

# European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



## ENPE newsletter - Issue 6

18 May 2018

### Message from ENPE President Anne Brosnan



Dear colleagues, It is a busy time. We are approaching the midway point of our ENPE- LIFE project which began in July 2015 and runs until 2020. It is a good time to take stock of what we have accomplished already and what we still have planned and you will find in this newsletter details of some of the achievements of our fantastic working groups. I'd like to pay tribute to the hard work of the Group Chairs who have ensured that we have kept up a cracking pace on the project work and delivered real outcomes. As a practitioner network, the true test of our success is the value and benefit our members can draw from our work.

It is also a good time to look forward. We are planning our annual conference in October 2018 in Crete and more detail can be found below. We are linking up with two other LIFE projects, LIFE Natura Themis and LIFE Reason for Hope to bring a focus to habitats and wildlife crime. The theme of our conference emphasises the importance of species protection and tackling green crime. We are also very pleased that IMPEL's Water Crimes Project will be joining us and holding a workshop as part of their project to identify and address water crimes such as over abstraction, mismanagement of resources and water theft. This collaboration reaffirms our long standing partnership with IMPEL in establishing best practice around the investigation and prosecution of environmental offences.

We have recently been invited to join the Commission's Expert Group as part of its Environmental Compliance Assurance initiative. I recently attended the inaugural meeting and felt that the drive towards implementation of environmental legislation and securing results on the ground is gathering momentum.

The Commission's Action Plan will be fundamental to securing these two important and linked objectives. I believe that the networks can make their greatest contribution by demonstrating our readiness, as experts and specialists, to tackle environmental offending, to investigate and prosecute offences and remove the proceeds of crime wherever they can be found.

## ENPE annual conference 23 & 24 October 2018; Natural History Museum of Crete, Heraklion, Crete, Greece



### *“Protecting habitats and endangered species in Europe through tackling environmental crime”*



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including speakers and case studies, representing EU Life programme funded projects. A full programme of plenary, breakout and workshop sessions is planned at the University of Crete Natural History

For our 2018 annual conference, ENPE is joining forces with two EU LIFE programme-funded projects with similar objectives in tackling wildlife crimes as our LIFE-ENPE project: LIFE Reason for Hope <http://waldrapp.eu/index.php/en/en-home>; and LIFE Natura Themis <http://www.lifethemis.eu/>, as well as our colleagues from the IMPEL Land Water Pollution Crimes Group. The focus of the conference is the protection of habitats and species in Europe, with many of the contributions



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Museum of Crete over two days – the **23 and 24 October 2018**.

## European Forum of Judges for the Environment (EUFJE) annual conference 16 & 17 November 2018; Sofia, Bulgaria

The EUFJE Annual Conference will this year be held in Sofia, Bulgaria. The conference theme is “Specialisation in Environmental Adjudication” and promises to be another well attended event, to follow the successful 2017 conference at Merton College, Oxford. For more information please see the EUFJE website at <http://www.eufje.org>

## ENPE membership news

The ENPE Board are pleased to report the continued expansion of the network with a new full membership application approved from the Italian Environmental Prosecutors, and several other applications received in the last few months. More details, including the latest ENPE Board meeting minutes can be found on our website.

Our list of ENPE membership organisations, including members and observers is currently - MEMBERS: Environment Agency (England, UK); Ministere de la Justice (France); Environmental Protection Agency (Republic of Ireland);

Riksenheten för Miljö- och arbetsmiljömål (Sweden); Openbaar Ministerie, Functioneel Parket (Netherlands); Vrchni statni zastupitelstvi v Praze (Czech Republic); Ökokrim (Norway); Rigsadvokaten (Denmark); Fiscalía General del Estado Medio Ambiente y Urbanismo (Spain); Drvazno Dovsetnisvo Republike Hrvatske (Croatia); Finnish Prosecution Service (Finland); Specialised Multi-field Prosecution Office (Latvia); The Greek Public Prosecution Service (Greece); The Association of Public Prosecutors (Former Yugoslav Republic of Macedonia); Italian Environmental Prosecutors General; SUPPORTING MEMBERS: Sara Boogers of the Public Prosecutor's Office, Antwerp, (Belgium); Carla Campanaro, Head of LAV legal office, Italy & Project Lawyer to the Life Reason for Hope project; OBSERVERS: European Union Forum of Judges for the Environment (EUFJE), Brussels (Belgium); 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); TRAFFIC (Belgium)

For more information about joining ENPE please contact [shaun.robinson@environment-agency.gov.uk](mailto:shaun.robinson@environment-agency.gov.uk)

