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LIFE-ENPE Project

Action B2 Working groups to improve consistency and capacity

Working Group 3 Air pollution Interim report and training materials

1.0 Introduction

The LIFE-ENPE project has formed four Working Groups to build capacity and consistency in implementing EU environmental law. The working groups will facilitate meeting the LIFE-ENPE project aim:

“to improve compliance with EU environmental law by addressing uneven and incomplete implementation across Member States through improvements to the efficiency and effectiveness of prosecutors and judges in combating environmental crime”.

Working Group 3 (Air pollution) will address non-compliance and improve prosecution of **air pollution** in Europe. At an early stage, the Working Group must prioritise which specific areas of the topic it should focus its efforts on.

Working Group 3 is comprised 8 members from 7 countries. The group has met on 3 occasions: March 2017 in Dublin, June 2017 in Sofia and September 2017 in Oxford.

Working Group member	Country	Role
Lorna Dempsey	Ireland	Prosecutor
Aisling Kelly	Ireland	Barrister
Victor Tarchev	Bulgaria	Prosecutor
Teodor Nita	Romania	Prosecutor
Karen Berry/Gillian Higgins	UK (Scotland)	Lawyer
Lina Chatziathanasiou	Cyprus	Prosecutor
Christos Naintos	Greece	Prosecutor
Dragana Lipovic	Bosnia Herzogovia	Prosecutor

This interim report provides a summary of the relevant findings from the LIFE-ENPE Capitalisation & Gap-filling report (Action A1), the findings from the Working Group's own questionnaire survey, and from both, presents draft proposals for training and guidance based on these findings for the group to meet its objectives and the project aim.

In combination with the presentation provided by the Working Group to the LIFE-ENPE Annual conference on 20 September 2017 (Annex 2.0), the report has been produced to meet the following LIFE-ENPE milestone and deliverable:

Deliverable/Milestone	Action	Deadline
<i>First-stage interim report and training materials produced</i>	<i>B2</i>	<i>01/12/2017</i>



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2.0 Capitalisation & Gap-filling report findings

The Capitalisation & Gap-filling report was published in March 2017 and was based on an extensive review of all available data on environmental crime prosecution activity across Europe¹.

The report focussed more broadly on 'chemical pollution', which included reporting on crimes where land and water were affected by the release of chemical pollutants, as well as air.

It concluded that this broad area of environmental crime, in comparison to other forms of environmental crime, is possibly best understood, particularly in terms of the specialist scientific and practical knowledge required to identify and investigate such crimes.

It noted that it is not always obvious what crimes and what hazards are involved with chemical pollution (even more applicable when the pollution is affecting air), making it challenging to identify, regulate and prosecute because of the need for (and often lack of) specialist knowledge within regulatory and prosecuting authorities.

It noted that this area of crime can occur on a much larger scale and in these cases can be transnational in nature – again, particularly significant in larger-scale air pollution incidents where atmospheric pollutants are not confined to national borders. The following recommendations were offered:

- i) That Member States must work towards consensus on definitions and collection of data on offences in this area of environmental harm; and
- ii) That having established such consensus, there is a pressing need for a shared data repository covering chemical incitements across the EU.

3.0 Questionnaire survey results

The questionnaire was carried out in Spring and early Summer of 2017 (see Annex 1.0). Its purpose was for the Working Group to gather information on air pollution and odour incidents and related crimes in Europe in general, including methods of their investigation. Questionnaires were sent to all contacts involved in the prosecution of this type of environmental crime in each ENPE Member State. The following key findings were noted from the questionnaire that were returned:

- There is a lack of data available in many states relating to this type of crime
- Air pollution offences not widely prosecuted, they can be the subject of administrative sanction instead

¹ LIFE-ENPE Capitalisation & Gap-filling report 2017



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- Offences relating to odour pollution not prosecuted in some Member States
- Nearly all prosecutions in courts of first instance – dissuasive sentencing is needed to address serious offences
- The fragmented nature of environmental enforcement in some states means that it is difficult to get conclusive data for each Member State.

