

**ENPE**

**Waste & Illegal Pesticides  
Working Group**

Report of the Workshop on  
Illegal Waste Transfer &  
Activity in Central Europe

Tallinn, 07-08 December 2023



Co-funded by  
the European Union

**The European Network of Prosecutors for the Environment (ENPE)** is registered in Brussels, Belgium as an International Non-Profit Association (Association Internationale Sans-But Lucratif - AISBL) and was incorporated by Royal Decree in Belgium on 01 September 2016.

ENPE's purpose is *to promote the enforcement of environmental criminal law by supporting the operational work of environmental prosecutors.*

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## **Acknowledgments**

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## **Attendees:**

Katerina Weissova (Czech Republic, Co-Chair); Rob de Rijck (Netherlands, Co-Chair); Maarten Jan Hovestad (Netherlands); Tomáš Holý (Czech Republic), Jakub Sivák (Czech Republic); Teodor Nita (Romania); Sofia Cristina Alionte (Romania); Howard McCann (England, UK); Diana Helila (Estonia); Jürgen Hüva (Estonia); Käthlin Ploompuu (Estonia); Reelika Ratassepp (Estonia); Heidi Nummela (Finland); Maria Johannsen (Sweden); Jennie Nording (Sweden); Martin Elofsson (Sweden); Sebastian Christ (Germany); Armen Oganesean (Republic of Moldova); Borys Indychenko (Ukraine); Maksym Popov (Ukraine); Shaun Robinson (ENPE); Sara Boogers (Belgium); Ilvars Kunigs (Latvia).

## **Executive Summary**

The European Network of Prosecutors for the Environment – ENPE, through its Waste & Illegal Pesticides Working Group, hosted a workshop focussing on prosecuting illegal waste activities in Europe in Tallinn, Estonia on the 07-08 December 2023. 23 delegates attended representing government prosecuting organisations from 12 different countries.

Presentations and case studies were shared with group activities and discussions resulting in the reporting of common challenges experienced by the participants in the regulation and enforcement of illegal waste activity. In particular, *waste classification, lack of control of movement, interpretation of waste legislation and lenient sanctions* were all presented as the most significant barriers to effective regulation. All presentations are available in a separate annex to this report (Annex 1.0) including an additional presentation which was not presented at the workshop from Prof Remus Jurj & Mr Teodor Nita setting out Romanian legislation & jurisprudence regarding waste crimes.

International co-operation and collaboration, through *Joint Investigation Teams (JITS)* and *Mutual Legal Assistance (MLA)* had proved to have a positive impact on cases with examples included in the presentations. Going forward, continued sharing of experience, including advice on interpretation of changing legislation is recommended through networks such as ENPE and further targeted training as required. Furthermore, international collaboration involving the countries participating in the workshop is envisaged to be eased following the sharing of common barriers and successes in the regulation of waste activities.

# Contents

Background	3
1.0 Introduction	4
2.0 Presentations & discussion	5
3.0 Conclusion	13
All presentations (separate file - Annex 1.0)	

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# Background

The European Network of Prosecutors for the Environment – ENPE, has convened three Working Groups (WGs) to enable the following Core Action<sup>1</sup> for the 2022-24 funding period:

*Delivery of Specialist Prosecutor Training with relevant Partners – in particular, to ‘devise training materials which we will roll out to network members and key prosecution contacts across the EU.’*

The WGs were formally established on 30/09/22 at the ENPE annual conference in The Hague, Netherlands. They focus on: **wildlife crimes; waste crimes & Illegal pesticides** and **pollution crimes**. Examples of WG outputs include:

- Minutes including Actions agreed from all WG meetings;
- A questionnaire/ feedback from prosecutors involved in the WG topic area;
- An animation, training video or specialist podcasts including reference/ ‘sign-posting’ to other relevant links & websites as needed;
- Training materials e.g. a slide pack, to deliver with other organisations (e.g. ERA; IMPEL; EJTN<sup>2</sup>);
- Materials to facilitate international liaison on environmental crime.

The ENPE Waste & Illegal Pesticides Working Group (W&IP WG) identified key areas of focus at the ‘kick-off’ meeting on 27/02 2023. These included Waste Transfer (within and out of Europe) and Illegal Pesticides. It was agreed that a workshop focusing on Waste Transfer in Central and Eastern Europe would be convened to share case study materials, identify common problems and agree on next steps to apply common solutions, in particular through the application of relevant legislation.

