

European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



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ENPE incorporated as international non-profit association

On 1 September 2016, by Royal Decree obtained from the King of Belgium, the **ENPE association internationale sans but lucratif** (ENPE aisbl), was formerly incorporated as an International Non-profit Association, registered in



Brussels. This followed the signing, by the new ENPE aisbl President and Directors, of incorporation documents on 4 July 2016.

This is an important step in establishing the ENPE network and will provide a robust and long-lasting organisational structure, within which the association will operate for years to come.

The ENPE aisbl Board and Belgian Notary are pictured left after the signing of incorporation documents at ENPE aisbl registered office, Scotland House, Schuman, Brussels, Belgium on 4 July 2016.

We welcome all new members and are pleased to report a growing membership as our network expands.

Our list of ENPE membership organisations, including members and observers is currently, MEMBERS: Environment Agency (England, UK); Ministère de la Justice (France); Environmental Protection Agency (Republic of Ireland); Riksenheten för Miljö- och arbetsmiljömål (Sweden); Openbaar Ministerie, Functioneel Parket (Netherlands); Vrchní státní zastupitelství v Praze (Czech Republic); Ökokrim (Norway); Rigsadvokaten (Denmark); Fiscalía General del Estado Medio Ambiente y Urbanismo (Spain); Državno odvjetništvo Republike Hrvatske (Croatia); Finnish Prosecution Service (Finland); Specialised Multi-field Prosecution Office (Latvia); OBSERVERS: IAP (International Association of Prosecutors); Sofia Regional Prosecutors office (Bulgaria); Dublin City Council (Republic of Ireland); Eurojust (Netherlands).

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



Introducing new ENPE aisbl President Anne Brosnan

Following the departure of ENPE President Jonathan Robinson, we congratulate and welcome new ENPE President Anne Brosnan, who is the Chief Prosecutor of the Environment Agency in England, and also the Project Sponsor for the LIFE-ENPE project (LIFE GIE/UK/000043). Anne was formally appointed at the ENPE aisbl Extraordinary General Meeting on 14 October, where the other ENPE aisbl Board members were confirmed. Anne said:

“I am very pleased to be appointed as President of ENPE in succession to my good friend and former colleague, Jonathan Robinson and I want to pay tribute to the impressive start he made, along with the other founder members, in setting up and leading our association of prosecutors. I have been closely involved with the development of the network since its early beginnings, in response to calls for a prosecutors’ forum specialising in environmental crime, from many quarters. In particular EUFJE, the European judges network, INECE and IMPEL have led calls for a prosecutors’ network and I believe that ENPE is a vital constituent part of the framework for combatting environmental crime. It has been a huge pleasure to work with prosecutors from other countries and jurisdictions to work out how and where we can make a difference.

I firmly believe that prosecutors have a significant role to play in educating, training and bringing together those who are able to play a part in the important fight against pollution, waste crime and wildlife trafficking. I hope that in these areas and in the protection of habitats and the green environment we can make a significant contribution, working in partnership with enforcement colleagues and others involved in the compliance chain. We are grateful to the Commission for supporting us, particularly with LIFE funding. ENPE has ambitious plans for 2017, in particular we will be concentrating on delivering results through our Working Groups and our Environmental Cases Database, more of which below. I’d like to wish you all a very Merry Christmas and a Happy New Year and I look forward to seeing you all at our annual conference in September 2017 in Oxford.”

Anne Brosnan President of ENPE

The other members of the new ENPE aisbl Board are : Lars Magnusson, Sweden – Secretary General;

Lorna Dempsey, Ireland – Treasurer; Jean-Philippe Rivaud, France – International Vice President; Rob de Rijck, The Netherlands – Vice President

Council of the European Union – Conclusions on countering Environmental crime

An important EU document on environmental law enforcement was released by the Council of the EU following a meeting on 8 December 2016. The Council calls for better enforcement of environmental crime by capacity building, specialisation of prosecutors and judges, training and cooperation between the key enforcement networks such as ENPE, EUFJE, IMPEL, EnviCrimeNet. This very interesting document is available here:

<http://data.consilium.europa.eu/doc/document/ST-15412-2016-INIT/en/pdf>

LIFE-ENPE Working Group kick-off meetings, 2 December 2016

LIFE-ENPE is a five-year EU Life programme-funded project that seeks to establish the ENPE network and instil consistency in the prosecution and sentencing of Environmental crime across Europe. Its aim is:

“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.....in combating environmental crime”.



