

European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



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Message from ENPE President Anne Brosnan

ENPE is first and foremost a prosecutors' network. We aim to help in the fight against environmental crime by enabling



and facilitating the prosecution of environmental offences. As practitioners we are keen to demonstrate the value of our network by delivering tangible results through the courts. We can achieve the very best results by sharing our knowledge and capabilities and those points of interest and expertise which lead to successful cases. This is why we network and hold conferences, as recently at Magdalen College in Oxford, where we can share our activities and experiences of complex and difficult cases and consider new initiatives.

Our working groups are up and running, looking at specialist areas of environmental protection. Our wildlife crime group and the group looking at waste crime took centre stage at our recent conference in Oxford. It was impressive to see how we were able to join up the police, inspectors and prosecutors in these areas to look at common problems and how they have been overcome. I personally enjoyed the presentation by colleagues from the Netherlands about the Butterbloem case and I know that those who attended the wildlife crime session enjoyed hearing about the glass eels case from Antonio Vercher. We welcome any contributions you may have on these subjects at any time and on our other subject areas of air pollution and sanctioning best practice. Details of the working group chairs are on our website but you can contact me or Shaun Robinson at any time to get more involved with our work. Most of all we'd like you to contribute by sending in details of your successful cases so that we can put these onto our database and share them with our prosecution community.

I hope those of you who attended the conference found it educational, possibly inspirational but most of all friendly and collegiate. We all benefit from talking to others about common problems and sharing our successes. If everyone learnt just one thing or made one useful contact we will have started a massive change. Thanks must go to Jan Van den Berghe who attended for EUFJE, Terry A'Hearn for NEPA and Aurel Ciobanu-Dordea from the Commission. We are very appreciative of your positive messages and your support. To Professor Robert White of Tasmania, thank you for your uplifting messages to end our conference and to Professor Richard Macrory, thank you for explaining that it may have been a long road to success but that we can all make a difference by perseverance and determination, oh and a little magic sometimes.

EU Environmental crime enforcement networks conference – 20 & 21 September 2017; Magdalen College, Oxford UK

Together with the IMPEL and EnviCrimeNet networks, ENPE held its annual conference in the spectacular surroundings of Magdalen College, Oxford on the 20 and 21 September 2017.

An historic Memorandum of Understanding was signed between the three enforcement networks, with each organisation pledging to strengthen the chain of compliance in order to effectively tackle environmental crime.

Guest speakers and attendees came from

as far away as Australia, Canada and China as well as from across Europe and made up a total of 155 delegates.



After 38 presentations spread out through plenary and breakout sessions over two days, focussing on Waste, Wildlife and Environmental Crime Enforcement themes, delegates were given a tour of the nearby Oxford Botanic Gardens.

Speakers shared some fascinating case studies including the successful prosecution of hunters who had illegally hunted the endangered Alpine Bald Ibis, a case involving illegal waste shipment, as well as perspectives on tackling environmental crime from Interpol and the unique methods available to prosecutors in pursuing criminals in Chinese courts.

A conference dinner was held for all 155 delegates on the 20 September in the beautiful surroundings of Magdalen College dining hall. Guests were treated to an excellent English meal with Professor Richard Macrory providing a stimulating and thought-provoking after dinner speech. Professor Macrory followed this with a conjuring trick involving in his own words “an ignition event” which captured everyone’s attention, including the head of the waiting staff!

Examples of some feedback from the conference attendees included: *“thank you for the opportunity to present our project so far and for a great and valuable conference as a whole. As always, one gets new ideas and contacts that we did not even anticipate - and that's fabulous”.... “I really enjoyed the conference and thanks heaps for all the work you did in helping to make it happen”... “Participating in the conference was a unique experience for me. It was very important to know each other. It was a complete success”.....“It's impossible for me to tell you what a wonderful experience it was to attend the conference in Oxford. I have memories of this which I shall never forget”.*



After-dinner speaker Professor Richard Macrory shares his magic

Memorandum of Understanding signed by ENPE

An historic Memorandum of Understanding (MoU) was signed at the EU Environmental Crimes Enforcement Networks conference at Magdalen College on 20 September 2017. This MoU, formalises a concerted approach to combatting environmental crimes by strengthening the chain of compliance across Europe from inspectors (IMPEL),



police and other enforcement organisations (EnviCrimeNet) through to Prosecutors (ENPE).

