

Waste Crimes (WG2)

Second-stage Interim
Report and Training
Materials

2017/18



LIFE-ENPE Project LIFE14 GIE/UK/000043

Action B2: Working groups to improve
consistency and capacity

March 2019

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EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT



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List of abbreviations

EU	European Union
H-LAB	High-Level Advisory Board
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
JIT	Joint Investigation Team
LoR	letter of request
WEEE	waste electrical and electronic equipment
WG	Working Group
WSR	EU Waste Shipment Regulations

1.0 Introduction

The LIFE-ENPE project has formed four Working Groups (WGs) to build capacity and consistency in implementing EU environmental law. The working groups are facilitating 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”*.

WG2 (Waste Crimes) addresses the prosecution of waste crime in Europe, originally comprising six members from six different countries. Since the LIFE-ENPE WG 2 First-stage Interim Report,¹ the group has met on three further occasions: on 28 March 2018 (Scotland House, Brussels, Belgium); at the ENPE Annual Conference on 23 October 2018 (Natural History Museum of Crete, Heraklion, Crete) and at the WG2 Waste Workshop in Nicosia, Cyprus on 28 March 2019. One of the group members, Leonora Mullett of Dublin City Council, Ireland, has left her position and is no longer a part of the group. WG membership now comprises the following:

Working Group member	Country	Role
Rob de Rijck (Chair)	Netherlands	Prosecutor
Kristina Persson	Sweden	Prosecutor
Antonio Vercher	Spain	Prosecutor
Howard McCann	UK (England)	Prosecutor
Marc Van Cauteren	Belgium	Prosecutor

This Second-stage Interim Report provides a summary of the activities and outputs of WG2 since the First-stage Interim Report. These are:

- A key consultation on the EU Waste Shipment Regulations (WSR) (Annex 1.0).
- Training materials shared through presentations and other methods by WG2 members (Annex 2.0).
- The WG2 presentation at the 2018 ENPE annual conference (Annex 3.0).

¹ WG2 (First) Interim Report December 2017.

- The WG2 workshop outputs, including programme, training presentations, and the animated training, from the event in Nicosia on 28 March 2019 (Annex 4.0).

The report has been produced to meet the following LIFE-ENPE milestone and deliverable:

Deliverable/milestone	Action deadline (revised)
Second-stage interim report and training materials produced B2	31 March 2019

2.0 WG activities and outputs since the First-stage Interim Report (December 2017)

It was initially agreed that a key focus of the group would be the *transfrontier shipment* (i.e. international transport) of wastes, in order to improve prosecution of crime in this area, and given the expertise in this area of the WG members. Following discussions at the group meeting held in Heraklion, Crete in October 2018, it was agreed to expand the subject area to also include general illegal deposit, treatment and storage of wastes.

WG2 members drew up their own list of activities (“next steps”) on which to focus. As set out in the First-stage Interim report, these were to:

- *Continue to expand the ENPE database of waste crimes and encourage dialogue and sharing of experiences (including consultation on WSR).*
- *Continue to work with projects such as DOTCOM Waste (focusing on WEEE) and ensure efficiencies through joint training events.*
- *Discuss possible collaborative training opportunities with ERA² in 2018/19.*

An update on progress and activities related to each of these is provided below.

- a) Continue to expand the ENPE database of waste crimes and encourage dialogue and sharing of experiences (including Joint Investigation Teams [JITs]/letters of request [LoRs], consultation on WSR).

Since the publication of the First-stage Interim Report in December 2017, it was acknowledged at the WG2 meeting on 28 March 2018 that while the ENPE crimes database is fully operational, the number of content suppliers, and therefore cases, is limited. Nevertheless, 67 cases are currently reported, with more being added all the time as ENPE membership, and access to the database, grows. Suggestions to increase the number further were discussed by WG2 and it was agreed to contact all ENPE members with a more specific request for cooperation. Another idea was to see whether publishers

² Academy of European Law, www.era.int.

could help; however, it was noted that the database must not serve “commercial purposes” and precautions around access must be observed because of this.

During this period of reporting, WG2 recognised that its existence had improved the sharing of experience and formal requests for information, both within Europe and beyond³ (NB: this is also reflected in the LIFE-ENPE Benefits Realisation report under Action C1).⁴

In addition, WG2 have also collaborated to provide their collated comments on the public consultation on the evaluation of the WSR in April 2018, based on the operational experience of the WG members from their own jurisdictions in the prosecution and general regulation of these types of waste crime.

The contribution to the consultation noted the lack of uniformity across the EU in the approach to the WSR, and also the difficulties in bringing about this uniformity. It is hoped that the ENPE network, including the activities and outputs of the WG, contributes positively to achieving the required uniformity in due course.

The letter to the Commission, including all WG comments, is provided as Annex 2.0.

- b) Continue to work with projects such as DOTCOM Waste⁵ to ensure efficiencies through joint training events.

During the reporting period for the First-stage Interim report, WG members were invited to contribute to the DOTCOM Waste project and did so by developing and delivering training to prosecutors and specialists from across Europe and beyond.

DOTCOM Waste, a project which ran from 2016 to 2017 (i.e. now completed), focused on the benefits of prioritising needs according to waste stream, and provided inspectors, customs officers and the judiciary with up-to-date information on how to better prevent and counter waste trafficking. Its remit included the compilation of good practice examples, cases, case studies and tools from manuals and reports and other sources to support the enforcement chain in this area.

It also provided a designated training manual, e-learning materials, presentation slides and bibliographic references with an online collection of information (reports, guidelines, manuals and good practices/lessons learned) in supporting the detection, investigation and prosecution of the illicit management and illegal trade of waste, available at: www.dotcomwaste.eu/resources/dotcomlibrary/.

Rob de Rijck and Howard McCann both contributed to the DOTCOM waste project by attending project meetings, and Howard McCann also participated in events (e.g. workshops) and training sessions in Italy and China. Howard co-wrote part of the training

³ WG2 Meeting minutes 28 March 2018, Item 1.

⁴ LIFE-ENPE Benefits Realisation Strategy and relevant Benefits Profile(s) B1, B3, B4.

⁵ <https://unu.edu/projects/dotcom-waste.html#outline>.

materials and gave two training presentations in Rome and Beijing. He also provided a workshop on shipbreaking at the IMPEL conference in 2018.

Annex 2.0 provides a summary of the training delivered.

WG2 continues to work with relevant projects of this type – in particular through the contributions of Rob de Rijck and Howard McCann to the High-Level Advisory Board (H-LAB) of the United Nations University (UNU) WasteForce project,⁶ which aims to boost the operational activities and capacities of authorities involved in the fight against the illegal trade and management of waste.

It will do this through: (i) development of new practical tools and methodologies; (ii) implementation of multi-stakeholder capacity building activities; and (iii) support of operational networking among practitioners in Europe and with their counterparts in the Asia-Pacific region.

The direct beneficiaries of the project are the authorities involved in tackling waste-related crimes across the enforcement chain, including environmental inspectorates, law enforcement agencies, customs and port authorities, and prosecutors both in Europe and in the Asia-Pacific region.

The group members involved in the H-LAB will contribute to the development of tools and methodologies and capacity building in order for the project to meet its objectives. Learnings from the WasteForce project will be shared with WG2.

- c) Discuss possible collaborative opportunities with ERA in 2018/19 (development of animated training for WSR – included in Annex 4.0).

This activity relates to collaborating with another key training provider to ensure efficiencies, maximise synergies and remove the likelihood of duplication in effort and outputs in the provision of training for environmental prosecutors in Europe.

The group considered that the most effective way of providing a fully transferable and comprehensive training package was to consider developing a short animated training film, in collaboration with specialists in this area of training media.

Noting that while it now also covers the illegal storage, treatment and disposal of waste, the WG2 focus area remains the international movement (transfrontier shipment) of wastes and tackling crimes related to this area. In early spring of 2019, the group worked on this as a key output and in March 2019 an animation-based training pack that can be rolled out across Europe and beyond was produced. This pack was trialled at the WG2

⁶ “Waste Enforcement Forensics and Capacity Building” (WasteForce) Project is a follow-up to the DOTCOM Waste project, which ended in December 2017.

training workshop in Nicosia on 28 March 2019 and was well received. In addition, one of the group members, Kristina Persson, has developed a webinar based on the WSR.

Discussions with ERA and other organisations will be pursued on how best to deliver the training.

3.0 Conclusions

LIFE-ENPE WG2 (waste crimes), continues to make a significant contribution towards prosecuting waste crimes in Europe and beyond.

Its focus on international waste transfer, the evaluation of the WSR, and the development of training on the WSR, reflects the expertise of the prosecutors who make up the group.

The group members are in demand across Europe for their knowledge and specialism on this topic, and more generally in the area of prosecuting waste crime. This was exemplified in the training workshop held in Nicosia on 28 March 2019, when three members of the group provided training to 30 delegates on effective and efficient prosecution of waste crimes.

Furthermore, the expertise of group members has been, and continues to be, shared across key European environmental projects, such as DOTCOM Waste and WasteForce.

The group's output has proved to be of real value, in particular the consultation on the WSR, which was acknowledged by the European Commission, and the provision of the animated training video, which has been widely shared: <https://vimeo.com/333388494> (no subtitles) and <https://vimeo.com/333388717> (subtitles).

Moreover, the group's activities are key to ensuring the LIFE-ENPE project meets its aim and fulfils its objectives of tackling waste crime, particularly where the context is transnational and even global. The group's success also makes a strong case for the continuation of its activities beyond the end of the LIFE-ENPE project.

Annexes attached below:

Annex 1.0: EU Waste Shipment Regulations consultation (final version April 2018)

Annex 2.0: Training delivered by WG members (specific training events and materials)

Annex 3.0: LIFE-ENPE WG2 Presentation at ENPE Annual Conference, 23 October 2018

Annex 4.0: Programme and presentations, including animated WSR training, from WG2 training workshop, 28 March 2019, Nicosia, Cyprus

Annex 1.0: EU Waste Shipment Regulations consultation (final version April 2018)



To the European Commission
DG Environment

Via WSRevaluation@trinomics.eu

Rotterdam, April 25, 2018

Re : Public Consultation on the Evaluation of the Waste Shipment Regulation

Dear Sir, Madam,

By means of this letter, the *European Network of Prosecutors for the Environment ENPE* would like to contribute to the Public Consultation on the Evaluation of the Waste Shipment Regulation.

ENPE is a formal not for profit association by Belgian law with its seat in Brussels. Its aim is to contribute to protecting the environment by supporting the operative work of environmental prosecutors and to contribute to protecting the environment by supporting the implementation and enforcement of national, European and International environmental law by environmental prosecutors, having particular regard to the protection of public health, the desirability of achieving sustainable development and the prevention of organised crime in the field of the environment. More information on ENPE can be found on its website www.environmentalprosecutors.eu.

In order to fulfil its obligations under a LIFE+ programme 2015 – 2020, ENPE has established four working groups for its activities, one of which is the Working Group on Waste, specifically the Waste Shipment Regulation. This contribution to the consultation fits in with the objectives and activities of this Working Group.

General remarks

It is important to note that this reaction to the consultation results from the prosecutor's perspective. The comments and suggestions offered have therefore regard chiefly to the enforcement aspects of the WSR. In general, it must be noted that regulations such as the WSR appear not to have been drafted with a specific view on enforcement. This is important, for the risk of non compliance in the area of waste management has been recognized throughout the history of the subject. Besides comments from the enforcement point of view, two further suggestions for improvement of the WSR are offered in this letter.



A second remark of a more general character is that prosecutors' experience shows that there is a lack of uniformity of approach to the WSR across the EU. How uniformity is achieved in practice may be very difficult. Networks like ENPE and IMPEL aim to assist with this, but these networks cannot in themselves be the solution to this problem.

Concerning interpretation of terminology

There are numerous examples of difference in interpretation of relevant terms not only between Member States, but also between authorities within Member States. One way of encouraging uniformity would be to clarify on EU level differences of opinion in interpretation.

One important example is the question what the term *export* means. The United Kingdom and the Netherlands, for instance, would appear to take a different view to Sweden. Case law in both the United Kingdom and the Netherlands has taken the view that an export means the action of leaving the community in that an export takes place long before it has left the national jurisdiction. Sweden, on the other hand, would appear to suggest that an export has only taken place once the consignment has left Swedish jurisdiction.

The term *shipment* is not fully defined in the WSR. In the ECJ *Wood Trading* case (C-2002/277) a 'shipment' is a shipment in its entirety in that it starts at the point of loading and continues until its recovery in the destination country. This ruling pre-dates the 2006 version of the WSR as it ruled on the definition of shipment in the 1993 version of the Regulation. The meaning of 'shipment' in the WSR 2006 would appear to be narrower than that of EU *Wood Trading*, although it does include a planned shipment.

The definition of *dealer/broker* as part of that of *notifier* can be problematic. Firstly, it refers to a person *under the national jurisdiction of a country*. Prosecutors encounter numerous instances of registered brokers or people arranging shipments based in countries outside those of dispatch or even outside the Union. It becomes difficult or almost impossible to enforce against such a broker/person. Some Member States require the broker/person to have a physical presence in the country of dispatch, such as a registered office with employees, but not all Member States do so. This definition could be amended to include an actual physical presence in the country of dispatch. If this were not possible, another solution to this problem should be sought.