To achieve this, the project has set up four Working Groups to address non-compliance and improve prosecution of specific areas of environmental crime in Europe. The four groups are Chaired by a member of the ENPE Life Board and are tackling: wildlife crime (WG1); waste crime (WG2); air pollution (WG3) & sanctioning & judicial practice (WG4). Groups 1, 2 & 4 met for the first time in Brussels on 2 December 2016 for a kick-off meeting and workshop in order to decide on specific themes to address within each topic area. Working Group 3 will meet early in 2017. Feedback from all attendees was good and we look forward to productive activities over the coming few years. For more information about the working groups please

see the ENPE website: www.environmentalprosecutors.eu/eu-life-project. LIFE-ENPE Working Group members are pictured here in discussion during a break at the kick-off meetings at Scotland House.

NETWORKING

LIFE-ENPE & LIFE SMART WASTE sign a declaration of co-operation at the EA offices in Bristol, England 22 November 2016



Peter Ashford, Meg Ellis and Shaun Robinson of LIFE-ENPE met with George Hope, Business Unit Manager at the Scottish Environmental Protection Agency (SEPA) for LIFE SMART WASTE, an EU Life funded project that looks at the better regulation of waste. In particular, the prevention of illegal waste movements, better detection and smarter intervention techniques will lead to better evidence collection whilst seeking to prevent environmental crime. A fruitful day was spent at the Environment

Agency Head Office in Bristol, England, where presentations on LIFE-ENPE and LIFE SMART WASTE were well-received. Peter Ashford & Shaun Robinson (both LIFE-ENPE) are photographed here with George Hope of the LIFE-SMART WASTE project at Horizon House, Bristol on 22 November 2016.

A declaration of co-operation was also signed by both parties to ensure and enable future networking, information sharing and collaborative activities for the duration of both projects. For more information please contact shaun.robinson@environment-agency.gov.uk or george.hope@sepa.pnn.gov.uk

THEMIS Environmental Crime Enforcement workshop, Skopje, Macedonia

THEMIS is a network of legal professionals for environmental crime covering the Balkans area of Eastern Europe. It held a 2 day training workshop in Skopje from 22-24 November 2016. LIFE-ENPE provided a presentation that set out the main organisational activities, including the background to the association, and details of the LIFE-ENPE project.



For more information on the workshop and the network please see: <http://www.themisnetwork.eu/news/115/17/Macedonian-National-Training.html>; d.blinkov@sei.gov.mk or www.sei.gov.mk

European Forum of Judges for the Environment - 2016 Conference

On 18 and 19 November, 2016, the European Forum of Judges for the Environment (EUFJE), held their annual conference in Bucharest, Romania. The conference topics were Environmental Crime and Human Rights. ENPE was



represented by Shaun Robinson, LIFE-ENPE project manager who gave a presentation on the LIFE-ENPE project on the morning of the first day. Professor Luc Lavrysen of EUFJE was conference chair. Carole Billiet gave a presentation on the background, aims and activities of LIFE-ENPE Working Group 4 – Sanctioning, Prosecution & Judicial Practice. EUFJE's next annual conference will be held at Merton College Oxford on the 22-23 September 2017.

For more information, including the 2016 conference programme and presentations, please see the EUFJE website: www.eufje.org/index.php/en/conferences/bucharest-2016. The Tribunalul Bucuresti, Bucharest, is pictured above, where the EUFJE conference was held.

ENPE Annual conference 2017 – Magdalen College, Oxford, England

ENPE will be holding our annual conference on the 20-21 September 2017 at Magdalen College Oxford. We will once again join forces with our colleagues at IMPEL and EnviCrimeNet to focus on the chain of compliance in enforcement against environmental crime in Europe. Please save the date for your calendars and keep an eye out for updates on the ENPE website and through our newsletters.

Satellite Imagery as evidence

The University of Oxford has recently begun a new research study looking at the use of satellites in regulatory monitoring of fisheries (to detect illegal fishing). As part of this project, they are trying to assess the impact (and value) of the use of satellite technologies in other regulatory monitoring programmes, and want to ascertain what legal applications are currently taking place across the world where satellites technologies are being used.

They are seeking the help of ENPE members and stakeholders in answering these two questions:

1. Has their Government/Agency used satellite data in any regulatory monitoring programme, or in individual cases (and if so for what applications)?
2. Have there been any cases where satellite imagery has been used in courts as evidence (and was it successful)?

Replies to: raymond.purdy@law.ox.ac.uk whose aim is then to catalogue all responses and to make the results available so others can see international best practice. Do contact Ray directly if you can assist.