The main workshop output, in the form of this report provides a platform for further **training materials** and **materials to facilitate international liaison on environmental crime**.

Group members highlighted ‘intra-EU ‘West-East’ and ‘post-Brexit UK-EU’ illegal transfer as key areas of focus with the three areas to consider in particular: 1) criminal activity/ applicable law; 2) administrative law ; 3) international co-operation (e.g. Mutual Legal Assistance - MLA; Joint Investigation Teams - JITs).

<sup>1</sup> as per the application form in relation to the European Commission DG Environment Programme for Environment and Climate Action (LIFE) Specific Grant Agreement for an Action Reference: **No9.2020/2022/872128/SUB/ENV.E4**

<sup>2</sup> ERA - The European Academy of Law; IMPEL – the European Union Network for the Implementation of Environmental Law; EJTN – European Judicial Training Network

# 1.0 Introduction

The delegates highlighted their specific challenges at the outset of the workshop revealing several key areas of commonality:

- General (illegal) movement of waste materials in a West-to-East direction;
- Connections to the 'administrative path' incomplete and unclear;
- International co-operation was evident and very helpful but needed to be expanded;
- Legislation, in particular the Waste Shipment Regulations and Environmental Crime Directive, was not always easy to follow and apply.

Specifically, in Sweden and Finland, for example, the unregulated *export* of waste to other EU-countries and Africa was reported, but the Czech Republic and Republic of Moldova were experiencing more issues around the *import* of waste.

Different types of waste were also posing different problems for different countries, for example, in Estonia the export of waste cases connected with noxious emissions had proved problematic.

It was also a challenge to derive investigative material from administrative bodies, for example, evidence and technical support, and defining "waste" vs. "product", to identify hazardous waste.

Further challenges reported included *waste classification, lack of control of the waste movements, incorrect documentation accompanying the waste, connection to organised crime, fraud* and forged documents, as well as fighting against 'big players' in the waste business.

Group activities enabled the delegates to focus on the key areas where support and exchange of expertise would be beneficial. In addition, presentations, including case studies, were shared to highlight country-specific problems and solutions. Going forward, it was agreed that continued international collaboration and sharing of ideas would be of benefit to the group in their work in prosecuting illegal waste activities.

All presentations were included in a separate Annex (Annex 1.0) for review as appropriate.

## 2.0 Presentations & discussion

At the outset, a series of questions were posed to the delegates who had been split into different groups, to consider and offer answers as part of the first group activities.

Delegates are pictured right during a presentation from our Swedish colleagues (S Robinson)



### **Group Activity 1.**

Groups were asked about the types of criminality evident in delegate countries, the recurring problems, specific areas of their waste regulation where assistance is required as well as what works well at present. The questions presented to the delegate groups were:

- 1) *What types of criminal activities regarding illegal waste shipment do you observe in your country/cases? Are there any trends?*
- 2) *What main challenges/obstacles do you observe? Are these legal or are they of practical nature?*
- 3) *Do you as prosecutors cooperate with bodies dealing with administrative procedures related to transboundary shipment of waste?*
- 4) *What is your experience with international cooperation in waste related cases? What tools would you recommend within the EU.*

General responses included:

- Waste shipments, including correct certification and administration;
- Movement of illegal pesticides & plastics in particular;
- Waste classification , including assigning correct coding and documentation;
- Lack of control over import and export;
- Illegal combustion of waste materials (instead of authorised disposal) leading to further pollution (e.g. dioxins).

But also, good international co-operation was evident (e.g. JITS & MLA) leading to favourable results. Other positives included some strong relationships with administrative authorities and some good results in waste prosecutions.

### Presentations

The workshop focussed on a series of presentations including an overview of applicable European legislation, including updated relevant Directives and individual case studies presented from the delegates country of origin. [All workshop presentations are available in pdf format in Annex 1.0]

### Presentation 1): Rob de Rijck -**Two to be revised and connected instruments :**



- Waste Shipment Regulation
- Ecocrime Directive

A brief history of the relevant related EU legal instruments revealed that legislation has been in place since 1984 going back to the 1984 Directive on Trans-frontier Shipments of hazardous Wastes (D 84/631). Regulations on Waste Shipments were introduced in 1993, 2006 and most recently, 2021 with the (European) Commission proposal on shipments of Waste (COM 2021/709).

The main proposed changes to the 2006 Directive were raised.

An important change will be that 'receiving non-OECD-countries' for the purposes of recovery must now demonstrate that they are able to do so safely and without risk to the environment. Important is also is that Article 60 requires types of administrative penalties applicable.



