with environmental crime, except Sweden where environmental crime is being dealt with a separate law. Sweden notes that even though the crime catalogue of environmental crimes is not part of the actual “Penalty Code” but instead collected into a chapter of the Environmental Code - this is not to be understood as legislation of less dignity. By tradition Swedish laws against even serious crimes are regulated in both the “Penalty Code” and special penalty laws such as “Narcotics crime Law” - “Tax crime Law” etc.

Two countries - Denmark and Norway - have chosen to adopt a general clause on environmental crime in their Penal Codes. The general clause refers to the environmental legislation, either specific laws or in more general terms as in Denmark.

The remaining countries: Estonia, Finland, Germany, Latvia, Lithuania, Poland and Russia, have in their Penal Codes more detailed individual sections on various types of environmental crimes.

Poland remarked, that it had been intention of the Polish legislator to make an exhaustive list in the Penal Code of the different types of environmental crimes.

Russia noted, that the legislation on the environmental protection is based on the Constitution of the Russian Federation and consists of the Federal Laws, and, adopted in compliance with them, normative and legal acts of the Government and the President of the Russian Federation and the bodies of executive power of the Russian Federation and normative and legal acts of constituent entities of the Russian Federation. The aforementioned laws set norms, which regulate legal relations depending on the object of the environmental protection (air, water, forest, wildlife etc.).

All the above mentioned countries stated that in order for an offence to fall under the scope of the Penal Code, the said offence generally has to of an aggravating nature cause substantial harm or danger.

Concerning the distribution of cases between intent and negligence several countries explained that to some extent environmental crimes committed negligently can also be punished under their Penal Codes. Denmark stated that under the Danish Penal Code only intentional acts are punishable.

Violations of the Penal Code can in all countries be sanctioned with imprisonment for up to four years and in some countries even more. In particular Germany and Norway should be mentioned, where environmental crime according to the Penal Code can be sanctioned with imprisonment for up to 10 years or in more severe cases up to 15 years.

However all the countries reported, that the majority of sentences passed are only for fines or for a suspended imprisonment. The countries stated that in order for a crime to render offenders liable to penalties for imprisonment it has to be committed with intent and to be of aggravating nature causing substantial harm to the environment or people or even resulting in the loss of lives.

3.1.1.2 Environmental crime outside the Penal Code

In most countries, the Penal Code is supplemented by a number of different environmental laws covering several offences of a less aggravating nature.

However, Estonia and Latvia reported that all environmental infringements dealt with as crimes, are covered by their Penal Codes.

Poland reported that although it had been intention of the legislator to include all criminalized environmental transgressions in the Penal Code, a few provisions within the environmental legislation was still in force.

Russia noted that in compliance with the legislation of the Russian Federation in force, the responsibility for the commission of environmental crimes is envisaged only by the Criminal Code of the Russian Federation. New laws providing for criminal responsibility are subject to the inclusion in the Criminal Code.

Sweden noted that while not having any environmental crimes in their Penal Code, all major crimes were today covered in one law, namely the Environmental Code, allowing for imprisonment for up to six years.

Here also the majority of cases seems to be based on negligence, and would for the most part result in the sentencing of a fine.

3.1.1.3 Environmental infringements outside the system of criminal law

Concerning environmental infringements dealt with outside the system of criminal law, the countries in the Expert Group can be divided into two subgroups:

1. Those countries which within their legislation have a system of administrative offences, namely Denmark, Estonia, Germany, Latvia, Lithuania, Norway, Poland, Russia and Sweden
2. Those countries which in general are unfamiliar with such a system, like Finland.

The latter group of countries however reported, that the administrative environmental authorities as supervisory bodies naturally as in the first group of countries have access to different administrative procedures such as revoking permits, requirement of changes in relations of productions etc.

Norway also, to a greater extent than previously, imposes administrative sanctions on environmental crime.

Russia informed that article 75 of the Federal Law "On Protection of Environment" provides for pecuniary, disciplinary, administrative and criminal liability for the violation of legislation on the environmental protection.

Sweden noted that the system of administrative sanctions ("environmental sanction fee") is regarded as a complement to the penalty law and is the only regressive consequence to several infringements, and is considered to be less serious and at the same time doesn't need a criminal court procedure to be established.

3.1.2. Environmental crimes covered by the Penal Code - specific information from:

DENMARK

Section 186 of the Danish Penal Code deals with the adding of injurious substances to drinking water or water reserves.

Section 187 deals with the adding of poison to products intended for sale or general use.

Section 194 deals with the removal or damaging of public monuments or objects subject to public conservation etc

Section 196 of the Danish Penal Code deals with environmental crimes. The provision while not criminalizing any specific actions, introduces a severe punishment for certain acts criminalized within the environmental legislation. The act has to be one of aggravating circumstances and has to

cause considerable harm or danger thereof to the environment.

ESTONIA

Offences against the environment are in the Penal Code chapter 20, articles 352 to 371. Some of the articles contain both criminal offences and misdemeanours, for example the first section is a misdemeanour and second is criminal offence. Necessary elements of criminal offence are almost the same for misdemeanours and criminal offences. The difference between the two is mostly in the range of damage to the environment caused by the offence. The range of damage is divided in two significant or serious damage to the environment. Criminal offences are mostly punishable when committed intentionally but for some offences negligence is sufficient. Misdemeanours are punishable with both negligence and intent. Punished can be both natural and legal persons.

Environmental criminal offences in the Penal Code

Article 353 deals with activities dangerous to flora.

Article 354 stipulates the punishment for damaging or destruction of trees or shrubs.

Article 355 deals with crimes caused damaging or destruction of trees or shrubs through negligence

Article 356 sets up punishment for illegal cutting of trees or shrubs.

Article 357 deals with violation of requirements for protection of protected natural objects.

Article 358 deals with violation of requirements for protection of protected natural objects through negligence.

Article 359 sets up punishment for damaging of landscape.

Article 360 sets up punishment for damaging of landscape through negligence.

Article 361 stipulates the punishment for damaging of wild fauna.

Article 363 sets up punishment for acting without natural resource utilisation permit or pollution permit.

Article 364 deals with crimes caused pollution of environment.

Article 365 deals with crimes caused pollution of environment through negligence.

Article 365¹ - repeated violation of prohibition of pollutant discharges from ships into sea

Article 365² - repeated violation of prohibition of pollutant discharges from ships into sea through negligence

Article 365² - repeated violation of prohibition of pollutant discharges

Article 367 deals with violation of requirements for handling dangerous chemicals or waste.

Article 368 deals with violation of requirements for handling dangerous chemicals or waste through negligence.

Article 368¹ - violation of requirements for transboundary movement of waste

Article 368² - illegal plant operation

Article 368³ - operation of products prohibited in order to protect ozone layer

Article 369 stipulates the punishment for causing of flood, paludification or prohibited reduction of amount of water.

Article 370 stipulates the punishment for causing of flood, paludification or prohibited reduction of amount of water through negligence.

Misdemeanours in the Penal Code

Article 352 deals with causing risk of fire in nature.

Article 362 deals with violation of requirements for transportation, storage or processing of natural products.

Article 366 deals with violation of procedure for utilisation of natural resources or procedure for maintenance of records on pollution.

Article 371 sets up punishment for damaging of boundary markers or geodetic network marks.

FINLAND

When violation causes threat or damage to environment, regulations are in the Criminal Code of Finland. Chapters 48 and 48a include the sanctions regarding environmental and natural resources offences. Other environmental laws can also include regulations which can be applied when minor violations occur.

Chapter 48 environmental offences:

- 1 § Impairment of the environment
- 2 § Aggravated impairment of the environment
- 3 § Environmental infraction

4 § Negligent impairment of the environment
 5 § Nature conservation offence
 5 a § Aggravated Nature conservation offence
 6 § Building protection offence
 10 § Environmental offence committed by a foreign vessel within the economic zone

Chapter 48 a natural resources offences:

1 § Hunting offence
 1 a § Aggravated hunting offence
 2 § Fishing offence
 3 § Forest offence
 3 a § Unlawful exploitation of mineral resources in the Antarctic
 3 b § Timber offence
 4 § Concealing of pouched game
 4 a § Aggravated concealing of pouched game
 7 § Fishing offence committed by a foreign vessel in the economic zone and concealing the illegal catch from a fishing offence

All offences for which the sanction may be imprisonment are included in the Criminal Code.

GERMANY

The German Criminal Code contains a chapter on "Crimes against the Environment" with the following offences:

Section 324: Water pollution

Section 324a: Soil pollution

Section 325: Air pollution

Section 325a: Causing noise, vibrations and non-ionising radiation

Section 326: Unauthorised handling of hazardous waste

Section 327: Unauthorised operation of installations in plant

Section 328: Unauthorised dealings with radioactive substances and other hazardous substances and goods

Section 329: Endangering areas in need of protection

Section 330: Particularly serious case of an environmental crime

Section 330a: Serious exposure to danger by releasing poisons.

Reference must also be made to criminal law protection against damage to

natural monuments,

Section 307: Causing a nuclear explosion

Section 309: Misuse of ionising radiation

Section 310: Preparing to commit a serious crime involving an explosion or radiation

Section 311: Releasing ionising radiation

Section 312: Defective construction of a nuclear installation

Section 314: Poisoning dangerous to the public

LATVIA

Criminal Offences against environment are specified in Chapter 11 of the Criminal Law, where the criminal liability is provided for the following offences:

Section 96: Violation of provisions regarding the management and utilization of the earth, its depths, waters and forests;

Section 97: Violation of provisions regarding the utilization of the natural resources of the sea;

Section 98: Violation of provisions regarding the circulation of radioactive and chemical substances;

Section 98¹: Illegal activities of ozone-depleting substances;

Section 99: Violation of provisions regarding elimination of hazardous waste;

Section 100: Unauthorized burial of hazardous substances in waters and depths of the earth;

Section 101: Pollution of the sea;

Section 102: Pollution and littering of the earth, forests and waters;

Section 103: Pollution of the air of the atmosphere;

Section 104: Operation of facilities without purification devices;

Section 104¹: Illegal exploitation of equipments;

Section 105: Failure to carry out initiatives for the elimination of environmental pollution;

Section 106: Concealment of data regarding environmental pollution;

Section 107: Setting forest fires;

Section 108: Destruction and damaging of a forest through negligence;

Section 109: Arbitrarily cutting and damaging trees;

Section 110: Arbitrarily fishing and acquiring aquatic animals;

Section 111: Unlawful manufacture, acquisition, storage, sale, transport and delivery of electro-fishing equipment;

Section 112: Unlawful hunting;

Section 113: Blasting and other acts committed in violation of provisions for protection of animals

Section 114: Destruction and damaging of natural sites under special protection of the State;

Section 115: Destruction and damaging of animals and plants under special protection of the State;

Section 115¹ Violation of provisions regarding the trade of endangered wild animals and plants species.

In several sections of the Criminal Law in order liability shall result it is necessary that substantial harm to environment or serious consequences have been caused by the offence.

Liability for the criminal offence provided for in the Criminal Law causing substantial harm shall result when as a result of the criminal offence not only substantial property damages have been caused, but also other interests and rights protected by the law have been endangered, or if such threat is substantial.

Liability for the criminal offence provided for in the Criminal Law causing serious consequences shall result when as a result of the criminal offence the person's death has been caused, serious bodily injuries or mental disorder have been inflicted to at least one person, moderate bodily injuries to several persons, property damages on a large scale, or another serious harm to the interests and rights protected by the law has been caused.

LITHUANIA

Section XXXVIII of the Lithuanian Penal Code deals with environmental crimes as well as with the criminal offences (those are less rough than crimes).

Worthy to note is the fact that some of actions, forbidden by these articles are classified as a crime as well as a criminal offence. Besides, the Lithuanian Code of the Administrative Offences provides a number of environmental infringements, which are quite similar to crimes or criminal offences. The difference between administrative infringements and crimes or criminal offences is mostly in extent of damage made by offence. The range of damage is divided in significant damage to flora, fauna or health and other hard consequences to environment. Most criminal offences are punishable when committed intentionally, but for some offences - negligence is sufficient to be punished (article 270, for instance).

Environmental criminal offences in the Penal Code

Intended in Chapter XXXVIII of Penal Code:

Article 270 – Violation of environmental rules, natural resources usage rules or violation of maintenance of buildings, where hazardous materials are used or stored;

Article 270¹ Illegal disposal of ozone-depleting substances or their mixtures;

Article 270² Illegal transportation of waste through the state border of the Republic of Lithuania;

Article 207³ Marine pollution from ships;

Article 271 - Destruction or desolation of protected areas or protected nature's objects;

Article 272 - Illegal hunting, fishing or other usage of wildlife resources;

Article 273 - Illegal traverse of woods or destruction of swamps;

Article 274 - Illegal collection of protected wild plants, mushrooms or their parts, destruction of them, illegal trade or other usage;

NORWAY

Effective from 1993 there was an insertion into the penal code of a general clause regulating serious environmental crimes, section 152b. The penal code has been modernized (2005) and changed with effect from 1 October 2015. Section 152b was continued in the new sections 240

(Serious environmental Crime), 241 (Conspiracy to engage in poisoning hazardous to public health or serious environmental crime) and 242 (Cultural heritage crime)

The sections in general calls for considerable harm or threat of such harm to the environment.

It does not merely protect the Norwegian environment but may also be employed in relation to foreign nationals for violations of environmental legislation committed abroad.

POLAND

All serious crimes against the natural environment have been inserted in a separate chapter, Chapter 22, of the Polish Criminal Code, covering inter alia

Article 181.

§ 1. A person who causes considerable degree of destruction to the plant or animal world shall be liable to imprisonment for a term of between 3 months and 5 years.

§ 2. A person who in breach of the provisions in force in the protected area destroys or damages plants or animals, causing serious harm, shall be liable to a fine, the penalty of restriction of liberty or imprisonment for a term of up to 2 years.

§ 3. The same penalty shall be imposed on anyone who, irrespective of the location where the act is committed, destroys or damages plants or animals under species protection, causing significant harm.

§ 4. The perpetrator of the act specified under § 1 who acts unintentionally shall be liable to a fine, the penalty of restriction of liberty or imprisonment for a term of up to 2 years.

§ 5. The perpetrator of the act specified under §§ 2 or 3 who acts unintentionally shall be liable to a fine or the penalty of restriction of liberty.

Article 182.

§ I. A person who pollutes water, air or soil with an ionising substance or radiation in such a quantity or form that it could endanger the life or health of a human being or cause considerable destruction to plant and animal world shall be liable to imprisonment for a term of between 3 months and 5 years.

§ 2. The perpetrator who acts unintentionally shall be liable to a fine, the penalty of restriction of liberty or imprisonment for a term of up to 2 years.

§ 3. If the act specified under § 1 was committed in the relation to the operation of an installation within the company, used for nature exploitation for which an authorisation is required, the perpetrator shall be liable to imprisonment for a term of between 6 months and 8 years.

§ 4. The perpetrator of the act specified under § 3 above who acts unintentionally shall be liable to imprisonment for a term of up to 3 years.

Article 183.