Secondly, the definition refers to a registered dealer or registered broker. A broker or dealer could argue that as they are not registered they are not the notifier for the purposes of the definition.

Concerning accessibility, references, and internal coherence of EU legislation

EU law is very difficult to navigate and relationships between parts of EU legislation are not always clear. On occasion, this proves an obstacle to effective enforcement. The following examples can be given.

For enforcement practitioners, the Annexes to the WSR are difficult to handle. To determine whether material is Green List one is referred to Annex III that then refers to Annex V and its introductory notes then Part 1 List B. This can probably be made simpler. Likewise,



consolidating the Green List Regulations would be very useful. Commission Regulation 2007/1418 can also be difficult for prosecutors to work with. A clear view on all existing restrictions in third countries is not easy to obtain.

Article 2 (6) WSR defines the essential term *recovery* via a reference to Article 1 (1)(f) of *Directive 2006/12 on waste*. This Directive, however, has been repealed by *Directive 2008/98 on waste*. As a result of this, the reference in the WSR to the new Waste Directive is unclear. More specifically, it is unclear how recovery in the WSR relates to Article 3(15) – 3(18) of Directive 2008/98.

Through *Regulation (EU) 2014/660*, the WSR term *illegal shipment* has been extended by amendment of Article 50. It is not clear how these extensions relate to the definition of 'illegal shipment' in Article 2 (35) WSR. In the Netherlands, only illegal shipments as defined in the latter Article are criminal offences.

Waste ships are a category of waste with a high risk of threatening the environment and labour conditions, as the recent *Sea Trade* case in the Netherlands shows. ENPE foresees difficulties with how the *Ship Recycling Regulation 2013/1257* will interact with the WSR in the future. Ships flying an EU flag are now excluded from the scope of the WSR. So an EU flagged shipped could be exported as hazardous waste to a third country but no longer be in breach of Article 36. Instead there may be a breach for not recycling a ship at an approved facility.

Further, Directive 2008/99 (also see below) requires that categories of violations of the WSR shall be sanctioned with criminal penalties. Neither Directive 2008/99 nor the Ship Recycling Regulation, on the other hand, requires the same for violations of the Ship Recycling Regulation.

The interaction between the WSR and the *Animal By-Products Regulation 2009/1069* is also problematic. In practice, it may be difficult to distinguish which regulation applies.

The legal force of the *Correspondents' Guidelines* can in some cases be made clearer. The guidelines are in principle merely guidance and not legally binding. The updated Guideline on WEEE, however, is more or less completely inserted into Annex VI to the *WEEE Directive 2012*. These guidelines are therefore a legal requirement under the WEEE Directive but not under the WSR. A simple way to avoid any argument or confusion would be to replicate Annex VI to the WEEE Directive as an Annex to the WSR.

Concerning sanctioning

It is not a new insight that sanctioning practices for WSR violations differ widely between Member States. This hinders effective, proportionate and dissuasive sanctioning and is an obstacle to the level playing field. It appears to be caused by three factors.

Firstly, enforcement authorities in the Member States do not take into account sanctioning practices in other Member States. For criminal enforcement, ENPE aims to contribute to harmonization of sanctioning through its database with national criminal sentences, but this in itself cannot be a sufficient remedy.



Secondly, in most Member States, legal persons can be – and in practice are – criminally sanctioned for WSR violations, but in some they cannot.

Thirdly, it can be questioned whether sanctioning authorities in Member States are sufficiently aware that both the WSR in Article 50, Section 1 and *Directive 2008/99 on the protection of the environment through criminal law* in Articles 3(c), 5 and 7 require effective, proportionate, dissuasive and, in important categories of cases, criminal sanctions for WSR violations.

Two further suggestions

Making it a requirement of the WSR that the *Annex VII document* must be sent to the competent authorities concerned prior to shipment, at least the competent authority of dispatch, would strengthen the authorities' information position. This could be done electronically. At the moment the document just has to accompany the shipment.

Repatriation by the competent authority of dispatch is an expensive process. It may be reconsidered whether the system of financial guarantees is a sufficient remedy.

Finally

The above reflects the great importance that ENPE attaches to the enforcement of EU environmental legislation. I trust that it is of relevance for your evaluation of the WSR. ENPE and its Working Group on Waste will be glad to provide any additional information that you may require.

Yours Sincerely,

Rob de Rijck
Vice-President
European Network of Prosecutors for the Environment

Annex 2.0: Training delivered by WG members

LIFE-ENPE Working Group 2 Second-stage Interim report

Appendix 2.0 Training Materials

Materials used for the training delivered by WG member on Prosecution of Waste Crimes is included below.

These materials were used by the WG members listed below, with the topic of the training and date and location also listed for information.

Name of WG 2 member	Topic of training	Date & location of training
Howard McCann & Rob de Rijck	Ship Recycling/ TFS	10/06/18 Vienna
Howard McCann	WEEE/ WSR	26-29/09/17 Rome
Howard McCann	WEEE/ WSR	13-14/10/17 Beijing
Kristina Persson	Transboundary M W	August 2017

1.0 WEEE CASE STUDY

Brief Facts

Customs officers, police and environment officers intercepted 2 containers at Containerport in Country A in the EU between **15th and 19th September 2017**.

1. **MRKS456789** is opened and would appear to contain televisions wrapped in clingfilm. The packing list says the items were loaded at "John Smith & Co". It describes the contents as televisions, PCs bicycles & tables and chairs. A test sheet is attached to the packing list. The bill of lading confirms that the exporter is John Smith & Co Limited based in **Country B**. The contact name is John Smith. It describes the contents as "Household goods". The destination of the container is Lagos, Nigeria. On examination the contents are CRT and flat screen TVs, R12 fridges, PCs and other electrical items. The test sheet and packing list do not match and the clingfilm stops after row 2.
2. **MRKS123456** is opened and would appear to contain bicycles. The packing list says the items were loaded at "John Smith & Co Ltd". It describes the contents as televisions, DVDs and CPUs. There are no test sheets in the container. The bill of lading confirms that the exporter is John Smith & Co Limited based in **Country B**. The contact name is John Smith. It describes the contents as electrical goods. The destination of the container is the Ghana. On examination the contents are CRT and flat screen TVs, fridges (some of which contain R12), PCs and other electrical items. There is an invoice to Majuba Enterprises, Accra, Ghana inside for E7,700.

3. The booking agent for the 2 containers was Mr Jan van Niekerk based in **Country C**. Excel Shipping Line exports the 2 containers, its principal place of business is in Country D with offices in Country A.
4. Further enquiries show that **between 1st September and 19th September 2017** "John Smith & Co" exported a further 10 containers each to Nigeria & Ghana. All of these containers contents were described as "Household Goods" on the bills of lading, arranged by Mr van Niekerk and shipped by Excel.

Questions

5. Are any offences suspected to have been committed, and if so by whom?
6. What evidence would you need to obtain to prove the offences you suspect have been committed?
7. What examinations would you undertake?
8. Having established offences, who would you suggest prosecuting, why and where?
9. What penalties would you anticipate if the offences are proved?
10. Would any of the above change if you knew that any of the defendants had any relevant previous convictions?

Indictment

IN THE LONDON CROWN COURT

INDICTMENT: T20172455

REGINA

-v-

JOHN SMITH

INDICTMENT

JOHN SMITH is charged as follows:

COUNT 1

STATEMENT OF OFFENCE

TRANSPORTING WASTE FOR RECOVERY IN **NIGERIA**, A COUNTRY TO WHICH THE OECD DECISION DOES NOT APPLY contrary to Regulation 23 of the Transfrontier Shipment of Waste Regulations 2007.

PARTICULARS OF OFFENCE

JOHN SMITH, BETWEEN **15th SEPTEMBER 2016 and 19th SEPTEMBER 2016**, as an officer of JOHN SMITH & CO LIMITED (dissolved), through your consent, connivance or neglect and by virtue of Regulation 55(1) of the Transfrontier Shipment of Waste Regulations 2007, you caused the company to commit the offence of transporting waste specified in Article 36(1)(d) of the European Waste Shipment Regulations 1013/2006.

COUNT 2

STATEMENT OF OFFENCE

TRANSPORTING WASTE FOR RECOVERY IN **GHANA**, A COUNTRY TO WHICH THE OECD DECISION DOES NOT APPLY contrary to Regulation 23 of the Transfrontier Shipment of Waste Regulations 2007.

PARTICULARS OF OFFENCE

JOHN SMITH, BETWEEN **15th SEPTEMBER 2016** and **19th SEPTEMBER 2016**, as an officer of JOHN SMITH & CO LIMITED (dissolved), through your consent, connivance or neglect and by virtue of Regulation 55(1) of the Transfrontier Shipment of Waste Regulations 2007, you caused that company to commit the offence of transporting waste specified in Article 36(1)(d) of the European Waste Shipments Regulation 1013/2006.

.....

Officer of the Court

Note for Sentencing hearing

IN THE LONDON CROWN COURT

INDICTMENT: T20172455

REGINA

-v-

JOHN SMITH

NOTE FOR SENTENCING HEARING 26th SEPTEMBER 2017

Introduction

1. **Mr SMITH** pleaded guilty on **6th September 2017** to **both counts** on the indictment [Tab 1], in that as the sole director of **JOHN SMITH & CO LIMITED (dissolved)**, he caused the company to export hazardous electrical waste consisting mainly of CRT televisions and fridge freezers in **2, 40-foot sea containers to Nigeria & Ghana, between 15th September 2016 and 19th September 2016**, contrary to Regulation 23 of the TFS Regulations 2007¹ and Article 36 European Waste Shipment Regulation²[Tab 3]. The company pleaded guilty to counts 1 & 3 on the indictment.

¹ Transfrontier Shipment of Waste Regulations 2007.

² 1013/2006

2. Some of the fridge freezers contained R12 ozone depleting gas, a controlled substance that is also prohibited by the EU Ozone Depleting Substances Directive³. The contents of the waste TVs and fridges have the potential to cause great environmental harm and harm to human health. The purpose of the legislation is to ensure that such harmful waste is not sent to developing nations and to stop a lucrative and growing trade in waste materials.

³ 1005/2009.

3. Mr SMITH and his company have **previous convictions** for exporting similar hazardous electrical waste in 8 containers from his site in LONDON to Nigeria & Ghana in November 2015. Mr Smith is the sole director and controlling mind of **JOHN SMITH & CO LIMITED. Each container contained about 700 CRTs and fridges.**
4. Mr SMITH dissolved the company in July 2017. In August 2017 he incorporated J. Smith of London Limited.

Brief Facts

5. **JOHN SMITH & CO LIMITED's** site in LONDON was licensed by the Environment Agency to treat electrical waste. Mr SMITH collected electrical waste from various Civic Amenity (CA) sites in LONDON and took them back to his site where they should have been properly tested for safety and functionality prior to being loaded for export as working items.
6. The containers in this case were intercepted by the Environment Agency at Containerport before leaving the UK. On opening the containers, items in the first rows had "**JOHN SMITH & CO LIMITED – Passed ELECTRICAL SAFETY TESTS**" PAT labels attached giving the **impression** that they had passed a testing regime (see selected photos in **Tab 4**). However **items further into the containers had no PAT labels** attached.
7. Items with PAT labels were tested by an Agency ELECTRICAL EXPERT and found to **fail** either electrical safety or functionality.
8. The containers were examined and 50 randomly selected items were tested to see if they worked and if they were safe. Mr SMITH attended the inspection and chose the 50 items for inspection from each container. The expert recorded significant failure rates for the items tested. The schedule below summarises the facts and results of each container: -

Container No.	Load Date	Stop Date	Destination	Description	Contents	Failure rate
MRKS45678	15.09.16 JS&Co London	17.09.16 C'port	Lagos Nigeria	<i>Household Goods</i> P List & test sheets did not match	CRTs, poorly wrapped cracked casings Flat screens R12 Fridges	50 items tested 48%
MRKS123456	16.09.16 JS&Co London	18.09.16 C'port	Majuba Enterprises Accra, Ghana Invoice for E7,700	<i>Used Household Goods</i> No test sheets in container	CRTs, poorly wrapped cracked casings Flat screens R12 Fridges	50 items tested 50%

9. Neither of the containers stopped complied with the requirements of the EU Correspondents Guidelines⁴ [Tab 5] on the export of electrical waste, which recommends the following steps to demonstrate that exported items are not waste:-

- 9.1 Testing – functionality should be tested and hazardous substances (such as CRTs and R12 gas) should be evaluated;
- 9.2 Record of testing – should be attached to each item and provide full details of testing for functionality (a visual inspection alone would be insufficient). A protocol of testing and evaluation should accompany the shipment;

⁴ The Revised Correspondents' Guidelines No 1 on Shipments of WEEE. Annex VI of the WEEE Directive 2012/19/EU incorporates the Guidelines as Minimum Requirements for Shipments of WEEE. This was transposed into UK Law on 1st January 2014 by Schedule 9 of the WEEE Regulations 2013.