4.0 Conclusions & next steps

Following the Working Group 3 meetings, and the analysis of the results of the questionnaire survey, it was agreed that the sources of environmental law and evidence gathering in prosecutions relating to cases of air pollution would be two training topics on which the Working Group would focus.

Next steps for this Working Group to ensure that the project aims are met include:

- Collect all questionnaires from Member States surveyed
- Increase the number of cases, for uploading onto the ENPE database and sharing (see Annex 3.0 – example case reporting form)
- Focus training on best practice methods, including evidence gathering
- Utilise experience within the group to deliver training in 2018 workshop.



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Annex 1.0 LIFE-ENPE WORKING GROUP 3 AIR POLLUTION QUESTIONNAIRE

Opening questions

How many prosecutions are brought on an average annual basis which relate solely or partially to air pollution? (e.g. four per year in Ireland)

How many of the average annual prosecutions relate solely to odour prosecutions?

How many of these relate to Emission Limit Values?

How many of the total number of air pollution cases are prosecuted in courts of first instance?

How many are prosecuted in higher courts?

Evidence gathering

How is evidence of air pollution gathered at investigation stage?

Are the following methodologies used?

site Inspection reports

odour logs

odour surveys from Inspectors

photos

environmental consultant reports (external to national agency)

Other?

Is the methodology of air emission monitoring ever challenged in pre-trial inter party correspondence?

How are Indictments or charging documents drafted in relation to dates for odour prosecutions? Is it divided by specific incidences or is it framed as one long continuous breach?



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Annex 2.0 Presentation from annual conference (Oxford September 2017 attached)

Annex 3.0 Case report for use in reporting on cases for submission to ENPE crimes database

Case Report Form (example)

Name of Defendant: Nutricia Infant Nutrition Limited (P0792-02)

Year of Prosecution: 2016

Relevant Legislation: Environmental Protection Act 1999, Ss 8, 86(6)

Jurisdiction of the Court: District Court (Court of first Instance)

Plea: Pleaded guilty to five out of ten charges. Other charges withdrawn on the basis of those guilty pleas.

Abstract of the Case:

The defendant was a company operating an infant milk formula manufacturing facility. It was subject to an Industrial Emissions licence. There were a number of breaches of the conditions of this license in the following ways:

*** Offensive odours were reported by civilian witnesses in nearby residential areas resulting from the storage of effluent in the balance tank, pending treatment on site.**

*** a hydrogen sulphide emission limit value breach (ELVs)**

*** late notification of uncontrolled release from the Waste Water Treatment plant sand filters.**

The prosecution alleged that those breaches resulted in impairment of and interference with amenities in the environment beyond the installation boundary. The prosecution further alleged that there was a late notification to the Environmental Protection Agency of an incident with the potential for environmental contamination of surface or ground water.

Evidence Available:

1. Civilian witness statements
2. Site visit reports
3. Odour assessment field sheets
4. Scientific emissions to atmosphere report commissioned by Environmental Protection Agency
5. Noncompliance notices
6. Complaint details report



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7. Interparty correspondence
8. Contemporaneous notes of Environmental Inspectors
9. Incident report

Sentence Result: Convicted and fined €2,000 on count no.5 on the other charges, a conditional discharge on the condition the defendant paid a €20,000 donation to charity. Costs and expenses of Environmental Protection Agency awarded to the prosecution.

Judge's remarks on Sentence:

The Judge explained that in his view large companies “do not feel pain and do not feel shame”. They react only to loss of business, loss of profit or loss of reputation. The Judge suggested the leaking sand filter showed a lack of attention and care. He explained that the accused was lucky that there was no media reporter in the court.

Costs Order: awarded costs to the Environmental Protection Agency in the amount of €12,159

Name of Prosecutor and Contact Details:

Lorna Dempsey
Head of Legal
Environmental Protection Agency
Johnstown Castle
Co. Wexford