§ 1. A person who, in breach of the provisions of law, stores, disposes of, processes, renders harmless or carries waste or substances under such conditions or in such a manner that could endanger the life or health of a human being or cause significant decrease in the quality of water, air, or soil or the significant destruction to plant or animal world, shall be liable to imprisonment for a term of between 3 months and 5 years.

§ 2. The same penalty shall be imposed on any person who, in violation of the provisions of law, imports waste or substances hazardous to the environment.

§ 3. Any person who in breach of his duty allows the commitment of the act specified under §§ 1, 2 and 4 shall be liable to the penalty specified under §1 above.

§ 4. Any person who in breach of the provisions of law imports or exports waste, shall be liable to the penalty specified under §1 above.

§ 5. Any person who without a required declaration or authorisation, or contrary to its conditions, imports or exports hazardous waste, shall be liable to imprisonment for a term of between 6 months and 8 years

§ 6. The perpetrator of the act specified under §§ 1-5 above who acts unintentionally shall be liable to a fine, a penalty of restriction of liberty or imprisonment for a term of up to 2 years.

Article 184.

§ 1. Any person who processes, transports, imports, exports, accumulates, stores, possesses, utilizes, uses, disposes of, abandons or leaves without proper protection nuclear material or other source of ionising radiation, under such conditions or in such a manner that it could endanger the life or health of human beings or cause significant decrease in the quality of water, air, or soil or the significant destruction to plant or

animal life, shall be liable to the penalty of the imprisonment for a term of between 3 months and 5 years.

§ 2. The same penalty shall be imposed on any person who, in breach of his duty, allows the commitment of the act specified under § 1.

§ 3. The perpetrator of the act specified in § 1 or 2 who acts unintentionally shall be liable to a fine, the penalty of restriction of liberty or the penalty of imprisonment for up to 2 years.

Article 185.

§ 1. If the consequence of the act specified in Article 182 §§ 1 or 3, Article 183 §§ 1 or 3 or Article 184 §§ 1 or 2 is the significant destruction to plant or animal life or significant decrease in the quality of water, air or soil, the perpetrator shall be liable to imprisonment for a term of between 6 months and 8 years.

§ 2. If the consequence of the act specified in Article 182 §§ 1 or 3, Article 183 §§ 1 or 3 or in Article 184 §§ 1 or 2 is serious detriment to the health of a person people, the perpetrator shall be liable to imprisonment for a term of between 1 and 10 years.

§ 3. If the consequence of the act specified in Article 182 §§ 1 or 3, Article 183 §§ 1 or 3 or in Article 184 §§ 1 or 2 is the death of a person or serious detriment to the health of many people, the perpetrator shall be liable to imprisonment for a term of between 2 and 12 years.

Article 186.

§ 1. Any person who, in breach of his duty, does not properly maintain or use facilities to protect water, air or soil against pollution, or facilities to protect against radioactive or ionising radiation, shall be liable to a fine, the penalty of restriction of liberty or imprisonment for a term of up to 2 years.

§ 2. The same penalty shall be imposed on any person who grants the use of or, in breach of his duty, permits a building structure or a group of facilities that are not furnished with the equipment required by law, as specified in § 1, to be used.

§ 3. The perpetrator of the act specified in §§ 1 or 2 who acts unintentionally shall be liable to a fine or the penalty of restriction of liberty.

Article 187.

§ 1. Whoever destroys, seriously damages or significantly reduces the natural values of a protected area or an object, causing considerable damage, shall be liable to a fine, the penalty of restriction of liberty or imprisonment for a term of up to 2 years.

§ 2. The perpetrator who acts unintentionally shall be liable to a fine or the penalty of restriction of liberty.

Article 188.

Any person who, in violation of the provision of law, within an area protected because of its valuable natural or landscape features or in the surroundings of such an area, erects a new building or extends an existing one, or conducts business which is hazardous to the environment, shall be liable to a fine, the penalty of restriction of liberty or the penalty of imprisonment for a term of up to 2 years.

Generally the intention of the legislators was to insert in the Criminal Code all acts against environment related to the high extend of danger or damage.

RUSSIA

Chapter 26 “Ecological Crimes” of the Criminal Code of the Russian Federation contains 17 corpus delicti:

- Violation of Rules for Environmental Protection During Performance of Works (Article 246);
- Violation of Rules for Handling Ecologically Dangerous Substances and Wastes (Article 247);
- Violation of Safety Rules in Dealing with Microbiological or Other Biological Agents or Toxins (Article 248);
- Violation of Veterinary Rules and Rules Established for Struggle Against Diseases and Pests of Flora (Article 249);
- Pollution of Waters (Article 250);
- Pollution of the Atmosphere (Article 251);
- Pollution of Marine Environment (Article 252);
- Violation of Legislation of the Russian Federation on the Continental Shelf and on Exclusive Economic Zone of the Russian Federation (Article 253);
- Spoilage of Land (Article 254);
- Violation of Rules for Protection and Use of Subsoil (Article 255);
- Illegal Extraction (Catch) of Water Biological Resources (Article 256);
- Violation of Rules for Protection of Water Biological Resources (Article 257);
- Illegal Hunting (Article 258);
- Destruction of Critical Habitats for Organisms Entered in Red Book of the Russian Federation (Article 259);
- Illegal Cutting of Forest Plantings (Article 260);
- Destruction or Damaging of Forest Plantings (Article 261);

- Violation of Regime of Specially Protected Nature Territories and Nature Objects (Article 262).

Moreover, the Criminal Code of the Russian Federation provides for the responsibility for the concealment of information about circumstances endangering human life or health (Article 237), for the destruction or damage of monuments of history and culture, including natural complexes and objects (Article 243), for the cruelty to animals (Article 245) and ecocide (Article 358).

The Criminal Code of the Russian Federation envisages the following types of punishment, imposed by a court for the commission of environmental crimes:

- fine;
- compulsory works; corrective labour;
- restriction of liberty;
- arrest;
- deprivation of liberty;
- deprivation of the right to hold specified offices or to engage in specified activities.

When awarding a punishment for the commission of environmental crimes, all circumstances of a case are taken into account, in the first place, the character of the crime committed, the personality of the guilty person, the gravity of consequences, the extent of the caused harm etc.

When there are grounds, the guilty person may be inflicted a supplementary punishment in the form of deprivation of a right to occupy determined posts or to engage in a determined activity (for a determined period).

Earlier a fine was set at the rate corresponding to a definite quantity of a minimum wage amount, established by the legislation of the Russian Federation.

At the present time, the amount of a fine is set in the limits, established by the Criminal Code of the Russian Federation. Thus, depending on the sanction of an article, a fine may be inflicted at the rate of from 2.500 to 1.000.000 of rubles or at the rate of wage or other income of a convicted person for the period of from two weeks to five years.

The amount of a fine is determined by a court, which takes account of the gravity of the crime committed, the property status of the convicted person and of his/her family, and with a glance of the possibility of getting a wage or other income by the convicted person. Taking into account the same circumstances, a court may assign a fine by payment by instalments by determined parts for a term up to three years.

The infliction of a punishment in the form of deprivation of liberty is envisaged for the commission of specific crimes in the environmental sphere and, depending on a crime, it may last from six months to eight years.

SWEDEN No environmental crimes are covered by the Swedish Penal Code

3.1.3. Environmental crimes covered by other laws than the Penal Code - specific information from:

DENMARK The most central law is the Environmental Protection Act which contains several provisions that are penalised.

Other laws are inter alia the Act on Chemical Substances and Products, the Act on Protection of the Marine Environment, the Act on the Environment and Genetic Technology, the Act on Contaminated Soil. In connection with these and other environmental laws a number of administrative regulations have been passed. The violation of these can be penalised as well.

ESTONIA All environmental criminal offences are described in the Penal Code. Environmental misdemeanours are described in addition to the Penal Code in many other environmental acts.

Acts covering environmental misdemeanours are, e.g.:

- Deliberate Release into the Environment of Genetically Modified Organisms Act
- Hunting Act
- Waste Act
- Mining Act
- Fishing Act
- Chemicals Act
- Environmental Charges Act
- Environmental Liability Act
- Nature Conservation Act
- Earth's Crust Act
- Maritime Safety Act
- Forest Act
- Ports Act
- Ambient Air Protection Act
- Water Act

FINLAND Violations are found in numerous, various acts. The most important environmental laws are the provisions in the Environmental Protection Act, the Nature Conservation Act, the Waste Act, the Land Use and Building Act, the Water Act, the Forest Act, the Hunting Act, the Act on Protection of Buildings and the Antiquities Act.

- GERMANY Criminal offences are specified in various acts, for example
- Dangerous handling of certain hazardous substances falling under the Chemical Act
- Dangerous dissemination of harmful organisms, section 69 of the Plant Protection Act
- Certain (qualified) violations of provisions protecting species of fauna and flora meriting special protection, the Act on Nature Conservation and Landscape Management – Federal Nature Conservation Act.
- LATVIA Criminal liability for commission of criminal offences against environment in Latvia shall be provided for only in the Criminal Law.
- LITHUANIA All activities against nature and health that are illegal and are being kept as criminal are prescribed in the Lithuanian Penal Code. Administrative misdemeanours against environment and man's health are prescribed in other legal acts. Those are:
- Code of the Administrative Offences;
 - Environment Act of the Lithuanian Republic;
 - Act of protected areas;
 - Act of protection of immovable cultural heritage;
 - Hunting Act;
 - Non pro fishing Act;
 - Wood Act;
 - Act of state port of Klaipeda;
 - Act of state port of Šventoji;
 - Act of environmental monitoring;
 - Act on monitoring of public health;
 - Water Act;
 - Protection of environmental air Act;
 - Act of waste recycling;
 - Act on planning of territories;
 - Building Act;
 - Act of protection of marine environment;
 - Employees` safety and health Act.
- NORWAY The most important laws relating to environmental crime are the Pollution Control Act, the Biodiversity Act, the Wildlife Act, the Act relating to Motorised traffic in Unfenced Areas and on Watercourses, the Salmon and Inland Fisheries Act, the Product Control Act, the Cultural Heritage Act., the Aquaculture Act, the Outdoor Recreation, the Ship Safety and Security Act, the Working Environment Act and the Planning and Building Act. The Animal Welfare Act has also been defined as part of Environmental law.

POLAND

The principal regulations of environmental law are set forth in the Environmental Protection Act of 2001.

Many environmental regulations are targeted to specific sectors, however, or address specific aspects of environmental protection, such as waste management, air, water and noise pollution. They are found in:

- the Water Law;
- the Waste Act;
- the Nature Conservation Act;
- the Law on Inland Fishery; the Game Law;
- the Law on Conservation of Inland Waters.

These are just examples of some of the specific regulations. There are also legal acts for example devoted to particular types of waste: packaging waste, mining waste, used electronic equipment, vehicles taken out of service, used batteries.

Code of Petty Offences lists a number of criminal petty offences concerning the environment - they go beyond administrative law as they apply criminal principles procedures and penalties.

RUSSIA

In compliance with the legislation in force, the responsibility for the commission of ecological crimes is envisaged in the Russian Federation only by the Criminal Code of the Russian Federation. New laws providing for criminal responsibility are subject to inclusion in the Criminal Code.

SWEDEN

The Swedish Environmental Code contains a Chapter 29 - Penalty provisions and forfeiture - with the ambition to essentially cover all crimes related to the environment. The stipulated sanction is in most cases fines or imprisonment up to two years. The chapter was founded in 1999 and subject to a major revision in 2007 with the main focus on clarity and effectiveness.

One fundamental issue for the 2007 revision was to adapt the law to the fact that environmental damage rarely has a concrete and limited appearance. The consequences of even a large discharge of harmful substances could extend over a long time and not be visible or even measurable at the time of the crime. Therefore, a special note should be made that the 2007 version of Environmental crime (discharges) does not need any proof of actual damage but only proof that the substance discharged - regardless of the specific conditions of the recipient - was potentially harmful to the environment.

A brief description of the main crimes in Chapter 29:

29:1 Environmental crime

a) Deliberate or through negligence cause a discharge of a substance that will - or typically would - in any kind of environment cause a pollution that could endanger human health, animals or plants.

b) Storage of or handling harmful substances in a way that could cause pollution

29:2 Crime against protected area

29:2a Crime against endangered species

29:3 Careless handling of chemical substances

29:4 Unauthorized environmental activity

a) Starting up or pursues an activity without obtaining prescribed permission

b) Not fulfil to a certain condition for a permission

29:4a Unauthorized and illegal waste transport

29:5 Obstruction of regulatory Authorities environmental control

29:6 Incomplete environmental information

29:7 Littering

All crimes above can be committed both willfully and by negligence.

Apart from the Environmental Code - provisions concerning crimes against the environment are to be found particularly in two other special laws:

A) The Water pollution law

Dealing with forbidden discharges from ships (implementation of UNCLOS and MARPOL)

B) The Hunting law

Dealing with forbidden hunting of endangered species (such as wolf, bear, eagle etc.)

3.1.4. Environmental infringements dealt with outside the system of criminal law - specific information from:

DENMARK

Within the field of environmental law administrative fines can be imposed if authorised in the environmental acts.

ESTONIA

The Code of the Administrative Offences provides a number of environmental infringements, which are quite identical to criminal offences. There are differences between administrative and criminal offences in the extent of damage only.

FINLAND

Environmental authorities have the option of using administrative means, especially in cases where violations have occurred more by accident or ignorance than by design. Administrative actions can also be taken when a criminal process is going on. Competent environmental authority can use coercive measures to order the responsible person to stop illegal activity or to carry out a legal duty and impose a threat of fine for case of failure to comply with the order or threat of required measures to be carried out at the expense of the responsible person. Environmental authorities can ask police for executive assistance in case of immediate coercive measures such as stopping illegal activity causing imminent health risks or significant environmental damage.

The administrative authorities can order sanctions in two cases: the administrative oil discharge fee (4.7.2) and penalty payment for negligence according to the Waste law § 131.

GERMANY

A special feature of German criminal law is the separation of penal law from administrative law relating to regulatory offences. Administrative regulatory offences cover areas of less serious wrongfulness.

The special feature of administrative regulatory offences is to be found in the fact that it is primarily administrative authorities that are responsible for the imposition of a non - criminal monetary sanction, while in this case prison sentences cannot be imposed. In consequence the penalty of a criminal fine has been established as the sole sanction for less serious offences under German criminal law.

Under German law there are, in the environmental field, numerous administrative regulatory offences in federal law and in the law of the 16 Laender. Under various statutes administrative regulatory fines of up to 50.000 Euro can be imposed for violations.

In general the following instruments inter alia are available to administrative authorities as a means of reacting to violations in the context of the relevant provisions of environmental administrative law: withdrawal of a licence refusal extension of a temporary licence; (subsequent) imposition of orders and conditions; administrative execution measures such as imposition of coercive fines or substitute performance.

LATVIA

In addition to the criminal liability provided for in the Criminal Law for commission of criminal offences against environment, in the

Latvian legislation also administrative liability for offences against environment shall be established. This liability shall be governed by the Latvian Administrative Offences Code. Administrative liability for the offence against environment shall be applicable if the offence is less dangerous and the substantial harm or serious consequences have not been caused.

