

European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



ENPE newsletter - Issue 14

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Message from ENPE President Anne Brosnan

Dear Colleagues,

We hope you and your loved ones continue to stay safe and well. Although the global Covid-19 pandemic is not over yet, the good news of vaccines being administered across Europe means that we are able to go about our day to day business much more safely, and we can look forward to some return to normality soon. For now though, the restrictions have meant that we have had to shift our work to online/ virtual sessions. This has proved challenging and rewarding in equal measure but overall we have had some good feedback and high levels of attendance at recent events. You will read below about some of the exciting events we have participated in and it has been a real delight to see some familiar faces, if only on screen.



I was really pleased that ENPE was involved with the Four Networks Day (4ND) conference recently. More of this below. Our relationships with colleagues in the other networks are immensely valuable and our collaboration is the best possible way to ensure that we are all focussed on the fight against environmental crime. Whilst collaborating together we can all make the most of our respective specialisms. It makes it so much easier when you have an idea of who to contact in another jurisdiction in the event of an unforeseen difficulty, or know who might be able to help with a contact in another country, and can find out whether or not there might be any guidance in another jurisdiction or another forum bearing on the issue you are grappling with. Indeed, our case study for this issue, provided by ENPE Director Antonio Vercher, shows the importance of collaborative working between enforcement authorities, which resulted in a positive outcome following initial investigations into possible Covid-19 restriction breaches, in Italy, as detailed below.

The pandemic has shown us that we really must understand our place in the environment and value our ecosystem. No longer can we take anything for granted. When we can return to some semblance of normality we must ensure that we take forward the lessons we have learnt. That may involve more remote working, less travelling and more on line meetings. But it will also involve valuing our friends and colleagues and our face to face contact so much more. Shaun and I would like to thank all of you who have supported our work during this difficult time and we look forward to seeing you in Florence, Italy in Spring 2022.

Best wishes Anne Brosnan ENPE President and Shaun Robinson Project Manager.



Four Networks Conference Day 21 May 2021 – virtual event

The Covid-19 pandemic has resulted in the postponement of the proposed Four Networks Environmental Crime enforcement conference. This was originally planned for Italy in September 2020, but has now been postponed to May 2022. However, the networks agreed that an event was needed in the meantime with a virtual “Four Networks Conference Day” organised and hosted on 21 May 2021. With the valuable support of the LIFE SATEC project, the online event, moderated by ENPE President Anne Brosnan, was a great success with **over 180 online delegates** comprising inspectors, regulators, police officers, prosecutors and judges attending. The conference theme was one of collaboration under the banner “**Together in the fight against environmental crime**”.

After two successful joint ‘face-to-face’ conferences, in Utrecht in 2016 and Oxford in 2017, the Four Networks - IMPEL, EnviCrimeNet, ENPE, and EUFJE, jointly hosted the event with the overall **aim** of improving the implementation and enforcement of environmental law. The opportunity was taken to consider how we might further join forces, bringing regulators, inspectors, police officers, prosecutors and judges together. The 4 Networks day concentrated on **two key topics**:

- **the revision of the Directive 2008/99/EC on environmental crime** (see below for ENPE’s position) and;
- **the next EU multi-annual Policy Cycle to tackle Serious and Organised International Crime (2022-2025).**

In the afternoon, participants could elect to attend one of five parallel, case-oriented workshops. These covered the evaluation of ecological damages in court (BIOVAL); the Shipment of Waste Enforcement Actions (SWEAP); Illegal plastic waste shipments, investigating and prosecutions Wildlife crime; ‘F-gasses’ regulation and biodiesel fraud.

We were well represented at the event, with ENPE Vice President Rob de Rijck updating delegates about our key work activities and proposals for the future. We also hosted and reported back from a workshop focussing on aspects of enforcement against Wildlife Crime. Colleagues from the LIFE programme-funded SWiPE project (LINK), to which ENPE contributes as a member of the Expert Steering Group, presented two interesting case studies on successful Wildlife crime prosecution in Romania and Spain. These presentations were given by representatives of two NGOs with whom we have worked closely, namely Dr Iain Trewby of Fauna and Flora International and Laura Moreno of WWF the World Wildlife Fund.

The event, was a partner event during the EU The [EU Green Week](#) (1-4 June 2021) which will be dedicated to its “Zero Pollution ambition”, which also implies better environmental enforcement. For more information, including access to the agreed joint statements issued by the Four Networks, please see (LINK).

News from the European Commission – ECD review

In early February 2021 DG JUSTICE of the EU Commission launched a public consultation to receive the views of the general public and of interested stakeholder on various options for revising the **Environmental Crime Directive**



(2008/99 EC). Published in all EU languages, the consultation was open for 12 weeks, ending on 4 May : <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12779-Improving-environmental-protection-through-criminal-law>

This important Directive requires EU Member States to treat certain activities that damage the environment as criminal offences, for instance trading endangered species, destroying protected habitats, illegally producing, manufacturing or handling nuclear materials or any other radioactive substances, and excessive water, air or soil pollution. An earlier public consultation, held in 2019, indicated that the Directive did not meet expectations, hence this consultation by the Commission in order to improve the effectiveness of the Environmental Crime Directive.

