

European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



ENPE newsletter - Issue 8

20 December 2018

Message from ENPE President Anne Brosnan



Dear colleagues,

Herewith a short newsletter to wish you a very Merry Christmas from Shaun and I, pictured here just after our Christmas lunch at Defra Headquarters in London. We wish you a Happy New Year too and amidst reflections of 2018, our thoughts turn to plans for 2019. Following on from our successful conference in Heraklion in 2018 we will be commencing planning work for our next conference on 28-30 October 2019 in the Hague, at the invitation of Eurojust .

We have had some positive and beneficial changes within ENPE this year. We have called for new members and I am pleased to say that at our AGM in October, 16 member organisations were represented. There have been some changes in the Board, with Lorna Dempsey moving on to Milieu consultants, based in Brussels, with whom therefore we hope to keep in contact. Her place has been taken by David Smith of the Irish EPA and Antonio Vercher Noguera has recently joined the Board for Spain and attended his first Board meeting in Brussels on 6 December. We were able to combine this with attending the Commission's Environmental Compliance Assurance Experts Forum on 7 December where the networks set out their proposals to assist with the implementation of the ECA Action plan. Rob de Rijck and I set out proposals around training and specialisation for the Commission and representatives from the Member States.

We are beginning to finalise some of our works streams under the LIFE–ENPE proect and we have developed some ambitious plans for the future, post 2020, which we will be unveiling and explaining in more details as the year progresses. We have plans for workshops in Cyprus and Italy this year and we aim to take our work out to our members to find out what problems prosecutors are facing on the ground. Our work on international collaboration continues and will we hope gather pace this year as an emerging theme for our conference.

We are contemplating Brexit and all the various opportunities and challenges that it will bring. Whatever the outcome or timetable during 2019 ENPE will continue to work with friends and colleagues across Europe to do the right thing for the environment and in the pursuit of the fight against environmental crime.

ENPE annual conference 23-24 October 2018; Crete, Greece

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



With 104 delegates from 56 different organisations representing 25 different countries, our 2018 Annual conference held at the Natural history Museum of Crete in Heraklion was a great success. We have produced an electronic conference magazine (E-zine), which includes excerpts from the speakers in action, interviews, feedback and all presentations and is available here: <http://environmentalprosecutors.eu/conference2018> .Please do share as widely as possible with stakeholders and interested colleagues. Much of the success of the conference was due to the efficient and hard-working hosts at the LIFE Natura-Themis project <http://www.lifethemis.eu/>, and their colleagues as the Natural History Museum of Crete. We are very grateful for all their support. Funding for the conference included contribution from the LIFE financial instrument of the European Commission.



ENPE conference 2019 at EUROJUST, The Hague

We are pleased to announce that our 2019 conference will be held at the EUROJUST premises in The Hague, Netherlands from the 28-30 October 2019.

Please do make a note in your calendars to “save the date”!



ENPE membership news

The ENPE General Meeting for 2018 was held on the 23 October 2018 at the Multimedia hall in the Natural History Museum of Crete, Heraklion. We were delighted to welcome 16 ENPE members as attendees. By show of hands from Members, the ENPE annual accounts were approved, as were the changes proposed to the Articles of Association, the continuation of keeping membership fees to 0€ and the ratification of proposed Board Member changes which included the appointment of Mr David Smith (Irish EPA) and Mr Antonio Vercher Noguera (Fiscalia General del Estado Medio Ambiente y Urbanismo) as Board Directors.

Our list of ENPE Membership organisations, including members and observers is currently - FULL 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); Fiscalia 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; Law Office of Cyprus; Romanian Public Ministry Prosecutor's Office attached to the High Court of Cassation;

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); Croatian Ministry of Environment & Energy.

We continue to welcome new Members - for more information about joining ENPE please contact shaun.robinson@environment-agency.gov.uk

ENPE networking and forthcoming events

ENPE hosting of Chinese delegation 29/10/18 at Scotland House, Brussels

ENPE was pleased to welcome and host a party of six Chinese Prosecutors from the Supreme People's Procuratorate, as well as their translators, to the ENPE registered offices at Scotland House, Brussels on 29 October 2018. Tina Depoorter, a prosecutor from Openbaar Ministerie, based in Antwerp, Belgium, together with Professor Luc Lavrysen, the Chairman of EUFJE, presented on the unique approach to environmental prosecution in Belgium. The delegation were very appreciative of the presentations, and the visit in general. The Supreme Peoples' Procuratorate has indicated that they will continue to work closely with us on areas of mutual interest.

