

Air Pollution (WG3)

Final Report

2016–2020



LIFE-ENPE Project LIFE14 GIE/UK/000043

Action B2: Working groups to improve
consistency and capacity

June 2020

Contributors: L. Chatzianathasou (joint
Chair), C. Naintos (joint Chair), A. Kelly, V.
Tarchev, T. Nita, K. Berry, G. Higgins, D.
Lipovic, L. Dempsey, H. Buther



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

List of abbreviations

COP25	2019 UN Climate Change Conference
ENPE	European Network of Prosecutors for the Environment
EU	European Union
IMPEL	European Union Network for the Implementation and Enforcement of Environmental Law
LIFE N-T	LIFE Natura Themis
MS	EU Members States
NGO	Non-governmental organisation
NHMC	Natural History Museum of Crete
WG	Working Group

Contents

1.0 Introduction	4
2.0 WG3 topics, activities and findings	6
3.0 Conclusions	10
4.0 Outreach and next steps	11
Annex 1.0 WG3 Nicosia Workshop report (provided as separate document)	
Annex 2.0 WG3 Training presentation (provided as separate document)	

1.0 Introduction

LIFE-ENPE Project Working Groups

The LIFE-ENPE project has convened four Working Groups (WGs) to build capacity and consistency in implementing EU environmental law. The WGs have a key role in meeting the overarching 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”*.

The main purpose of the WGs is to build capacity and consistency in implementing EU environmental law, with their activities forming a key preparatory Action (Action B2: Working groups to improve consistency and capacity). The WGs comprise specialists in each area of focus, the majority of whom are prosecutors, although some judges and technical specialists (non-legal) were also invited to contribute.

Over three and a half years, from December 2016 to June 2020,¹ the LIFE-ENPE WG activity has resulted in a series of awareness-raising, training and guidance outputs from the four WGs, comprising events (e.g. workshops), training packs and webinars for onward sharing and promulgation amongst all LIFE-ENPE stakeholders.

The LIFE-ENPE proposal sets out the methods² which the WGs would need to employ to achieve this, including the convening of three workshops or meetings a year, with one coinciding with the annual ENPE conference. At each, the participants would:

- *“Explore where prosecutor and judicial capacity-building is most needed and how this can be best achieved;*
- *Examine current practices across Europe;*
- *Gather practitioner views and practical examples of the management of serious and complex cases; and*
- *Identify best practice.”*

¹ Activity extended by six months due to the Covid-19 pandemic.

² LIFE14 GIE/UK 000043 Technical Application Forms Part B – technical summary and overall context of the project, p. 60.

Working Group 3

Working Group 3 (WG3 Air pollution) was convened to address non-compliance with and improve prosecution of **air pollution** in Europe. Comprising prosecutors and specialists from eight countries, over the course of the activity period (December 2016–June 2020) the group met on four occasions.

Table 1.0 LIFE-ENPE WG3 membership

Working Group member	Country	Role
Lina Chatzianathasou (Chair)	Cyprus	Prosecutor
Christos Naintos	Greece	Prosecutor
Dragana Lipovic	North Macedonia	Prosecutor
Lorna Dempsey	Ireland (Milieu consultants)	Prosecutor
Aisling Kelly	Ireland	Prosecutor
Gillian Higgins/Karen Berry	Scotland (UK)	Specialist/Prosecutor
Victor Tarchev	Bulgaria	Prosecutor
Teodor Nita	Romania	Prosecutor
Horst Buther	Germany (IMPEL)	Specialist

This WG3 Final Report provides a summary of the findings from the group's activities, which reflect the conclusions from the LIFE-ENPE (baseline) Capitalisation and Gap-filling report (LIFE-ENPE Action A1 – Cap & Gap report),³ and the results of the group's own questionnaire survey carried out in early 2017. More detail on the results and findings of these are included in the WG3 First-stage Interim Report⁴ and WG3 Second-stage Interim Report.⁵

It also presents the WG3 outputs, in the form of the training material developed and delivered by the group, and the reporting of the group's outreach activities across Europe and beyond, to meet the LIFE-ENPE project objectives and aim.