The MoU was signed by the three enforcement networks, with the signing observed by the EUFJE (European Forum of Judges for the Environment) network and the European Commission represented by Aurel Ciobanu-Dordea, Director for Implementation, Governance and Semester in the EC's directorate General from Environment.

This agreement was applauded by the European Commission who said that a common vision in tackling Environmental Crime is needed and that they hope this will help to deliver greater compliance assurance across Europe.

European Forum of Judges for the Environment (EUFJE) annual conference ; 22-23 September 2017 ; Merton college, Oxford

The EUFJE Annual Conference was this year held in Merton College, Oxford, back-to-back with the Tri Networks Conference in Magdalen College. The main subject of the Conference was “**Climate Change and the Judiciary**”.



Laurent FABIUS, President of the Constitutional Council of France and former president of the COP 21 Conference that resulted in the Paris Agreement of 12 December 2015, delivered the keynote speech. He gave his views on the success factors that contributed to the Paris Agreement and elaborated on the actual perspectives of its implementation. In the second part of its presentation he discussed the Draft Global Pact for the Environment, which had been put on the Agenda of

the UN a few days before, during the UNGA in New-York.

Dr Friederike OTTO, Senior researcher in the ECI Global Climate Science Programme, Oxford University gave a presentation on “Climate change science and policy” while Dr Damien MEADOWS, Acting Head of the European Commission's unit responsible for the International Carbon Market, aviation and maritime spoke on “EU Climate Change Policies after COP21”. Dr Sanja BOGOJEVIC, Fellow and Associate Professor of Law at Lady Margaret Hall and the Faculty of Law, Oxford University delivered a paper on “Environmental protection as judicial discretion: the case of EU Public Procurement Law”. Professor Liz FISHER, Professor of Environmental Law at Corpus Christi College and the Faculty of Law, Oxford University presented a paper on “The levels of the law: what a survey of judicial review wind turbine decisions tells us about climate change adjudication”.



M. Patrick DIETZ, Policy Officer of the EU Commission presented the Commission notice on access to justice in environmental matters and its relevance for climate action. Mr Justice DOVE, Judge of the High Court of England and Wales, and Ms Justine THORNTON Q.C., UK barrister, specialising in environmental, planning and energy law, and a Deputy Judge of the High Court of England and Wales gave a joint presentation on “Climate change in the UK courts: perspectives of an advocate and a judge”. Dr Matthew DYSON, Associate Professor in Law; Fellow of Corpus Christi College, Oxford University: “The Urgenda case”.



The Conference was attended by 34 judges representing 16 different EU Member States, as well as Albania, Norway and Turkey. Two judges from the US were welcomed to the event and

four judges from the Peoples' Republic of China. Justice Michael WILSON, Associate Justice of the Hawaiian Supreme Court, spoke about “Climate change: the role of judges”. Ms Dou SHUXIA, Vice Chief Judge of the

Environment Protection Tribunal of Hebei High People's Court informed us about the progress of Public Interest Litigation in China.

Dr Carole BILLIET, Chair of the ENPE-Life Working Group 4 presented a Progress report of the Working Group on Sanctioning, Prosecution and judicial best practice. All of the presentations were excellent, stimulating lively debates between the participants.

All the conference material is available on the website of EUFJE:

<http://www.eufje.org/index.php/en/conferences/oxford-2017>



source: Merton College Oxford website

ENPE network news

The ENPE AGM was held on 20 September 2017, in the Grove auditorium at the conference venue in Magdalen College, Oxford. The minutes have been shared with all members and we are pleased to report the continued expansion of the network with two new membership applications, and two observer applications received in the last few months. The President's Report and Officer reports are on our website.