## LIFE-ENPE Working Group activities

### Working Group 1 – wildlife crimes; Segovia migratory birds workshop

The LIFE-ENPE Working Group 1 (wildlife crimes) organised and hosted a successful joint workshop with UNEP's Convention on Protection of Migratory Species (CMS) on the illegal taking and killing of wild migratory birds. The event was held at the National Centre for Environmental Education (CENEAM) in Valsain, in the picturesque and rural area of Segovia,



Spain. The organisers were greatly indebted to their hosts for the provision of the facility. The speakers included the Spanish Director General, Ministry of Agriculture, Food, Fisheries and Environmental affairs, Mr Francisco Javier Cachón de Mesa (pictured opening the workshop, with WG 1 Chair Lars Magnusson on the far left).



Thirty five delegates (pictured left), many of whom were specialist prosecutors, attended, coming from across Mediterranean Europe and also from Tunisia, Lebanon and Egypt. The presentations were expert and thought provoking and engendered some lively discussion and debate. All were warmly received. A workshop summary and presentations will be available for download via the ENPE website in due course.

## **Working Group 2 – waste crimes; consultation on the Waste Shipment Regulation**

LIFE-ENPE Working Group 2, which focusses on waste crimes is chaired by ENPE Director Rob de Rijck, (Pictured below at last year's ENPE conference in Oxford).



The group recently contributed to the public consultation on the EC Waste Shipment Regulation (WSR) Evaluation (see [https://ec.europa.eu/info/consultations/public-consultation-evaluation-waste-shipment-regulation\\_en](https://ec.europa.eu/info/consultations/public-consultation-evaluation-waste-shipment-regulation_en)). They meet every three months and held their last meeting in Brussels on 28 March 2018 to finalise the consultation submission. Comprising of specialist prosecutors from Sweden, the Netherlands, the UK and Belgium, it was able to provide a unique pan-European prosecutor view on the day to day operation of the WSR which was received with thanks by the Commission. The hard work continues

with the group now looking at innovative training methods to improve the consistency in prosecution practises across Europe in tackling Waste crime.

## **Working Group 3 – air pollution; workshop planned for Winter 2018**

The Air Pollution Working Group continues to make good progress in collating prosecutor activities from across Europe in tackling crimes relating air pollution. Following a detailed and widely completed questionnaire survey, the group have met at the ENPE conference and also as guests of the Irish Embassy in Sofia. The group's Chair, Lorna Dempsey (pictured right), will be heading up their training workshop, which is planned for Cyprus later in the year in 2018. Please keep in touch with us for more details on this.



## **Working Group 4 – sanctioning, prosecution and judicial practices; interim report published**

Working Group 4 is the overarching working group which builds on recent European studies into the range of criminal and administrative enforcement responses used in tackling environmental crime. This group explores the effectiveness of different methods of securing compliance with environmental law and to assess the circumstances in which each type of sanction best meets the test of being proportionate, effective and dissuasive. It also considers how prosecutors seek to apply different sanctions, what routes to criminal penalties are available and how judges actually apply sanctions in criminal and administrative contexts. Finally, it examines the ongoing practical implications for prosecutors and judges of the Eco-crime Directive 2008/99/EC. Working Group 4 comprises 11 members including both prosecutors and judges, from 8 countries. Its interim report provides the findings from the group's activity between December 2016 and December 2017, its first working year, comprising: a questionnaire survey of difficulties, trends and good practices in prosecution and sanctioning (Part 1); an analysis of proportionality in prosecution and

sentencing (Part 2); and proposals for training and guidance for prosecutors and judges in the form of a training matrix adapted from the DOTCOM Waste project<sup>1</sup> (Part 3), to meet its objectives and the project aim. The group has met on three occasions (kick-off meeting in Brussels on 2 December 2016, teleconference meeting on Friday 9 June 2017 and meeting in Oxford on 20 September 2017). The cycle of the first working year was completed by a meeting in Brussels on 8 December 2017, which also saw the kick-off of the second working year. The report will soon be available for download via the ENPE website. Please do keep an eye out for it.

## ENPE NETWORKING

### ENPE and EUFJE at the 8<sup>th</sup> World Water forum, Brasilia 19-21 March 2018

ENPE International Vice-President Jean-Philippe Rivaud (pictured below) and EUFJE Chair and LIFE-ENPE Board Member Professor Luc Lavrysen were both participants in the 8<sup>th</sup> World Water Forum, held in Brasilia from the 19<sup>th</sup>-21<sup>st</sup> March 2018.

Of particular interest to both networks was the Conference of Judges and Prosecutors on Water Justice, which concluded with the approval of the “Brasilia Declaration of Judges on Water Justice”.