DOT.COM Waste workshop 9-10 November 2016, Bonn, Germany

Rob de Rijck, ENPE vice-president attended the DOT.COM workshop in Bonn, Germany. DOTCOM waste is a two year project, focussed on the trans-frontier movements of waste. It is financed by the EU DG Home Affairs and Migration department and is coordinated by the UN University in Bonn.

It aims at all relevant actors, involved in this area of activity, including prosecutors and judges and has a set of clear deliverables including:

- a collection of relevant materials in a digital library,;
- two training events involving actors of every kind (inspectors, police, customs, prosecutors, judges), one in Rome and one in China;
- a 'Toolkit' containing 10 or 11 'modules' including one on prosecuting and one on sentencing. Each module is to focus on a number of 'topics' and per topic, reference and training materials are to be collected and/or developed.

A workshop was held on 9 & 10 of November in Bonn, Germany to establish topics and themes for the training modules. Rob de Rijck attended on behalf of ENPE and noted the relevance of the project, and in particular the training modules, to the ENPE aim and our LIFE-ENPE working groups focussed on waste. We are pleased to be involved in this important project and look forward to ongoing collaboration over the coming 2 years. More details on the workshop and the project are available via www.dotcomwaste.eu

LAUNCHING THE ENPE ENVIRONMENTAL CRIMES DATABASE

The ENPE database for environmental case law and related documents is now operational for one of its three subject areas, that is (the trans-frontier shipments of) waste. The ENPE database supports environmental prosecutors by providing them with relevant national criminal case law and related documents from the various Member States. This case law is made available in the form of a pdf-document in the original language with keywords and a summary in English. Decisions can be found by searching by these keywords or words in the summaries. If required, the decision can be translated.

The idea is to build a collection of case law for all three ENPE working group subject areas (wildlife crime, waste crime & air pollution). It is important to note that 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 authorization by ENPE. Environmental prosecutors in Europe are invited to request an authorization - please contact Rob de Rijck or Lars Magnusson on r.de.rijck@om.nl or Lars.Magnusson@aklagare.se.

The database depends on submissions by colleagues and the volume of its content is still small. Environmental prosecutors in Europe are therefore not only invited not only to obtain user authorizations, but also to submit materials. Case law, with identifying details omitted and together with the pertaining database keywords and a summary in English, can be submitted via the national ENPE contact point or via one of the ENPE Workings Groups.

Case Reports



Prosecution for killing critically endangered birds

In September 2016 Italian prosecutors won a precedent case concerning illegal killing of Northern Bald Ibis (*Geronticus eremita*). This is of interest particularly for the collaborative approach to evidence gathering and successful prosecution, its wider context and the possibility of follow-on action it raises.

The Northern Bald Ibis is one of the most endangered bird species worldwide. It is extinct throughout most of its former European range and elsewhere is

classified as critically endangered. It is the subject of a pioneering European reintroduction programme, co-financed by the EU and managed through the Reason for Hope LIFE project. This project is attempting to reintroduce young ibis at suitable sites in Germany and to train them to follow traditional migratory routes to overwintering grounds in Italy.

These highly intensive conservation efforts are being undermined by illegal hunting. This problem affects many migratory species across many areas of Europe but is particularly acute for such an extremely threatened species, where as much as 70% of reintroduced ibis are illegally killed.

However, because the birds wear radio transmitters, the circumstances of their deaths are relatively well known. In 2014, a cluster of incidents could be narrowed down to a small area of Tuscany and to specific times when the birds were thought to have been shot. With the aid of the reintroduction project, local hunting associations and others police identified a suspect and Italian prosecutors could bring a case against him in respect of a handful of the illegally shot birds.

In September 2016 the prosecutors secured a conviction. The defendant was ordered to pay a €2.000 fine, €1.500 costs and forfeit his hunting licences. The fine was suspended due to mitigating circumstances and, in any event, might be thought to be inadequate in view of the unusually damaging nature of the offences.

However, in addition to criminal sanctions, the court ordered the defendant to compensate the reintroduction project for its losses, which would be quantified in separate civil proceedings. These are estimated at up to €234.000 for the losses of birds overall, of which perhaps €20.000 can be attributed to the defendant's offences.

ENPE is in contact with the ibis reintroduction project, and with wider initiatives to tackle illegal killing of migratory species in the Mediterranean. We are providing help and support as appropriate and aim to disseminate to our members further information, case studies and examples of best practice approaches as they arise.