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); The Association of Public Prosecutors (Former Yugoslav Republic of Macedonia) SUPPORTING MEMBERS: Public Prosecutor's Office, Antwerp, Belgium; OBSERVERS: International Association of Prosecutors (IAP); Sofia Regional Prosecutors office (Bulgaria); Dublin City Council (Republic of Ireland); Eurojust (Netherlands); The State Environmental Inspectorate (SEI) (Former Yugoslav Republic of Macedonia); Brazilian Federal Prosecution Service (Brazil).

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

ENPE & LIFE-ENPE NETWORKING

ENPE representation at the joint IKB & MIKT conventions 22-23 June 2017

On the 22 and 23 June 2017, Angus Innes, a prosecutor from the Environment Agency, England, represented ENPE at the Joint Meeting of the Bern Convention Network on the Eradication of Illegal Killing, Trapping and Trade in Wild Birds (IKB) and the UN Environment/CMS (Bonn Convention) Intergovernmental Task Force on the Illegal Killing, Taking and Trade of Migratory Birds in the Mediterranean (MIKT). The Chair was Mr Sergei Golovkin, Head of the Maltese Government's Wild Birds Regulation Unit; and the two conventions were represented by 20 member countries including 14 EU Member State countries, as well as the EU itself through the DG Environment, 4 Middle Eastern and 5

North African Countries. Additionally, there were representatives of the host convention secretariats, other conventions, convention working and scientific advisory groups, UNODC, Interpol, Europol, 9 major birding NGOs – including Birdlife International with some 80 persons attending in total. ENPE was represented at all sessions and it was extremely useful, as a prosecuting organisation, to be able to add to the discussion on legal matters and processes relating to the proposed 'Scoreboard' to be used by countries in tackling illegal activity. The specialisation of all those involved in IKB and MIKT enforcement was, in part, implicit, and in part, explicit, in the Scoreboard. This includes the training of prosecutors and judges. ENPE has been approached as a representative body with regard to the possible involvement of our Network in such training. For more information, please contact shaun.robinson@environment-agency.gov.uk

ENPE meets with DG Environment to discuss ECA in Brussels on 28 June 2017

ENPE president Anne Brosnan, together with EnviCrimeNet Chair Roel Willekens, Luc Lavrysen of EUFJE and IMPEL Chair Chris Dijkens, met with Miroslav Angelov and Liam Cashman of the EU Directorate General for Environment, in Brussels on 28 June to discuss feedback from ENPE into the Environmental Compliance Assurance (ECA), initiative and in particular the recently published ECA position paper. We met with representatives of DG Justice to discuss the effectiveness of the two Directives which are particularly relevant to our area of work, the Environmental Crimes Directive and the Ship Source Pollution Directive. ENPE continues to provide input to this crucial work to strengthen the chain of compliance in the battle against environmental crime across Europe. Effective legislation is an important foundation for good enforcement. For more information please contact shaun.robinson@environment-agency.gov.uk

ENPE and EUFJE attend ERA Steering Group meeting 30 June 2017, Brussels

Rob de Rijck of ENPE and Luc Lavrysen of EUFJE attended the Steering Group (SG) meeting for the ERA EU-funded project to improve application of EU legislation for prosecutors and judges through training. Other SG members and representatives (ERA, EUFJE, and DG Environment) were present. ENPE was encouraged to contribute to the project to ensure the needs of prosecutors as well as judges in Europe (EU MS) could be met in the forthcoming training events that are being planned as part of the project.

ENPE host Chinese delegation 22 September, London

On 22 September 2017, Anne Brosnan, ENPE President, hosted a delegation of Chinese visitors taking part in a TAIEX Study Visit on the Implementation and Enforcement of Environmental Law at the Environment Agency's Head Office in Ergon House London. The participants included Senior prosecutors from the Supreme People's Procuratorate Civil and Administrative Prosecution Department who were delighted to hear presentations from the Environment Agency about their approach to prosecution of environmental crime, as well as a specialist presentation on contaminated soils and enforcement. There were also presentations from the Government Department Defra and the Crown Prosecution Service which were warmly received. Members of the delegation, Mr Liu and Mr Sun had attended the EU Environmental Crime Enforcement Networks conference in Oxford, so this was a fitting end to their visit to the UK.

