

European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



ENPE newsletter - Issue 13

17 July 2020

Message from ENPE President Anne Brosnan

Dear colleagues,

Since our last newsletter issued at the end of March 2020, the global battle against Covid-19 continues, with many countries in Europe starting to gain the upper hand and emerging from 'lockdown' conditions. We extend our deepest sympathies to those affected by this terrible disease.

Restrictions in the way we live and work remain in place for most, and although we continue to operate as effectively as we can, we remain very grateful for your flexibility and patience in assisting us in our work. This newsletter includes an example of how one country, Spain, is looking at the effect of Covid 19 and environmental crime through a paper written by our ENPE Board member Dr Antonio Vercher.

The 5-year LIFE-ENPE project is drawing to a close with all project activities now concluded. We have, together with our ENPE & Working Group members, as well as our wider stakeholder contributions, produced a series of outputs which we believe will be of significant benefit to those involved in the fight against environmental crime in Europe. Final reporting for the project will take place in the Autumn, with all shared outputs posted on our website.

Environmental crimes continue to be committed in spite of diminished global economic activity and, as usual, we include some cases from across Europe for your information and for sharing as appropriate. We wish you all well in these strange and difficult times and, as ever, are very grateful for your interest in our activities.

THE LIFE-ENPE Project 2015-2020

It seems only recently that we were announcing this five-year project, funded by the EU Life programme, to formally establish ENPE as a force in the fight against environmental crime and bring consistency and best practice to how such crimes are prosecuted across Europe.



We are now at the point of completing all project activities and are busy preparing for the submission of all reports and deliverables by the middle of October. Our ENPE members, particularly those involved in the four LIFE-ENPE Working Groups, have made significant contributions to this work for which we are very grateful.

Our Inaugural President, Jonathan Robinson, in our first ENPE newsletter (issue 1, March 2016) talked of our ambition to “*develop the network over the next five years into a valuable resource to support the day to day work of environmental prosecutors*”. We believe that we have achieved this and want to give thanks to our project partners –



the EPA (Ireland); REMA (Sweden); Funktioneel Parket (Netherlands); and EUFJE (the European Environmental Judges network based in Belgium) who have worked alongside myself and Shaun at the Environment Agency (England, UK). Everyone involved has contributed hard work and support. It has been a fascinating and rewarding journey, with several major obstacles overcome on the way.

LIFE-ENPE Board members are pictured (left) signing the project agreements at the

Constitutional Court in Brussels, Belgium at the start of the project.

The project aim to “Improve Compliance with EU Environmental Law by addressing uneven and incomplete implementation across Member States through improvements to the efficiency and effectiveness of prosecutors and judges in combating environmental crime” is underpinned three key objectives with a focus very much on developing and sharing training and awareness raising. Some project facts and figures are summarised below:

- More than 3,000 specialists involved in tackling environmental crime have been in receipt of direct training and/ or awareness raising guidance over the course of the project;
- Four annual conferences have been organised with partner enforcement networks, with more than 500 delegates and speakers attending representing 60 different countries;
- ENPE membership has increased from 8 to 41 from 2015-20, with 30 different countries now represented;
- ENPE has presented at 52 different events in 25 different countries across the world
- ENPE has published 13 specialist newsletters with details of our activities and recent cases to a distribution network of over 420 stakeholders including organisations and individuals.

So we move forward to ENPE II the After-LIFE project, 2021 – 2025. We have already had a meeting with the Commission with a view to securing funding for the network going forward. We hope to enter into a formal dialogue shortly with a view to setting up detailed financial arrangements to fund certain network activities going forward. Our target date is January 2021 and we have prepared a detailed work-plan for the network in its next 5 year cycle.

I am pleased to say that we have in the meantime agreed to participate in two EU funded projects both of which are focussed on tackling wildlife crime in the Balkan region of central and eastern Europe.

I have also joined the Board of Interpol’s Pollution Crime Working Group with a view to aligning our enforcement activities more closely with the important work being undertaken by Interpol. More of this in future newsletters.

Anne Brosnan ENPE President.