Working Together Works : \$40 million Fine for US company

A case involving the dumping of oil contaminated waste provides a great example of European and US agencies working together to bring an offender to justice. The case concerned the cruise ship the Caribbean Princess, owned by California-based Princess Cruise Lines Ltd, a subsidiary of Miami-based Carnival Corporation. An investigation began



after a recently hired engineer on the Caribbean Princess contacted the Marine and Coastguard Agency (MCA) in the UK, as a whistle blower, to express his concern and outrage at an illegal practice on the vessel. He reported that on 23 August 2013, over 4,000 gallons of oily waste was discharged off the English coast. The discharge was made through a “magic pipe”, an illegal and covert attachment to the ship’s oily water separator. The engineer left the ship at Southampton and immediately brought this activity to the attention of the MCA. He resigned his position.

Photograph of the Caribbean Princess ©Cruisemapper.com

The chief engineer and senior first engineer then ordered a cover-up, removing the magic pipe and directing subordinates to lie. While the discharge was happening, engineers simultaneously ran clean seawater through the ship’s overboard equipment to create a false digital record for a legitimate discharge.

The MCA shared this information with the US Coast Guard who examined the cruise ship upon its arrival in New York later that year. Their investigation revealed a number of illegal activities and a prosecution was ultimately brought by the US Department of Justice's environment and natural resources division.

The operator of the cruise line admitted seven felony charges of deliberately dumping oil contaminated waste into the sea and intentionally covering up its actions in a plea deal in November 2016. It was ordered to pay **\$40 million**, the largest-ever criminal penalty involving deliberate vessel pollution in the world.

According to papers filed in court, the Caribbean Princess had been making illegal discharges through bypass equipment since 2005, using several different methods. Prior to the installation of the bypass pipe, for example, a different unauthorised valve was used.

Two other illegal practices were found on the Caribbean Princess as well as four other Princess ships. One was to open a saltwater valve when bilge waste was being processed by the oily water separator and oil content monitor. The purpose was to prevent the oil content monitor from setting of an alarm and stopping the overboard discharge.

The other involved routinely discharging oily bilge water from the overflow of greywater tanks into the machinery space bilges. This waste was pumped back into the greywater system rather than being treated as oil contaminated bilge waste. Neither of these practices were truthfully recorded in the oil record book as required.

The overflows took place when internal floats in the greywater collection tanks got stuck due to large amounts of fat, grease and food particles from the galley that drained into the greywater system. Princess had no written procedures or training for how internal gray water spills were supposed to be cleaned up and the problem remained uncorrected for many years.

A perceived motive for the crimes was financial, according to the MCA. The chief engineer who ordered the dumping off the coast of England told subordinates that it cost too much to properly offload the waste in port and that the shore-side superintendent who he reported to would not want to pay the cost.

Princess engineers on the Caribbean Princess indicated that the chief engineer responsible for the discharge in August 2013, was known as "*broccino corto*" (a person with short arms), an Italian expression for a cheap person whose arms are too short to reach his wallet.

As part of the plea agreement with Princess, cruise ships from eight Carnival cruise line companies will be under a court supervised environmental compliance programme for five years.

If approved by the Florida district court, a quarter of the \$40m criminal penalty will be devoted to community service projects to benefit the maritime environment. Of this, \$3m of the community service payments will go to environmental projects in South Florida and \$1m to projects benefitting the marine environment in UK waters.

In a statement, Princess Cruises said it was “extremely disappointed about the inexcusable actions of our employees who violated our policies and environmental law”.

“Although we had policies and procedures in place, it became apparent they were not fully effective. We are very sorry that this happened and have taken additional steps to ensure we meet or exceed all environmental requirements.”

Remedial measures have included upgrading the oily water separators and oil content monitors on every ship in its fleet and instituting many new policies.

Jeremy Smart, Head of Enforcement at the MCA, said the case shows just how well the UK and US can work together on these kind of cases. “It also sends a clear message to the industry that this kind of pollution practice will not be tolerated anywhere in the world [and] that we will always take any information we are given by those who report such practices to us very seriously and will act upon it.”

Contacts

We very much value your input. If you have any items, whether prosecution case updates, lessons learnt, legal developments or anything else likely to be of interest to environmental prosecutors, and which you would like us to disseminate on your behalf, please let us know. **Shaun Robinson, ENPE aisbl secretariat support and LIFE- ENPE project manager.** shaun.robinson@environment-agency.gov.uk Mob: +44 (0)7771 940690

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