- 9.3 Packaging – Should be sufficient to prevent damaged during loading, carriage and unloading. Insufficient packaging would suggest that the item is waste;
- 9.4 Testing must be carried out by a certified engineer. No evidence can be found of a certified engineer at **JOHN SMITH & CO LIMITED or any of the items in these containers being tested by one.**
10. A statement taken from Mr van Niekerk confirms that he booked the 2 containers on behalf of **JOHN SMITH & CO LIMITED**. The statement also confirms that **between 1st January 2016 and 14th September 2016, and even after the convictions in November 2015, a further 20 containers** were booked on behalf of JOHN SMITH & CO LIMITED and exported from its site in London to the same addresses in Nigeria and Ghana as the two containers intercepted by the Environment Agency in this case. Throughout this process, the **only person Mr van Niekerk dealt with was Mr John Smith.**
11. **Mr SMITH & his company would have been acutely aware of the Guidelines given his previous convictions for like offences. Only some of the items in the front rows of the containers had PAT labels attached indicating items had passed electrical safety tests. Items with PAT labels attached failed testing by Agency experts. No testing records were found within the containers and only some of the items were wrapped in cling film. Selected photographs of the contents of the containers are produced at Tab 4.**
12. UK Court of Appeal has found that electrical items discarded at CA sites frequented by Mr SMITH and his company were capable of being waste. What he then intended to do with the items once at his site had to be judged against the results of the tests to which they were subjected. It was not sufficient for Mr SMITH and his company, to say that he was selling on items he had collected: As the items failed the tests suggested by the Guidelines, the Court's only objective conclusion was that the items remained waste and were simply being passed on for sale in Nigeria & Ghana.
13. In addition to the non-compliance with the Correspondents' Guidelines, both of the containers in this case recorded high failure rates of about 50% when tested by an Agency expert. Throughout his offending, Mr SMITH's methods did not change. He

continued to export the current containers in the same way as he had done in relation to his last conviction.

Interview under caution

14. Mr SMITH was interviewed on 9th July and 6th November 2013. He gave no comment replies to all questions put to him during the interviews.

Sentencing

15. The environment is accorded a high level of protection in the European Treaty at Article 191(2):

"Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. [Tab 3]

16. This high level of protection is repeated in the primary objective of the European Waste Shipment Regulation, which is responsible for regulating waste shipments to, through and from EU Member States, which requires: *"the protection of the environment, its effects on international trade being only incidental". [Tab 3].*
17. Article 50 of the EU Regulation requires Member States to provide penalties that are "effective, proportionate and dissuasive". This mirrors the sentencing provisions of the Criminal Justice Act 2003.
18. Regulation 58(b) of the TFS Regulations 2007 states that on conviction on indictment a person is liable to "a fine or to imprisonment for a term not exceeding two years or to both."
19. Guidelines for environmental offences have been published and are effective **from 1st July 2014 [Tab 6]**. TFS offences appear under "Other environmental offences" at page 23.

Culpability (Page 17 of the Guidelines)

20. These offences were **deliberate** breaches of the law, given Mr SMITH's and the company's previous convictions and unsuccessful appeal. Both knew full well the requirements for ensuring that the discarded items they collected should have been fully tested and working properly prior to being exported for re-use. They knew or ought to have known that exporting hazardous waste to non-OECD countries was prohibited. They knew or ought to have known of the greater degree of scrutiny the law placed on them exporters of waste that may cause harm to health and the environment.
21. Further, their methods remained the same. There was a disregard for the Correspondents' Guidelines: (1) PAT labels indicating items had passed electrical safety testing actually failed when tested by the Agency (2) testing records did not accompanying the containers and (3) only some of the items were wrapped in cling film – the Guidelines require sufficient packaging to protect the items from damage during loading, transportation and unloading. Road transport aside, the estimated sailing time from England to West Africa is 2-4 weeks.
22. Items at the front of the containers were “dressed” with **JOHN SMITH & CO LIMITED PAT labels attached**, giving the impression that their contents were compliant. Without a detailed examination, an unsuspecting Customs Officer or customer might be deceived in two ways: (1) because of the PAT labels the items had passed the appropriate testing and were therefore working and (2) all of the items in the container had the same labels, had been tested and worked properly. In reality only the front rows had labels attached and even with the labels attached a number of the items selected for testing failed.

23. The containers were described as "household goods" containing electrical items on the draft Bills of Lading. Mr SMITH's containers in his previous case were described also described as "household goods". The descriptions given in this case did not match the contents found when stopped by the Agency.
24. Finally, despite the convictions he continued to export as evidenced by the 20 containers exported to Nigeria & Ghana.

Harm

25. Mr SMITH exported **hazardous CRT televisions and fridge / freezers containing R12⁵ refrigerant, an ozone depleting substance**. The 1987 Montreal Protocol⁶ eventually phased out and banned the production of ozone depleting substances (ODS). R12 is a controlled substance under the EU Ozone Depleting Substances Directive, which prohibits the export of controlled substances or products and equipment containing or relying on controlled substances. The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 creates an offence of exporting a controlled substance in breach of the EU Directive. In short, these fridges were being exported illegally. Whether they worked or not would be relevant insofar as the nature of the offence committed.
26. It is the Prosecution case that the offending **straddles category 1 and category 3 harm**. While Category 3 includes the risk of category 2 harm. The waste exported was hazardous, with potentially far reaching damaging effects on the local environment in Nigeria & Ghana and the ozone layer if R12 gases in the fridges were not treated in an environmentally safe manner. The difficulty with Category 3 in this case is that it is limited to minor or localised harm. These containers were destined for recovery in Nigeria & Ghana, as such the harm, or risk of harm cannot be said to be minor or localised. Given the contaminants found, any recovery of this material in an environmentally sound manner is likely to have been difficult to achieve.
27. These containers were being exported to West African countries for recovery. Although there is no direct evidence of harm, as the containers were stopped before export, the risk of harm occurs where the items might be dismantled for use as spare

⁵ Dichlorodifluoromethane also known as CFC-12.

⁶ on Substances that Deplete the Ozone Layer.

parts or recovered in conditions that might expose the individual to hazardous qualities such as phosphors or leaded glass in the CRT tube, or cause the escape of ozone depleting substances when not recovering the fridge properly (used oil in the fridge compressor would also be classified as hazardous). There is the further risk that items which are not recovered are dumped or disposed of in a way that harms health or the environment.

28. This is contrary to the high level of protection afforded to the environment in the EU treaty and the recognised principles of proximity and precaution.
29. Dealing with harm involves the consideration of both the likelihood of harm if it happens and the extent of it if it does. In R v Sellafield Ltd [2014] EWCA Crim 49 (failure to comply with strict conditions on disposal of nuclear waste) at paragraph 30 the Court held that *"We therefore take into account, as section 143(1) requires us to do, the fact that there was in effect no actual harm but there was a very small risk of some harm."* Likewise in R v Southern Water Services Limited [2014] EWCA Crim 120 (pump failure allowing a sewage discharge into the sea at Margate) at paragraph 15 *"It was therefore right that the judge should approach this case on the basis that there had been no actual harm, but there was the potential for serious harm."*

Factors increasing seriousness (Page 20 of the Guidelines)

Previous convictions

30. These were not isolated offences. Both defendants were found guilty of similar offences of exporting hazardous waste to Nigeria & Ghana in almost exact circumstances in 2015. Mr Smith was fined a total of £15,000 and ordered to pay £5,000 costs. **JOHN SMITH & CO LIMITED** received the same penalties.

Offence committed for financial gain

31. Mr SMITH and his company ran a site permitted by the Agency to deal with waste. He collected items from CA sites and sold them on to businesses in West Africa for a profit. The Agency estimates that each container was **sold** for about **£8,000, and invoice for £7,700 found in the second container would confirm this**. The Court of Appeal concluded that the items he exported were simply being passed on for sale. The method of offending of the first convictions and the current containers did not change.

Mitigating features

32. Mr SMITH has pleaded at the first opportunity.

Ancillary orders

Costs

33. There is an application for costs (including investigation and prosecution costs) in the sum of **£10,500** (see attached Schedule).

Director's disqualification

34. Given the previous convictions whilst as a director of the same company, the court may wish to consider disqualifying Mr Smith from being a company director. He has run his business with little or no regard for others with the sole intention of making money. It is the Agency's case that he is no longer a fit and proper person to be in charge of a company. **Mr Smith dissolved John Smith & Co in July 2017 and incorporated J.Smith of London Limited in August 2017**. The period of disqualification available ranges from 2 to 15 years.

Proceeds of Crime

35. POCA was initiated for particular criminal conduct at the previous hearing and statements have been submitted by both sides. It is the Crown's case that Mr SMITH benefitted from his conduct in the sum of **£16,000** (£8000 per container).

REGINA**-v-****JOHN SMITH**

COSTS SCHEDULE

In R v Associated Octel [1997] 1 Cr. App. R. (S.) 435 (and pursuant to section 18 Prosecution of Offences Act 1985), the court held it was just and reasonable for the Appellant to pay all the costs of the investigation and prosecution. If a defendant, once served with a schedule of costs wishes to dispute the whole or any part of the schedule he should, if possible, give proper notice to the prosecution of the objections proposed to be made or, at least, make it plain to the court precisely what those objections are.

09/09/2016 – 25/09/2017	Inspection, Investigation and case file preparation costs: Storage, emptying and examination of 2 containers – 2 Agency staff, forklift driver, stevedore and independent electricians (experts) for testing of items selected in each ach container takes 1.5 days to examine at a cost of £2000 per container plus additional evidence gathering and statements from shipping lines, numerous booking agents, other officers , arrest and interviews at police stations.	£4,000 £2,500
10/09/2016 – 26/09/2017	Legal costs- Considering evidence, drafting detailed case summary, indictment, drafting sentencing note and attending court.	£4,000
Total		£10,500

2.0 WASTE PAPER CASE STUDY

Brief Facts

Customs officers, police and environment officers intercepted 2 containers in **Country A** in the EU between **15th and 19th September 2017**.

11. **MSKU345678** was stopped at Containerport on **15th September** and opened. It would appear to contain bales of mixed recycling including newspapers, magazines, letters, cardboard, food wrapping, glass, nappies and plastic bottles. Officers noted what they described as a strong smell of rotting waste. The Annex VII form was found within the container. It described the waste as "waste paper - B3030". It was destined for **China**, a non-OECD country. The container was due to sail on **16th September 2017** on the ship "Excel 1" which is operated by "The Excel Shipping Line." The Annex VII says that the "waste paper" was loaded at "Eastward Recycling Limited" in **Country C** in the EU. The contact name for Eastward is Michael Weller, a company director. The Annex VII is incomplete and says "confidential" in box 2, however it says there is a contract in place. There is an invoice in the amount of E800 made out to "Eastward Ventures" in Beijing, China, accepts waste paper as green list waste for recovery.
12. **MSKU234567** was stopped during a roadside inspection after crossing the border **between Countries A and B** on **16th September**. The carrier of the waste is named as Juan Carlos Transport. The driver of the truck gives his name as David Podolsky, from **Country D**. Mr Podolsky is questioned and confirms that he was on his way to Containerport in **Country A**. Enquiries reveal that Juan Carlos Transport has a waste carriers' licence registered in **Country D** in the EU. Further checks confirm that the container was due to sail on "Excel 2" from Containerport on **18th September 2017**. When officers opened the container, they could see what appeared to be clean bales of waste paper. There was no Annex VII form within the container but there was an invoice for E10,000 for 2000 tonnes of "waste paper - 20 01 01" from Eastward Recycling Limited to EcoClean Enterprises in Mumbai, India. However, due to the information received about **MSKU345678**, the container was taken to an inspection facility. The front 2 rows of paper bales were removed to reveal similar waste bales as those seen in **MSKU345678**.
13. The booking agent for the 2 containers was Mr Walter Schubert in **Country C**.
14. Further enquiries show that **between 1st August and 15th September 2017** Eastward Recycling Limited exported a further 20 containers each to China & India. All of these containers' contents were described as "waste paper" on the bills of lading. Again Mr Schubert was the booking agent.

Questions

15. Are any offences suspected to have been committed, and if so by whom?
16. What evidence would you need to obtain to prove the offences you suspect have been committed?
17. What examinations would you undertake?
18. Having established offences, who would you suggest prosecuting, why and where?
19. What penalties would you anticipate if the offences are proved?
20. Would any of the above change if you knew that any of the defendants had any relevant previous convictions?
21. Would your position change if the containers were destined for South Korea?

3.0 SHIP RECYCLING QUIZ (WITH ANSWERS)

1. What is the name of the International Convention for Ship Recycling?

The Hong Kong Convention: Full name The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 2009.

2. True or False, the Convention named in question 1 is in force?

False. It will enter into force 24 months after the date on which (1) it has been ratified by 15 States (2) representing a combined fleet of at least 40% of the gross tonnage of the world's merchant shipping and (3) the maximum annual ship recycling volume is not less than 3% of the combined tonnage of the ratifying States.

3. True or False, the EU has ratified the Convention?

False.