The Ecocrime Directive was introduced through a brief look back at historic EU instruments on the protection of the environment through criminal law. Directive D 2008/ 99 is to be replaced following the Commission proposal Com (2021) 851. It shall now include placing on the market of illegal pesticides. As the new WSR provides for administrative sanctions on illegal waste transports, the Ecocrime Directive does so for criminal sanctions.

Of particular interest to this workshop, the proposal for Article 17, Resources, includes:

*Member States shall ensure that national authorities which detect, investigate, prosecute or adjudicate environmental offences have a sufficient number of qualified staff and sufficient financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.*

*And..Member States shall [...] assess the need to strengthen specialisation of these authorities in the area of environmental criminal law.*

More detailed information on widespread deliberate environmental damage and 'ecocide' is also provided in this new Directive.

**Presentation 2): Jürgen Hüva & Heidi Nummela (joint presentation) Case Study JIT – Estonia-Finland**



This case described a joint Finland-Estonia Joint Investigation Team (JIT) to deal with an illegal waste transfer case which resulted in successful investigation and prosecution. The following key points were noted:

- The JIT worked very well resulting in a successful prosecution;
- The construction waste was successfully returned back to the company of origin on one occasion;

- Often in cases such as these, the scale is more significant than initially thought – over 70 shipments of similar nature (waste transports run in series) were noted;
- Other unauthorised transport of waste had been noted in the past (the same company), and it was a legal business running with illegal activities;
- Investigative teams comprised investigators, prosecutors & environmental authorities;
- Where there are teams of prosecutors it's important to have one leading the case.
- False documentation (describing another type of waste) and the company who received construction waste in Estonia didn't have permit to handle that type of waste;
- Natural persons involved – were identified, and the relevant waste companies were identified as criminally liable;
- The advantages of JIT were extolled including technical support and costs (via Eurojust).

The judges in this case were not at all familiar with the topic – so experts to explain technical details were needed. Although successful prosecution was achieved, sanctions (financial) were not severe with relatively low fines imposed. But overall, the operation was deemed a success given the benefits of international collaboration.

### Presentation 3): Mr. Tomáš Holý (Czech Republic) – “Pretend” Waste Recovery



This case centred around the legal definitions of 'recovery' and 'disposal' and the activities undertaken by the perpetrator, since the import of waste for disposal is prohibited in the Czech Republic. Mutual Legal Assistance (MLA), namely European investigation orders, was used and needed to demonstrate the illegality and support the successful prosecution case. The key features of this case were:

- 3 shipments were prosecuted out of 79;

- The operation was complex which was run by an 'Organized Group' (not an Organised Crime Crime Gang or 'OCG'\*);
- MLA was used (and was needed);
- The documents didn't match reality – hence the 'pretend' nature of the recovery;
- Illegal shipments were mixed with legal ones for concealment of the crime.

The operation proved a success, not least in uncovering the activities of an OCG and although a JIT was not used, it would've proved useful on reflection.

\*In the Czech legal system as "organized group", is distinct from an Organised Crime Gang is the association of several persons into an organized group of criminals without aiming at systematic criminal activity.

**Presentation 4): Mr Theodor Nita for Romania: Problems raised in the Romanian judicial practice regarding the crimes of the waste regime - case studies**



The following common themes were reported in the Romanian waste cases presented:

- Connections between illegal and legal business;
- The documents provided didn't match reality;
- Accusations evident also from the representative of the consumer protection authority;
- Investigations proved complicity of the Port Customs Authority in a specific case;
- The money generally flows from the waste 'supplier' (producer) to the waste 'receiver';
- MLA is a useful tool in these cases;
- Transport of waste is costly, long-distance transport only pays as criminal activity;
- Judges have a limited understanding of waste crime and appropriate sanctions;

- Seizure of property can be effectively used as a deterrent.

Some of the waste had travelled thousands of kilometres, with the case studies re-affirming the general 'West-East' movement across Europe (e.g. English, Italian and Portuguese companies were investigated in the cases described). Effective sanctions had included seizure of goods including buildings and the suspension of bank accounts, however it was acknowledge that judges did not have experience of wate crimes, in general.

Presentation 5): Howard McCann – UK (England): **post EU-exit situation (waste)**



**ENPE Waste Workshop**

Tallinn, Estonia  
7-8 December 2023

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Environment Agency

The poster features a central logo with the acronym 'ENPE' in a blue banner, flanked by two blue scales of justice. Below the scales is a wavy blue and green banner. The entire logo is set against a white background with a circle of twelve yellow stars, similar to the European Union flag.