LITHUANIA

Lithuanian Code of the Administrative Offence provides a number of infringements on protection of environment and environmental resources. Parts of those infringements by their structure are similar to criminal offences that are intended in Penal Code. Commonly differences between administrative and criminal offences are the extent of damage to environment made by malpractice. The other part of infringements is specific, not intended in Penal Code, but mostly less dangerous than crimes and criminal offences.

NORWAY

Under the legal provisions that apply in environmental crime cases, the supervisory authorities may reach various kinds of administrative decisions. They can issue orders, coercive fines and impose various sanctions.

Environmental legislation in Norway has a number of provisions that allow the supervisory authorities to order to shut down of a number of legal activities, such as illegal labour and illegal construction activity. If the order is not adhered to, the provisions allow for the issuing of continuous or conditional coercive fines. Failure to comply with the order is often punishable by law. The coercive fine may be imposed as an automatic, conditional or unconditional fine, and it may be imposed as a single payment or as a continuous fine.

Recent legislation on environmental crime also authorises various departments of public administration to issue violation fines, for instance the Ship and Security Act of 2007 section 55.

POLAND

Sanctions result from the execution of legal liability, in the field of environment protection apart criminal includes administrative law liability, which occurs in the situation of a real infringement of the state of the environment as well as in the situation where there is a risk of such a negative impact.

Administrative sanctions are the most commonly used and they are imposed in accordance to the Code of administrative proceedings, e. g. administrative fines, particular obligation - restore the lawful state.

The decision of punishment is taken and executed by the organ of the National Environmental Inspection.

RUSSIA

The Russian legislation provides for administrative, civil and disciplinary

responsibility for the commission of infringements in the sphere of the environmental protection and the nature management.

An administrative environmental infringement is an unlawful, guilty action or a failure to act, infringing upon the environmental law order, established in the Russian Federation, upon health and the environmental safety of population, which inflicts damage to the environment and constitutes a justifiable threat thereof, for the commission of which an administrative responsibility is envisaged.

Administrative responsibility is provided for by Chapter 8 of the Code of Administrative Offences of the Russian Federation, which envisages 40 elements for the commission of environmental offences.

Depending on the committed administrative offence, the guilty person may be inflicted a fine, or an administrative suspension for activity (for a determined period) maybe used in respect of him/her etc.

Administrative fine is set at the rate of from one hundred rubles: an administrative fine imposed on citizens may not be more than five thousands rubles; for officials - no more than fifty thousand rubles; for legal entities - no more than one million rubles.

The civil responsibility is applied in compliance with the Civil Code of the Russian Federation and provides for a compensation for damages (and/or lost benefit) to an aggrieved person by a guilty person.

The amount of compensation for damages is determined in accordance with the established rates and methods for calculation the extent of damage and, in the absence thereof, in accordance with the actual expenditures, spent for the recovery of the state of the environment and with a glance of losses, including the lost benefit.

The disciplinary responsibility for the ecological offences accrues after the failure to perform labour or service duties. The Labour Code of the Russian Federation regulates the application of the disciplinary responsibility.

The disciplinary act, which is an unlawful, guilty non performance or improper performance of labour duties connected with meeting of ecological requirements by employees, is an actual base for disciplinary ecological responsibility. An employer has a right to apply the following disciplinary penalties in respect of a guilty person: reprimand, rebuke or discharge for relevant reasons.

SWEDEN

In 2007 a legislative reform of the system of sanctions in the Environmental Code created a separation between penalty sanctions and administrative sanctions. The aim was to avoid double sanctions and to reserve the system of crime proceedings for more serious offences. Minor

infringements now fall outside the criminal law system and are instead subject to administrative fees.

3.2 Any special procedures for environmental cases?

3.2.1. Summary

All countries reported that no special rules apply for the proceedings during investigation and prosecution in cases of environmental crime. The general rules found in the respective Codes of Criminal Proceedings are applicable. However, Denmark, Estonia and Lithuania wanted to point out some specific information.

3.2.2 Specific information from:

DENMARK

The provisions on investigation of environmental crime are in general the same as for any other criminal investigation. However, there can be special regulation regarding, e.g. access to searches in the environmental legislation.

ESTONIA

There are no special rules or proceedings during investigation and prosecution in cases of environmental crimes.

Limitations in Criminal Code of Procedures According to the article 126¹ and 126² surveillance activities are permitted on the bases provided for in this Code if collection of data by other activities or taking of evidence by other procedural acts is impossible, is impossible on time or is especially complicated or if this may damage the interests of the criminal proceedings surveillance activities may be conducted in the event of environmental criminal offences specified in articles 356, 357, 361, 364. So basically surveillance methods can be used only in a minority of environmental crimes. The Environmental Inspectorate doesn't have the right to conduct the surveillance activities, only police can do it at request. That means that in a lot of environmental crime cases is not possible to collect evidence with surveillance activities.

Most of the procedural acts which limit constitutional rights need the permission of the court (taking into custody), some the permission of the prosecutor (search).

LITHUANIA

Valid legislation does not intend any special rules or proceedings to investigate and prosecute in cases of environmental crimes.

Some limitations are provided in CCP. Investigating environmental crimes investigators are not allowed to use some of investigating procedures intended in CCP (for instance - to control information sent by wired network communications and record it). However, considering the

fact, that some of environmental crimes are classified as less severe (for instance - article 270), or severe (for instance - article 276), CCP allows to collect evidences in these kind of cases using some of surveillance activities (secret surveillance and so on).

Procedural acts which limit some of constitutional rights mostly can be granted only by prosecutor or in some cases (taking into custody or to control information sent by wired network communications and record it) only with court permission.

3.3. Subjects of environmental cases

3.3.1. Summary

With regard to legal entities, these can be prosecuted for environmental crimes in Denmark, Estonia, Finland, Latvia, Lithuania, Norway, Poland and Sweden. Germany pointed out, that although it doesn't have the possibility of imposing criminal sanctions on legal entities, administrative sanctions can be imposed for violations by legal entities of the environmental legislation.

3.3.2. Specific information from:

DENMARK	<p>In accordance with chapter 5 of the Danish penal code, legal entities can be subject to the punishment of fines. However the infringed law must contain a specific provision allowing the punishment of legal entities.</p> <p>In an environmental criminal case, where a legal entity is involved, the entity will be the primary subject to prosecution. The physical persons however will be subject to criminal prosecution as well, if they have a senior responsibility within the legal entity and have acted intentionally or with gross negligence.</p>
ESTONIA	<p>Legal entities can be prosecuted for environmental offences and misdemeanours. It has to be proven that the crime is committed in the interest of the legal entity.</p>
FINLAND	<p>According to the Criminal Code of Finland, there is also a possibility to a corporate criminal liability. Corporate criminal liability means that a company can be sentenced to a fine. It requires always a prosecutor's request and evidence of the fact that the criminal act has been committed in the operations of a corporation. It is not necessary to show which person has committed the crime. A corporate fine is usually anyhow sentenced in addition to the punishment of the actual offender. The amount of the corporate fine can be from 850 Euro to 850.000 Euro; Chapter 48, section 9, and Chapter 48 a, section 6 a§, Criminal Code.</p>

GERMANY In German law legal persons can be prosecuted on the basis of section 30 OWiG (sanctions under the law relating to administrative regulatory offences).

LATVIA In accordance with the Latvian Criminal Law, coercive measures shall be applied to a private law legal person, as well to State or municipalities commercial company, for commission of criminal offences against environment which may be applied only if the criminal offence has been committed in the interests of the legal person by a natural person.

The coercive measures applicable to legal persons are stated in Chapter 8 of the Criminal Law.

The following coercive measures may be applied for a legal person:

1. Liquidation;
2. Limitation of rights;
3. Confiscation of property;
4. Monetary levy.

LITHUANIA According to article 20 of Criminal Code, legal entities in Lithuania can be subjects of punishment. These concern only criminal, not administrative cases. In such cases infringed law must contain a specific provision allowing the punishment of legal entities. In environmental cases, where a legal entity is involved, the entity will be the subject to prosecution as well as a physical person. Legal entity can be prosecuted for environmental crimes and criminal offences only in cases, when these offences were done by physical persons who have a senior responsibility within the legal entity and committed the crime in the interest of the legal entity. Possible sanctions for legal entity, intended in Criminal Code are fine, restriction of activity of legal entity, liquidation of legal entity. According to the Lithuanian Criminal Code legal entity can be prosecuted for all environmental crimes, intended in a Criminal Code.

NORWAY Legal entities can be prosecuted, ref. section 27 and 28 of the Penal Code.

POLAND Polish legislation provides the admittance of criminal liability of a legal person under the Act on Liability of Collective Entities (2002).

Article 16

1. Legal entity is liable under the Act if the person referred to in Article 3 has committed an offense:

- 1)

8) against the environment, as defined in:

- a) Articles 181-184 and Articles 186-188 of the Penal Code
- b) Articles 31-34 of the Act on the chemical substances and blends
- c) Article 19 of the Act on the international waste trade
- d) Articles 58-64 of the Act of the Genetically Modified Organisms
- e) Article 37b of the Act on The State Sanitary Inspection

A collective person is liable on the ground of the statute, if a natural person acting in the name of a collective person, and has committed the offence against the environment.

Criminal liability does not exclude civil or administrative liability.

RUSSIA

Only a sane natural person who has attained the age of criminal liability is subject to criminal responsibility. The Criminal Code of the Russian Federation provides for a special responsibility for the commission of environmental crimes by persons who use their employment position during the commission of environmental crimes.

Natural persons as well as legal entities may be the subjects of administrative responsibility.

Natural persons as well as legal entities may be the subjects of civil responsibility.

Employees are the subjects of disciplinary responsibility.

SWEDEN

Since 2006 the corporate fine as a special effect of a crime is the main sanction - and normally the only sanction - when crimes are committed under the practice of a business. Corporate fine could be ordered to a legal entity as well as a person responsible for a private business. A majority of crimes against the environment falls under these provisions.

3.4. Additional sanctions

3.4.1. Confiscation

3.4.1.1. Summary

All countries have in their legislation the possibility of confiscating the proceeds of an environmental crime.

All the countries further emphasised that not only profits but also expenditures saved or benefits obtained in default of investments

required are covered by the rules on confiscation.

Poland remarked that their legislation further presents the option of imposing upon a convicted person a supplementary payment for a purpose connected with environmental protection.

3.4.1.2. Specific information from:

- | | |
|-----------|---|
| DENMARK | <p>The Danish Penal Code contains general rules on the confiscation of the proceeds of crime or property and the value which corresponds to such proceeds. These rules also apply to environmental crime.</p> <p>Proceeds can be financial benefits as well as obtained savings.</p> <p>If confiscation is not possible due to lack of documentation of the size of the obtained benefits or savings, this should be taken into consideration in the measuring of the fine.</p> |
| ESTONIA | <p>In Estonia it is possible to confiscate the proceeds of an environmental crime.</p> |
| FINLAND | <p>The Criminal Code, Chapter 10 requires that all proceeds of a crime shall be ordered forfeit to the state. This applies to all crimes. Also instruments of a crime shall be ordered forfeit to the state. If an object or a property cannot be forfeited, forfeiture of value may be ordered on the offender. A special provision applies to nature conservation offences. The value of the protected species for conservation shall be forfeited if a protected individual is killed or destroyed (Nature Conservation Act section 59).</p> |
| GERMANY | <p>Section 73 et seq. of the Criminal Code contains provisions regulating the case that an unlawful act has been committed and the perpetrator or inciter or accessory has obtained something for or from the act itself. What has been obtained is subject for forfeiture. This particularly includes the profits made. But expenditure that has been saved or whatever has been obtained as a result of failure to make investments required for protection of the environment is also covered by forfeiture.</p> |
| LATVIA | <p>The Latvian legislation specifies confiscation of property if it is established in the Special Part of the Criminal Law. Confiscation of property may be applied as a basic penalty or additional penalty.</p> |
| LITHUANIA | <p>Lithuanian Penal Code contains rules on the confiscation. Objects of forfeiture according to article 72 of Criminal Code, can be only tools or measures used to do crime as well as the results (benefit) of crime. These rules apply on environmental crimes as well.</p> |

NORWAY	Any gain obtained by a criminal act may wholly or partly be confiscated from the person to whom the gain has directly accrued through the act. In addition, property or the product of a criminal act, used as subject or tools of a criminal act, may be confiscated.
POLAND	<p>There is general possibility of forfeiture of items derived from an environmental offence, unless they are subject to return the injured person or other entity.</p> <p>Furthermore section 47-2 of the Criminal Code provides: "in the case of conviction for an offence against the environment, the court may impose a supplementary payment for a purpose of the National Fund for Environmental Protection and Water Management".</p>
RUSSIA	In the course of proceedings on environmental infringement/crime, if a court rules, the instruments and objects (including biological resources), against which the unlawful actions were directed, the cash assets, valuables or other property, gained as the result of commission of these crimes/infringements, may be confiscated.
SWEDEN	According to chapter 29 of the Environmental Code proceeds from environmental crime can be confiscated.

3.4.2. Professional or Business prohibition

3.4.2.1. Summary

All countries can under various circumstances impose a professional or business prohibition on a person convicted of an environmental crime.

In this context most countries except Norway pointed out, that although they have the option within their legislation it is rarely or has not yet been used in connection with environmental crime.

3.4.2.2. Specific information from:

DENMARK	<p>In accordance with sections 78 and 79 of the Danish Penal Code, a person convicted of a criminal offence may be deprived of the right to carry on activities under a special public licence or permit if the act committed implies an imminent risk of abuse of his position or profession.</p> <p>A person carrying on such activities may be deprived by judgment in criminal proceedings of the right to continue such activities or to carry on such activities in certain circumstances if the act committed implies an imminent risk of abuse of his position.</p>
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years as well as period of limitation the execution of penalties - it's 30 years for the sentences to a penalty of deprivation of freedom of over 5 years or to a more severe penalty.

3.5.2. Specific information from

- DENMARK** The statutory period of limitation is set out in the Danish Penal Code Section 93-94. The limitation periods are two years where the maximum penalty prescribed for the offence is imprisonment for one year, five years where the maximum penalty prescribed for the offence is imprisonment for four years, ten years where the maximum penalty prescribed for the offence is imprisonment for ten years and fifteen years where the maximum penalty prescribed for the offence is imprisonment for a determinate period.
- The limitation period is suspended when the relevant person is notified of the provisional charge, or when the Prosecution Service requests legal proceedings by which the relevant person is provisionally charged with the offence. The limitation period of the liability of a legal person can be suspended by notification to a person authorised to accept service on behalf of the legal person.
- ESTONIA** The statutory period of limitation is 5 years in 2nd degree offences (offence punishable up to 5 years of imprisonment), and environmental offences are 2nd degree offences. For misdemeanours the statutory period of limitation is 2 years.
- FINLAND** The statutory period of limitation for offences depends on the maximum penalty applicable. Environmental offences under the Penal Code, which are punishable by imprisonment with maximum at least two years, fall under the statute of limitations after ten years. Minor violations in turn, which are punishable by a fine, fall under the statute of limitations after two years.
- Forfeiture may not be sentenced if an act is no longer punishable due to expiration of the statutory period of limitation. However, the minimum statutory period of limitation for a claim concerning forfeiture is five years.
- GERMANY** The statutory period of limitation for prosecuting violations of the Penal Code (water pollution) is five years, starting with the end of the illegal discharge. In case of especially serious environmental crime, where certain serious consequences are caused by oil pollution, the upper limit of imprisonment is ten years or even fifteen years where death is caused. The statutory period of limitation for prosecution is in such cases is ten or twenty years.
- The statutory period of limitation for the execution of fines imposed for violations of the Penal Code is five years.