The ECD is a critical pillar in the fight against environmental crime, it was very important that ENPE provided a considered, detailed and representative submission for this consultation. A dedicated Working Group was set up, comprising 8 ENPE organisation member representatives and individual members, including three Board Directors, from across Europe. We were represented by Ireland, the UK, the Netherlands, Poland, the Czech Republic, Hungary, Romania and Italy which illustrates the breadth of our network.

The submission was made on 30 April, and is available as a pdf to download here:
<https://www.environmentalprosecutors.eu/recent-activities>

EU Green Week 31 May- 04 June 2021

This year's EU Green Week, [Home | EU Green Week 2021](#) running from 31 May – 05 June 2021, has focussed on the EU's Zero Pollution Ambition with a series of events, including workshops and plenary sessions showcasing all the initiatives and activities from across Europe being undertaken to achieve this important aim. ENPE President, Anne Brosnan presented the findings of the Four Networks Conference Day (21 May 2021), including the Joint Statement at the Environmental Compliance Governance Forum on 2 June, alongside Judge Els Van Die from EUFJE and Lt Colonel Ondrej Koporec from EnvirCrimeNet.

EU LIFE Programme awards ceremony 02 JUNE 2021

As a recipient of the EU LIFE programmes funding for Information and Governance projects, for our 2015-20 LIFE-ENPE project, we were pleased to attend to the recent LIFE Awards Ceremony, as a part of the EU Green Week on 02 June 2021. These awards recognise the most innovative, inspirational and effective LIFE projects in the fields of nature protection, environment, and climate action. The 15 finalists were picked from the many hundreds of projects from across Europe and winners chosen by a panel of expert jury members. There was also an opportunity for the general public to vote on the Citizen's Prize, where the overall favourite could be voted for from across all finalists. For more information, please see: [LIFE awards ceremony | EU Green Week 2021](#)

ENPE annual awards - the 'Gaia' statuette

We are delighted to announce the inauguration of the annual ENPE "Gaia" awards. The awards, in the



form of the Greek Goddess 'Gaia' (Mother Earth) will be made in recognition of outstanding contribution to fighting environmental crime. There may be further categories in due course and if you wish to suggest a category where you feel that an award should be made please do get in touch

with Shaun. More details will follow, including the criteria for judges, and when and how the awards will be presented, but for now, we have included some pictures of how the awards have been crafted. The bronze statuettes, have been designed and cast in Heraklion Crete



and are the result of an idea that was conceived in 2019 during a coffee break at the ENPE annual conference held in conjunction with Eurojust at their headquarters in The Hague, Netherlands.



The previous year's ENPE (2018) annual conference for "Protecting habitats and endangered species in EU", was held at the Natural History Museum of Crete and hosted by our colleagues at the LIFE NATURA THEMIS project. Dr Jorgos Sbokos, NATURA THEMIS project Coordinator (also an Environmental Lawyer and sculptor) had noted the wide-ranging work that was presented at the conference and raised the possibility of an award, given by ENPE to mark outstanding contribution to fighting environmental crime. Anne and Shaun both agreed that this was an idea worth pursuing, and Jorgos set to work with his sculptor friend, Yannis Kelesis, in designing and casting these beautiful sculptures. We look forward to presenting them to some deserving recipients at our annual conferences for many years to come!

ENPE Networking

Joint training event – Environmental crime for Judges in Georgia, February 2021



We recently undertook a training session on line with colleagues from EUFJE which was arranged in conjunction with the NGO Fauna and Flora International and the Georgian High School of Justice.



Judge Jan Van Den Berghe took delegates through a case study involving the killing and taking of birds in Belgium and how this was dealt with by the courts. We were pleased to involve one of our supporting members, the Crown Prosecution Service of England and Wales who assisted the session by putting forward a senior prosecutor, Mr Paul Stimson, who gave a presentation about two CITES cases which had been investigated and prosecuted in the UK. The training covered the Birds and Habitats Directive, CITES legislation and processes and international conventions on protection of the environment. We spent some time discussing the Natura 2000 network which is aligned with the Emerald Network in Georgia, a non EU state.

UNODC Legislative guide on combatting waste trafficking

ENPE President Anne Brosnan participated in this important on line global workshop to offer the prosecutors viewpoint from



UNODC

United Nations Office on Drugs and Crime

ENPE on penalties and sentencing, at an online event organised by the United Nations Office on Drugs and Crime on 14 April 2021. The discussions were varied and interesting, with participation from specialist delegates from as far afield as Chile, China, the USA and Europe.

ENPE contributing to the WasteForce project

The Wasteforce project aims to boost the operations activities and capacities of authorities involved in the fight against illegal trade and management of waste. ENPE Vice-President Rob de Rijck and ENPE Waste Working Group member and Senior Lawyer Howard McCann of the Environment Agency in England have both continued with their important contributions through on-line delivery of training on behalf of ENPE, to the WasteForce project <https://www.wasteforceproject.eu/>. Howard recently delivered training from 27-29 April 2021 to delegates on combatting international illegal shipments of waste. This training was very well attended and well-received, and replaced planned events in Munster, Germany.