The distinction was made between the prosecutors (numbering 35) in the *Environment Agency (EA)* who dealt with waste crime – the Environmental Protection Agency for England and Wales - and Her Majesty's Government (England & Wales) Crown Prosecution Service – a much larger governmental prosecuting authority that dealt with most prosecutions. Having the technical specialisms within the EA certainly helps in prosecuting illegal waste cases. The presentation provided the following key points:

- That the Environment Agency (specialist body providing technical support) also had 144 lawyers and 35 prosecutors and was responsible for waste crime;
- In spite of UK EU Exit ('Brexit') certain laws relating to waste regulation were retained;
- For example - Article 36 of WSR 1013/ 2006;
- But also some key laws were jettisoned making enforcement more difficult;
- UK is a major waste exporter so is a 'big player' in the EU waste industry;

- MLA retained thanks to 1959 Conventions & Protocols;
- Collaboration & co-operation essential to efficiently regulate illegal waste activities;
- Cases discussed revealed that the documents didn't match reality (recurring theme).

Continued sharing of information and collaboration wherever possible is needed to ensure effective regulation of waste transfer activities involving the UK.

**Presentation 6): Maria Johannsen; Jennie Nordin; Martin Elofsson (Sweden)**  
**Classification of waste – the burden of proof regarding waste:**



The Swedish presentation underlined that waste crime is a serious issue in Sweden. Assessment of what constitutes “waste” is often problematic and legal and technical support in this area is needed. The Swedish case also raised the following key points:

- ‘Shifting the burden of proof’ – the question whether the items are ‘waste’ or ‘goods’ is a common problem for prosecutors;
- Difficulties with container inspections;
- Waste classification problems (general).

Eurojust had been approached to assist with these issues. In addition, the presenters had raised specific questions for the delegates to consider, with reference to their own jurisdictions

and methods applied (shared separately with the group). An example was around the way in which authorities were deployed to assist with waste identification and classification in waste cases, with much variation in approach evident and the following responses provided by workshop delegates:

- *Belgium* - it was environmental protection officers, specialising in waste, and the defendant must prove otherwise;
- *Romania* - it is the Romanian National Agency for Consumer Protection & National Environmental Protection Agency (2 authorities, same burden of proof);
- *Estonia* also has a national agency (Environmental Board);
- *Finland* it was a 'case-by-case' basis e.g. the Finnish Environmental Institute (Inspectors) classify the waste.

In summary, the Swedish challenges focussed very much on waste description and classification. Comparisons with other jurisdictions were helpful and would be followed up after the workshop.



Lady Justice sculpture at the new Tallinn court, previously at the old court building and moved in 2020

## 3.0 Conclusion

The delegate groups were asked the following questions by way of conclusion to the workshop classroom-based activities:

### Group Activity 2.

- 1) *What did you note were recurring themes throughout the presentations and discussions?*

Answers were summarised as:

- Major problems include classification – what is waste?, lenient punishments, customs control and access to specialised knowledge;
- Low penalties in successful prosecutions once sanctions are imposed,;
- limitation of resources to assist,;
- difficulties in gathering knowledge and experience.

- 2) *What new/ novel methods of enforcement have you found out?*

Answers were summarised as:

- Use and importance of JITS, including assistance of EUROJUST;
- Use of GPS & trackers in tracking waste movements;
- Importance of collaboration with other authorities including other states & jurisdictions;
- Drones can be deployed usefully;
- EIOs are very useful.

- 3) *Next Steps?*

Answers were summarised as:

- Continue with collaboration (informal but also MLA; JITS);
- EIO, knowledge of law
- Connection to money – check bank accounts, investigating into other crimes – money laundering, fraud;
- Encourage similar workshops such as this.

On the second day of the workshop, the delegate group were kindly allowed to visit the Prosecutor's Office of Estonia's central Office (North) Lubja 4 1015 Tallin where they were able to visit a sitting session in the Court of the First Instance.

The delegate group are pictured below at the court in Tallinn.







This report was written and published by the European Network of Prosecutors for the Environment (ENPE). ENPE is a legal entity fully incorporated as an International Non-Profit Association (Association Internationale Sans-But Lucratif - AISBL) registered office is c/o Scotland Europa, Scotland House, Rond-Point, Schuman 5, Bruxelles 1040.  
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