The statutory period of limitation for prosecuting violations of administrative regulations (e. g. duty to keep the Oil, Cargo or Garbage Record Book properly, illegal discharges, illegal pipe in contravention of Regulation 17 Paragraph 3 to MARPOL 76/78) is up to three years depending on the respective maximum fine. In cases of improperly kept record books the period of limitation starts with the detection of the violation.

The statutory period of limitation for the execution of fines imposed for violations of administrative regulations is three years for fines of up to 1,000 Euro, five years for higher fines.

LATVIA

Administrative penalty for offences against environment may be applied not later than within four months from the day when the offence was committed, but if the offence is continuing, - within four months from the day when it was discovered. If the expert statement is necessary in the case, administrative penalty may be applied not later than within six months from the day when the offence was committed, or discovered, but not later than within a year from the day when the offence was committed.

If the refusal to initiate criminal proceedings has been obtained or the criminal proceedings have been terminated, but there are elements of the administrative violation in the behaviour of the offender, administrative penalty may be applied within the time period specified in Paragraph 1 of this Section. If it is not possible to find out all circumstances within the time period specified in Paragraph 1 of this Section in order to decide in the administrative violation case, administrative penalty may be applied not later than within a month from the day when the decision was made to terminate the criminal proceedings.

Limitation period for crimes against environment is set out in the Latvian Criminal Law. It depends on the seriousness of the criminal offence.

A person may not be held criminally liable if from the day when he or she committed the criminal offence, the following time period has elapsed:

1) two years after the day of commission of a criminal violation. A criminal violation is an offence for which the Criminal Law provides for deprivation of liberty for a term not exceeding three months, or a lesser punishment.

2) five years after the day of commission of a less serious crime. A less serious crime is an intentional offence for which the Criminal Law provides for deprivation of liberty for a term exceeding three months but not exceeding three years. As well as an offence, which has been committed through negligence and for which the Criminal Law provides for deprivation of liberty for a term not exceeding eight years.

3) ten years after the day of commission of a serious crime. A serious crime is an intentional offence for which the Criminal Law provides for deprivation of liberty for a term exceeding three years but not exceeding eight years. As well as an offence, which has been committed through negligence and for which the Criminal Law provides for deprivation of liberty for a term exceeding eight years.

4) fifteen years after the day of commission of an especially serious crime. A especially serious crime is an intentional offence for which the Criminal Law provides for deprivation of liberty for a term exceeding eight years, life imprisonment.

LITHUANIA

The statutory period of limitation for offence depends from the highest sentence stipulated for the crime (the maximum penalty applicable). Article 95 of Penal Code intends following periods of limitation:

- Three years, after criminal offence done (punishment does not intend imprisonment);
- Eight years after offence by negligence or undemanding offence been done (intended punishment not more than 3 years of imprisonment);
- Twelve years after less severe intentional offence been done (intended punishment more than 3 years of imprisonment but no more than 6 years);
- Fifteen years after severe offence been done (intended punishment more than 6 years but no more than 10 years of imprisonment);
- Twenty-five years after very severe offence been done (intended punishment more than 10 years of imprisonment);
- Thirty years after offence involved intentional homicide been done.

For misdemeanours, intended in Code of the Administrative Offence the statutory period of limitation is 1 year.

NORWAY

The statutory period of limitation is regulated in Section 86 of the Penal Code of 2005. For offences under section 240 the limitation period is ten years, or 15 years in case of death or serious personal injury. For most other laws concerning environmental crime the limitation period is five years but in some cases only two years.

POLAND

A fine shall not be imposed after 5 years from the date on which the violation was committed. The fine shall not be executed after 5 years from the final decision on the fine.

RUSSIA

The period of limitation for making a person criminally liable for the commission of environmental crimes depends on the gravity of a crime. The majority of crimes of the Criminal Code of the Russian Federation belong to the category of average gravity crimes, the period of limitation of which is

six years since the moment of the commission of a crime.

The period of limitation is calculated since the moment of the commission of a crime till the moment the judgement comes into legal effect. The course of the period of limitation is suspended, if a person, who has committed a crime, evades from investigation or a court. There is no period of limitation for ecocide (Article 358).

The period of limitation for making administratively accountable is one year since the day of the commission of the administrative environmental infringement.

SWEDEN

The statutory period of limitation for sanctions depends on the most severe sentence stipulated for the crime. If it is no more than imprisonment for two years, the limitation is five years from the day of detention or the day of serving notice of the prosecution.

Sanctions can never be imposed later than 15 years from the day of the offence if the most severe punishment is no more than imprisonment for two years.

IV SPECIAL RULES CONCERNING OIL POLLUTION AT SEA

4.1. Environmental enforcement jurisdiction within the Baltic Sea Area

4.1.1. Breadth of territorial seas and establishments of exclusive economic zones

All the Baltic Sea States have a territorial sea the breadth of which is up to 12 nautical miles measured from the baseline, in most cases the low-water line along the coast. All Baltic Sea States have established an exclusive economic zone (EEZ), the breadth of which is up to 200 nautical miles measured from the baselines from which the breadth of the territorial sea is measured.

4.1.2 Rights and duties of enforcement

The Baltic Sea States have the right and - if not forwarding the specifics of a case to the Administration of a flag State - the duty, pursuant to international law, to prosecute violations of anti-pollution regulations up to 200 nautical miles from the baselines, i.e., in their internal waters, territorial seas and exclusive economic zones. As regards ships flying their own flag the Baltic Sea States also have the duty to enforce violations on the high seas.

In addition to these enforcement powers Germany has implemented Article 218 of the United Nations Convention on the Law of the sea (UNCLOS) giving a port State the right to investigate and institute proceedings, when a ship is voluntarily within its ports, irrespective

of where an illegal discharge has taken place, i.e., on the high seas or in the internal waters/territorial sea/exclusive economic zone of another Baltic Sea State. However, in the latter case this is conditional on a request to act from the State concerned.

4.1.3 Application of anti-pollution regulations to all ships, irrespective of flag

The Baltic Sea States do not discriminate between ships sailing different flags, but apply their anti-pollution regulations equally to all ships committing a violation in the internal waters, territorial seas. In exclusive economic zones these regulations are applied in accordance with UNCLOS.

4.1.4 Specific information from:

DENMARK Denmark established an exclusive economic zone on 1 July 1996. In case of infringements of the Danish Act for Protection of the Marine Environment in this zone, Denmark shall enforce anti-pollution regulations as laid down in the act (which is based on the regulations of the MARPOL Convention) as far as they are in line with international law towards both the Contracting Parties to the convention irrespective of their nationality and to the Non-contracting Parties.

ESTONIA It is possible to punish for a crime that's made in the Estonian territory waters and in economic zone.

Pursuant to § 9 section 2 of the Penal Code Estonian criminal law is applicable to an act damaging the environment in the economic zone or high seas regardless whether it is an offence or misdemeanour in accordance with the obligations and rights stemming from international maritime law.

Estonian territorial waters are comprised of the territorial sea with the breadth of 12 nautical miles. Exceptions may be made on the basis of international conventions and treaties with neighbouring states. The borders of the economic zone are determined by the treaties signed with states bordering with Estonia. Such a treaty has been signed with Finland and Sweden.

The agreement has been reached between the Estonian Republic and the Latvian Republic to establish the marine border at the Gulf of Finland, the Bay of Kura and the Baltic Sea that has been signed on 12 July 1996 and it has come into force.

The Estonian Republic and the Russian Federation have established an

agreement with Russia about the marine borderline of the water bodies of the Gulf of Finland and Narva which has been signed in Moscow on 18 May 2005. The mentioned agreement is declared void due to the fact that Russia hasn't ratified it. No other supplementary agreements have been tied up.

The restrictions on discharges from ships in the territorial waters and economic zone apply to all vessels, regardless of flag.

FINLAND

In Finland the rules concerning oil pollution at sea are regulated by the Act on Environmental Protection in Maritime Transport (1672/2009). The Act contains a prohibition against marine pollution from the ships, regulating the use of waste and oil discharges resulting from the normal operations of the vessels. It concerns the vessels sailing both at the areas inside the Finnish territorial waters and also at the EEZ of Finland. With regard to the Finnish vessels the act is applied also outside of the Finnish territorial waters and EEZ. In separate act there are also regulations regarding combating oil pollution incidents in cases where the accident has already happened.

The Act on Environmental Protection in Maritime Transport has also criminal sanctions for minor offences. For more serious offences the sections of environmental offences in the Criminal Code are applicable to a certain degree.

GERMANY

According to §324 Strafgesetzbuch (StGB), the German Penal Code, anybody who, wilfully or negligently, pollutes water or otherwise detrimentally changes its properties without authorization shall be prosecuted. § 324 StGB, on the basis of the legal definition of the term "water", protects not only the underground water and all surface waters within the jurisdiction of the Federal Republic of Germany including the territorial sea, but also the high seas and foreign coastal waters, although only insofar the German flag is flown. Foreigners on board a ship not flying the German flag can be prosecuted if the offence was committed in waters under German jurisdiction (internal waters and territorial sea) or within the German exclusive economic zone.

Article 12 of the UNCLOS Implementation Act has even extended the possibility of prosecuting criminal offences against MARPOL discharge regulations to the whole Baltic Sea Area.

According to Article 12 German law shall apply to criminal offences to the detriment of the environment in cases referred to in Sections 324, 326, 330 and 330 of the German Penal Code, if committed from the vessel in the Baltic Sea outside the German exclusive zone by the discharge of substances resulting in a violation of administrative-legal obligations (Section 330 d (1), Items 4 and 5, of the German Penal Code) serving the purpose of implementing conventions for the protection of the sea

binding under international law. In cases where such offence has been committed in the territorial sea of another State, the provisions of the forgoing sentence shall apply when such an offence is punishable under the laws and regulations of that State.

The expansion of the scope of application of German penal law, beyond the present scope as defined in Section 5 (Item 11) and section 7(2) (Item 2) of the German Penal Code, is provided for in cases of certain types of criminal offences to the detriment of the marine environment, when committed by a foreigner from a foreign-flag ship in the Baltic Sea. Thereby, this regulation embodies the so-called "port state principle", newly introduced into international law by the provisions of UNCLOS Article 218, entitled "Enforcement by port States". This principle authorizes the Contracting States - certain preconditions prevailing - to institute proceedings in respect of criminal offences to the detriment of the marine environment that have been committed from a foreign-flag ship. This authority is being used to the extent of covering criminal offences committed in the Baltic Sea.

However, Article 12 only covers offences committed in the North Sea or the Baltic Sea outside the German exclusive economic zone. When an offence has been committed within the German exclusive zone, the provisions of Section 5 (Item 11) of the German Penal Code are relevant. The provisions of Sections 4 and 7 (2) (Item 1) of the German Penal Code continue to apply to offences committed by a foreigner on board a German-flag ship or by a German on board a foreign-flag ship. When an offence of the kind under consideration has been committed in the territory of another State, German jurisdiction may not be exercised unless the offence in question is punishable in that State, too.

The preconditions set out in Article 218 of the UN Convention on the Law of the Sea, 1982, contain certain limitations to the application of Article 12 of the UNCLOS Implementation Act. This is why Article 12 is limited to cases of discharge of substances from foreign-flag ships. The institution of criminal proceedings is made dependent upon a violation of the "applicable international rules and standards established through the competent international organization or general diplomatic conference", as Article 218 says; accordingly, the expansion of the application of German penal law is limited to criminal offences to the detriment of the environment, which violate the administrative legal obligations (Section 330d (Items 4 and 5) of the German Penal Code) serving the purpose of implementing conventions for the protection of the sea binding under international law. Moreover, the additional preconditions for instituting criminal proceedings, referred to in UNCLOS Articles 218(1) and (2) as well as 228 must be observed.

In addition to the Penal code, breaches of the discharge provisions of MARPOL 73/78 are also breaches of administrative regulations and fall under the jurisdiction of German authorities if the violation was committed by a German or by a foreigner on board a German ship. If the offender is a

foreigner on board a ship not flying the German flag, he can be prosecuted by German administration if the violation was committed in the German exclusive economic zone, territorial sea or in that part of the internal waters in which MARPOL 73/78 is applicable.

The possibility of imposing administrative fines is an important feature of the German legal system.

As in other countries, cases which are not liable to prosecution in Germany as flag state, coastal state or port state are passed to the flag state.

LATVIA

Fines can be imposed on ships irrespective of flag both on contracting and non contracting parties to MARPOL 73/78 and HELCOM 74/92.

In section 82 of the Latvian Administrative Violations Code the administrative liability is established for pollution by ships of the Baltic Sea and interior sea waters with dangerous or other harmful substances, materials or waste exceeding the specified standards or violating regulatory enactments. For such actions a fine may be imposed on officials from 140 *euro* and up to 4300 *euro*, but for legal persons – from 1400 *euro* and up to 14000 *euro*.

Section 82¹ of the Latvian Administrative Violations Code provides for the liability for violation of provisions regarding the creation of reclaimed islands, installation and construction erection committed by the masters or other commanding officers of ships or other floating means of conveyance, for which a fine shall be imposed from 280 *euro* and up to 4300 *euro*.

Section 82² of the Latvian Administrative Violations Code provides for the liability for failure to notify about the pollution of the Baltic Sea and interior sea waters with dangerous or other harmful substances, materials or waste, for which a fine shall be imposed from 280 *euro* and up to 2100 *euro*.

Section 83 of the Latvian Administrative Violations Code provides for the liability for failure to conduct operations to regulate or minimize the emission of pollution substances if information has been received regarding poor meteorological or hydrological conditions, which has resulted in harm to the environment, biological diversity, natural resources or people's health, for which a fine shall be imposed from 70 *euro* and up to 700 *euro*.

Section 101 of the Latvian Criminal Law provides for the criminal liability for the pollution of the sea with dangerous or other harmful

substances, materials or waste if substantial harm is caused thereby to the environment, or property or economic interests. The applicable sentence shall be deprivation of liberty for a term not exceeding four years, or community service, or a fine from 5 and up to 150 times the minimum monthly wage.

For the pollution of the sea with dangerous or other harmful substances or waste if serious consequences are caused thereby, the applicable sentence is deprivation of liberty for a term not exceeding ten years.

Section 106 of the Criminal Law provides for the criminal liability for the failure to notify about the pollution of the marine waters or other harmful effects arising from marine transport vehicles or structures if committed by a person having a duty to notify, for which the applicable sentence is deprivation of liberty for a term not exceeding three months, or a community service, or a fine from 3 and up to 100 times the minimum monthly wage.