The Declaration was the culmination of three days of events where more than 50 senior judges and prosecutors from around the world joined together with diplomats, experts, and other leaders in the field to address current challenges to the utilization, management, and protection of all forms of freshwater resources. In addition to multiple panel discussions involving over 130 speakers the event included debate and networking opportunities between specialist prosecutors and judges. For more information, including access to the final signed version of the World Water Declaration for sharing, please see:

[www.iucn.org/sites/dev/files/content/documents/brasilia](http://www.iucn.org/sites/dev/files/content/documents/brasilia) Declaration of Judges on Water Justice 21 March 2018

### EC Environmental Compliance Assurance workshop and the inaugural Environmental Compliance and Governance forum 13 March 2018

ENPE president Anne Brosnan, together with the Chairs of the other enforcement networks involved in the Environmental Compliance Assurance (ECA) initiative Action Plan, met with the EU Directorate General for Environment on the 1<sup>st</sup> and 2<sup>nd</sup> of February 2018 for a meeting to discuss the networks involvement in the delivery of the 9 point ECA Action Plan. This meeting preceded the inaugural Environmental Compliance and Governance Forum meeting where the networks, together with representatives from all EU Member States, met with the EU Directorate General for Environment in Brussels on 13 March to present their views and make a contribution to the ECA initiative. ENPE will provide significant input to this crucial work to strengthen the chain of compliance in the battle against environmental crime across Europe. We will be focussing on the specific Action, No 4 related to the combatting of environmental crimes but also feeding into all Actions identified, and supporting this important initiative. For more information please see [http://ec.europa.eu/environment/legal/compliance\\_en.htm](http://ec.europa.eu/environment/legal/compliance_en.htm)

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<sup>1</sup> DOTCOM Waste – a project improving the capabilities of all actors, including enforcement agencies and prosecutors in the fight against cross-border waste crime, <http://www.dotcomwaste.eu/>.

## **ENPE at EJTN Fourth Contact Point meeting Judicial Stakeholders meeting 31 January 2018, Brussels**

ENPE President Anne Brosnan attended a stakeholder and partners meeting with EJTN in accordance with the objectives of their Pilot Project on promotion of Co-operation between Judicial Stakeholders concerned with European Judicial Training. Attendees included representatives from the European Judicial Network, the European Networks of Councils for the Judiciary, the Network of Presidents of Supreme Courts of EU, the International Association of Refugee Judges, the Association of European Administrative Judges and the European Judicial Network. The meeting reported on the activities during 2017 of the various partner groups including progress on the compilation of EJTN's calendar of activities and Annual Training Plan. Delegates considered the present position as regards the programme of specialised judicial exchanges. The report on judicial exchanges has been disseminated to members but is summarised :

The EJTN secretariat reported on its programme of specialised exchanges. Last year they had approximately 500 applicants and only 140 successful placements. They are trying to increase this number by improving their practices and securing places in advance of the call for applicants. They will also shortly be launching their road map under the Austrian Presidency with an emphasis on Judgecraft, language and better training methods. Their priorities will be extending training to court staff, the Western Balkans judiciary (including Albania and the Former Yugoslavian states) and upholding the Rule of Law. UNODC is also becoming involved in preventing corruption in Judicial systems and securing integrity in the judicial network.

## **ENPE at the Supreme People's Procuratorate seminar on environmental crime, Xiamen, China, December 2017**

On 5-6 December 2017, Anne Brosnan, ENPE President attended a seminar organised by the Supreme People's Procuratorate and ClientEarth in Xiamen, China to exchange knowledge and best practice around the challenges associated with environmental crime. Attendees included representatives from ClientEarth China, the Deputy Prosecutor General of SPP and many others. The President of the Environmental Law Institute, a representative from the US Department of Interior, an Attorney from the USEPA Office, Regional Counsel and a Professor of Environmental Law, Utrecht University. Discussions included the different approaches to compliance assurance and combatting illegal activity. The Chinese delegates were very pleased to hear from western counterparts how they have established appropriate and successful regulatory mechanisms and how effective these have proved in practice.

Anne was thanked for her attendance as a delegate representing both the Environment Agency in the UK but also for representing European prosecutors through the ENPE network. Improving environmental governance is clearly a new important priority for the Chinese Government and they are seeking to emulate systems which work well elsewhere. Our links with the Chinese continue to strengthen with the welcome news of a delegation of prosecutors attending our annual conference in Crete in October 2018.