LIFE-ENPE Capitalisation & gap-filling report sent to all EU Member States

The LIFE-ENPE Capitalisation & Gap-filling report, published in March 2017, has now been issued to all 28 EU Member States, through our network of stakeholder contacts. The report is available as pdf from the ENPE website. Please visit <https://www.environmentalprosecutors.eu/recent-activities> where you can download the report.

Case Reports

The Glass Eels case

Following detailed collaborative work over a period of several years involving prosecutors from Greek and Spanish authorities, supported by the European enforcement agencies Europol and Eurojust, an international criminal network suspected of having smuggled over 10 tonnes of eels from the EU to China was dismantled in March 2017.

The European eel (*Anguilla anguilla*) stock is severely depleted. According to estimates from the International Council for Exploration of the Seas (ICES), up until 2011, the 'recruitment level' of glass eels (the number of baby eels produced each year) was only 1% of what it was before the 1980s. Despite an increase in glass eel numbers since 2011, the numbers at all stages of their lifecycle remains very low.

According to EU legislation, EU countries need to take measures that allow 40% of adult eels to escape from inland waters to the sea, where they can spawn. The European eel is also listed in Annex II of CITES (Convention on International Trade in Endangered Species). Based on the annual recommendations of the Scientific Review Group comprising experts from EU countries, international trade of European eel into and out of the EU is prohibited (source: Europol website; March 2017).

The operation was initiated by the Spanish Guardia Civil Environmental Protection Service SEPRONA. Investigators discovered a company that had been suspiciously purchasing eels from four different countries. Once the fish were introduced into the legal market, the company would deliver them to Greece using false documentation. The eels were finally exported illegally to Asia as "fresh fish".



photograph courtesy of A Vercher, Fiscal de sala, Medio Ambiente y urbanismo, Spain

The first phase of the operation, named 'Operation Succulent', commenced in October 2011, following receipt of initial information passed to the Spanish authorities leading to interventions at Madrid, Sofia and Barcelona airports between November 2011 and February 2012, where 766kg of eels being exported illegally were confiscated.

The second phase, named 'Operation Succulence', followed a police road control in Portugal, and led to confiscations by the Portuguese authorities

of a total of 750kg of eels at Lisbon airport, valued at around €1,500,000. The final phase – ‘Operation Blackglass’ resulted in the interception of suitcases resulting in confiscations of 696kg in 2016, worth an estimated €2,700,000. The continuation of ‘Operation Succulence’ resulted in containers of between 500kg-800kg being intercepted on their way from Spain to Greece, via Italy.



Photograph courtesy of A Vercher, Fiscal de sala, Medio Ambiente y urbanismo, Spain

Other interventions at both Bilbao and London Heathrow airports, resulted in confiscation of a further 43kg of illegally smuggled eels from the end of 2016 until March 2017. This was an excellent outcome following the co-ordinated and collaborative working of several enforcement networks across the EU. (Sources: Europol website article; Mr Antonio Vercher's presentation at the EU Environmental Crime Enforcement Networks conference, 20 September 2017).

Bristol (UK) company fined for hazardous waste offences and Directors made subject to Suspended Sentences of Imprisonment.

A waste recycling company has been ordered to pay more than £32,450 in fines and costs. Two of its Directors who were prosecuted in their personal capacity were made subject to sentences of imprisonment although the courts suspended those sentences for twelve months.



Photo from BBC News website

The company was fined for illegally supplying thousands of tonnes of hazardous waste to a development site in Avonmouth where the waste was buried under the new buildings.