For a person who commits intentional concealment or distortion of data regarding the level of environmental pollution if committed by a person whose duties included the presentation of such data, and if as a result substantial harm is caused thereby to the environment, human health, or property or economic interests, the applicable sentence is deprivation of liberty for a term not exceeding four years, or a community service, or a fine from 5 and up to 150 times the minimum monthly wage.

LITHUANIA

In Lithuania, marine protection is regulated by the Act of Protection of Marine Environment, the Water Act. Protection of marine environment and ways of response to pollution at Baltic Sea, are regulated by Act of Protection of Marine environment (the Act), which intend, that owners of ships are to ensure that ships carrying Lithuanian flag or registered in Lithuanian territory are to meet requirements intended by Act, MARPOL 73/78 and Helsinki Convention.

Lithuanian territorial waters, as intended in article 3 of the Act, are comprised of the territorial sea with the breadth of 12 nautical miles. Exceptions may be made on the basis on international conventions and treaties with neighbouring states.

Punishable crimes and misdemeanours, made in Lithuanian territorial waters and in economic zone. According to article 4 of the Lithuanian Penal Code, criminal law is applicable to an act damaging the environment in the economic zone or high seas regardless whether it is an offence or misdemeanours in accordance with the obligations and rights stemming from international maritime law.

The restrictions on discharges from ships in the territorial waters and economic zone apply to all vessels, regardless of flag.

The responsibility for legal supervision of compliance with the Act of Protection of Marine environment rests with the Ministry of Environment and Ministry of Communication. The Ministry of Environment and its local agencies may, by threatening to enforce a fine or to order any necessary measures to be carried out at the defaulter's expense, obligate any part who fails to comply with the provisions to remove the unlawful state or omission within the specified period of time.

Provisions on environmental offences made in article 270 of Penal Code which is applicable to more severe environmental offences. A penalty for an environmental offence shall be imposed on the person, whose duties the act or omission violates. Sanctions against environmental offence range from fines, through detention (up to 90 days) to imprisonment up to 6 years.

Article 270³ provides responsibility for marine pollution from ships. A person who violates the requirements of the Annex I and II of the The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and pollutes open sea or other territory shall be punished by a fine or arrest or by imprisonment for a term of up to three years.

For less severe environmental offences provisions are as well made in article 265 of Code of the Administrative Offence. The penalty by this article is imposed in the case of violations of anti-pollution regulations within Lithuania's economic zone, territorial sea and seaports.

NORWAY

The breadth of territorial sea is up to 12 nautical miles from the baselines. The territorial waters' border against another state is regulated by the prevailing agreement between the states.

The practice in Norway is to investigate and prosecute all illegal discharges made by Norwegian ships and referred to Norway as Flag State, and all illegal discharges made within the territorial waters by Norwegian or foreign ships. All illegal discharges in the EEZ will be referred to the Flag State. According to the Law of the Sea (UNCLOS) it is possible for the coast state to investigate illegal discharges in the EEZ, but only if the Flag State fails, has failed previously or if the discharge has caused risk for major damage.

POLAND

The Act of March 16th, 1995 on Prevention of Pollution of the Sea from Ships concerns

- All vessels present in Polish marine areas (internal waters, territorial sea and exclusive economic zone),
- Vessels flying Polish flag outside Polish marine areas.

RUSSIA

Under the general rule, the territorial sea of the Russian Federation is the sea belt adjacent to the land territory or internal maritime waters, whose breadth is 12 nautical miles measured from the baselines.

The protection and preservation of the marine environment and natural resources of the sea waters and territorial sea is carried out in accordance with the laws of the Russian Federation and international treaties, to which the Russian Federation is a party.

The exclusive economic zone of the Russian Federation is a maritime area beyond and adjacent to the territorial sea of the Russian Federation with a specific legal regime, the outer limit of which is situated 200 nautical miles from the baselines. In the exclusive economic zone the Russian Federation also exercise jurisdiction in respect of protection and preservation of the marine environment from the pollution of all types.

The Ministry of Transport of the Russian Federation is the main federal agency of the executive branch of power of the Russian Federation, which exercise the state management in the sphere of marine navigation.

The Department of the Rosprirodnadzor for the Northwest Federal District exercises control over the compliance with the rules in the field of oil pollution of the water area of the Gulf of Finland.

Generally, the Code of Trade Navigation and other Federal Laws regulate the relations arising from the damage, caused by oil pollution on the territory of the Russian Federation (including at the territorial sea and in exclusive economic zone of the Russian Federation).

SWEDEN

The Act 8SFS 1980:424) concerning measures for the prevention of pollution from ships applies to all vessels within Swedish territorial sea and exclusive economic zone. Since January 2002 it is possible to prosecute persons responsible for oil pollution that have taken place in the Swedish EEZ in Swedish courts even if the ship is not Swedish. This has not been possible before.

An unlawful oil discharge or discharge of other harmful substances rise a penalty for environmental crime or liability for environmental damage to the vessel and the responsible person on board.

4.2. Legislation Regarding Oil Pollution and Implementation by the Baltic Sea States of MARPOL 73/78 and the Helsinki Convention

4.2.1. Summary

The International Convention for the Prevention of Pollution from ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) and the convention on the Protection of the Marine Environment of the Baltic Sea Area, 1974/1992 (the Helsinki Convention) form the basis for the marine environmental legislation in the Baltic Sea Area, to be implemented through national legislation (The 1992 Helsinki Convention entered into force on 17 January 2000, from which date the

1974 Helsinki convention ceased to apply).

The acts, codes etc. of the Baltic Sea States defining oil pollution as a criminal offence and ensuring national implementation of the regulations of MARPOL 73/78 and the Helsinki Convention are listed below and supplemented in paragraph 4.

4.2.2. Specific information from:

DENMARK

The Danish Act for the Protection of the Marine Environment of 1993 as amended in 2008 contains the main anti-pollution regulations concerning the sea. The Act is based on the regulations of the MARPOL Convention 1973/78 and the Helsinki Convention (as regards regulations of the Baltic Sea Area). The obligation to keep an Oil, Garbage and Cargo Record Book is regulated in the Danish Act for Safety of Sea.

The Danish Act for the Protection of the Marine Environment:

Section 11

Discharge of oil into the sea, whether direct or indirect, is prohibited in the territorial seas of Denmark. The Minister for Environment can lay down rules regarding discharge of oil in the exclusive economic zone and outside the territorial seas of Denmark.

Accordingly, the Minister for Environment has laid down rules regarding discharge of oil in the exclusive economic zone in executive order Nr. 174 of the 25th of February 2014.

Furthermore, according to section 196 of the Danish Penal Code imprisonment for a term not exceeding six years is imposed on any person who, contrary to the environmental legislation in aggravating circumstances pollutes the air, water, soil or subsoil resulting in considerable damage to the environment or an imminent risk of such damage or stores or disposes of waste or similar materials resulting in considerable damage to the environment or an imminent risk of such damage. The same penalty is imposed on any person who pollutes the air, water, soil or subsoil or stores or disposes of waste or similar materials contrary to the environmental legislation where such offences are committed in a systematic or organised manner.

ESTONIA

Estonia has ratified the Helsinki convention.

FINLAND

The Act on Environmental Protection in Maritime Transport fulfils the requirements of the international conventions. Previous regulations concerning oil pollutions have been renewed. The new act came into force on 1.1.2010 and includes the requirements of the renewed Annexes I and II of the MARPOL 73/78 Convention.

The Act on Environmental Protection in Maritime Transport is applied to all vessels sailing at the Finnish territorial waters or at the EEZ. It is applied to Finnish vessels also outside the Finnish territorial waters or the EEZ.

The supervising authorities are the Finnish Transport Safety Agency, the Finnish Environmental Institute, Centres for Economic Development, Transport and the Environment, the Finnish Boarder Guard, the Customs and the Police.

The Finnish Transport Agency is responsible for ship safety, ship and port security and, in collaboration with other authorities, for the protection of the marine environment. By surveys and inspections agency makes sure that ships operating in Finnish inland waters and Finnish ports meet all relevant safety requirements. At inland waters it works together with the police. The Finnish Environmental Institute is the leading authority when it comes to oil discharges from ships at Finnish waters and at the exclusive economic zone. According to the Act also The Finnish Boarder Guard is the supervising authority at Finnish waters and at the EEZ. The tasks of the Centres for Economic Development, Transport and the Environment concern more regulations regarding to waste management in ports.

GERMANY

1) Penal Code: § 324

2) Administrative regulations: In addition to the Penal Code, breaches of the discharge provisions of MARPOL 73/78 and the Helsinki convention are also breaches of administrative regulations under the jurisdiction of German authorities if the violation was committed on board a German ship. If the offender is on board a ship not flying the German flag, he can be prosecuted by German administration if the violation was committed in the German exclusive economic zone, the territorial sea or in the part of the internal waters on which MARPOL 73/78 is applicable.

Violations of the duty to keep the Oil, Cargo and Garbage Record book properly constitute administrative offences. Since January 1999 administrative fines can be imposed if - in contravention of Regulation 17 Paragraph 3 of annex 1 of MARPOL - sludge tanks have a direct connection overboard other than the standard discharge connection.

For the above - mentioned violations of regulations of the MARPOL Convention the applicable German law is the MARPOL MARPOL-Zu widerhandlungsverordnung - MARPOL-ZuwV (ordinance on MARPOL offences).

LATVIA

In Latvia the administrative and criminal liability are established for the

pollution of the sea with the oil and oil products.

- 1) The Criminal Law of Latvia;
- 2) Law on Natural Resource Tax;
- 3) Law on environment protection;
- 4) Administrative Penalty Code.

LITHUANIA

The Act of Protection of Marine environment of 1997 as amended in 2008 contains the main anti-pollution regulation concerning the sea. This act is based on the regulations of the MARPOL 73/78 and the Helsinki Convention.

Administrative and criminal liabilities for pollution of seawaters are prescribed in Lithuanian law. Main legal acts intended liability are:

1) Penal Code of the Republic of Lithuania, issued on September 26, 2000, valid from 1 of May 2003 with later amendments. Illegal discharge of wastewaters, garbage in case of serious environmental damage is treated as criminal offence under the Penal Code. Article 270³ of Penal Code provides responsibility for marine pollution from ships. A person who violates the requirements of the Annex I and II of the The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and pollutes open sea or other territory shall be punished by a fine or arrest or by imprisonment for a term of up to three years.

Violation of the obligation to keep properly an oil or cargo book is treated as misdemeanours under Code of the Administrative Offence.

- 2) Code of the Administrative Offence of 2017;
- 3) Act of State Port of Klaipeda of 1996 amended in 2010;
- 4) Act of State Port of Šventoji of 2006 amended in 2010;
- 5) Act of Protection of Marine environment of 1997, amended in 2008;

Other legal acts:

- 1) Recommendations on the Methodology of the Calculation of damages to the Nature, issued by Ministry Of Environment in 2005 with later amendments;
- 2) Klaipeda State Sea port Regulation on Navigation, issued 2008, amended 2010;
- 3) Šventosios State sea port Regulation on Navigation, issued 2007.

NORWAY

The main legislation that defines oil pollution as a criminal offence is the Pollution Control Act, the Ship and Security Act and the Penal Code. Section 152b.

According to the Penal Code of 1902 Section 152b the maximum penalty is 10 years in case of serious pollution of the sea, and 15 years in case of death or serious personal injury. (Section 152 b will be replaced by Section 240 of the new Penal Code of 10 May 2008, not yet in force, where the maximum penalty for serious pollution is fifteen years, regardless of

suspected violating of anti-pollution regulations to another state should be informed on actions taken in connection with the report.

This information can be seen as a tool for enhancing convictions of offenders. Thus, it is possible to indicate for instance why it was not possible to obtain a conviction, i.e. which other evidence would have been needed or which conditions the collected evidence fulfil to be used for a conviction.

4.4.2 Specific information from:

DENMARK

Surveillance and evidence

Defence Command Denmark carries out surveillance of the seas surrounding Denmark, collects oil samples for analysis and is in charge of the contact with the ship master while at sea.

Danish Center for Environment and Energy analyses collected oil samples.

Investigations and Enforcement Powers

A possible illegal discharge into the sea from ships is treated as a criminal offence under the Danish Act for the Protection of the Marine Environment. The Minister of Defence has delegated the contingency functions to Defence Command Denmark. Defence Command Denmark is therefore responsible for the enforcement of the Danish Act for the protection of the Marine Environment.

It is possible to conduct searches in cases concerning violation of the provisions of the Act on the Protection of the Marine Environment or regulations issued under the Act. A search must be conducted in conformity with the rules of the Administration of Justice Act on searches in cases that under the law may lead to a custodial sentence.

Searches for the purpose of extracting oil samples in cases concerning unlawful discharge of oil from ships may be carried out by the Minister of Defence or anyone authorised by the Minister, in practice Defence Command Denmark, for that purpose and in conformity with the provisions searches.

All examinations must be carried out subject to the rules of the Administration of Justice Act, and may therefore be conducted exclusively if there are reasonable grounds to assume that an unlawful discharge of oil has taken place. Examinations require a warrant from the court unless the aim of the examination would thereby be missed. If examinations are carried out without any prior warrant, the case must be submitted to the court within 24 hours if the person against whom the measure is aimed so requests. Where examinations have not been carried out by the police, the 24-hour time limit must be reckoned from the time when the case was passed on to the police. Searches of foreign ships are regulated specifically by section 63(2) and (3) of the Protection of the Marine Environment Act.

In addition, the act makes it possible for the police or the Minister of Defence, in practice Defence Command Denmark, to detain ships if this is necessary in order to secure claim for payment of a fine, costs of trial or confiscation.. A measure of detention must be implemented in accordance with the rules of the Administration of Justice Act and the restrictions following from international law. In addition, foreign ships that travel in external territorial waters while passing through or operating in the exclusive economic zone can be detained under certain conditions.

These rules largely correspond to the rules regarding searches on foreign ships. In regards of foreign ships in the exclusive economic zone, searches can only be conducted if there are reasonable grounds to suspect that the ship has violated the Act on the Protection of the Marine Environment or regulation thereof in the exclusive economic zone or in the seaterritory by which considerable discharge or emission to air have taken place which have caused or threaten to cause significant pollution of the marine environment or of the air and the ship has declined to provide information on the identity of the ship or other relevant information or if the information provided by the ship does not correspond to the actual situation.

Prosecution

The local Prosecutor's Office is responsible for the decision on indictment and proceedings at court. However, on account of an amendment to the Danish Act for the Protection of the Marine Environment, which came into force 1 July 2000, a procedure for administrative enforcement is now established in Danish law.

Accordingly, the Minister of Defence or anyone authorised by the Minister can, under certain conditions, impose administrative fines in cases of illegal discharges of oil by Danish and foreign vessels.

Administrative fines require that the discharger admits his guilt and consents to the case being settled administratively. Otherwise the case must be handed over to the police.

In connection with the agreement to an administrative fine the discharger can also agree to the confiscation of an amount equivalent to the alleged saving in connection with the illegal discharge.