4. As of 14th May 2018, how many countries have ratified the Convention?

- a) 14
- b) 6
- c) 72

5. How many of these countries are in the EU?

- a) All 28 EU states have ratified the Convention
- b) 12
- c) 5 -

Bonus point if you can name the EU Countries – The EU has not ratified it, but Belgium, Denmark and France have. Norway (non-EU) has also ratified the Convention.

6. True or False The EU has introduced law incorporating the requirements of the Convention?

True.

7. True or False. A ship becomes waste when there is a contract in place for scrapping the ship.

False.

8. If False, when does a ship become waste?

An EU flagged ship destined for recycling must specify information about the type and amount of hazardous material and waste generated by the recycling of each ship and the treatment management and storage of that waste at the recycling facility on the List (whether abroad or in a Third Country). The Regulation refers to Ship Recycling which is defined as the complete or partial dismantling of a ship to recover components and materials for reprocessing or reuse.

9. True or False. The export of a waste ship from Europe is allowed.

Difficult Question. An EU flagged ship destined for recycling at an EU Listed site is likely not to be classified as waste due to the definition of ship recycling in the Ship Recycling Regulation. Items that result from the recycling that don't meet the definition of ship recycling are likely to be classified as waste. A non-EU flagged vessel is subject to the WSR and could be exported as notified waste to a ship recycling yard in an OECD country but would be prohibited from export to a non-OECD country.

10. True or False. The Ship Recycling Regulation revokes the Waste Shipments Regulation 1013/2006 for Ships.

False. The Ship Recycling Regulation applies to EU flagged vessels only.

11. The Ship Recycling Regulation applies:

- a) Only to ships whose building contract is in place from the 20th November 2013, the date the Regulation took effect;
- b) To all ships from 1st January 2017;
- c) To all ships flying an EU flag from 31st December 2018;
- d) To all ships flying the EU flag and those countries that ratified the Convention from 31st December 2018.

12. The Ship Recycling Regulation excludes:-

- a) Any warships operated by the State only;

- b) Warships and other ships operated by the State for non-commercial use;
- c) Ships weighing less than 500 gross tonnage;
- d) Ships operating within State waters only for its entire "working life"
- e) b and c only
- f) All of the above

13. True or False. "Ship" includes submersible vessels and vessels under tow or being towed?

True.

14. IHM Stands for:-

- a) Inventory of Heavy Metals;
- b) Institute for Heavy Metal;
- c) Inventory of Hazardous Materials.

15. Which of the following statements are true:-

- a) IHM applies to all new ships only;
- b) IHM applies to all ships;
- c) Existing ships including those going for recycling shall comply as far as possible with IHM.

16. Each IHM must consist of:-

- a) A List of all hazardous materials in the structure and equipment of the ship, including their location and quantity;
- b) All operationally generated waste on board;
- c) A List of on board stores;
- d) All of the above.

17. True or False. The Ship Recycling Regulation creates a European List of Ship Recycling Facilities.

True.

18. True or False. The European List relates to ship recycling facilities in Member States only.

False. Ship recycling companies can apply to include facilities in Third countries on the List but they must meet the same standards as the European facilities on the List.

19. As of 4th May 2018 how many ship recycling facilities are there on the European List?

- a) 1
- b) 6
- c) 21 – see Decision 2018/684

20. As of 4th May 2018 how many Member States had recognised ship recycling facilities on the List?

- a) 11
- b) 6 – Belgium (1), Denmark (2), Estonia (1), Spain (1), France (4), Latvia (1), Lithuania (3), The Netherlands (2), Poland (2), Portugal (1), the United Kingdom (3).
- c) All 28

21. True or False. Ships don't have to be recycled at a Listed recycling facility. This is only the case if the ship's contract was agreed after the coming into force of the Ship Recycling Regulation.

False. All EU flagged ships must be recycled at a Listed facility.

22. Which of the following statements are true:-

- a) As long as a facility has a ship recycling facility plan any ship can be recycled at that facility;
- b) a ship specific recycling plan is required for each ship before it can be recycled;
- c) a ship specific recycling plan applies only to ships built before the coming into force of the WSR 1013/2006 and weighs above 1000 gross tonnes.

Each plan must be tacitly or explicitly approved by the Competent Authority in which the facility is located. Tacit approval - there is no written objection to the plan by the Competent Authority. Explicit Approval - there is written notification of approval and this is sent to the ship owner, the facility and the State's administration.

23. Which of the following statements are true for a facility to be included on the List:-
- a) It must be authorised to conduct ship recycling facilities by the Competent Authority;
 - b) It must have been authorised facility for at least 3 years beforehand;
 - c) A ship can be recycled on a beach but only at low tide;
 - d) It must have an approved ship recycling plan prior to commencement;
 - e) It must operate from built structures;
 - f) It must pay its workers the nationally recognised minimum wage of the Member State;

24. Which of the following statements are true:
- a) Once a facility is on the List it remains on the List;
 - b) Inclusion on the List expires when the facility's permit expires;
 - c) Authorisation lasts for 5 years but it can be renewed;
 - d) None of the above statements are true.
25. True or false. Authorisations can be suspended, corrected or withdrawn if the facility does not comply with the requirements for authorisation.
- True.
26. Which of the following statements are true. Ship owners must:-
- a) Ensure that ships are recycled only at facilities on the List;
 - b) Supply the facility with all necessary information required to develop a ship recycling plan;
 - c) Notify the Competent Authority of its intention to recycle a vessel;
 - d) Provide the Competent Authority with the ship's IHM and all information required for the ship recycling plan;
 - e) All of the above;
 - f) All of the above but only if the ship was built before the coming into force of the WSR 1013/2006 and weighs above 1000 gross tonnes.
27. Which of the following statements are true:-
- a) All ships must be surveyed;
 - b) Only new ships must be surveyed and before they are in service;
 - c) Surveys can be conducted by surveyors acting on behalf of the ship owner; Surveys must be conducted by officers of the State's administration or a recognised organisation authorised by the State;
 - d) Initial surveys on existing ships must be completed by 31st December 2020;
 - e) Renewal surveys must be conducted periodically and no later than every 5 years;
 - f) For existing ships, the initial survey and final survey can be completed at the same time;
28. Which of the following statements about the final survey are true:-
- a) It shall be conducted prior to the ship being taken out of service;
 - b) It can be conducted before recycling has started but not after recycling has been completed;
 - c) It must verify and include the IHM and ship recycling plan;

29. Which of the following statements are true:

- a) A ready for recycling certificate can be issued by the ship owner once the final survey has been completed;
- b) Must include the IHM and the ship recycling plan;
- c) Ready for Recycling certificate does not apply to new ships;
- d) There is no such thing as a "ready for recycling certificate."

30. Which of the following statements are true about the ship recycling plan:-

- a) A ship specific recycling plan must be developed prior to the recycling of any ship;
- b) Ship recycling plans apply to existing ships only;
- c) Must be developed by the ship owner – the owner must send through all the relevant information to enable the facility to develop the plan.
- d) Must be developed by the recycling facility;
- e) Must specify and monitor safe working conditions;
- f) Must be consistent with the IHM and include measures to deal with hazardous materials on board;

Annex 3.0: LIFE-ENPE WG2 Presentation at ENPE Annual Conference 23 October 2018

LIFE-ENPE project

LIFE-ENPE Waste crimes Working Group

Mr Rod de Rijck



With the contribution of the LIFE financial instrument of the European Community

ENPE - The European Network of Prosecutors for the Environment



“Promote the enforcement of environmental criminal law by supporting the operational work of environmental prosecutors.”

Board:

- President: Anne Brosnan (England, UK);
- Jean-Philippe Rivaud (France), Vice President;
- Rob de Rijck (Netherlands), Vice President
- Lars Magnusson (Sweden), Director
- David Smith (Ireland), Director
- Antonio Vercher Noguera (Spain), Director

Support to realise our Mission: the LIFE-ENPE project



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LIFE-ENPE project outputs general, 1

Baseline Capitalisation & Gap-filling Report
published and shared with 39 countries

4 Working Groups convened:

- Wildlife crime
- Waste crime
- Air pollution
- Judicial process and sanctioning

Working Group 2 Waste crime



Outputs: training completed e.g. DOTCOM waste; Italy
China

Outputs: EC Waste Shipment Regulations consultation



With the contribution of the LIFE financial instrument of the European Community

Working Group 2 Waste



Originally focussed on Transnational Waste Movement
but possible expansion to include deposition/ treatment

In preparation : webinar

In preparation: training (animated video)



With the contribution of the LIFE financial instrument of the European Community

Thank you.



With the contribution of the LIFE financial instrument of the European Community

Annex 4.0: Programme and presentations from WG2 training workshop, 28 March 2019, Nicosia, Cyprus



LIFE-ENPE Waste & Air Pollution Working Group Workshops 28-29 March 2019

Republic of Cyprus Ministry of Finance, Nicosia, Cyprus

Day 1 - 28 March 2019: LIFE-ENPE Working Group 2 (waste crimes) workshop “criminal enforcement of illegal waste disposal”

Background

The LIFE-ENPE Waste Crimes Working Group (WG2) has been established for two years and comprises six specialist prosecutors from five different European countries. The group is a key contributor to the objectives of the LIFE-ENPE project, which has an over-arching aim to improve the effectiveness and efficiency of prosecuting environmental crimes. Since its inception, WG2 has focused on **cross border transports (Trans-Frontier Shipments) of waste** and has provided the following outputs:

- two training sessions (which took place via the IMPEL prosecutors’ workshop) ;
- a collection of criminal law cases in the ENPE database;
- a collection of training materials, both existing and newly developed (such as a webinar and an animation).

Day 1 workshop objectives

WG2 has widened its scope to include *illegal disposal and treatment of waste* in its activities which will be the subject of the presentations and discussions on Day 1. The workshop objectives are:

- to offer an update on WG2’s activities and plans for the future ;
- to find inspiration and knowledge in presentations of and discussions about illegal waste disposal and treatment cases from several European countries by colleague practitioners;
- to identify, on a more abstract level, the key elements of criminal law in combating illegal disposal and treatment of waste. These key elements are needed to categorize legal issues and cases and to create a new field in the ENPE case law database.

There will be opportunities for questions from delegates and group discussion after each presentation.





Day 2 - 29 March 2019: LIFE-ENPE Working Group 3 (air pollution) workshop

“prosecuting air pollution crimes in Europe”

Background

The LIFE-ENPE Working Group 3 (Air Pollution) addresses non-compliance and has an aim to improve prosecution of **air pollution** in Europe. Working Group 3 (WG3) comprises eight members, all actively involved in the prosecution of environmental crimes from seven countries.

Since its inception, WG3 has met on three occasions and has provided the following outputs:

- a completed questionnaire survey of prosecutors and practitioners in Europe to gather information on air pollution and odour incidents and related crimes in Europe, including methods of investigation (mid 2017);
- a first stage Interim Report as part of the LIFE-ENPE project outputs (December 2017);
- submission of specialist cases to the ENPE case database (ongoing).

The outputs have provided the following key findings:

- there is a lack of data available in Member States relating to this type of crime
- air pollution offences are not widely prosecuted, they can be the subject of administrative sanction instead
- offences relating to odour pollution are not prosecuted in some Member States
- nearly all prosecutions are heard 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.

Day 2 workshop objectives

The Day 2 workshop will provide an introduction and background to prosecuting air pollution including the discussion of cases from different countries. Its objectives are:

- to provide an overview and background to the relevant EU Directives where prosecution of air pollution crimes is concerned;
- to share knowledge in presentations of and discussions about air pollution cases from several European countries by colleague practitioners ;
- to undertake group exercises to improve understanding and practices of prosecuting such cases in future;
- to connect like-minded prosecutors to enable future networking and sharing of cases e.g. via the ENPE database.