³ LIFE-ENPE Capitalisation and Gap-filling report, March 2017.

⁴ LIFE-ENPE WG3 First-stage Interim Report, December 2017.

⁵ LIFE-ENPE WG3 Second-stage Interim Report, March 2019.

2.0 WG3 topics, activities and findings

WG3 topic(s) of focus and activities

The LIFE-ENPE Capitalisation and Gap-filling (Cap & Gap) report was completed in March 2017 as a “baseline” report to describe the landscape of environmental crime prosecution and reporting in Europe. It was a key preparatory Action (Action A1) of the LIFE- ENPE project and noted that for crimes relating to chemical pollution, including air pollution:

“... (It) is challenging to identify, regulate and prosecute (those crimes) because of the need for (and often lack of) specialist knowledge within regulatory and prosecutory agencies which do not always prioritise this type of crime” (p. 5)

The group, at an early stage, reflected on its members expertise, together with specific areas of chemical pollution where European prosecutors were in need of guidance. It agreed to focus, in particular, on the prosecution of *air pollution* crimes, where it was felt that there were gaps in understanding in many countries in Europe, and where some WG members had previous experience of prosecution.

It was decided to drill down further on the situation across Europe by drafting a questionnaire for sharing with colleagues across EU Member States (MS) to establish the “landscape” of prosecution of air pollution events in Europe and what was needed by way of training and awareness-raising.

The WG3 First-stage Interim Report (March 2018) identified a series of key actions to further the work of the group, including:

1. Collating and interpreting the questionnaire survey of all MS.
2. Encouraging more air pollution crime cases to be uploaded to the ENPE crimes database.
3. Focusing the development of the group’s training and guidance on best practice methods, including identifying the most appropriate European directives and offences applicable, and on evidence gathering for cases.

The main activity for the group therefore became the development and promulgation of training and guidance relating to best practices in prosecuting air pollution. This was demonstrated in a highly successful training workshop in Nicosia in 2019 (Annex 1.0),

together with the compilation of a summary training presentation, which has been translated into 20 languages and was shared across Europe in June 2020 (Annex 2.0).

Throughout the preparation and development of the WG3 outputs it was noted that this broad area of environmental crime, in comparison to other forms of environmental crime, is possibly best understood via the *specialist scientific and practical knowledge* required to identify and investigate the crimes.

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

It was also noted that air pollution events can occur on a much larger scale – frequently transnational in nature – where atmospheric pollutants are not confined to national borders. The following recommendations were made:

1. That MS must work towards consensus on definitions and the collection of data on offences in this area of environmental harm.
2. That having established such consensus, there is a pressing need for a shared data repository covering chemical incidents across the EU.

The WG undertook a questionnaire survey of all group members and MS, carried out in the spring and early summer of 2017, to gather more information on air pollution and odour incidents and related crimes in Europe in general, including methods of their investigation. The following key findings were reported from the returned questionnaires:

- There is a lack of data available in many MS 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 MS.
- Nearly all prosecutions were heard in courts of the first instance – dissuasive sentencing is needed to address serious offences.
- The fragmented nature of environmental enforcement in some MS means that it is difficult to get conclusive data from those countries.

Following the interpretation and analysis of the results of the questionnaire survey, it was agreed that the two training topics on which the WG would focus would be: 1) the *sources* of environmental law including, specifically, applicable *European directives*, and, 2) the *evidence gathering* in prosecutions relating to cases of air pollution.

It was agreed at the WG meetings that the next steps for this WG to ensure that the project aims were met would include:

- Collate all questionnaires from the MS surveyed.
- Increase the number of cases for uploading onto the ENPE database, sharing and analysis (see WG3 First-stage Interim Report, December 2017; Annex 2.0 – example case reporting form).
- Focus training on best practice methods, including evidence gathering.
- Utilise experience within the group to deliver training at the 2018 workshop.