The Central Government Unit established within Defence Command Denmark decides the adjudication on settling a case administratively. The central unit is specialized in maritime issues and can be reached by phone 24 hours a day, should there arise a need for legal help in connection with specific cases related to the criminal prosecution of vessels, e.g. due to illegal discharge of mineral oil or insufficient reporting of groundings, collisions, etc. The Central Government Unit is also able to offer assistance in connection with decisions regarding legal searches, detentions and issuing of administrative fines.

ESTONIA

The Estonian Environmental Inspectorate is the national authority in

charge of conducting investigation in case of violation of anti-pollution regulations. The inspector of the Estonian Environmental Inspectorate has the right to inspect a ship when it is in port or at anchor in Estonian waters, also a ship in voyage if it is suspected as polluter.

The inspector has the right to take samples on board a ship and to interrupt the ship's voyage for the time needed to take this sample, in order to verify the origin of oil or any harmful substance found in sea surface.

Amounts of the pollution charge, which are not paid during the term for payment thereof, shall be collected from the polluter pursuant to the procedure, provided for in the Code of Civil Procedure.

Prior to the commencement of civil proceedings for the collection of the pollution charge not paid during the term for payment thereof and in order to collect the pollution charge pre-trial, the authorised state agency is required to send a reminder to the polluter to pay the pollution charge within ten days.

The head of a corresponding environmental authority or a person authorised by him or her is the representative of the state in the collection of the pollution charge by way of civil procedure.

According to section 105 of the Code of Criminal Procedure officials of environmental supervision agencies (i.e. Estonian Environmental Inspectorate) shall only apply expedited procedure and conduct investigative activities which allow no postponement - inspection of the scene of the criminal offence, search, seizure, physical examination, interrogation of a suspect, questioning of a victim or witness, taking of comparative samples, and at the request of a preliminary investigator or prosecutor, conduct other investigative activities, in the case of violation of the requirements of protection and use of the environmental and natural resources.

After these proceedings the officials of the Environmental Inspectorate shall pass the criminal case over to the investigative agencies, which are (according to the code of Criminal Procedure): the Police and Border Guard, Board and prefectures. A prosecutor depending on the location where the crime was committed would represent public prosecution in a criminal case of oil pollution; there are no specific provisions concerning cases of oil pollution. Also a prosecutor in the locality where the crime was committed would supervise over the legality of commencement of criminal proceedings and preliminary investigation.

According to the section 178 of the code of Criminal Procedure it is possible to form investigative teams in order to ensure thoroughness upon ascertainment of the facts of the subject of proof.

FINLAND

The investigating authorities when regulations against the Act on Environmental Protection in Maritime Transport have been violated are

the Finnish Transport Safety Agency, the Finnish Border Guard and the Police. When it is a suspicion of a crime the investigation authority is first of all the border guard and in some cases the police. Both have the authority but in their mutual agreement they have decided that the border guard investigates the offences which have occurred at the sea.

The investigation of a criminal case in Finland is subject to an order for prosecution by the Prosecutor General where action has been committed on a foreign vessel at a time when the vessel was at the Finnish EEZ.

Oil pollution cases under The Act will be prosecuted in special courts, Maritime Courts.

GERMANY

1) Penal law

Competent authority for the investigation is the public prosecutor, assisted by the Federal Customs Administration, the Federal Police, the Federal German Navy (aerial surveillance), the Federal Water and Shipping Authority and the Water Police of the Laender.

Competent authority for the prosecution is the courts of the Laender. Which court is competent depends on the place of offence, the place or residence of the defendant, the place of arrest in the event of his being detained, or the homeport if a German ship outside German territory committed the offence. If no other venue is specified, the Hamburg courts are in charge of all offences against the environment, which have been committed outside German territory in the sea region. In case an offence is committed beyond the German Territorial Waters in practice the public prosecution office of Hamburg is in charge.

2) Administrative regulations

Competent authority for the investigation as well as for the prosecution of violations of the duty to keep an Oil, Cargo and Garbage Record book, is the Federal Maritime and Hydrographic Agency in Hamburg. It is also the competent authority for imposing administrative fines in cases of violations of Regulation 17 Paragraph 3 of Annex I to MARPOL 73/78 (illegal pipes). In the investigation of violations it is assisted by the Federal Customs Administration, the Federal Border Police, the Federal German Navy (aerial surveillance), the Federal Water and Shipping Authority and the Water Police of the coastal Laender.

LATVIA

The Sea and Interior Waters Authority is the structural unit of the State Environment Service of the Ministry of Environment, the Republic of Latvia, which according to the regulations within the procedures of the regulatory enactments performs its functions in the territorial sea waters of the Republic of Latvia, in the continental shelf, exclusive area and port

aquatorium (Sea waters of Latvia), as well as in the interior waters of the Republic of Latvia, international waters determined in accordance with the fishing regulatory enactments of the European Union, and in the waters of the Member States of the European Union and the states which are not the Member States of the European Union.

In addition, it ensures the state control of environmental protection and approves the emergency action plans for ports, malls and terminals in case of the oil leak.

The officials of the Sea and Interior Waters Authority have the competence to decide on administrative penalty, it may determine the harm caused to the environment, and to calculate the tax on natural resources.

On the basis of the regional administrative procedures, adjudications may be appealed in court.

If the constituent elements of a criminal offence are established in the offence committed by an official, investigation and criminal prosecution is conducted within the general procedures specified in the Latvian Criminal Law. The State Police conducts the investigation, but criminal prosecution is under the competence of the Prosecution Office.

LITHUANIA

The regional environment protection departments of the Lithuanian Republic Environment Ministry are the main organization carrying out ecological control function. Additionally, the Klaipėda seaport harbour Master Service and Directorate of seaport are the institutions who deal with environment protection in territory of harbour.

The officials of the regional environment protection departments make decisions on administrative punishments, determine damages caused to environment and calculate natural resource tax. As well officials have the right to inspect a ship when it is in port or at anchor in Lithuanian waters, also a ship in voyage if it is suspected as a possible polluter. If there is a severe damage to environment stated, after primary proceedings the officials of regional environment protection departments shall pass information collected to the investigative agencies which according to the Lithuanian Code of Criminal Procedure(CCP) are the Police and regional Prosecutor's office. A prosecutor, depending on the location where the crime was committed, would represent public prosecution in a criminal case of oil pollution. The prosecutor as well would supervise over the legality of separate criminal proceedings and pre-investigation in general.

Offences referred in the Penal Code are judged by a public trial. The first instance is the appropriate Circuit Court; the second is the Court of Appeal. The last instance is the Supreme Court. Some

administrative fines can be imposed only by the public trial as well.

The regional environment protection departments of the Lithuanian Republic Environment Ministry and Klaipėda seaport harbour Master Service and Directorate of seaport may impose fines on the master of the ship's crew members as well as on any responsible person for pollution.

NORWAY

In Norway different authorities handle pollution at sea.

The Norwegian Maritime Directorate administrates the Ship Safety and Security Act. The Act deals with safety and security in the operation of ships, including safety and security to avoid pollution from ships. The directorate may under certain circumstances hold a ship back, and it can give regulations and policies and issue requirements to the individual ship/shipowner. It may also issue violation fines for violations of the law, in the less serious cases.

Independent investigations of maritime accidents are undertaken by the Norwegian Accident Investigation Board, with the objective to analyse the causes of the accidents and to advise the maritime authorities on measures that may be necessary to avoid similar accidents in the future. These investigations do not include any issues concerning criminal or civil liability, such as the question of guilt.

The Coast Guard is our "Eyes at sea". They can take oil samples and statements from people who have observed the spill.

The Directorate of Climate and Pollution deals with the Pollution Control Act, which regulates the prohibition to pollute at sea. The Directorate can pull charges and deal with administrative offences.

The Norwegian Coastal Administration deals with emergencies and actions against emergency pollution at sea. They will be in charge of clean-up operations, often in cooperation with other public authorities, such as local government.

The criminal prosecution of illegal pollution of the seas is dealt with by the police and prosecution, (including ØKOKRIM). As from July 1, 2008 Rogaland police district has been appointed the task to develop national expertise in the investigation of maritime crimes, and to assist the local police districts in such matters, but the responsibility to handle the cases are still with the local police district.

POLAND

Detection of pollution of marine environment caused by activities on the sea, and of offenders, is performed by the Maritime Inspection, which cooperates with the Border Guard, using its means and resources.

If an inspector of the Maritime Inspection is not present on board the vessel

of the Border Guard, the guard can by itself perform activities in the name of the local maritime authority.

Maritime Offences are situated in Gdynia, Slupsk and Szczecin. The Search and Rescue Service are situated in Gdynia.

The Act of March 16th, 1995 provides that the Director of the Maritime Board may:

1) With respect to a vessel flying a flag of a State which is Party to the MARPOL 73/78 convention:

a) In port of offshore terminal, perform inspection of the vessel (limited to checking certificates and other documents required by the convention) and inspect oil and cargo records in order to determine whether harmful substances have been discharged from the vessel against provisions of the Convention;

b) Refuse a foreign vessel permission to enter port of offshore terminal, or start procedures or ensure that navigation by this vessel will not constitute danger to the marine environment - if the vessel does not comply with the requirements of the Convention;

c) Refuse a vessel permission to leave port until it is brought to proper technical state, if there are grounds to suspect that the state of the vessel or its equipment differs significantly from the one stated in certificates, or if the vessel does not have valid certificates; however, the Director of the Maritime Board may permit the vessel to leave the port in order to go to the nearest repair shipyard.

2) With respect to vessels flying a foreign State flag, which is not a Party to the MARPOL 73/78 Convention, the Director of the Maritime Board may:

a) Inspect the vessel in order to ascertain that the state of the vessel fulfils MARPOL 73/78 requirements; if it is found that these requirements are not fulfilled, and that navigation by that vessel may constitute significant danger to the marine environment, the Director may refuse permission to enter port or offshore terminal;

b) If the inspection is performed in port of offshore terminal, the Director of the Maritime Board may order that appropriate repairs are made or that the vessel must leave the port or offshore terminal.

Apart of the above, the Director of the Maritime Board may:

1. enquire, from a vessel sailing through Polish marine areas, information concerning identification, port of registering, last and next port of call, and any other necessary information if there is reasonable suspicion that while passing through these areas the vessel has violated the regulations of the Act, causing pollution or a danger of pollution:

2. perform inspection of a vessel passing through Polish marine areas in case when:

- a) there is reasonable suspicion that the vessel has violated regulations of the Act by discharges which result or may result in significant pollution of the sea;
- b) required information has been refused, or if the information obtained from the vessel is evidently different from the actual state, and circumstances justify such an inspection.

If information is obtained about:

- 1) pollution of the sea by vessels;
- 2) dumping of sewage or other noxious substances from vessels;

The Director of Maritime Board should immediately undertake activities in order to find the offender and to collect evidence.

The Director of the Maritime Board shall start investigations:

- 1) with respect to a vessel flying Polish flag
 - a) which caused pollution or danger of pollution of the marine environment
 - b) on application of an authority of any State, if there is a suspicion that regulations of the Act of March 16th, 1995 have been violated, and if evidence has been collected,
- 2) with respect to a foreign vessel staying in a Polish port or offshore terminal, which caused pollution or danger of pollution of marine environment in the Polish marine area.

The Director of the Maritime Board is also obliged to carry out an investigation concerning a foreign vessel, staying in a Polish port or offshore terminal, on request of:

- 1) an authority of any State, if it is suspected that the vessel has made a discharge outside the Polish marine area, if the discharge has caused pollution or danger of pollution in the internal waters, territorial sea or exclusive economic zone of the State,
- 2) an authority of a State, which is a Party of the MARPOL 1973/78 convention, concerning such a discharge irrespective of location of the discharge.

The Director of the Maritime Board may start an investigation, if evidence is collected, concerning a foreign vessel which:

- 1) is staying in a Polish port or offshore terminal, if it has caused pollution or danger of pollution outside the Polish marine area, violating international law, regulations or standards.
- 2) while sailing in Polish territorial sea caused pollution or danger of pollution of this area,
- 3) while sailing in the Polish exclusive economic zone or territorial sea, through pollution in the exclusive economic zone has caused serious damage or danger of serious damage to the coast or to other significant interest of the State.

The Director of the Maritime Board notifies immediately the proper authority of the State of ship's flag, and of any other concerned State, about the actions and measures undertaken in accordance with the Act of March 16th 1995, and conveys to them relevant documents concerning these actions and measures.

During the proceedings, the Director of the Maritime Board:

- 1) admits evidence submitted by authorities of another State,
- 2) facilitates participation in the proceedings of the representatives of competent international organization, State of flag of the vessel, and of any other State afflicted by sea pollution incident.

Within the scope of the Act of March 16th, 1995, the Director of the Maritime Board is responsible in matters of international legal assistance.

The Director of the Maritime Board imposes fines.

Appeal against the decision on a fine may be made to the Minister of Transport and Maritime Economy.

As a decision on fine is an administrative decision, the Supreme Administrative Court is competent for overview on legality of the decision.

Despite the fact that the Criminal Code includes a provision (art. 182) concerning criminal sanctions for pollution of water (including sea) the observance of legal provisions concerning prevention of the pollution and prosecution environmental criminality at sea belongs to Directors of Maritime Boards and bodies subordinates to Minister of Infrastructure on the basis of the Act on Maritime Areas of the Polish Republic and the Marine Administration (21 March 1991) and the Code of Administrative Procedure.

Practice indicates that public prosecutors have never used these provisions in relation to the pollution of sea. Thus in the Public Prosecutor's offices there have been no cases related to the oil pollution of the sea.

RUSSIA

There is a unified procedure of the investigation of crimes and infringements, including in the environmental sphere, in the Russian Federation, which is determined by the Criminal Procedure Code and Code of Administrative Offences of the Russian Federation.

SWEDEN

Criminal cases concerning violations of the prohibitions of water pollution from ships are handled by competent district courts. Ordinary rules of procedure are applicable.

Competent authority to charge water pollution fees is the Swedish Coast Guard. Such a decision may be appealed to a district court. Since 1 January 2000 there are special prosecutors handling environmental crime

cases, including water pollution cases. At the moment they are 23. They are located throughout the country. Since 4 July 2001 there is always one environmental prosecutor on call outside office hours to take decisions in water pollution cases. This prosecutor can be reached on a special phone number handed out to the police and Coast Guard.

Since 1 January 2002 the investigations concerning oil pollution at sea are mainly handled by the Coast Guard in cooperation with the prosecutors. The police still have the authority to investigate these cases but the general feeling is that the Coast Guard will take over more and more when the effect of the education of the personnel sets in.

The law says that the Coast Guard shall lead and conduct the investigation as long as there is no reasonable suspicion against a person. In these cases a reasonable suspicion is considered to exist when there is a suspected ship. When a reasonable suspicion exists the prosecutor shall lead the investigation and the Coast Guard conducts it.

With the new rules follows a possibility to conduct searches on board ship whenever there is a suspicion of pollution at sea without prejudice to what penalty can follow on the crime. This is an improvement in the investigations of pollution from foreign ships that have taken place in our territorial waters or in our EEZ. Since it in these cases normally only can follow a fine on the crime, due to the rules in UNCLOS, this was not possible since Sweden ratified the convention in 1995.