Covid-19 and Environmental Crime in Spain



ENPE Board member Dr Antonio Vercher Noguera, Chief Public Prosecutor for Environment and Land Planning in Spain was recently interviewed for the World Environment Day in Spain. In his summary, he reported 1,180 criminal convictions relating to environment crime this year plus 138 demolitions of illegal buildings. The Environment team comprises 190 Prosecutors and one of their immediate objectives right now is the criminal prosecution of the illegal treatment of Coronavirus waste.

On this very urgent topic, Antonio has written a valuable paper on his Spanish experience of tackling environmental crime in Spain during the pandemic. Titled “**CRIMINAL LAW, CORONAVIRUS AND**

ENVIRONMENT IN SPAIN”, the paper examines the possibility of finding solutions to the underlying environmental-criminal context of the Coronavirus. To this end, it is based on the current situation of the Spanish legal system, assuming the important environmental component of many aspects of the problem of the Covid-19 pandemic and verifying the absence of any regulations on pandemics in the Spanish Penal Code.

It acknowledges that one of the biggest problems facing our society over the decades has been the completely surprising appearance of the Coronavirus, as well as its complex and numerous consequences. This has led to problems that were not predictable just a few months ago. The paper provides solutions to some of these consequences, especially of a criminal-environmental nature.

For more information please contact shaun.robinson@environment-agency.gov.uk.



LIFE SMART Waste project - update and waste regulators Covid-19 response

Regulating Covid-19 waste is affecting much of Europe and our colleagues at the LIFE SMART-WASTE project have recently issued updates around their capacity building and the

response to Covid-19 from the waste sector regulators in Wales (UK). Through their **Results & recommendations brochure** they have published a summary LIFE SMART Waste's conclusions and the recommendations arising from the project's capacity-building initiatives to help regulators and law enforcement agencies to tackle waste crime [read more](#) .

ENPE and international collaboration and co-operation

Illegal pesticides: ENPE workshop Spring 2021

Illegal pesticides appear to be an underestimated phenomenon in the field of environmental criminal law. Its classic subject areas are waste crime, wildlife crime and pollution. But the environmental and health risks of plant protection products are evident, simply because they are toxic. Therefore, the precautionary principle as laid down in EU legislation states that these products may only be placed on the EU market if they have been authorised by the Member State in which they are to be traded or used.

It is frequently shown, however, that these EU rules are being infringed on a large scale. Unauthorised products or illegal pesticides are widely used and traded. The Europol coordinated Operation *Silver Axe V* led, in 2020, to the seizure of 1 346 tonnes of illegal pesticides. This quantity could be enough to spray 207 000 km², or more than all the farmland in Germany which accounts for nearly half the country, almost 75% of farmland in France or more than 150% of the farmland of Romania. Illegal profits are huge. (<https://www.europol.europa.eu/newsroom/news/record-number-of-1-346-tonnes-of-illegal-pesticides-taken-market-in-2020-global-operation-silver-axe>).

These figures leave no doubt that criminal law has a role to play in this. A quick questionnaire within the ENPE network confirmed the urgency of the matter. Several dozen prosecutors and other colleagues expressed their interest in going more deeply into the subject, for example, to study case law, exchange practices etc.

Therefore, ENPE intends to organise a *Workshop on Criminal law and illegal pesticides* in Spring 2021, to be hosted and directed by Rob de Rijck, national coordinating prosecutor for environmental criminal law in the Netherlands, and Rien van Diesen of Europol and the Dutch Inspectorate for Food and Product Safety. More detailed information to follow. *It must be noted that the workshop is still subject to the condition of financing.*

For more information, and to register your interest please contact shaun.robinson@environment-agency.gov.uk.