ENPE at the EUFJE annual conference, Sofia, Bulgaria 18-19/10/18

EUFJE's annual conference was held this year at the National Institute of Justice in Sofia, Bulgaria. The conference theme was "Training and Specialisation in Environmental Law". ENPE was represented by Peter Ashford (LIFE-ENPE Project Executive) and Dr Carole Billiet (LIFE-ENPE Board member and Chair of Working Group 4). Carole presented on the work of her specialist Working Group which is focussed on Sanctions and Judicial practices in the context of Environmental Crime. The conference was a great success with the varied and interesting presentations generating much discussion amongst delegates. For more information about the proceedings in Sofia and the conference programme/report please see: https://www.eufje.org/images/docConf/so2018/so2018-Programme_EN.pdf

ENPE representation at DG Environments Environmental Compliance Assurance (ECA) forum meeting 07 December 2018

ENPE has been well represented at the Environmental Compliance Assurance (ECA) workshops and meetings held during 2018, hosted by the Directorate General for Environment at the EU in Brussels. Anne Brosnan, ENPE President and Vice-President Rob de Rijck both attended the last ECA Forum meeting on 7 December 2018 where the networks presented an update on their work-plans and outlined possible funding structures for the future. Each network outlined training proposals and plans for capacity building to assist with the implementation of the ECA initiative across Europe. We remain strongly committed to the initiative and, as always, would urge our members to find out more, including ways of participating, through the following link: http://ec.europa.eu/environment/legal/compliance_en.htm

FORTHCOMING EVENTS

Judicial Training Institute of Belgium Environmental Law training

The Judicial Training Institute (JTI) of Belgium would like to request your collaboration in the information and selection of interested judges and/or prosecutors (specialising in environmental law) to attend the seminar "**The role of the judiciary in enforcing environmental law and combatting climate change**" which will take place on **Friday 15 of February 2019 at IGO-IFJ, Avenue Louise 54, 1050 BRUSSELS**. The working language of the seminar will be in English, with simultaneous translation to French. The objective of the seminar is to provide participants with an insight into the state of the environment, climate change and several new techniques that may help the judiciary in its task of enforcing environmental legislation.

The number of participants is fixed at 90 magistrates (judges and prosecutors) from EU Member States. The participation will be free of charge, but travel and accommodation costs are NOT covered by the JTI.

The deadline for registration by email will be not later than **Monday 1st of February 2019**.

It will also be possible to follow this training on live-streaming. For this purpose, and for registration generally, please send notification by email to: Thomas.Cornado@igo-ifj.be. The principle of 'first come, first served' will apply.

LIFE-ENPE Working Group workshops

Plans are underway to host 2 LIFE-ENPE Working Group workshops in the Spring of 2019 to provide training and awareness-raising related to the activities of LIFE-ENPE Working Group 1 (Wildlife crimes, to be held in Brescia, Italy) and Working Groups 2 & 3 (an Air pollution workshop combined with Waste training, to be held in Cyprus).

The format of the workshops is likely to be one and a half days of presentations, including case studies, highlighting best practices in the prosecution of cases involving these topic areas.

More details of these workshops, including invitations to attend, will be shared in early 2019.

ENPE contributing to WASTEFORCE Project

ENPE Vice-President Rob de Rijck, and LIFE-ENPE Working Group 2 Member Howard McCann (UK, Environment Agency) are contributing to the IMPEL co-ordinated 'Waste Enforcement Forensics and Capacity Building' ('WasteForce') Project, a 2-year project funded by the European Directorate-General for Migration and Home Affairs.

This project is a follow-up to the DOTCOM Waste project which ended in December 2017. It aims at boosting the operational activities and capacities of authorities involved in the fight against illegal trade and management of waste. Rob and Howard will participate in the project together as members of the High-Level Advisory Board (H-LAB member), where their knowledge and experience of waste crime prosecution and waste regulation generally, will really add value for the project. The first H-LAB meeting took place on 5-6 December 2018.

For more details relating to the WasteForce project, please contact Rob de rijck at r.de.rijck@om.nl

Recent prosecution cases

‘Operation By-Product’ - Illegal deposit of waste at sites in Sunderland and Middlesbrough, England, UK

On the 13 November 2018 at Newcastle-upon-Tyne Crown Court, England, UK, Michael Coates was sentenced to 14 months imprisonment and a director’s disqualification order for 5 years and Michael Strong was sentenced to a 12 month community order with a requirement to complete 140 hours unpaid work and pay £500 compensation.