The sentencing follows a 5 year Environment Agency investigation into Churngold Recycling Ltd and 2 of its directors, John Barcham and Lee

Phelan. Codenamed ‘Operation Durable’, the investigation culminated in a nine week trial at Bristol Crown Court earlier this year. Churngold operated a waste transfer site at Hallen Yard on the Severn View Industrial Estate, Avonmouth,

where it supplied soil and aggregate for the building industry. Waste was collected from sites across the UK and stored and treated at Hallen Yard.

The company operated under a waste management licence, issued by the Environment Agency. This controlled the types of waste accepted at the transfer station and the activities permitted at the site.

In June 2011, Churngold was awarded a contract to remove hazardous waste from a site in Oxford where the car company, BMW, discovered extensive contamination under a building during re-developing its Cowley factory. Trial pits and testing revealed high levels of heavy metals, hydrocarbons and asbestos contaminated materials.



Photo from BBC News website

Churngold was paid £750 per load to remove the hazardous waste to its yard in Avonmouth for treatment prior to it being used as a building material. Between July to September 2011, a total of 31,000 tonnes of waste was brought from Cowley to Churngold's waste transfer station in Avonmouth. The volume of waste kept increasing and very quickly exceeded the transfer station's limit of 6,000 tonnes.

Around the same time, Churngold was awarded a contract to supply 60,000 tonnes of aggregate to the site of a new Co-operative supermarket distribution centre at Cabot Park, Avonmouth. They stated that aggregate would be mixed with inert material that had gone through a 'stabilisation process' making it suitable for use as a building material.

On 7 September 2011 Churngold delivered the first load to the Co-op site. Over the next fortnight it transported a total of 64,000 tonnes (2,751 loads) to the new distribution centre site. Ground-workers at the Co-op site said the Churngold material gave them 'runny and sore eyes'. One worker said it smelt like 'faeces and bleach' and 'took his breath away.' Others described the clay-like material as 'smelling like a hospital'.

Waste from the BMW site in Oxford had undergone partial treatment to remove asbestos materials, but some asbestos remained and it was still hazardous when it arrived at the Churngold's Hallen Yard in Avonmouth. The company was told the waste required further treatment. As operations manager, Lee Phelan would have been fully aware of the requirements of the transfer station's permit conditions. Failure by Churngold to fully treat the waste, potentially exposed staff and visitors to Hallen Yard and ground-workers at the Co-op site to health risks from the asbestos.

On 22 September 2011 a former Churngold employee notified the Co-op that contaminated material had been delivered to their new distribution centre at Cabot Park. Subsequent analysis revealed the presence of asbestos in 47 of 60 samples, high levels of total petroleum hydrocarbons (TPH), polycyclic aromatic hydrocarbons (PAH) as well as

significant levels of leachable lead, cyanide, copper, antimony and total sulphate concentrations that posed a risk to groundwater and nearby watercourses.

Barcham was described as a 'domineering character' who liked to micro manage. Nothing would happen without his say so or knowledge including where treated waste went after treatment. He once told the company's environment manager, 'We don't tell the EA what we are doing, we do it and then tell them how we've done it.'

The Environment Agency had earlier advised Churngold that waste containing heavy metals remains hazardous even after it has undergone a stabilisation process. The court heard that while Phelan had worked in the waste industry, he had no qualifications or experience of treating hazardous waste.

Work on the Co-op site was suspended on 1 December 2011 following publication of the analysis report. The Environment Agency confirmed the material was illegally deposited hazardous waste and that it should be removed to a suitable waste facility for safe disposal. The Environment Agency investigation revealed that Churngold had also illegally disposed of hazardous waste including asbestos, railway sleepers, plastic, metal pipes, vehicle tyres and foam pipe lagging at a second site, Minors Farm, Severnside.

Churngold Recycling Limited, John Barcham (pictured below on right) and Lee Phelan (pictured below on left) faced a total of 10 charges under the Environment Protection Act 1990 and Environmental Permitting Regulations 2010 at a 9 week trial that started in May 2017.