EUFJE annual conference 9-10 October 2020 (webinar)



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

The 2020 EUFJE Annual Conference, which this year focusses on Air Pollution Law takes place from *Friday 9 October 2020 to Saturday 10 October 2020* as a virtual event via webinar. Key speakers include Veronica Manfredi, Director, Quality of Life (Air, water and industrial emissions), DG Environment, European Commission; Alina Novikova, to discuss *The UNECE Convention on Long-range Transboundary Air Pollution* and Martin Adams, Head of Programme, Health & Sustainable Resource use of the European Environment Agency to talk about *Scientific aspects of Air Pollution*. For more details, please contact Farah at: farah.bouquelle@eufje.org

7th Environmental Liability Directive conference (webinar)

On behalf of the European Commission, DG Environment E.4, we are pleased to announce the 7th ELD stakeholders conference organised virtually this year from 16-20 November 2020. The event is organised as a series of four webinars around the following four major themes:

- Draft Commission Guidelines on 'Environmental Damage'
- Multi-Annual ELD Work Programme 2021 – 2024
- Financial Security Study 2020 and Follow-Up
- Environmental Damage Cases – a New Perspective from the Ground

Up to four 'minor' themes may also be added, pursuant to the available time. The sessions may take place between 9:00 and 12:30 on Monday, Tuesday, Thursday and Friday of the week (16, 17, 19, 20 November 2020). Some sessions may include "virtual workshops". At least one break will be included every morning. Please note that the 3rd part of the 23rd ELD government expert meeting is organised on 18 November 2020, the conference will hence not be continued on that day.

The afternoons will be kept free for 'side events' relevant to the subject on environmental liability, which can be organised by interested organisations on their own (organisational efforts and cost). We are amenable to include appropriately described side events into the final conference programme, as feasible. Please inform Julie Fischer at: J.Fischer@prospect-cs.be, no later than **14 September 2020**.

ERA online workshops for prosecutors and judges on Waste Crime.

The Academy of European Law (ERA) is organizing online workshops for prosecutors and judges titled "EU Waste Legislation and Protection of the Environment through Criminal Law – Focus on Combating Waste Crime": 2 online workshops: 21-29 September 2020, 6-27 October 2020

Please see below for more details, including joining information and links to the programme:

[420DV145](#) (incl.the programme)

21-22 September 2020 - 08:45-13.30 (CEST)

28-29 September 2020 - 08:45-13.30 (CEST)

[420DV146](#) (incl.the programme)

6 October 2020 - 08:45-13.30 (CEST)

13 October 2020 - 08:45-13.30 (CEST)

20 October 2020 - 08:45-13.30 (CEST)

27 October 2020 - 08:45-13.30 (CEST)

The aim of these workshops is to provide participants with a comprehensive overview of the waste-related crimes which have raised major concerns in recent years. Emphasis will be given to the EU legislation and case law relating to waste offences and crimes, the relationship between criminal and administrative law provisions for these crimes as well as the main challenges for investigation, prosecution and adjudication in this field. Hence, workshops will shed light on

the protection of the environment through criminal law with special focus on waste. By addressing these issues that might be relevant for prosecutors as well as judges, it will facilitate the handling of future national court procedures in this field.

Applications for each workshop are included in the links below:

420DV145: <https://applications.european.law/en/Registrations/Apply/420DV145>

420DV146: <https://applications.european.law/en/Registrations/Apply/420DV146>

Terms and Conditions

It is necessary to fill in this form to apply (not yet binding). After filling in the application form applicants will be automatically emailed its copy that may be used for the approving procedure at their court/authority. If selected by ERA, applicants will be asked to confirm their participation. This confirmation is binding.

You can kindly apply to one of the online workshops between now and **7 September 2020** at the latest.

For further details, including eligibility to participate, please follow our project website: www.era.int/environmental_law

The Four Networks conference 2021 – Italy

The Covid-19 pandemic has resulted in the proposed Four Networks conference planned for Italy September 2020 being postponed until September 2021. The conference steering group are very keen for the event to take place on a 'face-to-face' basis, to maximise the

opportunities for awareness raising, guidance sharing and networking. With this in mind, by putting the proposed dates back a full calendar year, it is very much hoped that the event will take place in Italy as planned. Please do keep in touch with ENPE and IMPEL for more news and updates in due course.



Carabinieri Headquarters, Rome (photo:Wikipedia)



Street scene in Florence (photo: cntravel)

Interesting Cases

UK (England): Trio receive jail terms for dumping mustard gas bombs in Lincolnshire lake putting people and the environment at risk.