Awareness-raising (WG3 members)

At the second WG3 meeting, held at the Irish embassy in Sofia, Bulgaria on 30 June 2017, several presentations were delivered by WG members to raise awareness and update the group on the approaches taken towards the prosecution of crimes relating to air pollution in Europe. This meeting comprised the first key internal *awareness-raising* exercise, in which the group members updated each other on the approaches taken by the countries represented in the WG. The meeting, supplemented by presentations, further honed the development of training needs for future action:

1. A **Romanian case study**, delivered by Mr Teodor Nita, described the prosecution of the owners of a waste company regarding the expansion and development of a landfill site near Navodari that was located in close proximity to a military air base and holiday resort.
2. An **Irish case study**, presented by Ms Lorna Dempsey (Director of Public Prosecutions v Jenzosph Ltd and others), related to a landfill site with significant air pollution issues. The prosecution related to breaches of the landfill licence, with civilian witnesses called to corroborate evidence relating to odour and air pollution. Scientific evidence and use of expert witness were key factors in the case to establish the extent of impact of the pollution beyond the boundary of the site. The company was fined €20 million.
3. A **Scottish case study**, presented by Ms Karen Berry, related to a composting company that processed animal and fish carcasses. The alleged offence was that the company had breached a condition of their permit; “all emissions to air from the permitted installation shall be free from offensive odour as perceived by an authorised officer, outside the boundary.” The prosecution was taken as a last resort where the company had failed to carry out adequate checks to maintain their bio-filter. In this complex case, the evidence comprised of odour assessments from specialist inspectors. Under (UK) Scottish law, all evidence must be corroborated. Civilian witness statements were assessed to decide whether or not to prosecute, but not for the purposes of corroboration at trial. The company was convicted and fined £17,000. All participants noted that low fines are a

consistent problem across the EU, with an absence of guidance on sentencing for crimes such as this.

4. A second **case from Ireland**, presented by Ms Aisling Kelly (Director of Public Prosecutions v Chemifloc Ltd) related to a company that allowed the release of nitrogen oxide in excess of its emission limit values. The particular emission was visible as a red plume of smoke due to the high concentration of nitrogen oxide.

All of the cases presented demonstrated the need for specific guidance on evidence gathering for cases involving air pollution in Europe.

Discussion focused on how national courts in MS jurisdictions assess damage in environmental cases. The general consensus from Ireland, Bulgaria and Scotland was that expert reports are submitted, expert evidence is called if contested, and then the court assesses the damage having regard to the evidence.

The need for expert input, and understanding this input, was further noted in the discussions.

Training: Nicosia Workshop, 29 March 2019

It was agreed that a training workshop for prosecutors dealing with air pollution in Europe would be a valuable and necessary key training output for WG3 to deliver as part of meeting the group's LIFE-ENPE objectives. The one-day workshop would provide an introduction and background to prosecuting air pollution, including the discussion of cases from different countries. Its objectives were:

- 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 of crimes.

The workshop was convened as the second day of a two-day event held at the end of March 2019 at the Ministry of Finance, Nicosia (see Annex 1.0). It comprised a combination of training presentations and group exercises undertaken by delegates, delivered by experienced prosecutors and specialists. It was attended by 34 delegates representing 13 different countries. For more details, including all the training presentations in pdf format, please see Annex 1.0.

3.0 Conclusions

Using a thorough approach to identifying an appropriate topic area of focus, the work of WG3 has ensured that tackling the prosecution of air pollution in Europe has a common set of introductory training materials for specialists to use. These materials outline applicable EU directives, specialist techniques and useful case studies that can be shared among prosecutors and others involved in the prosecution of air pollution in Europe.

The final reporting for all WGs, as set out in the LIFE-ENPE project proposal, needs to comprise:

- A suite of training material(s) for prosecutors.
- Dissemination of outputs to prosecuting organisations in 30+ states.
- Dissemination of training materials through the website with 50+ hits per month.
- Delivery of training via seminars, webinars and third-party organisations to at least 20 organisations by end of project.
- A final report (including training materials) by 28 February 2020 (deliverable).