Programme

Day 1 agenda

09.15 hrs- 09.20 hrs	Welcome and opening of the Workshops – Attorney General of Cyprus (Mr Costas G Clerides)
09.20 hrs – 09.45 hrs	Introduction including LIFE-ENPE WG2 WSR animated video training: https://vimeo.com/333388717 (Mr Rob de Rijck)
09.45 hrs – 10.45 hrs	A criminal case from the Netherlands (Mr Martijn Zwiers)
10.45 hrs – 11.15 hrs	Tea & Coffee break/ networking
11.15 hrs – 12.15 hrs	A criminal case from Sweden (Mrs Maria Johansson)
12.15 hrs – 13.15 hrs	A criminal case from Belgium (Judge Mr Jan Van den Berghe)
13.15 hrs – 14.00 hrs	Light lunch & networking
14.00 hrs – 15.15 hrs	What are the relevant factors to assess a criminal penalty in the context of Environmental Crimes? – a Judge’s view (Mr Paschalides)
15.15 hrs – 15.45 hrs	Tea & Coffee break/ networking
15.45 hrs – 16.15 hrs	Opportunity for questions/ discussion (all delegates)
16.15 hrs – 16.30 hrs	Concluding remarks & summary (Mr Rob de Rijck)
16.30 hrs	Delegates disperse
19.30 hrs (approx.)	Dinner Restaurant: “Polychoros 77”

Day 2 agenda

09.00 hrs – 09.15 hrs	Introduction including LIFE-ENPE WG3 brief overview of the day (Mrs Lina Chatziathanasiou)
09.15 hrs – 10.00 hrs	Relevant EU Directives (Dr Horst Buether) <ul style="list-style-type: none">• Air Quality Directive (10 minutes)• Eco Crime Directive (10 minutes)• Industrial Emissions Directive (25 Minutes)





10.00 hrs – 10.30 hrs	Scientific evidence used in prosecutions under legislation transposing the IE Directive (Aisling Kelly /recorded)
10.30 hrs – 11.00 hrs	Tea & Coffee break/ networking
11.00 hrs – 11.30 hrs	Impact of breaches of the IED on air quality (Dr Horst Buether)
11.30 hrs – 12.30 hrs	Example case study from WG3 Members: - <i>Romanian case study (Mr Teodor Nita)</i>
12.30 hrs – 13.30 hrs	Light lunch & networking (finger buffet)
13.30 hrs – 14.00 hrs	prosecution cases – group work (1)
14.00 hrs – 14.30 hrs	Group feedback
14.30 hrs – 15.15 hrs	prosecution cases – group work (2)
15.15 hrs – 15.45 hrs	Tea & coffee/ networking
15.45 hrs – 16.15 hrs	Group feedback followed by closure of workshop (Dr Horst Buether/ Mr Christos Naintos)
16.15 hrs	Delegates disperse

Speaker biographies

Rob de Rijck, born 1958, has been a public prosecutor from 1992. He has specialized in environmental criminal law since 2002. In this field, his special interests are in two subjects, i.e. international waste transports and the role of criminal law in the field of the environment. Presently, he is the national coordinating prosecutor in the Netherlands for environmental criminal law enforcement. He is one of the Vice-Presidents of the European Network of Prosecutors for the Environment ENPE and chairs the ENPE Working Group on Waste. He published a number of articles, and, though only occasionally, still appears in court.

Martijn Zwiers is a prosecutor at the *National Office for Serious Fraud, Environmental Crime and Asset Confiscation* and handles fraud and environmental crime cases and related confiscation procedures. Currently, he focuses primarily on cases involving animal manure and cases that necessitate cooperation with administrative authorities. Before becoming a prosecutor, he wrote a thesis on the European Public Prosecutor's Office at Maastricht University.

Maria Johansson has been working as prosecutor at the Swedish Prosecution Authority since 1993. In 2008 Maria started working with Environment Cases and is one of 22 Senior Prosecutors at the National Unit for Environmental and Working Environmental Cases. She





LIFE14 GIE/UK/000043

serves their unit in Gothenburg. Maria Johansson is together with her colleague Kristina Persson also a part of the Swedish Central National Cooperation group for cross-border waste crime and a part of their regional cooperation group for cross-border waste crime.

Mr Jan Van den Berghe was lawyer from 1985-1991 and specialized in environmental cases. In 1991 he was nominated judge in the Court of First Instance in Ghent. He deals mainly with criminal environmental cases and since 2002 he has been vice president of what is now the Court of First Instance East Flanders. From 2008-2016 he was member of the Belgian High Council of Justice. He is a founding member of TMR, the Flemish Environmental Law Review, and has published on environmental law. He is also a member of the European Forum of Judges for the Environment (EUFJE) and since 1995, has organised environmental law training for the Belgian Judicial Training Institute (open for judges, prosecutors, inspectors and police).

Mr Loucas Paschalides was born in Nicosia, Cyprus on 24.9.1983. After graduating from Lyceum in 2001 and having completed the two year mandatory military service in the National Guard, he studied law at the University of Bristol in the UK where he graduated in 2006. He then enrolled to the Bar Professional Training Course (BPTC) of England and Wales where he studied at BPP College in London and was called to the Bar of England Wales (Middle Temple Inn) in 2007. Following that, he undertook vocational training in Cyprus at the office of the Attorney General of the Republic where he was actively involved in a variety of domestic and international criminal and human rights law cases and in 2008 he was admitted to the Cyprus Bar. During his vocational training he was an elected member of the Executive Committee of the Young Lawyers and Trainees' Association of Cyprus. Shortly after qualifying to the Cyprus Bar in August 2008, he joined the litigation department of Antis Triantafyllides & Sons LLC law firm where he was an active litigation lawyer until September 2015. During his practice as a lawyer, Loucas handled several cases before the District and Supreme Court of Cyprus as well as before the Court of the European Union. On 10.9.2015 he was appointed as a District Court Judge at the District Court of Limassol where he has been presiding over criminal and civil law cases ever since. He is an elected member of the Executive Committee of the Cyprus Association of Judges Union from 2016 and represents the Cyprus Judiciary at International and European Conferences.

Dr Horst Büther is a chemist. Since 1989 he has worked at the environmental administration of North-Rhine Westphalia (NRW), Germany. After different tasks in the areas of environmental analysis, water and waste management, and pollution control he is now head of the unit for permitting and inspection of industrial installations, air quality planning, and inspection of genetic engineering facilities at the NRW Regional Government Cologne since 2007. For the last few years he has been manager of some international projects dealing with European environmental inspection duties under the umbrella of the IMPEL network. In the 'easyTools' project an integrated risk assessment method (IRAM) for inspection planning including an internet application was developed. Within IMPEL Horst is a Board member and was head of the Cluster "Improving Implementation of European Environmental Law" from 2010 until 2014. Now he is head of the IMPEL Expert Team "Industry and Air" and within this team he is managing the Project "IED Implementation".





Teodor Nita was born in Romania, Constantza county on 09.10.1965. After graduating from Military High School and Technical Radiolocation Military Faculty he studied law at the University of Bucharest in Romania where he graduated in 1991.

Between 1991-1997 he was judge at the First Instance Court in Constantza and also he graduated from The National Magistrate's Institute, and at the same time he became master of criminal law. From 1995 -2006 he was practiced in Constantza's Bar as a law attorney, specialised in criminal law. From 2006 to the present he is a prosecutor in General Prosecutor's Office attached of Court of Appeal Constantza. At the same time, he was designated expert from the European Council regarding environmental matters and he has participated in the 8 Mutual Evaluation Rounds regarding several European countries and is a supporting member of ENPE. In the last ten years he was involved in investigations of environmental crimes all around Romania's territory and has experience in the field of combating economic crimes.

Aisling Kelly is a Barrister. She is currently a Senior Prosecutor in the Office of the Director of Public Prosecution, Dublin, Ireland. She has an LL.B and M.A. from Trinity College Dublin and qualified as a Solicitor in the Law Society of Ireland in 2002. She went on to prosecute in the U.N. International Criminal Tribunal for Rwanda from 2003 - 2005 in Arusha, Tanzania. She returned to Ireland to take up a role as a Prosecutor in the DPP in Dublin from 2005 - 2015. She qualified as a Barrister-at-Law from the Honourable Society of Kings Inns in 2015 and practiced at the Bar of Ireland from 2015 - 2019. She was appointed as the Environmental Protection Agency/Bar of Ireland Fellow in Environmental Criminal Law in 2017, where she was involved in ENPE and the Working Group on Air Pollution prosecutions. She recently rejoined the DPP in Dublin and currently specialises in prosecuting serious financial crime. She has two young children and likes penguins.





LIFE14 GIE/UK/000043

delegates and speakers

Position, Organisation & country	Name
Scottish Environmental Protections Agency, Scotland (UK)	Iain Brockie
Deputy Prosecutor, Ministry of Justice, Greece	Christos D. Naintos
Chair, IMPEL, Greece	Prof Dimitris Dematras
Attorney at Law & Lecturer, Crete, Greece	Dr Georgios Smpokos
Prosecutor, Romania	Teodor Nita
Prosecutor, Romania	Jurj Remus
Barrister, Ireland	Aisling Kelly
Prosecutor, Belgium	Marc Van Cauteren
Judge, Court of First Instance, East Flanders, Belgium	Jan Van den Berghe
Senior Inspector, Croatia	Nina Jandric
Senior Inspector, Croatia	Robert Rocek
Prosecutor, Bosnia Herzegovina	Dalibor Vreco
Prosecutor, Bosnia Herzegovina	Dragana Lipovic
Specialist, IMPEL, Germany	Horst Buther
Prosecutor, Albania	Anila Leka
Prosecutor, Albania	Fatjona Memcaj
Cameraman, Netherlands	Jan Stap
District Court Judge	Mr Loucas Paschalides
Counsel of the Republic/ prosecutor- European Law Section at Attorney General's Office	Lina Chatziathanasiou
Public Prosecutor	Dafni Napoleontos
Public Prosecutor	Yiannos Argyrou
Public Prosecutor	Veni Daniilidou
Police	Charalampos Aristodimou
Police	Argyris Petrakos
Police	Andreas Andreou
Senior Environment Officer – Head of The Pollution Control and Waste Management Sector (Cyprus)	Dr Chrystalla Stylianou
Environment Officer – Limassol District Inspections Coordinator, Cyprus Focal Point for Basel Convention and Waste Shipments Regulations (Cyprus)	Demetris Demetriou
Environment Officer – Nicosia District Inspections Coordinator (Cyprus)	Andreas Athanasiades
Prosecutor, REMA, Sweden	Maria Johanssen
Prosecutor, REMA, Sweden	Kristina Persson
Project Manager, Environment Agency, England (UK)	Shaun Robinson
Environment Officer, Cyprus	Antonia Achilleos
Inspector, Department of Labour inspection, Cyprus	Michalis Hadjipetrou
Public prosecutor, Function Parkeet, Netherlands	Rob de Rijck (Chair)





Suggested pre-workshop reading

Waste Directives relevant reading

- 1. DIRECTIVE 2008/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 19 November 2008 on waste and repealing certain Directives (attached)**
- 2. DIRECTIVE 2008/99/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 19 November 2008 on the protection of the environment through criminal law
(attached)**
- 3. pages 282 – 282 and 301 – 302 in the Themis Network Action Toolkit 2017
(attached)**

Air pollution Directives and reading

1. EEA, 2017, Air Quality in Europe - 2017 report, European Environment Agency
2. EEA, 2015a, Air quality in Europe — 2015 report, EEA Report No 5/2015, European Environment Agency (<http://www.eea.europa.eu/publications/air-quality-ineurope-2015>)
3. EU, 1994, Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations (OJ L 365, 20.12.2014, p. 24–33) (CELEX:31994L0063)
4. EU, 1997, Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (OJ L 059 , 27.02.1998, pp. 1–86) (CELEX: 31997L0068).





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5. EU, 2001, Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22–30) (CELEX 32001L0081)
6. EU, 2002, Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ L 242, 10.9.2002, p. 1–15) (CELEX 32002D1600)
7. EU, 2003, Directive 2003/17/EC of the European Parliament and of the Council of 3 March 2003 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels (OJ L 76, 22.3.2003, p. 10–19) (CELEX:32003L0017)
8. EU, 2004, Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, pp. 3–16) (CELEX: 32004L0107)
9. EU, 2008, Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, pp. 1–44) (CELEX: 32008L0050)
10. EU, 2009a, Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (OJ L 140, 5.6.2009, pp. 88–113) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0088:0113:EN:PDF>)
11. EU, 2009b, Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign References Air quality in Europe (OJ L 285, 31.10.2009, pp. 10–35) (CELEX: 32009L0125)





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12. EU, 2009c, Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (OJ L 285, 31.10.2009, pp. 36–39) (CELEX: 32009L0126)
13. EU, 2010a, Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, pp. 17–119) (CELEX: 32010L0075)
14. EU, 2010b, Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, pp. 13–35) (CELEX:32010L0031)
15. EU, 2013, Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 20.12.2013, pp. 171–200) (CELEX:32013D1386)
16. EU, 2015, Directive (EU) 2015/2193 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, pp. 1–19) (CELEX:32015L2193)



LIFE-ENPE workshops

28-29 March 2019

Nicosia, Cyprus



EU FORUM OF JUDGES FOR THE ENVIRONMENT
LE FORUM DES JUGES POUR L'ENVIRONNEMENT



With the contribution of the LIFE financial instrument of the European Community



ENPE and the LIFE-ENPE Project welcomes you to the waste crimes and air pollution Working Group workshops at the Cyprus Ministry of Finance, Nicosia



EU FORUM OF JUDGES FOR THE ENVIRONMENT
LE FORUM DES Juges POUR L'ENVIRONNEMENT



With the contribution of the LIFE financial instrument of the European Community

ENPE & the LIFE-ENPE project

MR Rob de Rijck

ENPE Vice President

LIFE-ENPE Waste crimes Working Group Chair



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ENPE - The European Network of Prosecutors for the Environment



“Promote the enforcement of environmental criminal law by supporting the operational work of environmental prosecutors.”