- The landmark case is the first time anyone in the UK has been charged with possession of a chemical weapon
- Mustard gas bombs were initially developed as a chemical warfare agent
- The threat sparked the largest multi-agency emergency response of its kind in the UK over 11 days

A trio of wartime memorabilia hunters have received jail sentences for dumping WWII mustard gas bombs in a Lincolnshire Lake – making them the first in the country to be sentenced for possession of a chemical weapon.

Martyn Tasker (40) was jailed for **5 years** for possession of firearms, plus **16 months' concurrent sentence** for possession of a chemical weapon. His wife Michaela Tasker (32) and friend Stuart Holmes (50) were both handed a **12-month jail sentence suspended for two years** for possession of a chemical weapon. Tasker received a **10 months' concurrent sentence** for an illegal discharge to water with his wife and co-defendant receiving a **6 months' custodial sentence, suspended for two years**, for that offence.



Pictures of the canisters, including testing for mustard gas at the analytical laboratory are included above (courtesy of Environment Agency, UK)

They all pleaded guilty to breaching environmental laws by dumping hazardous material into the lake in addition to the chemical weapons charge. Mustard Gas is a substance likely to harm human health or pollute the environment. High Court Judge the Honourable Mr Justice Jeremy Baker at Nottingham Crown Court passed sentence on the joint prosecution by the Environment Agency and the Crown Prosecution Service.

During sentencing, he highlighted that the trio's acts had 'huge and wide-ranging consequences', sparking the largest multi-agency response of its kind – and the situation only came to light when two of the three sought medical help for burns and trouble breathing.

The court heard that in September 2017, the Taskers came across wartime memorabilia in Roughton Woods, near Woodhall Spa, Lincolnshire – land which was historically requisitioned by the MoD for military training – and dug up

a half-buried box of mustard gas bombs. They messaged a friend who used to repair weapons in the Territorial Army to ask what they'd found, but didn't get an immediate identification.

Ten days later, the pair returned with Mr Holmes and uncovered a total of 16 canisters and three earthenware bottles. One bottle was prised open – exposing what Mr Tasker called 'really smelly oil' inside – before his friend texted, confirmed the containers were full of mustard gas, and advised alerting the authorities.

But Holmes had already poured the three bottles of mustard gas onto the ground so he could take the empty bottles home with him, along with 10 unopened canisters. The group left the other six canisters where they found them, but didn't report their find – despite knowing what a dangerous substance they'd uncovered.

Later that day, they decided to dump the canisters in Stixwoud Lake, where Holmes worked. They secretly took a dinghy, rowed out into the lake at night time, and left the containers to sink to the bottom, before burning their clothes.

The next day, Martyn Tasker sought treatment for blisters on his forearms and soon after, Michaela Tasker was treated for breathing difficulties. Only then did the pair alert the police – but they lied about the circumstances and still didn't tell officers about the bombs they had dumped in the lake.

But it wasn't long until inconsistencies emerged from their stories and all three were arrested. Authorities then launched a major operation to secure the woods, lake, and suspects' homes, and to recover the hazardous chemical. In what has since been hailed the biggest operation of its kind in the UK, Lincolnshire Police led more than two dozen organisations including the Environment Agency, emergency services, and the Army, in an 11-day response. It saw roads closed, drones deployed, safety cordons put in place, and at least one home evacuated while teams worked around the clock to tackle the tactical challenges of safely removing the bombs from the lake while keeping themselves, and nearby residents, safe.

Environment Agency sonar equipment usually used for fish surveys finally determined the bombs' location in the lake before Royal Navy divers were sent in to safely retrieve them.



JR 02.mp4

video footage of the sonar survey is included above (courtesy of Environment Agency, UK)

The bombs were immediately transferred to the specialist defence science and technology lab in Porton Down. There, testing confirmed that the containers were still sealed and had not leaked and they were destroyed. Everyone involved risked exposure and nasty side effects including burns, blisters, respiratory damage, vomiting and diarrhoea. Multiple public meetings were held to address concerned local residents.