## INTERESTING CASES

### **ENVIRONMENT AGENCY V JOHN BRUCE;**

**WORCESTER CROWN COURT 11 MAY 2018** [source: Environment Agency (England) case summary]

#### **Sentencing of John Bruce to 26 months immediate custody for offences arising from illegal waste operations at Ridgeway Park Farm, Throckmorton, Worcestershire**

The Defendant, John Bruce, ran a waste disposal operation centred on a site at Throckmorton Airfield ('the Site'), near Pershore for a period between 2011 and 2014 without an environmental permit. He ignored the interventions of the Environment Agency and the Fire and Rescue Service, the complaints of local residents and the legal requirements for waste disposal and treatment. He brought waste to the site from various locations, deposited, burned and buried it. A LIDAR report indicated that there was an increase in volume at the site of at least 26,000m<sup>3</sup> since the site had been purchased by the defendant.

Throughout March and April 2013 the defendant treated and disposed of waste by burning large quantities of it at Ridgeway Park Farm. For several weeks fires were continually burning at the site causing considerable interference with the quality of life for local residents, endangering health and polluting the air in the locality. There was a major impact on the quality of life for local residents. In particular the defendant burnt a large amount of plastic waste, causing plumes of putrid black smoke to effect the residents in the nearby village.

Environment Officers carried out an extensive sampling exercise on the site in September 2013. The analysis of the samples confirmed that some of the waste deposited on the site was hazardous as it contained aluminium dross. Through his unlawful waste disposal operation the defendant made hundreds of thousands of pounds.

The defendant was also convicted of failing to comply with two Enforcement Notices. The first was an Anti-Pollution Works Notice requiring the installation of effective drainage from a silo storing silage at the site and failing to submit a compliance report. The failure to comply resulted in polluting effluent draining from the silo onto the farmland and towards a local watercourse.

The second was a notice to carry out works to minimise pollution in relation to the polluting effluent from another silo at the site. The defendant failed to install effective collection channels and a storage tank and failed to submit a compliance report

The defendant initially denied all the charges and the case was listed for trial on 9 April 2018. He changed his pleas to guilty in relation to 6 out of 7 charges on the indictment at a hearing on 9 March 2018. A basis of plea was submitted on his behalf, which we did not accept. He argued that the LIDAR data was not an accurate reflection of the amount of waste brought onto the site as he had generated a significant amount of material himself as a result of digging up the existing runway and laying new concrete prior to constructing a new cattle shed.

The defendant denied knowing that the material was hazardous and that at least half the waste transfer notes found at his premises related to haulage work as opposed to bringing material onto the site.

A Newton Hearing took place at Worcester Crown Court between 17 and 30 April 2018.

The judge ruled that the defendant was aware that the waste was hazardous, albeit the risk that this waste posed was reduced because it was buried.

He agreed that the Environment Agency's LIDAR report was strong evidence proving how much waste the defendant disposed of at his site. He did not find in the defendant's favour in relation to his argument that a significant quantity of waste had been generated by him on the site.

### **Points of note from the case**

- The judge agreed with the Environment Agency's determination of the defendant's culpability in that this was deliberate offending on his part and a flagrant disregard for the law. He described the defendant as "*staggeringly arrogant*" and that he was a career criminal in terms of environmental offending. He described the offences as serious environmental offending which was made more serious by the extensive nature of his business.
- The Judge stressed the need for a deterrent sentence and noted that it was not common for an individual to receive a custodial sentence for environmental offending, particularly one of this length.
- The aggravating features include the defendant's previous convictions, history of non-compliance with warnings from the Environment Agency, clear impact on the local community and the fact that the offences were committed over a long period of time. This significantly increased the starting point in terms of the length of sentence.
- The starting point was 30 months. The length of sentence was reduced by a period of 4 months taking into account the fact that the defendant did plead guilty and avoided the need for a lengthy trial. The Judge added that there was little else in terms of mitigation.
- The Environment Agency will seek a confiscation order under the Proceeds of Crime Act 2002. Those proceedings have been adjourned for service of evidence by both parties and are due back in Court in early December 2018.



## Seatrade Convicted for Beaching Ships



Image Courtesy of NGO Shipbreaking Platform

In March 2018, Rotterdam District Court sentenced the owner of Groningen-based Seatrade for illegal exports of vessels sent for scrapping on beaches of South Asia as the company's move breached the EU Waste Shipment Regulation [source: World Maritime News]

The company had fines imposed ranging between EUR 50,000 to EUR 750,000. Additionally, two of its executives have been banned from exercising the profession of director, commissioner, advisor or employee of a shipping company for one year. A third director was acquitted. The

prison sentence, has been waived amid the company's lack of a previous criminal record which was accepted as a mitigating factor.