Judge James Patrick QC said "the treatment of the waste was unscientific and amateur" and that the defendants showed a "flagrant disregard for the law".

The company was found guilty of 4 offences. John Barcham was found guilty of 1 offence and Lee Phelan convicted of 3 offences. There were 3 not guilty verdicts and the jury failed to reach a

Photos from BBC news website

verdict on the 2 remaining charges. The judge praised the Environment Agency for the quality of their professional investigation. Summary of convictions and sentences imposed:

Churngold Recycling Ltd:

- Between 1 July to 31 December 2011, failed to comply with conditions of permit at Hallen Yard, Avonmouth, an offence under Reg 38(2) under the Environmental Permitting Regulations: £12,000 fine

- Between 1 September to 31 September 2011, deposited controlled waste at the Co-operative Site, Cabot Park, Avonmouth without a permit contrary to Section 33(1)(a) and 33(6) of the Environmental Protection Act 1990: £3,000 fine
- Between 1 January to 31 December 2011, treated, kept or disposed of controlled waste in a manner likely to cause pollution or harm to human health contrary to Sections 33(1)(c) and 33(6) of the Environmental Protection Act 1990: £5,000 fine
- Between 1 June to 31 December 2011, deposited controlled waste at Minors Farms, Hallen, Bristol contrary to Section 33(1)(a) and 33(6) of the Environmental Protection Act 1990: £2,450 fine

John Barcham:

- Between 1 July to 31 December 2011, failed to comply with, or contravention of, a Waste Management Permit condition contrary to Regulation 38(2) of the Environmental Permitting Regulations 2010: 6 months imprisonment suspended for 12 months and costs of £10,000 & 75 hours of unpaid work.

Lee Phelan:

- Between 1 July to 31 December 2011, failed to comply with, or contravention of, a Waste Management Permit condition contrary to Regulation 38(2) of the Environmental Permitting Regulations 2010: 6 months suspended for 12 months
- Between 1 September and 30 September 2011, deposited controlled waste on land without a permit contrary to Section 33(1)(a) and 33(6) of the Environmental Protection Act 1990: 1 month suspended for 12 months
- Between 1 January to 31 December 2011, treated, kept or disposed of controlled waste in a manner likely to cause pollution of the environment or harm to human health contrary to Section 33(1)(c) and 33(6) of the Environmental Protection Act 1990: 1 month's imprisonment suspended for 12 months, 100 hours unpaid work

[source Gov.UK website; UK]

ENPE website crimes database

As a reminder, we welcome submissions for inclusion on the ENPE crimes database. The database is part of the ENPE website <https://www.environmentalprosecutors.eu/> and with the idea 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. 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 points.

Forthcoming conferences, workshops, events

DOTCOM training event, Beijing, China October 17-20 2017

Howard McCann, a prosecutor from the Environment Agency, England, will be attending and representing ENPE at this 4-day training event in Beijing later in October. The workshop will bring together actors from all stages of the enforcement cycle to participate in a mixture of lectures, practical case studies, open sessions and a study visit covering: the legislative 'landscape'; waste classification and problematic waste streams; illegal shipments; intelligence; inspection & detection; next generation compliance; investigation, prosecution & sentencing and inter-agency collaboration and networking. Targeting a mixture of law enforcement agencies, prosecutors, customs, port authorities and environment agencies, this workshop will focus on EU-Chinese shipments in particular.

Conference on Environmental crime Brasilia, Brazil, 30 October – 1 November 2017

ENPE President Anne Brosnan has been invited to present at the forthcoming environmental crime conference taking place at the French Embassy in Brasilia from 30 October – 1 November 2017 at the instigation of our International Vice President Jean Philippe Rivaud. Organised by the Brazilian association of environmental prosecutors and the Latin American network, the event will bring together legal specialists from the EU and Latin America to discuss jointly tackling environmental crime.

Contact

If you have any questions or anything which you would like us to disseminate on your behalf, please let us know: **Shaun Robinson, ENPE aisbl secretariat and LIFE-ENPE project manager.**
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