Following the sentencing, Ben Thornely, Incident Management Lead at the Environment Agency, said:

"Mustard gas is extremely toxic, so dumping it in a lake near people's homes and in a popular woodland enjoyed by Scouts and dog-walkers was appallingly dangerous. Luckily the old, corroded containers didn't leak and were safely disposed of by professionals who showed bravery, ingenuity and collaboration to keep people safe. This incident was entirely unique, so it's satisfying the judge recognised the grave threat posed and we hope this sentence sends

a clear message – we won't hesitate to take action against those who so carelessly put people and our precious environment at risk."

Chief Inspector Phil Vickers, of Lincolnshire Police, said:

"This operation challenged the emergency services, military and partner agencies in ways that we have never experienced in Lincolnshire before – in fact some of the issues had never been faced anywhere before. "The operation was testament to the planning and preparation that goes on behind the scenes to protect our communities in times of need, and whilst that has meant flooding and extreme weather in the past, the same principles applied when faced with this new challenge. Bringing together 27 agencies to protect the community of Woodhall Spa and surrounding area was no mean feat – everyone pulled together and we witnessed bravery from our military, insight from our specialist advisors, ingenuity from the Environment Agency and commitment from all involved."

Belgian Waste case appeal outcome - defendants sentenced to imprisonment up to 5 years and 600.000 euro fines in unprecedented illegal waste case

As previously reported in an earlier ENPE Newsletter, on 5 February 2019, the Court of First Instance of East-Flanders, Ghent department, Belgium, ruled in the case of the Public Prosecutor against 3 Belgian managers of a waste processing company.

The defendants operated a plant for the storage and processing of shredder materials, light organic waste, sieve sands and the production of solid recovered fuel ("SRF") in Ghent and surroundings.

The defendants were charged with storing 158.767 tons of waste (light shredder fluff from car wrecks, "Fe-fines" or the fine iron fraction and sieve sands) without an environmental permit or exceeding the permitted quantities, of not respecting operating conditions regarding fire safety and of the storage of this waste in violation of the Flemish Waste Decree. 14.329 tons of fluff had been dumped in a tug pushed dumb barges in the Ghent port.

The defendants were managers of a company called "PTB Ltd." that went bankrupt in December 2014. The company's purpose was to process light shredder fluff from wrecked cars and compress it into bales of secondary solid fuel, which in turn could be used e.g. in the cement industry.

The court dismissed the argument that the "reasonable time" for the trial had been exceeded, because the investigation had been conducted without periods of standstill and the defendants had been offered several possibilities to regularise the offences.

Huge amounts of waste had been collected on payment of a price of 1 EUR below the market price, without a real and legal market for the processed waste, according to the court.

The quantities were proven on the basis of the reports of the environmental inspection, which in Flanders constitute evidence to the contrary.

The legal person, PTB Ltd., could not be prosecuted because they had become bankrupt. The court deemed the 3 managers liable because they had power of decision regarding the offences and because they acted knowingly.

The court stressed the defendants started operating the plant without prior environmental permits. Once the permits were granted, the quantities were systematically exceeded. The activities continued even after the environmental inspection reported the offences. Compliance with environmental regulations was not a priority and was subordinated to financial interests, according to the court.

The offences continued even after orders by the environmental inspection, and were not sufficiently remedied.

All three managers were equally held responsible. The court stated the storage of huge amounts of waste in violation of environmental regulations, had been typical for the business from the start.

The criminal liability of the managers did not end with the company going bankrupt. According to the court, the managers were responsible for dumping the waste and each of them had (and still has) the power to have the waste removed (in which case the offence of abandoning of waste would end).

Under Flemish legislation, the penalty for the offences is a minimum of 1 month and a maximum 5 years of imprisonment and / or a fine of a minimum of 100 and a maximum 500.000 euro. The punishment for a company is a fine of a minimum of 500 euro and a maximum of 1.000.000 euro.

The defendants asked the court to suspend the sentence, but this was turned down.

The court referred to article 5 of Directive 2008/99 on the protection of the environment through criminal law: offences should be punishable by effective, proportionate and dissuasive criminal penalties.