In carrying out its activities over the last three years, WG3 has met all of the above requirements and in most cases exceeded the figures in the metrics.

Furthermore, through the provision of training that is focused largely on the practical steps that need to be taken in prosecuting air pollution crimes, in particular which EU directives are most applicable, the group has started to instil consistency in how these crimes are prosecuted.

In addition, the reference to scientific techniques and terminology and the use of specialist interpretation have provided valuable assistance to prosecutors in their understanding of how such cases need to be prepared and presented.

4.0 Outreach and next steps

The LIFE-ENPE project is based on sharing information and best practice for dissemination. Developing the awareness-raising and training outputs from the four WGs, and their onward promulgation through outreach activities to end-users, are key elements to the completion of Action B2.

Table 2.0 lists the outreach activities undertaken by WG3 during its period of activities (December 2016–June 2020), with more than 1,700 delegates directly or indirectly in receipt of specialist training developed and promulgated by the group and its members.

Where applicable, WG3 members have collaborated with and contributed to related but separate projects and initiatives, such as Dr Horst Buther's contribution on urban air pollution to the UN COP25 conference on climate change,⁶ in the wider context of meeting the LIFE-ENPE B2 objectives and the overarching LIFE-ENPE project aim.

It is expected that ENPE aisbl will continue as a network beyond the end of the LIFE-ENPE project, with a similar format of specialist working groups involved in specific technical areas of environmental crime prosecution.⁷ More widely, ENPE hopes to be involved in the EU Zero Pollution Action Plan, part of the EU Green Deal,⁸ which is a roadmap for making the EU's economy sustainable.

There remains much to be done in the development of guidance on air pollution prosecution, in particular the collation and making available of applicable case studies and European case law.

A possible opportunity may be the focus on a particular type of air pollution or pollutant, depending on the requirements and needs of stakeholders and end users. For example, increasing concern around greenhouse gas emissions, e.g. arising from the domestic combustion of fossil fuels in cities in northern Europe, would merit further examination, covering the related regulations, illegal activities and associated prosecution.

The LIFE-ENPE air pollution WG has worked hard over the last three and half years and it is hoped that the group can continue with its valuable work.

⁶ 13–14 December 2019, Madrid, Spain.

⁷ LIFE-ENPE After-LIFE report, July 2020.

⁸ https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

Table 2.0 LIFE-ENPE WG3 Summary of outreach activities 2017–2020

Key including number of delegates trained/recipients of awareness-raising or guidance

	Training/awareness-raising shared passively with stakeholders; number in receipt of training: 1000+ (est.)
	Training/awareness-raising delivered directly to delegates face to face; number in receipt of training: 655
	Training/awareness-raising delivered 'virtually', e.g. by webinar; number in receipt of training: 40
	Meeting where WG3 training/awareness-raising outputs discussed or shared; number present: 0

Date of communication	Communication type	Nature of communication/event title	Who met with/sent/spoke/presented on behalf of the WG?	Who was present at the meeting/event/received copies (include number of delegates)?	What was said/delivered on behalf of the WG?
12 and 13 May 2016	Workshops/ Events/Media	ENPE Annual conference (Action B3) as part of EU Networks Conference, Utrecht	All ENPE Board	192 delegates – environmental crime professionals from Europe and beyond	Presentation in plenary session outlining WG3 aims and objectives and future activity (Lorna Dempsey).
05 December 2016	Workshops/ Events/Media	THEMIS National training on "Environmental law enforcement and environmental crime", North Macedonia	Shaun Robinson (SR) (Darko Blinkov presented on behalf of ENPE)	Multinational group of 40 representatives judges; prosecutors; police and customs officers; academic experts; NGOs; environmental inspectors	Summary ENPE presentation including LIFE-ENPE project WG activity