The court said that the conviction concerned the illegal transfer of four reefer ships from the European Union to (initially) India. When these ships left the ports of Rotterdam and Hamburg in 2012, the intention was already to demolish the ships which makes the ships categorized as waste, despite the fact that they were still seaworthy, certified, insured and operational. It was determined that Seatrade knowingly sold the vessels for dirty and dangerous breaking in order to maximize profits.

For the first time, a European shipping company has been held criminally liable for having sold vessels for scrap to substandard shipbreaking yards in India and Bangladesh, where, as widely acknowledged and according to the Prosecutor, "current ship dismantling methods endanger the lives and health of workers and pollute the environment". The Prosecutor's request that the Seatrade executives face prison was only waived in light of this being the first time such criminal charges had been pressed.

This ground breaking judgment sets a European-wide precedent for holding ship owners accountable for knowingly selling vessels, via shady cash-buyers, for dirty and dangerous breaking in order to maximize profits. [Source: Functionel Parket Netherlands]

## Five Britons convicted of illegal hare coursing



Belga

In what is a first in Belgium, five Britons have been convicted of illegal hare coursing using greyhounds. The five were given 9-month suspended prison sentences and fines of € 8,000. The trial judge Jan Van den Berghe was sharp in his condemnation of the men “Uncontrolled hunting just for the pleasure of the kill and probably for profit is not just a crime against nature, but also unethical conduct”.

Hare coursing is the pursuit of hares with greyhounds and other sight hounds, which chase the hare by sight and not by scent. Often considerable sums of money are bet on hare coursing competitions. The amount bet can run into the tens of thousands of euro. Hare coursing has been banned in the UK for some years, making hare coursers look elsewhere to practice their “sport”.

On 3 January the hare coursers (the 5 Britons), fled after they were confronted by a Belgian hunter. They crashed their car as they made their escape and were detained by police. In his summing up the Judge said “Through their illegal hunting practices they have damaged nature. The number of hare has been falling in recent years”.

“No dead hares were found which would suggest that the hunters were only interested in fun and profit.

### **Defence solicitor "Ground-breaking verdict"**

Defence counsel Thomas Gillis was satisfied with the verdict “It is a ground-breaking verdict. The Judge has not only given a clear signal that should serve as a deterrent. He has also taken into consideration the fact that the accused are not incorrigible re-offenders”.

Mr Gillis added that he believes the verdict will hit home to those in the UK that are thinking of hare coursing here (Belgium). [article from Flanders News.Be website; Flanders, Belgium]

## **UK Environment Agency v Edward Fair Telford Magistrates Court Telford UK**

**Edward Fair received fines totalling £16,000 (£8,000 for the abstraction offence, £8,000 for the Nitrate Vulnerable Zone offences). He was also ordered to pay Environment Agency costs of £20,000 and the victim surcharge of £170. He will pay the figure of £36,170 at a rate of £1,000 per month.**

The offences related to the Nitrate Pollution Prevention regulation 2008 and the Water Resources Act 1991 (s24) Edward Fair pleaded guilty to one offence of abstracting over 20m<sup>3</sup> of water per day without an abstraction licence between 1 May 2015 and 27 April 2017 contrary to section 24 WRA 1991. Despite being aware of the limit, Fair increased his abstraction levels throughout that period. This culminated in the time period October 2016 and April 2017, in which Fair was abstracting an average of 67,000 litres of water per day. As well as farm use, he was supplying this water to tenanted properties. Newcastle-under-Lyme Borough Council discovered that this water was failing water quality standards in that excess nitrates were identified in water samples. In October 2015, the Council served an enforcement notice on Fair under the Private Water Supplies Regulations 2009, requiring him to notify tenants that the water was not safe to drink or use in food preparation. The notice was withdrawn in May 2016. Although the Council did not bring any criminal proceedings, the water quality issue was identified as an aggravating feature of the abstraction offence.

Edward Fair also pleaded guilty to nine offences contrary to the Nitrate Pollution Prevention Regulations 2008. These offences reflected deficiencies in his NVZ records for the year 2014.

The instructed expert in the field of hydrogeology submitted a report stating that:

- the absence of NVZ records created a risk that nitrate pollution had occurred as a result of Fair's farming practices;
- the abstraction offence created a risk of the depletion of stream flows in the nearby River Tern.

## **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 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 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](mailto:r.de.rijck@om.nl) or [Lars.Magnusson@aklagare.se](mailto: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.

## Contact

If you have any questions or anything which you would like us to disseminate on your behalf, please let us know:

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