4.5. Required evidence

4.5.1. Summary

When suspecting a violation of anti-pollution regulations it is essential that all possible evidence is collected to document the suspected violation.

As regards collecting of sufficient evidence a reference is made to the pages 9-23 in the HELCOM, 2000, Guidelines on Ensuring Successful Convictions of Offenders of Anti-pollution Regulations at Sea, Proceedings No. 78, which can be obtained at HELCOM (please refer to paragraph 10) or can be downloaded from the Internet at: www.helcom.fi.

4.5.2. Specific information from

DENMARK

The prosecutor has to prove that the presumed polluter is liable for the infringement due to intent or negligence in conduct.

There are no formal requirements as to the nature or the presentation of evidence as long as it concerns the actual discharge.

ESTONIA

Evidence is evaluated as a whole and therefore it is necessary to gather

as much evidence as possible. Foremost the following procedural acts should be performed:

- witness testimony from the person who detected pollution
- observation of scene
- recording of radio link with the suspected vessel
- video recording and photos in case polluter has been detected red-handed
- taking samples from water
- radar observation data from Estonian Maritime Administration
- observation of the vessel in order to find track from oil products
- inspection of vessel logbooks
- collection of drawings of tanks and oil system
- finding out what kind of oil products are used on board of ship (certificates)
- contract between the tanker and oil terminal regarding the loading procedures of oil products
- certificates of oil products
- Establishing the location of the vessel on the basis of the computer of the vessel and comparing the data filled in the logbooks.

FINLAND

As evidence the competent administrative agency or prosecution accept testimony of police officers or other witnesses, statements of the offenders, photographs of oil spills or photographs taken on board the ships, expert's opinions on samples taken from tanks, machinery space or oil spills and copies of the Oil or Cargo Record Book.

In the Finnish enforcement practice various forms of evidence are used and no fixed formal requirements exist. Common forms of evidence may include for example the testimony of police officers, audio-visual material obtained by surveillance, samples and statements obtained from officers on board the ship, together with copies of the ship's documents etc.

A public prosecutor shall press charges where there is probable cause in support of the guilt of the suspect for an offence. The court has full discretionary powers in regard to the evidence presented thereto.

GERMANY

As evidence the competent prosecution or administrative agency accepts testimony of police officers or other witnesses, statements of the offenders, photographs of oil spills or photographs taken on board the ships, expert's opinions on samples taken from tanks, machinery space or oil spills and copies of the Oil, Cargo and Garbage Record Book.

In the German enforcement practice, various forms of evidence are used for which no fixed formal requirements exist. Common forms of evidence include the testimony of police officers, audio-visual material obtained by means of surveillance (e. g. photographs), samples and statements obtained from officers on board the ship, together with copies of the ship's document.

LATVIA

As regards the violations of provisions that govern the liability for pollution of environment, or in case of establishment of the violation, an inspector of the Sea and Interior Waters Authority shall collect the primary material, and shall be responsible for drafting the documents, according to which the violation is being reviewed; shall seize the ship documents in regards to the violation.

In case of accident, an official responsible shall seize the leaked oil samples; the samples of the hazardous substances shall be immediately taken and sent for analysis. The samples shall be taken also from the oil cargo containers, boiler containers, and engine rooms. The evidence in the investigation is also the examination of the scene, photographs, witness testimonies and other evidence.

LITHUANIA

The legal liability for environmental crimes is mainly based on culpability. In each criminal case the prosecutor has to prove that the presumed polluter is liable for infringement due to intent or negligence in conduct.

There are no formal requirements as to the nature or the presentation of evidences as long as it concerns particular discharge or pollution.

Common forms of evidences may include testimonies of witnesses, testimonies of officers, audio - visual materials obtained by surveillance, samples and statements obtained from officers on board of ship, copies of ship's documents, conclusions of experts concerning extent of damage to environment, expert's opinions on samples taken from tanks, ships machinery space or oil spills etc.

NORWAY

In Norway we have no special rules about what evidence is permitted. The court will decide which evidence is legal in each case. Photos, samples and witnesses are the most common evidence.

POLAND

All kind of evidence is admitted. There are no special rules concerning the evaluation of evidence.

RUSSIA

Evidence, required during the investigation conducted on the fact of oil pollution of sea, is determined depending on the type of infringement (criminally punishable act/administrative offence/delict).

SWEDEN

There are no formal rules of evaluation of evidence.

In case of the water pollution fee, it is enough to prove that a prohibited discharge of oil has been made from a certain ship. It is not necessary to prove which person has done the discharge or his intent or negligence.

4.6. Who can be held liable?

4.6.1. Summary

A physical person or a company (legal entity) can be held liable for a violation of anti-pollution regulation.

All Baltic Sea States may prosecute a physical person. Apart from Sweden and Germany all Baltic Sea States also have the possibility to prosecute a company (legal entity). In Germany a non-penal fine, however, can be imposed on legal persons and certain associations. Similarly a ship owner is held responsible for the payment of the administrative Water Pollution Fee in Sweden.

In some Baltic Sea States certain violations can only be referred to the physical person actually committing them, whereas for other violations a responsible position is assumed and a superior. i.e., usually the master or the ship owner is held responsible.

4.6.2. Specific information from:

DENMARK

According to the Danish Act for the Protection of the Marine Environment and the Act for Safety on Sea a fine can be imposed on a legal entity as well as on individuals.

A fine is primarily imposed on the ship owner. However, the person who caused the discharge or who neglected his duty to keep the Oil Record Book can also be imposed a fine or sentenced to imprisonment.

ESTONIA

A natural person or a corporate body can be held liable for a violation of anti-pollution regulations.

The person held responsible for violations of the discharge provisions is the ship's master. The person held responsible for keeping the Oil Record Book is in general the chief engineer. The pollution charge for the releases of pollutants or wastes into seawater from a vessel or an oil terminal shall be paid by the possessor of the vessel or terminal.

FINLAND

A natural person or a corporate can be held responsible for violation of environmental regulations. According to the Criminal Code of Finland a penalty for an environmental offence shall be imposed on the party, whose duties the act or omission violates. According to the Act on Environmental Protection in Maritime Transport the penalty shall be imposed on the person, who has violated the law on purpose or by negligence.

The administrative oil discharge fee is imposed to the shipowner. It is not

required to establish the actual person on board who caused the discharge for imposing the fee.

GERMANY

1) Penal Law

According to the German Penal Law the person actually causing the discharge can be held responsible. The master of the ship is responsible if he neglects his duty to take adequate measures to ensure that a maritime pollution is not committed on board of the ship. (This duty is mentioned in Art. 1 b of the German MARPOL Implementation Act).

An offender has to be identified as a physical person. A company cannot be incriminated, but according to § 30 of the Administrative Offences Act (“Gesetz ueber Ordnungswidrigkeiten”) a non-penal fine (“Geldbusse”) can be imposed on legal persons and certain associations for crimes or administrative offences committed by persons in a leading position, including the violation of supervisory duties having an impact on the commission of crimes or administrative offences by subordinates. If a criminal offence or a violation of supervisory duties (administrative offence) is committed by a person in a leading position the non - penal fine is up to 10 million Euro, in case of forfeiture - even beyond this amount if the economic advantage for the company is higher.

2) Administrative regulations:

In cases of violations of administrative regulations the following persons are held responsible:

- for violations of the duty to keep the Oil, Cargo and Garbage Book properly, the master of the ship and the engineers or other crew members responsible for keeping the books -,
- for violations of Regulation 17 Paragraph 3 of Annex I to MARPOL 73/78 the master and the person in the engine room who is in charge of the piping system -,
- for violations of the discharge provisions of Annexes I, II and V to MARPOL 73/78 the master and the person who actually committed the discharge -,
- for violation of the provision of the Helsinki Convention concerning the discharge of sewage the master of the ship or the crew members responsible for the sewage treatment on board.

LATVIA

In accordance with the Latvian Administrative Violations Code, both a natural person and a legal person may be charged with administrative liability. Moreover, the administrative liability is separately specified for the officials, the masters or other commanding officers of ships or other floating means of conveyance.

In accordance with the Criminal Law, a natural person may be charged with criminal liability who has reached the age of fourteen by the day of the commission of the criminal offence.

In the case of a legal person, such natural person shall be liable who committed the offence, acting individually or as a member of the collegial institution of the legal person, on the basis of the rights to represent the legal person, to act on its behalf, or to make decisions in the name of the legal person, or performing the control within the legal person, or while on duty of the legal person.

Coercive measures may be applied to legal persons.

LITHUANIA

Liability will be a person who intentionally or by negligence violates any prohibitions of water pollutions from ships or who neglects to minimize the consequences of a discharge. A legal entity can also be charged with penal liability. Penalties that may be imposed upon a legal entity for the commission of a criminal act are: a fine, restriction of operation of the legal entity or liquidation of the legal entity.

The Lithuanian Code of the Administrative Offence and Penal Code provide for the punishment of one or several responsible persons:

- Ship owner who is held responsible for the survey of the vessel in accordance with established procedures and for preparation of the vessel to voyage;
- Ship master who has not executed supervision to avoid discharge contrary to Lithuanian regulation, as well as
- Engineer and crew members.

NORWAY

According to Norwegian law fines can be imposed both on a legal entity and on individuals. Individuals can also be sentenced to serve in prison. Economic gain of the crime can be confiscated by court decision.

POLAND

The Act on the Prevention of Pollution of the Sea from ships, 1995, puts on the ship's master the responsibility to ascertain and ensure that:

1) the vessel at commencement of a voyage and during it, or during any other marine activity, complies with requirements concerning prevention of pollution of the sea, confirmed by relevant certificates, and that the vessel has a contingency plan to protect against pollution of the sea, 2) required oil and cargo records are kept up to date, 3) the crew is properly trained in activities to prevent pollution of the sea.

RUSSIA

Depends on the type of an act. In the majority of the detected infringements in the sphere of pollution of water area of the Gulf of Finland, is usually a ship owner who is liable.

SWEDEN

A person who intentionally or by negligence violates any prohibitions of

water pollution from ships or who neglects to minimize as far as possible the consequences of a discharge caused by accident, shall be fined or condemned to imprisonment up to two years, if the deed is not imposed with more severe punishment in the Criminal Code or the Environmental Code. A master who has not executed supervision to avoid discharges contrary to Swedish regulations shall be sentenced to the same punishments. If the master has transferred the responsibility for the supervision of handling on board of harmful substances to a special officer, this officer can be punished as well as the master. Also the ship owner or manager can be sentenced as if he had done the crime himself, if he has not done what could be expected of him to prevent a prohibited discharge.

Responsible for the payment of the water pollution fee is the ship owner at the time of the infringement. If the ship owner at that time had assigned the responsibility for the operation of the ship to someone else, for example a manager or a bare boat charterer that person will be held liable for the payment.

4.7. Penalties

4.7.1. Summary

Penalties imposed for violations of anti-pollution regulations cover both fines and imprisonment. Whereas all Baltic Sea States have the possibility to impose a fine, only Denmark, Germany, Norway, Finland, Latvia, Lithuania and Sweden have the possibility to impose imprisonment.

In order to ensure observance of the anti-pollution regulations the Baltic Sea States have decided to harmonize the administrative fines by deciding on a minimum level, cf. Section 3.1. and HELCOM Recommendation 19/14.

4.7.2. Specific information from DENMARK

According to the Act on Protection of the Marine Environment violation of the act is punishable by fine unless other legislation applies and provides for a higher penalty.

In regards of oil discharge the recommended level of fine was raised by an amendment of the act in 2006. According to the travaux préparatoires the fine to be imposed for discharges of approx. 50 litres of oil should be DKK 25,000 (approx. EUR 3,350), the fine for discharges of approx. 500 litres should be DKK 150,000 (approx. EUR 21,000) and the fine for discharges of approx. 1.000 litres should be DKK 250,000 (approx. EUR 33,500), with the linear rate of the price for one litre of oil for volumes

exceeding 1.000 litres (DKK 250 or approx. 33 euros per litre of oil). The fine may be adjusted both upward and downward in view of aggravating or mitigating circumstances. In the fixing of the amount of the fine, conditions such as the degree of mens rea, the environmental damage caused and any prior violations of a similar nature will be taken into account.

The penalty may be increased to imprisonment for up to two years where the violation has been caused deliberately or with gross negligence, and where it has:

- a. caused damage to the environment or a serious risk of such damage; or
- b. been done, or been intended in order to achieve an economic benefit (including avoiding an expense).

However, this does not apply to foreign ships unless the violation has been committed in Danish territorial waters. Violations committed by foreign ships in the exclusive economic zone are punishable by imprisonment for a term of up to two years if they involve a wilful act and cause serious pollution of the marine environment or of the air.

Furthermore, according to section 196 of the Danish Penal Code imprisonment for a term not exceeding six years is imposed on any person who, contrary to the environmental legislation in aggravating circumstances pollutes the air, water, soil or subsoil resulting in considerable damage to the environment or an imminent risk of such damage or stores or disposes of waste or similar materials resulting in considerable damage to the environment or an imminent risk of such damage. The same penalty is imposed on any person who pollutes the air, water, soil or subsoil or stores or disposes of waste or similar materials contrary to the environmental legislation where such offences are committed in a systematic or organised manner.

ESTONIA

Violations of the Penal Code can be sanctioned with a pecuniary punishment (from 30 to 500 daily rate) and with imprisonment for up to 5 years. Legal persons can be punished with a fee from 16 000 000 EUR. According to the Penal Code article 46 a court may impose the compulsory dissolution on a legal person who has committed a criminal offence if commission of criminal offences has become part of the activities of the legal person.

For a misdemeanour the punishment varies from 12 EUR to 1200 EUR or detention (up to 30 days) for a natural person and for a legal person 32 EUR to 32 000 EUR.

FINLAND

According to the provisions of the Act on Environmental Protection in Maritime Transport violation of the Act is punishable by a fine.

An environmental offence falling under the Criminal Code is punishable by imprisonment or a fine. Sanctions for environmental

offences vary between a fine and six years of imprisonment. Fines shall be imposed in the form of day-fines, the number of which shall correspond to the blameworthiness of the act. The amount of a day-fine is determined in accordance with the offender's daily income. It is also possible to impose a corporate fine for an environmental offence on a corporation.

If the violation has occurred from a foreign vessel at the EEZ of Finland only fines as punishment are possible. In these cases despite of the nature of the offence, prosecutor cannot press charges after three years have passed when the violation occurred. The Border Guard Service may impose an administrative penalty fee on a person or legal entity who is at the moment of violation the shipowner, for violating the prohibition on discharging oil in the Finnish waters or at the EEZ. The amount of the oil pollution fee is depended on the size of the discharge. The administrative oil discharge fee is not possible if the violator of the act will be sentenced for a crime. The administrative oil discharge fee is the most common sanction in oil pollution cases. The process is easier and quicker than the criminal process and less detailed evidence required than in a criminal process.

GERMANY

1) Penal Law

Intentional unauthorised pollution of water carries a penalty of imprisonment of up to 5 years or the imposition of a court fine which is to be imposed per diem and amount to a maximum of 360 days at 30.000 Euro per day. If the offender acts negligently, the maximum term of imprisonment is reduced to 3 years.