Board:

- President: Anne Brosnan (England, UK);
- Jean-Philippe Rivaud (France), Vice President;
- Rob de Rijck (Netherlands), Vice President
- Lars Magnusson (Sweden), Director
- David Smith (Ireland), Director
- Antonio Vercher Noguera (Spain), Director

ENPE - The European Network of Prosecutors for the Environment



Formal association in Brussels by Belgian Royal Decree



Open to organisations involved in the prosecution of environmental crime as Full Members, Observers & Supporting Members

29 Members, 18 EU Member States represented

Support to realise our Mission: the LIFE-ENPE project



Funding has been provided through the European Union LIFE programme LIFE14 GIE/UK/000043

€1,072,400 provided through the European Union LIFE programme LIFE14 GIE/UK/000043 from 2015-20

A partnership between the Environment Agency (England, UK) Environmental Protection Agency (Ireland), Åklagarmyndigheten (Sweden), Openbaar Ministerie (Netherlands) and the European Union Forum of Judges for the Environment (EUFJE)



LIFE-ENPE project outputs general, 1

Baseline Capitalisation & Gap-filling Report
published and shared with 39 countries

4 Working Groups convened:

- Wildlife
- Waste
- Air pollution
- Judicial process and sanctioning

LIFE-ENPE project outputs general, 2

Crimes Database activated, used and updated

The screenshot shows a web browser window with the URL www.environmentalprosecutors.eu/crimes. The page is titled "Search Crimes" and features a navigation bar with "Home", "Current Activities", "Crimes", and "Useful Tools". A search bar and links for "My account" and "Log out" are also present.

The main content area includes a "New Cases" button and several filter sections:

- Status:** A dropdown menu currently set to "Any".
- Domestic Reference Number:** A text input field with a "Is equal to:" label.
- Type of Crime:** A dropdown menu with options: "Waste Crime", "Wildlife Crime", and "Chemical Pollution".
- Title:** A text input field with a "Is equal to:" label.
- Judgement:** A dropdown menu currently set to "Confine".
- Type of Waste:** A list of checkboxes including: "Waste", "Hazardous waste", "Household waste", "Nuclear", "Plastic/paper/glass/metal waste", "Poison", "Radioactive", "Toxic", and "Other".
- Way of Transport:** A list of checkboxes including: "Air", "Container", "Inland shipping", "Road", "Sea vessel", and "Train".
- Verdict:** A list of checkboxes including: "Fine", "Imprisonment", "Working penalty", "Acquittal", and "Other verdict".
- Direction of Transportation:** A list of checkboxes including: "Into EU", "From EU", "Within EU", "Transit through EU", "Out of EU to non OECD country", and "Out of EU to OECD country".
- Legal Entity:** A list of checkboxes including: "Legal Person", "Natural person", and "First offender".

Below the filters is a table with the following columns: Title, Attachments, Author, Judgement, Direction of Transportation, Domestic Reference Number, Legal Regime, and Status. The table contains one row of data:

Title	Attachments	Author	Judgement	Direction of Transportation	Domestic Reference Number	Legal Regime	Status
Used goods or dangerous waste? Prosecution for recovery?	Attachment Decision of the Appellate Court of Southern Sweden appealed to the Supreme Court of Sweden	Sten	19	What is waste, and what is, used goods? Compensation Guidelines for it can be a tool for the court to its decision, whether the item can be defined as waste or used goods. In this...	From EU	B 1954/12	In Progress

ENPE annual conference: Heraklion, Crete 2018



: <http://environmentalprosecutors.eu/conference2018>



EU FORUM OF JUDGES FOR THE ENVIRONMENT
LE FORUM DES Juges POUR L'ENVIRONNEMENT



With the contribution of the LIFE financial instrument of the European Community

Working Group 1 Wildlife



Working Group 1 – Wildlife Crimes Segovia workshop
Illegal taking and killing of migratory birds



37 Delegates from 15 countries including Algeria, Tunisia, Egypt, Israel and Cyprus



With the contribution of the LIFE financial instrument of the European Community

Working Group 2 Waste



Under construction : Collection of classical training materials

Under construction : webinar

EC Waste Shipment Regulations consultation



Animated introduction :

<https://design102.wistia.com/medias/d0c35f0kq3>



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With the contribution of the LIFE financial instrument of the European Community

Working Group 2 Waste



Originally focussed on Transnational Waste Movement

Now to be expanded to include illegal waste storage,
treatment and disposal : today's workshop

Please join us and invite others !



With the contribution of the LIFE financial instrument of the European Community

Working Group 3 – Air pollution



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Working Group 4

Sanctioning, Prosecution & Judicial Practices

Interim report 'Gravity Factors' 2018



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The near future



EC Environmental Compliance Assurance (ECA) program

Collaborative working on other LIFE and non-LIFE projects e.g.
Reason for Hope II, UN WASTEforce project

Europol Operational Action Plans (OAPs) 2019 – 2020 e.g. pesticides

Is Brexit really happening today ?



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Thank you.



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Cashing & Stashing

Free riding through “recycling” facilities

Martijn Zwiers

Netherlands



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Introduction; several cases

- ARCHIMEDES
- KWARTS
- STEKELHAANTJE
- John Peeters
- GANDALF

ARCHIMEDES - Edelchemie



- Non-licensed chemical waste stockpiling

KWARTS - Milieuservice Zuid

Tien miljoen kilo afval weg bij MSZ



Het terrein van Milieu Service Zuid begin augustus, voorafgaand aan de opruimactie. foto: Gemeente Maasgouw

- 10.000 tons of household waste, plastics, residual/contaminated sand



Het terrein na het weghalen van bijna tien miljoen kilo afval. foto: Gemeente Maasgouw

KWARTS – Some comments

- Coordinated criminal and administrative enforcement
- Attempt to involve the bank
- Financial investigation
- Complications due to use of different legal persons and related legal issues in asset confiscation laws

Jansen Recycling BV - Stekelhaantje

- 600.000 tons of asphalt granulate
- Negative value: 12 million euros



John Peeters Recycling

- Demolition waste, scrap metals, wood waste



Bruekers Recycling - Gandalf



- Dangerous chemical waste i.a. from photography stores



Gandalf

Complications:

- Several locations
- Empty bank accounts
- MLA required:

Chances:

- cooperation
- Indictment straightforward
- Processing of excess waste yields its own proof

Topics these cases raise

- Cashing & stashing as a business model
- Complicated legal structures
- Weak administrative enforcement
- Negative spiral: too expensive to fail
- How we investigate these cases / strategy

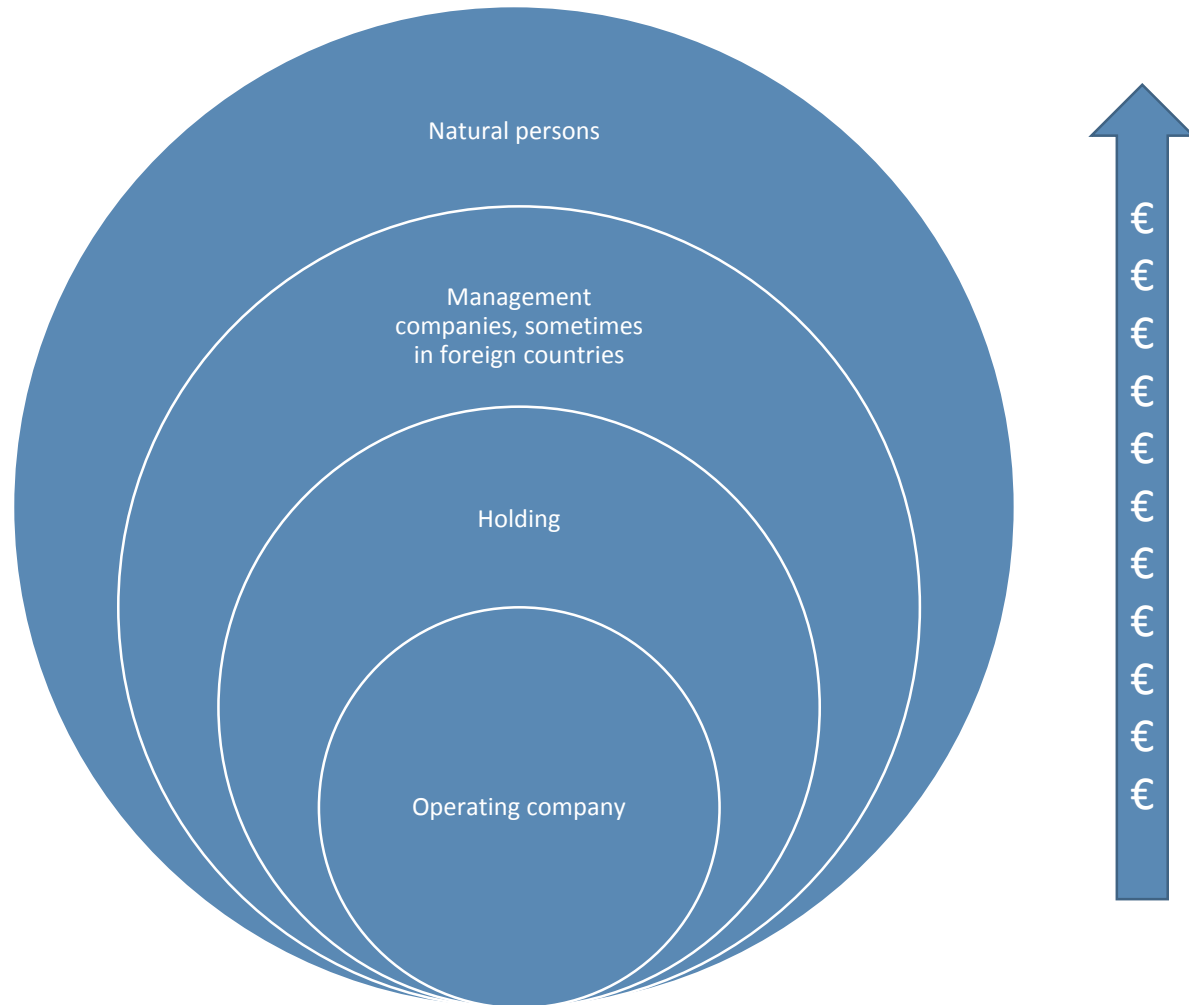
Cashing & stashing as a business model

- Low starting costs
- Subsidies
- Negative value
- No financial deterrents

Complicated legal structures

- Holding structures
- Funneling money away from operating company
- Inter-company leasing
- Securities
- International structures

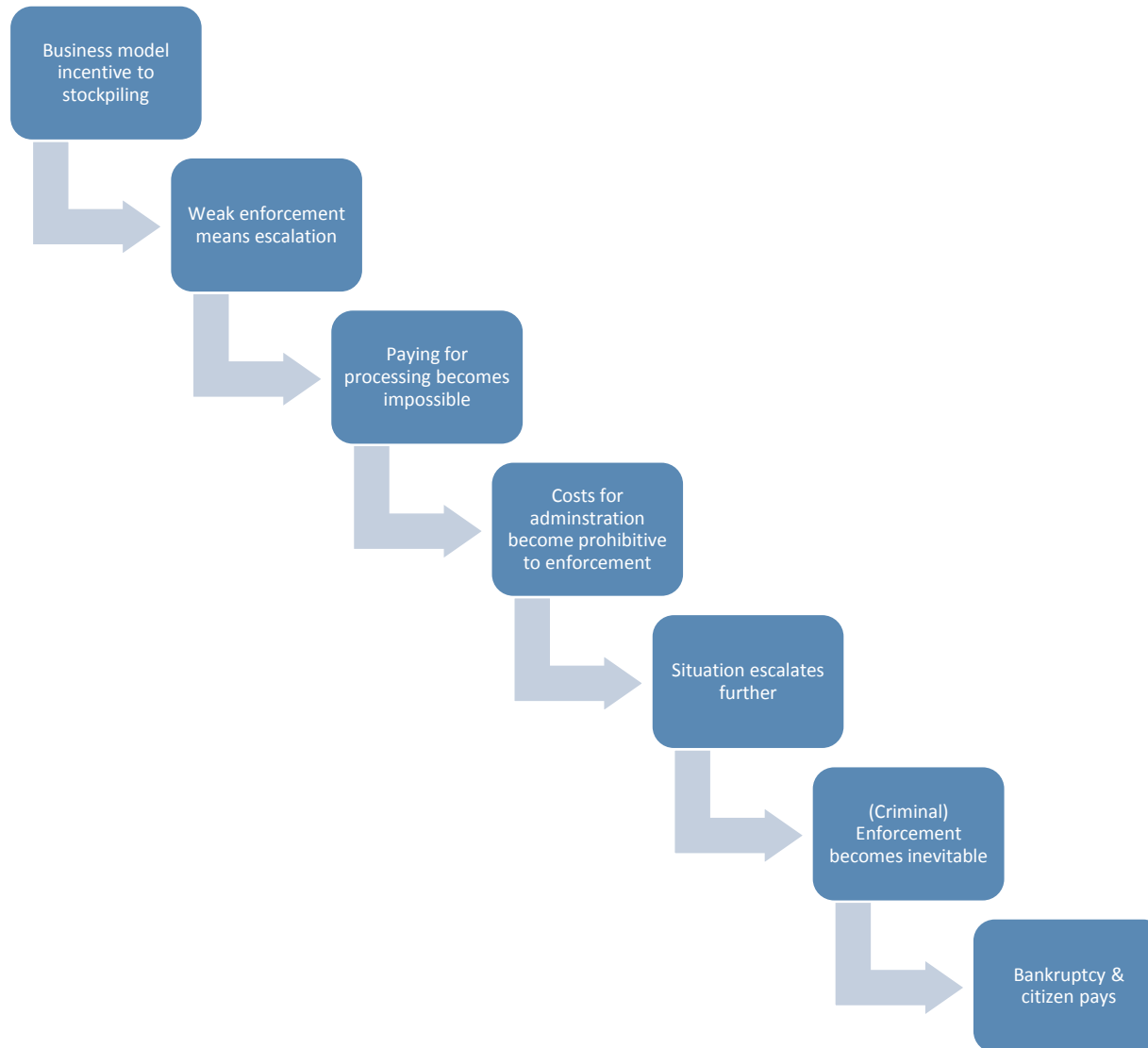
Corporate veils



Weak administrative enforcement

- Weak licensing
- Half-hearted administrative enforcement
- Fragmented administrative enforcement