Operation By-product was a large scale investigation into the unlawful deposit of waste at sites in Middlesbrough and Sunderland in England.

In September 2015, The Environment Agency, England, (EA) became aware of illegal deposits of waste at a disused warehouse in Pallion, Sunderland. The EA conducted a directed surveillance operation which enabled identification of vehicles connected with Mr. Strong at the site on multiple occasions depositing waste.

In November 2015 Mr. Coates, the controlling mind behind Aurigo Recycling Ltd (but not formally a director), instructed the company’s HGV drivers to transport mixed, shredded waste to the same warehouse. During the investigation and criminal proceedings Mr. Coates maintained that it was not he who had supplied a waste broker with a fake permit purporting to be a legitimate permit for the site. The court subsequently determined that Mr. Coates had supplied the fake permit.

It cost the landlord over £100,000 to clear the 658 tonnes of waste illegally deposited inside the warehouse.

Mr. Coates pleaded guilty to two offences relating to this site:

- Consenting or conniving to the offending of a company, namely, knowingly causing the deposit of controlled waste otherwise than in accordance with an environmental permit.
- Consenting or conniving to the offending of a company, namely, failing in its waste duty of care requirements.

Mr. Strong pleaded guilty to two offences relating to this site:

- Depositing waste otherwise than in accordance with an environmental permit.
- Failing to comply with waste duty of care requirements.

In August 2016 a T4 waste exemption (which applies to un-mixed waste only) was registered at an empty factory warehouse in Middlesbrough. The exemption was registered in the name of CNC (NE) Ltd. Mr. Coates was the sole director of the company. Over the next 4 months the company was paid to accept approximately 400 tonnes of mixed shredded paper and plastic waste, which is not allowed under the exemption.

On 12 December 2016 the EA attended the site unannounced and observed large waste piles. These piles were self-heating. Cleveland Fire and Rescue Service were called and strongly advised Mr. Coates to address the imminent fire risk. Mr. Coates pleaded guilty to consenting or conniving with the offending of his company as follows:

- Keeping waste in a manner likely to cause pollution to the environment or harm to human health.
- Operating a regulated facility otherwise than in accordance with an environmental permit.
- Failing to comply with waste duty of care requirements.

Under the Sentencing Guideline, the court found the culpability for the offending was deliberate. The court determined harm fell into category 2 for the offences committed by Mr. Coates and category 3 harm for the offending committed by Mr. Strong (due to the lesser amount of waste he deposited).

The Judge was satisfied that 400 tonnes of mixed paper and plastic waste was enough to create a risk of fire that would fall within the definition of category 1 harm (“major” environmental harm).

Deer poacher ordered to watch Bambi once a month in jail

David Berry, convicted of poaching deer in the United States, must view the Disney classic as part of his punishment for illegally killing hundreds of animals in Missouri. He must watch Bambi once a month in prison and has also had his hunting privileges revoked. [Article from Associated Press]

<https://nypost.com/2018/12/17/missouri-poacher-sentenced-to-watch-bambi-as-punishment-for-deer-killing/>



Photograph: Allstar/DISNEY

“The deer were trophy bucks taken illegally, mostly at night, for their heads, leaving the bodies of the deer to waste,” said Don Trotter, the prosecuting attorney in Lawrence county in the state’s south-west. David Berry killed the deer for their heads, with the bodies left to rot. Berry, his father, two brothers and another man who helped them had their hunting, fishing and trapping privileges revoked temporarily or permanently. The men have paid \$51,000 in fines and court costs but the judge ordered a special addition to Berry’s sentence for illegally taking wildlife. Court records show he was ordered by county judge Robert George to “view the Walt Disney movie Bambi, with the first viewing being on or before 23 December 2018, and at least one such viewing each month thereafter” while at the county jail. Berry was also sentenced to 120 days in jail in nearby Barton county for a firearms probation violation.

His father, David Berry Senior, and his brother, Kyle Berry, were arrested in August after a nearly nine-month investigation that also involved cases in Kansas, Nebraska and Canada. The Missouri department of conservation said information from the investigation led to 14 Missouri residents facing more than 230 charges in 11 counties. Investigators say Berry Senior’s other son, Eric Berry, was later caught with another person spotlighting deer, where poachers use light at night to make deer pause and easier to hunt. The investigation into the Berrys began in late 2015, when the conservation agency received an anonymous tip about deer poaching in Lawrence county.

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 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



ENPE has received funding from the EU LIFE Programme

LIFE14 GIE/UK000043