Date of communication	Communication type	Nature of communication/event title	Who met with/sent/spoke/presented on behalf of the WG?	Who was present at the meeting/event/received copies (include number of delegates)?	What was said/delivered on behalf of the WG?
20–21 September 2017	Workshops/ Events/Media	EU Environmental Crime Enforcement Networks Conference; Magdalen College, Oxford	ENPE aisbl and LIFE-ENPE Board members, ENPE members and observers	155 delegates from around Europe and the World, comprising prosecutors, judges, police and other enforcement professionals	LIFE-ENPE WGs presented updates as required (Lorna Dempsey for WG3).
30 October–1 Nov 2017	Workshops/ Events/Media	Seminar on interventions and interactions of public bodies in the fight against environmental crime including a meeting with the Latin American Network of Environmental Public Prosecutors Offices (REDEMPA)	Anne Brosnan (AB)	Senior representatives of police, judiciary and prosecutors from France and Latin America (40 approx.)	This seminar gave ENPE an international profile and highlighted the important work we are doing to counter environmental crime, in particular transboundary crime such as waste shipments, so that a joined-up approach can be taken with overseas partners. WG activities were also covered.
23-24 October 2018	Workshops/ Events/Media	ENPE Annual conference – joint event with LIFE RfH, LIFE N-T, IMPEL Water crimes at NHMC, Heraklion	All ENPE Board, LIFE-ENPE Board, 17 members, 14 WG members	104 specialists including water crimes expert group	ENPE hosted (AB chaired), all WG chairs presented updates (Christos Naintos for WG3).
28-29 March 2019	Workshops/ Events/Media	LIFE-ENPE WG2 and WG3 waste and air pollution crime workshops, Nicosia, Cyprus	Rob de Rijck (Chair), SR (facilitator), Jan Van den Berghe (speaker), WG2 and WG3 (delegates and speakers)	34 delegates including Attorney General for Cyprus, judges, prosecutors, inspectors, police, specialists. IMPEL Chair and air quality lead also present	WG2 and WG3 were introduced in the context of the LIFE-ENPE project and wider ENPE aisbl organisation. Various ongoing references to ENPE during presentations and breakout sessions. Report and filmed presentations due to be shared for promulgation.

Date of communication	Communication type	Nature of communication/event title	Who met with/sent/spoke/presented on behalf of the WG?	Who was present at the meeting/event/received copies (include number of delegates)?	What was said/delivered on behalf of the WG?
28–30 October 2019	Workshops/ Events/Media	ENPE Annual conference in conjunction with Eurojust	All ENPE Board members (apart from J-P Rivaud), SR and LIFE-ENPE Board members	100 delegates from all over Europe and beyond; 32 countries represented; 65 different organisations involved in prosecuting environmental crimes	All LIFE-ENPE WG updates and outputs (x4); animation training (WG2) shared; general updating of all ENPE activities.
13 December 2019	Workshops/ Events/Media	UN Climate Change COP25 conference Madrid	Antonio Vercher Noguera, Rob de Rijck and Dr Horst Buther	Global participants/delegates; ENPE members invited/presenting; articles in Spanish national press (El Mundo) and radio RE2; approx. 30	ENPE included in preamble to some breakout sessions (x3) including WG3 air (urban) pollution.
June 2020	Articles/ Training shared	WG3 summary training presentation on prosecution of air pollution crimes	All WG3 members	All ENPE and WG3 members with specialist prosecutors in Romania (200), Greece (65 offices and 19 courts of appeal); Lithuania (650 prosecutors); North Macedonia (50+); confirmed	ENPE role and activities summarised and included in the introduction.

Date of communication	Communication type	Nature of communication/event title	Who met with/ sent/spoke/ presented on behalf of the WG?	Who was present at the meeting/ event/received copies (include number of delegates)?	What was said/delivered on behalf of the WG?
				1,000+ recipients across 20 jurisdictions	
June 2020	Articles/ Training shared	WG3 summary training presentation on prosecution of air pollution crimes	All WG3 members	All EU countries, including those not ENPE members; related LIFE funded projects (x2)	ENPE role and activities summarised and included in the introduction.

Annex 1.0 WG3 Nicosia Workshop report (provided as separate document)

Annex 2.0 WG3 Training presentation (provided as separate document)

© Crown copyright 2020

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request.



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