Negative spiral: too expensive to fail



Investigating these cases

- My goals:
 - Finding what money there is left
 - Ending the negative spiral
 - Holding management to account

Financial investigation

- Goal: finding what money there is left
- Method: *Strafrechtelijk financieel onderzoek*

Ending negative spiral

- Search & seizure
- Sometimes: *voorlopige maatregel*
- cooperation with administration

Holding management to account

- Aim: making sure the natural persons are held to account
- Method: proving at least “passive” involvement
- Requires:
 - Piercing the corporate veil (holding structures)
 - Financial view (who profits)
 - Proving the management was or should be aware of the offences
 - Effective & dissuasive penalties

Prevention

- Reintroduction of the Regulation on providing financial security

LIFE-ENPE waste & air pollution Working Group workshops

A swedish case

Senior prosecutor Maria Johansson
Senior prosecutor Kristina Persson



ÅKLAGARMYNDIGHETEN

ENVIRONMENTAL ENFORCEMENT

Environmental Law
Supervisory Enforcement

The Administrative
Authorities

- Local
- Regional
- Central

The Court - Special Courts

- Land and Environmental Courts
- Land and Environment Court of Appeal

Environmental **Crimes** Law –
Criminal Enforcement

The Police
Conducting the
Criminal Investigation
(under supervision of
a prosecutor)



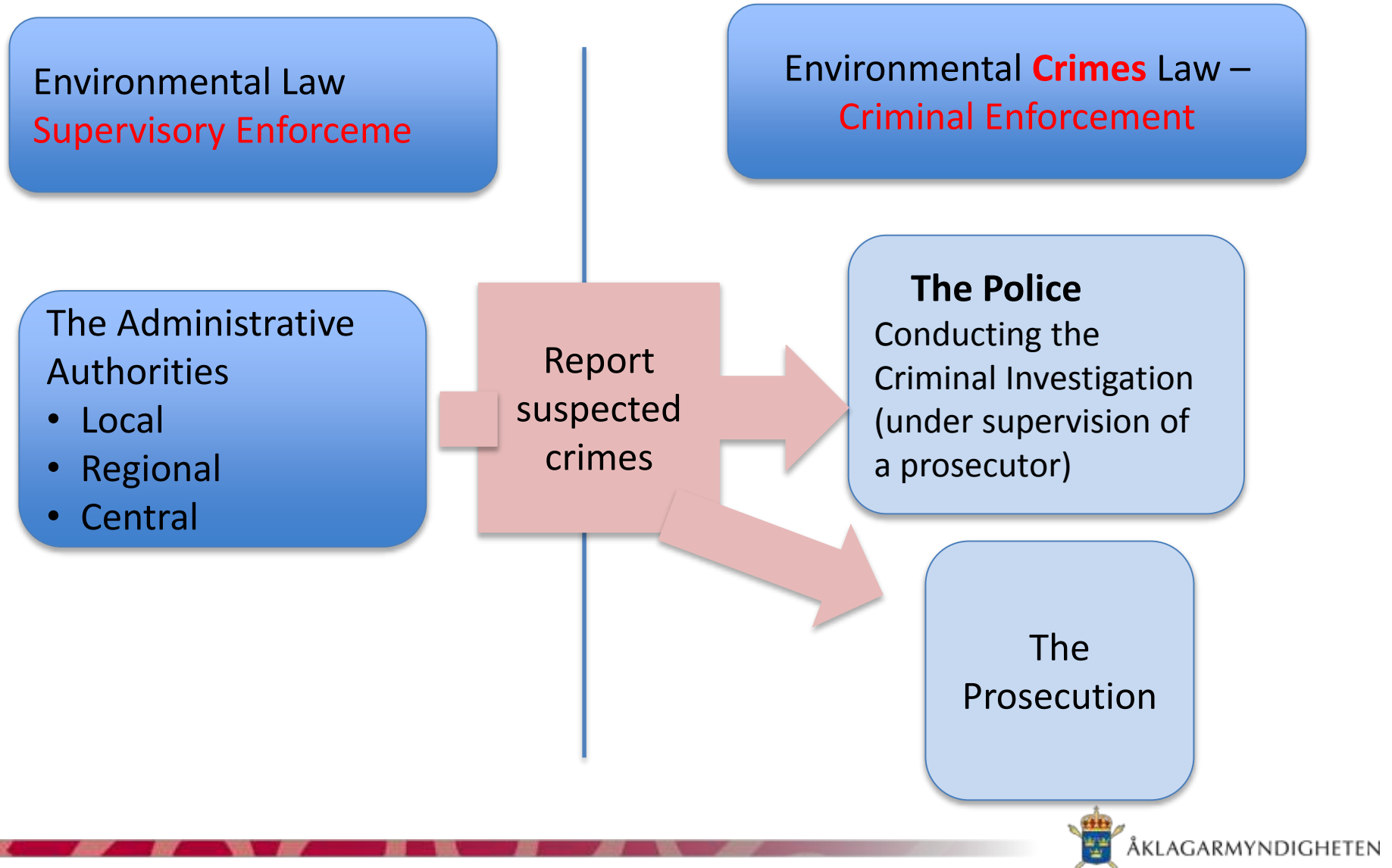
The
Prosecution



The Court - General Courts

- District Courts
- Courts of Appeal
- Suprem Court

How crimes are detected



How crimes could be detected

Police intelligence and surveillance work



Environmental Crimes

The environmental offence p. 1

Any person who **emit** to land, water or air a **substance** that causes or may cause a pollution that is considerable harmful to human health, animals or plants or other significant detriment to the environmental shall be liable to a fine or a term of imprisonment not exceeding two years.



Environmental crimes

The Environmental Offence p. 2

Any person who **stores a subject or handle waste** in a way that may cause a pollution that is considerable harmful to human health, animals or plants or other significant detriment to the environmental shall be liable for a fine or a term of imprisonment not exceeding two years.



Environmental crimes

Serious environmental offence

Particular consideration must be given to

- whether it has caused or has been able to cause lasting damage of a large scale,
- if the act has otherwise been of a particularly dangerous nature or
- has included a conscious risk-taking of a serious nature or
- if the offender, when special attention or skill was required , has been guilty of a serious blow.

The penalty shall be a term of imprisonment of not less than six months no more than six years.



Environmental crimes

Unauthorized environmental activities

Any person who starts or pursues an activity or takes some other measure without obtaining a decision concerning permissibility or a permit, approval or consent or without submitting a notification required by this Code or by rules issued in pursuance thereof shall be liable to a fine or a term of imprisonment not exceeding two years.



Penalties

Low penalty value for environmental crimes

Serious environmental crimes – verdicts with only 6 months imprisonment

Even if the act is considered to be of particularly dangerous nature



GENVAL EVALUTATION -

Obstacles in the preliminary investigation

- Secret investigation technics
- The use of all expert units in the police
 - Intelligence unit
 - Surveillance unit
 - Cyber unit
 - Forensic unit
 - Financial unit
 - Investigations



Secret investigations technics

- Secret wiretapping and camera surveillance
 - Minimum 2 years imprisonment
 - If the penal value for the crime exceeds imprisonment for two years
- Secret room interception
 - Minimum 4 years imprisonment
- Secret tele-surveillance
 - Minimum 6 month imprisonment







31/8

1/9

2-5/9

5-8/9

14/9

15/9



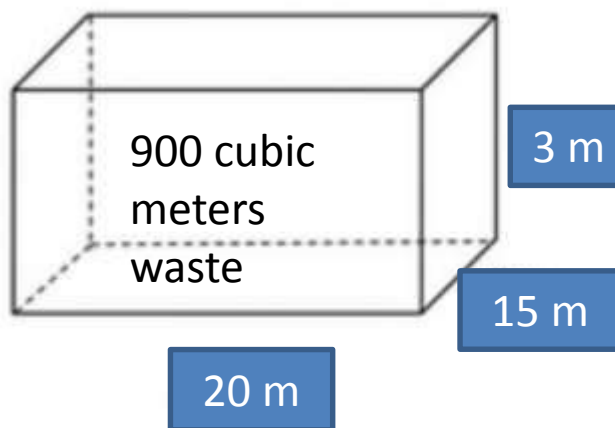
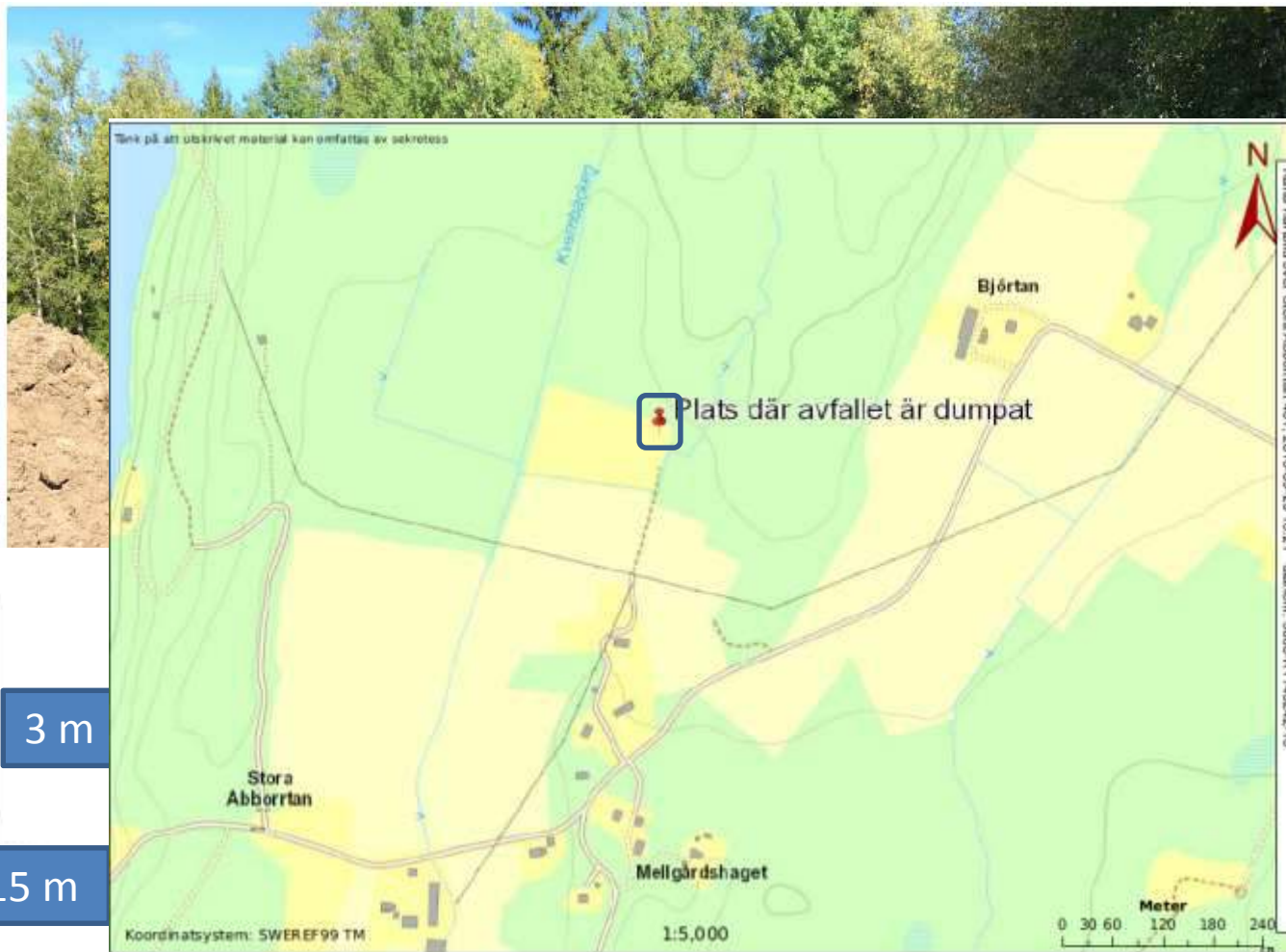
KARLSTAD

MOTALA

TORESTORP



ÅKLAGARMYNDIGHETEN



Fotografi(er) Polispatrullens bilder, 2016-09-20 10:59 diariennr: 5000-K1145242-16

Polispatrullens bilder 2016-09-16, Stora Abborrtan 104, Segerstad, Karlstad, K 1145242-16