The court gave the following motives for the sentence:

- the illegal storage of the waste and frequent company fires caused real environmental damage;
- the defendants acted as professionals, driven by the love of gain;
- businesses have to comply with environmental regulations before starting up and not vice versa;
- the defendants gave priority to personal financial interests over the general interests of public safety and a sound environment;
- environmental regulations have to be taken seriously;
- businesses have to bear the costs of the activities;
- the social costs of deploying means and capacity for the enforcement at the inspection, police and judiciary levels;
- the defendants paid no attention to environmental regulations even after warnings by the environmental inspection;
- they burdened society and the owners of the premises with a huge waste problem and cost;
- they distorted competition with companies who do make efforts to comply with environmental regulations;
- the magnitude of the waste fraud is unprecedented in Belgium;

- the company accepted (and kept accepting) huge amounts of waste while there was no real or legal market for the recycled waste fractions;

- after the legal person went bankrupt, the head defendant took over the assets and continued the same activities with a new company.

The first defendant was sentenced to 5 years imprisonment (23 months on probation, so 37 months effective) and a fine of 600.000 euro. He had already been convicted for waste crimes in 2016. The court called him the leading man, a real environmental criminal who even made attempts to transfer excess waste to the Walloon region making use of "connections", who according to statements of employees ordered them not to warn the fire brigade and to mix fine fraction with the fluff to get rid of it.

The other two managers were sentenced to 3 years imprisonment (suspended) and a fine of 600.000 euro and 2 years imprisonment (suspended) and a fine of 300.000 euro.

The prosecutor asked for the seizure of over 15 million euros, the price of the removal of 158.767 tons of waste. This was dismissed because the court ordered the removal of the waste within 10 months after the judgment becomes final under a penalty of 1.000 euro per day for each of the condemned. The condemned may be ordered to pay back the removal costs to the Flemish region.

The owner and former owner of a plot of the premises where tons of waste remain to date received a provisional indemnity of 100.000 euro for preventive measures against fire and breaking down of the hangar, a provision of 1 euro for the removal cost and a provision of 1 euro for commercial and financial damage.

On 26 June 2020, the Ghent Court of Appeal confirmed the judgement, but reduced the punishments because the reasonable time for the trial has been exceeded. 6 years between the offences and the decision of the Court of Appeal was considered unreasonable.

The first defendant was sentenced to 4 years imprisonment (effective) and a fine of 450.000 euro (effective).

The second defendant was sentenced to 2 years imprisonment (suspended) and a fine of 300.000 euro (180.000 euro suspended).

The third defendant was sentenced to 1 year of imprisonment (suspended) and a fine of 150.000 euro (90.000 euro suspended).

The Court of Appeal confirmed the order to remove the waste within 6 months after the judgment becomes final under a penalty of 1.000 euro per day for each of the condemned. The condemned may be ordered to pay back the removal costs to the municipality, the Flemish region and the Flemish Public Waste Agency (OVAM).

The decision on the claims of the "civil parties", owner and former owner of the land on which tons of waste remain to date, was postponed till 2021.

ENPE website crimes database

We continue to encourage submissions for inclusion on the ENPE crimes database. The database is part of the ENPE website <https://www.environmentalprosecutors.eu/> and is building a collection of case law for all three ENPE working group subject areas (wildlife crime, waste crime & air pollution). The database is of a non-operational character and concerned with legal aspects only. Names of defendants and other identifying information are left out. Because the main function of the database is supporting the ENPE network of prosecutors, access to it is not public, but is subject to authorisation by ENPE. Environmental prosecutors in Europe are invited to request an authorisation - please contact Rob de Rijck or Lars Magnusson on r.de.rijck@om.nl or Lars.Magnusson@aklagare.se. Case law, with identifying details omitted and together with the relevant database keywords and a summary in English, can be submitted via the national ENPE contact points.

Contact

For all queries, please contact Shaun Robinson, ENPE aisbl secretariat and LIFE-ENPE project manager at: shaun.robinson@environment-agency.gov.uk Mob:+44 (0)7771 940690 Tel:+44 (0)203 025 2880; or visit our website: www.environmentalprosecutors.eu



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