In case of especially serious environmental crime, where certain serious consequences are caused by oil pollution, the upper limit of imprisonment is ten years or even fifteen years where death is caused.

2) Administrative regulations

Offences against the discharge regulations of MARPOL 73/78 and the Helsinki Convention, which do not simultaneously fulfil one of the aforementioned parts of the criminal offence, can be punished with an administrative fine of up to 50.000 Euro.

For violations of the duty to keep the Oil, Cargo and Garbage Record Book properly, administrative fines of up to a maximum of 25.000 Euro can be imposed. For breaches of the duty to keep an Oil Record Book properly a differentiation is made between the case in which the amount of the sludge is not recorded in the Oil Record Book, but is still on board or has probably been burned, and cases in which there are not sufficient entries in the Oil Record Book and there is a strong suspicion that it had been discharged illegally. In the latter cases the fine imposed will be up to ten times as high as in the former cases.

For violations of Regulation 17 Paragraph 3 of Annex I to MARPOL 73/78 an administrative fine up to 25.000 can be imposed.

LATVIA

Administrative liability:

In the Latvian Administrative Violations Code for pollution by ships of the Baltic Sea and interior sea waters the applicable sentence is a fine: for officials from 140 *euro* and up to 4300 *euro*, but for legal persons from 1400 *euro* and up to 14000 *euro*.

For violation of the provisions regarding the creation of reclaimed islands, installation, or construction erection committed by the masters or other commanding officers of ships or other floating means of conveyance the applicable sentence is a fine from 280 *euro* and up to 4300 *euro*.

For failure to notify about the pollution of the Baltic Sea and interior sea waters the applicable sentence is a fine from 280 *euro* and up to 2100 *euro*.

Criminal liability:

In the Latvian Criminal Law for the pollution of the sea if substantial harm is caused to the environment, or property or economic interests, the applicable sentence shall be deprivation of liberty for a term not exceeding four years, or community service, or a fine from 5 and up to 150 times the minimum monthly wage.

For the pollution of the sea with dangerous or other harmful substances or waste if serious consequences are caused thereby, the applicable sentence is deprivation of liberty for a term not exceeding ten years.

For failing to carry out or improperly carrying out necessary initiatives included in the duties of persons regarding rectification of pollution of and prevention of other harmful effects on the environment, as well as for failing to give notice if harmful effects have resulted, the applicable sentence is deprivation of liberty for a term not exceeding three months, or a community service, or a fine from 3 and up to 100 times the minimum monthly wage.

For concealment of data regarding environmental pollution, the applicable sentence is community service, or a fine not exceeding fifty times the minimum monthly wage, but if as a result substantial harm is caused thereby to the environment, human health, or property or economic interests, the applicable sentence is deprivation of liberty for a term not exceeding four years, or a community service, or a fine from 5 and up to 150 times the minimum monthly wage.

The following coercive measures may be applied for a legal person:

Liquidation;

Limitation of rights;

Confiscation of property;

Monetary levy.

LITHUANIA

The Lithuanian Code of the Administrative Offence (article 265) provides fines up to 6.000 EUR for violation of the regulation preventing pollution of the sea. These fines do not cover damage to environment, which always being calculated separately and is usually substantially bigger.

The Lithuanian Penal Code (article 270) provides for personal punishment of up to 6 year of imprisonment or fine up to 37660 EUR. Punishment provided for a legal entity is up to 1883000 EUR, or restriction of activity of legal entity or liquidation of legal entity.

Article 270³ provides responsibility for marine pollution from ships. A person who violates the requirements of the Annex I and II of the The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and pollutes open sea or other territory shall be punished by a fine up to 18830 EUR or arrest or by imprisonment for a term of up to three years. Punishment provided for a legal entity is up to 1883000 EUR, or restriction of activity of legal entity or liquidation of legal entity.

In those cases where, under the national legislation, offences against the MARPOL or Helsinki Convention may be fined as breaches of administrative regulations, the fines shall be imposed according the following criteria:

1) Annex I to MARPOL 73/78:

- a) illegal discharge (regulations 9 and 10). Fines range from 2,000 to 25,000 USD (60 USD per kg of oil);
- b) Violation of the duty to keep the Oil Record Book and Cargo Record Book properly (Regulations 20, paragraph 4 and 5). No Oil Record Book kept on board or entries missing or wrong. Fines range from 750 to 1,250 USD.

2) Annex II to MARPOL 73/78:

- a) Illegal discharge of noxious liquid substance (Regulation 5). Fines range from 500 to 250,000 USD.
- b) Violation of the duty to keep the Cargo Record Book properly. Fines up to 750 USD.

3) Annex V to MARPOL 73/78:

- a) Illegal discharge of garbage (Regulation 5). Minimum fine 62,5 USD.

4) Annex IV of Helsinki Convention:

- a) Illegal discharge of sewage (Regulation 7). Minimum fine: 62,5 USD;

5) Annex IV of Helsinki Convention:

- a) Illegal incineration on board of ships (Regulation 9). Minimum fine: 125 USD.

NORWAY

According to the Penal Code of 2005 Section 240 the maximum penalty is 15 years in case of very serious pollution of the sea in such a way that the living environment in an area becomes significantly harmed or is threatened by such harm., regardless for personal injury.

Under the Pollution Control Act, Section 78, pollution of the sea may be sentenced to a maximum of two years imprisonment, five years where there was danger of any person's death or personal injury.

The Ship Safety and Security Act deals with the obligation of the shipping company, the ship master and the crew on board the ship in relation to safety and security to avoid pollution. Breaches of these obligations may result in a sentence up to two years.

POLAND

On a ship's operator from whose ship, while staying in the Polish sea areas, a pollution of the marine environment took place in violation of the provisions of the Act, in connection with the ship's operation, or as a result of dumping in the sea wastes or other matters, a fine shall be inflicted, equivalent to 1,000,000 SDR (Special Drawing Rights), as defined by the International Monetary Fund.

This fine shall also be inflicted on a ship's operator of a ship flying Polish flag which, in violation of provisions of the Act, pollution took place of the marine environment situated outside the Polish sea areas, in connection with the ship's operation, or as a result of dumping in the sea wastes or other matters, without a required permit, or contrary to its condition.

If a master, or other member of the ship's crew, by not fulfilling the duties imposed on him by force of the law:

- 1) does not take care of the ship's seaworthiness, or other function on the sea concerning prevention of pollution of the sea,
- 2) does not keep the Oil or Cargo Record Book,
- 3) does not send up the ship to survey or inspection, the vessel for survey or inspection, makes difficulties or prevents a survey or inspection required by the MARPOL 1973/78 convention,
- 4) causes pollution of the sea,
- 5) does not provide notification of the notified pollution, or report on the imminent danger of pollution of the marine environment,
- 6) does not take necessary measures in order to prevent pollution, or to limit or eliminate pollution of the marine environment, resulting from an accident,
- 7) does not transmit, upon the demand of the competent agencies, the information in the cases foreseen in the Act,
- 8) does not discharge, either in the port or at the ships repair shipyard, the remaining noxious matters to land-based facilities, if the volume of the noxious substances left on the ship exceeds the volume of the ship's installations, when taking into account the technical appliances for their harmless removal,
- 9) does not report to the inspection agencies the incidents which exercise a considerable influence on the technical condition of the ship, her

appliances or equipment, thus causing a danger to the marine environment, shall be liable to a fine up to an amount not exceeding twenty times the average monthly salary in the national economy for the proceeding year, as published by Chairman of the Central Office of Statistics.

RUSSIA

Determined subject to a type of act and consequences. A fine is the main type of penalty, imposed on a delinquent who has polluted water area of the Gulf of Finland.

SWEDEN

A special Swedish administrative fee (water pollution fee) is charged, if the prohibition to discharge oil from ships has been infringed and the discharge is not insignificant. Such a fee is charged also if a discharge of oil caused by accident has not been limited as far as possible. The fee is charged irrespective of a criminal punishment, not as a replacement for it.

The amount of the water pollution fee charged depends on the extent of the discharge and the size of the ship (gross tonnage).

Criminal punishments can either be a fine or imprisonment. Fines shall be imposed as day-fines or, if the punishment for the crime should be less than 30 day-fines, to money-fines. The number of day-fines reflects the blameworthiness of the offence and the amount reflects the income level of the person condemned. The number of the day-fines may vary from 30 to 150 or, if it is a joint punishment for several crimes, at most 200. The amount of a day-fine vary from 50 to 1.000 Swedish crowns. Money-fines may vary from 200 to 4.000 Swedish crowns, or in cases of joint punishment, at most 10.000 Swedish crowns

V. SOME RELEVANT INTERNATIONAL INSTRUMENTS

R – ratified (or accepted or approved)

S - signed

Based on the information in July 2012

Convention	DK	EE	FI	DE	IS	LV	LT	NO	PL	RU	SE
United Nations Convention on the Law of the Sea (UNCLOS) (1982)	R	R	R	R	R	R	R	R	R	R	R
Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters (London Convention) (29 December 1972)	R	-	R	R	R	-	-	R	R	R	R
1996 Protocol to London Convention (17 November 1996)	R	-	-	R	R	-	-	R	-	-	R
Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (3 March 1973)	S/R	S/R	S/R	S/R	S/R	S/R	S/R	S/R	S/R	S/R	S/R
International Convention on Prevention of Pollution from Ships 1973, as modified International Convention on Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) (2 November 1973 / 17 February 1978) - Annexes I-V	R	R	R	R	R	R	R	R	R	R	R
MARPOL Annex V	R	R	R	R	R	R	R	R	R	R	R
Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (22 March 1989)	S/R	-/R	S/R	S/R	-/R	-/R	-/R	S/R	S/R	S/R	S/R
Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), 1992 (9 April 1992)	R	R	R	R	-	R	R	-	R	R	R
Convention for the Protection of the Marine Environment of the North-East	R	-	R	R	R	-	-	R	-	-	R

Atlantic (OSPAR Convention) (22 September 1993)											
International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS Convention (5 October 2001)	R	R	-	R	R	R	R	R	R	-	R
The Montreal Protocol on Substances that deplete the Ozone Layer (16 September 1987	R	R	R	R	R	R	R	R	R	R	R
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (10 September 1998)	R	R	R	R	-	R	R	R	R	-	R
Conventions not yet in force											
Convention of the Council of European the Protection of the environment through Criminal Law (4 November 1998)	S/-	S/R	S/-	S/-	S/-	-/-	-/-	-/-	-/-	-/-	S/-
Ban Amendment to the Basel Convention (22 September 1995)	R	R	R	R	-	R	R	R	R	-	R
EU Directives (EU Member Countries)					-			-		-	
Directive 2009/18/EC of the European Parliament and of the Council of 28 May 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Directive 2009/16/EC of the European Parliament and the Council of 23 April 2009 on port State control (Recast)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>

Directive 2009/17/EC of the European Parliament and the Council of 23 April 2009 amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Directive 2005/35/EC of the European Parliament and the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements and Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC as regards the sulphur content of marine fuels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		
Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>			<input type="checkbox"/>		<input type="checkbox"/>
Regulation (EC) No 782/2003 of the European Parliament and the Council of 14 April 2003 on the prohibition of organotin compounds on ships	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>

VI. INSTITUTIONS OF INTEREST

- DENMARK www.mfvm.dk - homepage of the Ministry of Environment and Food
www.mst.dk - homepage of the Environmental Protection Agency
www2.forsvaret.dk - homepage of Defence Command Denmark
www.politi.dk - homepage of the Police with detailed introduction to the structure of the Danish Police
www.anklagemyndigheden.dk – homepage of the Prosecution Service
- ESTONIA www.prokuratuur.ee - Prosecutor's Office
www.just.ee - Ministry of Justice
www.envir.ee - homepage of the Ministry of the Environment, also in English
links to other relevant homepages
www.kki.ee - Environmental Inspectorate
www.keskkonnaamet.ee - Environmental Board
www.politsei.ee - Estonian Police and Boarder Guard Board
www.emta.ee - Estonian Tax and Customs Board
wwwq.vta.ee - Estonian Maritime Administration
- FINLAND www.poliisi.fi/english/indeks.html - homepage of the Finnish Police
www.vksv.oikeus.fi - homepage of the Prosecution Service
www.ymparisto.fi - homepage of the Environmental Administration
www.om.fi/en/Etusivu - homepage of the Ministry of Justice (legislation)
www.raja.fi - The Finnish Border Guard
www.tulli.fi - Finnish Customs
- GERMANY www.bmfv.bund.de - Federal Ministry of Justice and Consumer Protection
www.bsh.de - Federal Maritime Agency
www.bundespolizei.de - Federal Police
www.bka.de - Federal Criminal Police Office
- LATVIA www.mfa.gov.lv – The Ministry of Foreign Affairs of the Republic of Latvia
www.varam.gov.lv - The Ministry of Environmental Protection and Regional Development
www.vvd.gov.lv – The State Environment Service
www.lrp.gov.lv – The Prosecution Office of the Republic of Latvia
www.vp.gov.lv – The State Police.
- LITHUANIA www.lrs.lt - Parliament of Lithuanian Republic (legislation)
www.tm.lt - Ministry of Justice
www.prokuraturos.lt - The Lithuania Public Prosecution Service
www.policija.lt - Lithuanian Police
www.am.lt - Ministry of Environment
www.portoklaipeda.lt - State port of Klaipeda

- www.pasienis.lt - State Border Guard Service
www.kam.lt - Ministry of Defence
- NORWAY www.okokrim.no the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime
www.dirnat.no - The Directorate for Nature Management
- POLAND www.mos.gov.pl - The Ministry of Environmental Protection
Rbartold@mos.gov.pl - The Minister's Counsellor, Ministry of Environmental Protection
- RUSSIA www.genproc.gov.ru - The Prosecutor General's Office
www.prokuratura.sp.ru - The Prosecutor's Office for the city of Saint-Petersburg
www.prokuratura-lenobl.ru - The Prosecutor's Office for the Leningrad Region
www.prokuratura39.ru - The Prosecutor's Office for the Kaliningrad Region
www.mintrans.ru - The Ministry of Transport
www.mvd.ru - The Ministry of Internal Affairs
www.mnr.gor.ru - The Ministry of Natural Resources and Ecology
www.mcx.ru - The Federal Agency for Veterinary and Phytosanitary Supervision
www.control.mnr.gov.ru - The Federal Nature Management Supervision Service
www.gosnadzor.ru - The Federal Service for Ecological, Technological and Nuclear Supervision
<http://voda.mnrgov.ru> - The Federal Water Resources Agency of the Ministry of Natural Resources and Ecology
www.fishcom.ru - The Federal Agency for Fishery
- SWEDEN www.riksdagen.se - homepage of the Swedish Parliament with several links to other interesting addresses
www.regeringen.se - homepage of the Swedish Government Offices
www.notisum.se - internet-portal specialised in both Swedish and European law
www.lagrummet.gov.se - legal information with several interesting links
www.environ.se - homepage of the Environmental Protection Agency
- The Council of the Baltic Sea States
www.cbss.org
- HELCOM www.helcom.fi