7



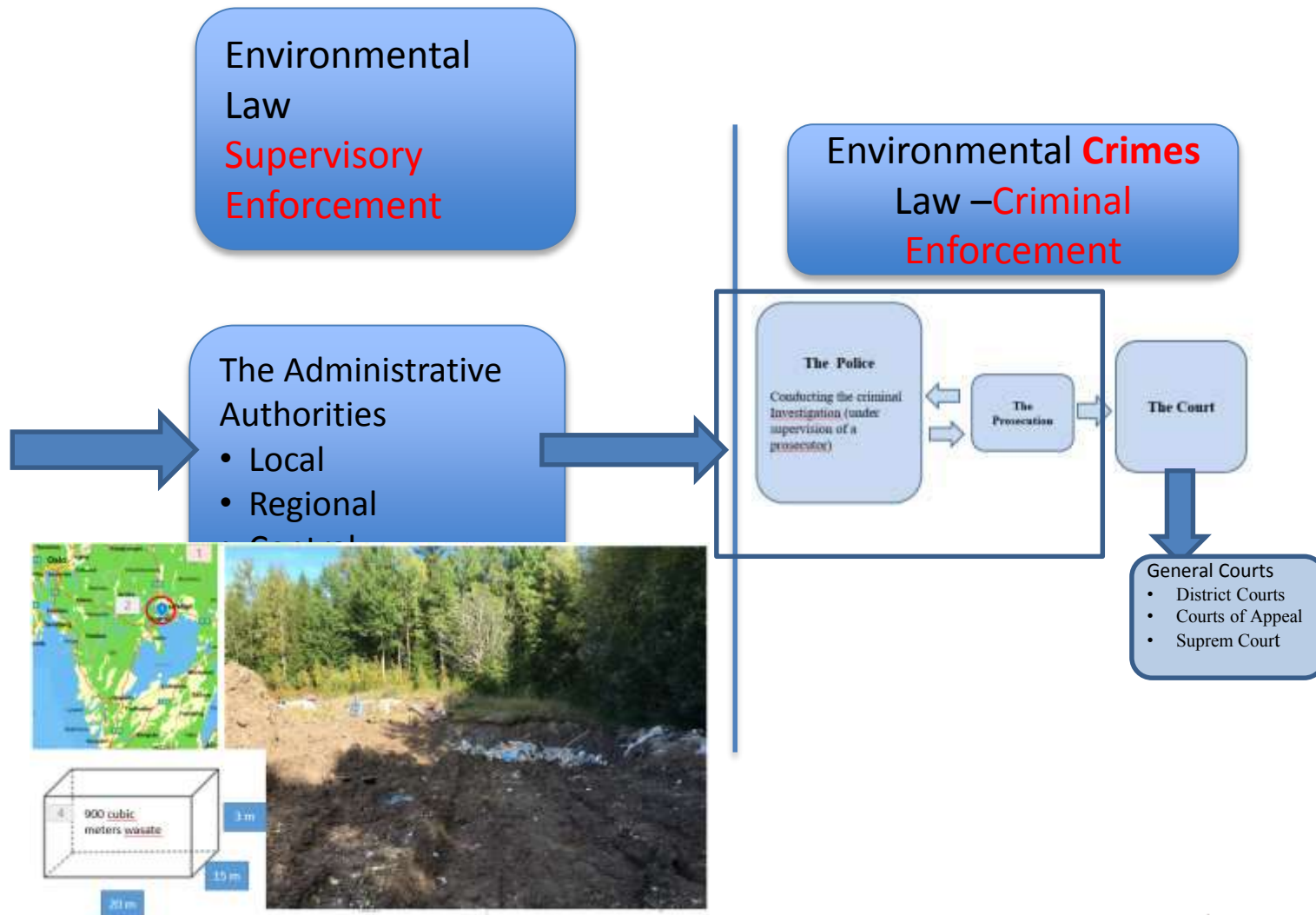
ÅKLAGARMYNDIGHETEN







ENVIRONMENTAL ENFORCEMENT







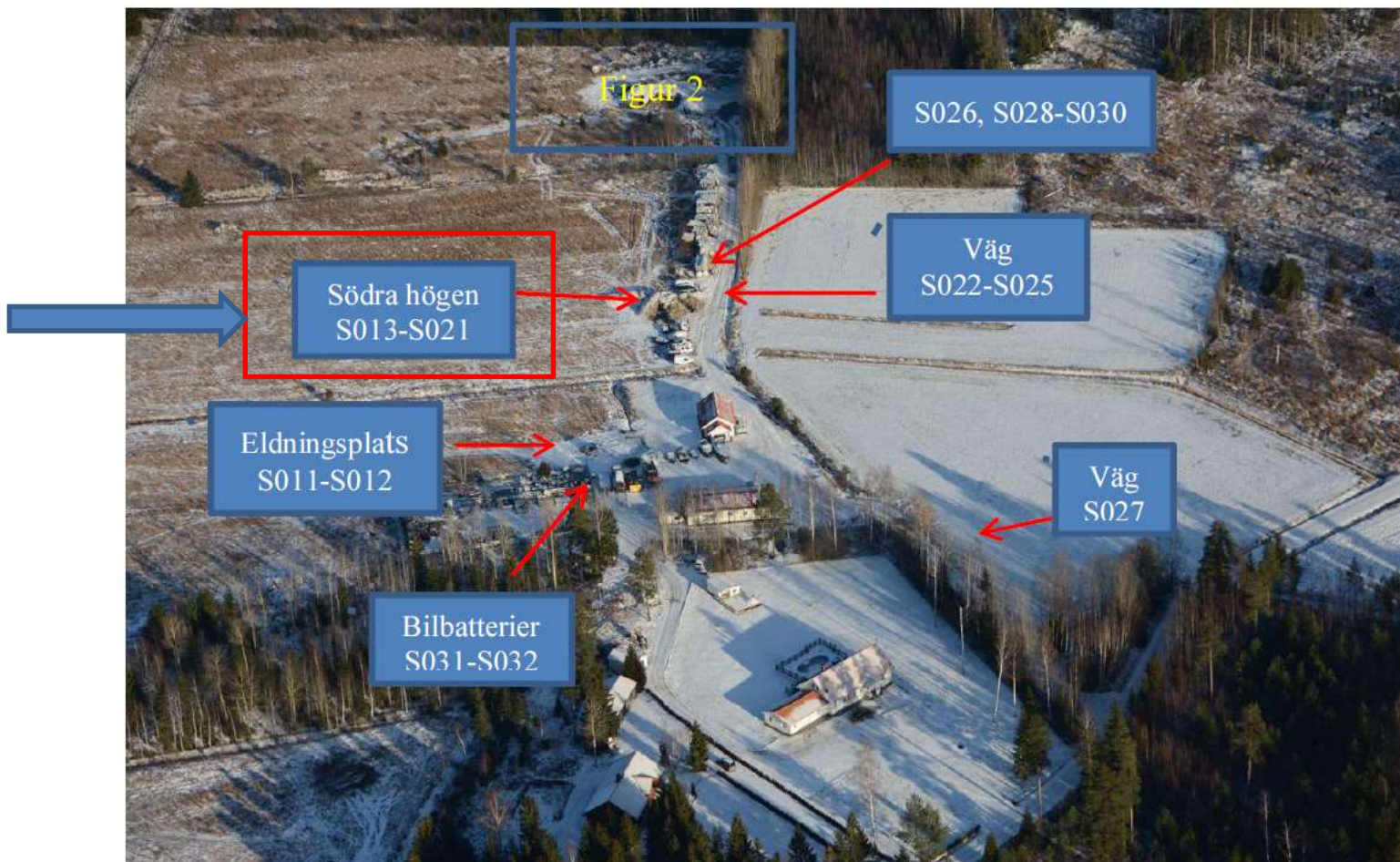
Avfall som transporterats i container från Stora Abbortan 401 till Stena Recycling.











Figur 1. Översiktsbild över Stora Abbortan 401, Segerstad. På figuren markeras de platser där respektive spår säkrats. Foto: Polisens helikopterflyg, 2017-02-07.



Figur 7. Södra högen märkt 11. Plats för säkrade spår S013-S021.

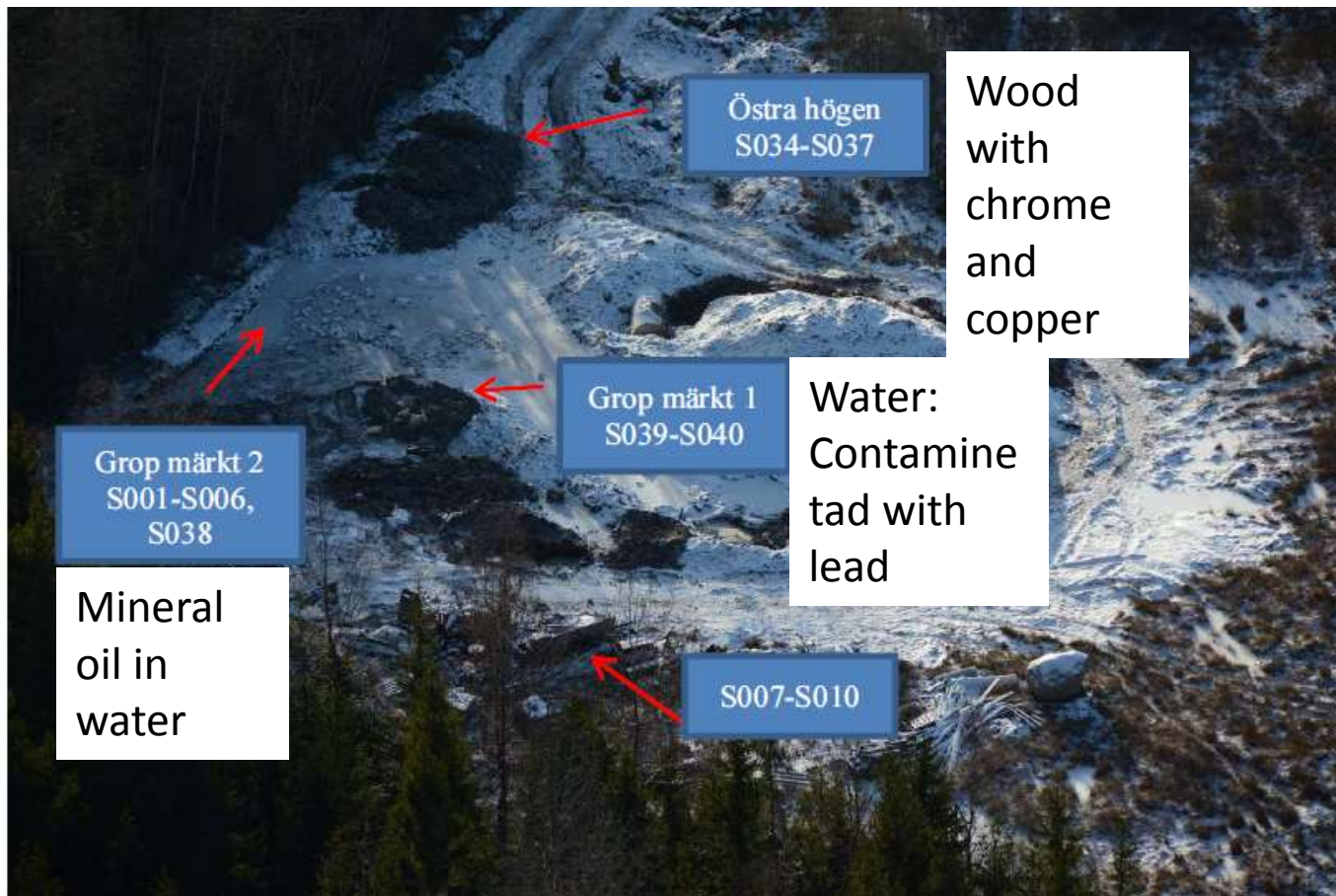


- Asbesto
- Part of a drain pip 1,52 kg lead
- Water contaminated with lead and dioxins.





Figur 1. Översiktsbild över Stora Abbortan 401, Segerstad. På figuren markeras de platser där respektive spår säkrats. Foto: Polisens helikopterflyg, 2017-02-07.



Environmental crimes

Serious environmental offence

Particular consideration must be given to

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- if the offender, when special attention or skill was required , has been guilty of a serious blow.

The penalty shall be a term of imprisonment of not less than six months no more than six years.

Foto nr 20. I innerävt i östra högen



Problems

- The first illegal waste disposal with connections to organised crimes and we were not prepared to handle it
- The need of intelligence and surveillance (secret investigation tools/penal value)
- The need of cooperation with special units such as the cyber units for analyses of mobile phones/computers and finance investigators to follow the money in timely matter
- Penal law – is it a serious crime?
- Cooperation with the supervisory authority - a big problem



*Thank you for your
attention*

Senior Prosecutor Maria Johansson
(maria.johansson@aklagare.se)

Senior Prosecutor Kristina Persson (kristina.persson@aklagare.se)



Issues to discuss

- What is the sanction value for waste dumping in other member states? (for the organisers, the receivers)
- Can secrete investigation tools be used?
- Are cyber- financial units used?
- Other important units and expertise?
- Tools to se burried waste?
- How do we cooperate with the supervisory authority to prevent that they go and talk to the criminals and distroy the investigation.



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