French Society of Judges and Magistrates for the Environment

We are advised by our International Vice President Jean-Philippe Rivaud that some 165 French judges and prosecutors, including the General prosecutor of Paris, Mrs Catherine CHAMPRENAULT, are about to establish the "**Association française des magistrats pour le droit de l'environnement et le droit de la santé environnementale - AFME**", otherwise "The French society of judges and prosecutors for environmental law and environmental health law". The nascent organisation is taking steps to finalise its statutes and bylaws as a non-profitable organisation which will be officially established on 5 June (UNEP's World Environment Day). We are pleased to say that the new organisation will become a partner to ENPE thanks to the good auspices of Jean-Philippe Rivaud.

FRONTEX online seminar on environmental crime



hosted an online seminar as part of the EU Green Week for the Justice and Home Affairs Agencies on 01 June 2021.

Aisling Kelly, Senior Prosecutor, Ireland Office of the Director of Public Prosecutor, and an ENPE Board Member and Treasurer, presented a fascinating case study on poaching of a brown bear in Romania to the main plenary session. Aisling's case focussed on cross-border collaborative and co-operative working in tackling environmental crime, and her presentation was very well received. Please see below in the 'interesting cases' section of this newsletter for more details.

IUCN WCEL Developing Effective Strategies for Environmental Compliance and Enforcement – A virtual seminar 02 June 2021

ENPE President Anne Brosnan was one of four key speakers at the recent International Union for Conservation of Nature and World Commission on Environmental Law (IUCN-WCEL) webinar discussing effective strategies for environmental compliance and enforcement. With her experience of leading ENPE, a prosecutors' network focussing on environmental enforcement, Anne participated in a round table discussion on how we can implement and apply environmental laws more effectively, given the current global challenges we all face, including the Covid-19 pandemic. Anne noted three key factors contributing to a global environmental compliance disconnect:

- a lack of political will and leadership (described elsewhere as 'resolve');
- failure to understand and value the importance of our ecosystems and the wider environment, and
- a lack of resources directed at protecting the environment.

All of the speakers encouraged delegates to do more to develop effective strategies to fight environmental crime, at every level, but particularly at an international level, to improve the current global situation and strengthen environmental crime enforcement.

The webinar was chaired by Professor Nick Bryner of the University of Louisiana, Deputy Chair, IUCN World Commission on Environmental Law. It was introduced by Mr Justice Antonio Benjamin who will be very well known to many of our members as Chair, IUCN World Commission on Environmental Law.

FRONTEX, the European Border and Coastguard Agency organised and

Other speakers were :

Professor Alejandra Rabasa, Centre for Constitutional Studies. Supreme Court of Justice of Mexico, Chair, IUCN-WCEL Compliance and Enforcement Specialist Group;

Justice Damaris Vargas Vásquez, Corte Suprema de Justicia de Costa Rica (Supreme Court of Costa Rica);

Scott Fulton, President, Environmental Law Institute

The seminar was well attended with some 100 delegates on line. There were some very thought-provoking discussions and comments.

For more information, including links to other events please see: IUCN WCEL Environment Week | IUCN

Interesting Cases

Covid-19 breach investigation at Italian restaurant results in rare songbird discovery



The Italian military wildlife police (Carabinieri Forestali) were shocked to discover dozens of protected songbirds, including rare finches, when investigating a possible coronavirus breach in central Italy.

After tip-off and a visit to some government buildings, officers found a meal taking place with the fried birds concealed ready to be eaten, under the table.

Depending on the charges brought against the guests, the fines could amount to €2,000 per guest. For more details please see: [On the Menu at a Lunch in Italy: Protected Songbirds - The New York Times \(nytimes.com\)](https://www.nytimes.com/2021/04/20/science/italy-songbirds-coronavirus.html)

(Image of 'bramblings in flight' taken from article in the New York Times, 20/04/2021)

FRONTEX Case study in prosecuting cross-border environmental offences – poaching in Romania

At the Frontex conference during EU Green Week, ENPE was asked to present on the challenges to cross border prosecutions of environmental cases. Aisling Kelly, ENPE Treasurer and Senior Prosecutor & Deputy Head, Special Financial Crime Unit, Office of the Director of Public Prosecutions Ireland, chose to focus on the current allegation against a high profile individual of the Liechtenstein royal family. They were recently accused of shooting Romania's largest wild bear, in contravention of the Habitats Directive. Romania had transposed this into national law and there is a ban there of this type of 'trophy hunting'.

The large carnivore, named Arthur, was shot in the Carpathian mountains of Romania. This interesting and challenging case, which is ongoing, has required extensive co-operation and collaboration between enforcement agencies from different jurisdictions: [slide below taken from A Kelly 2021]: Ms Kelly has no professional involvement in the prosecution of this case but thought it a useful example which illustrates the difficulties of cross border investigation and prosecution.

Jurisdictional issues

- Location of offence → Romania
- Nationality of suspect → Liechtensteiner
- Residence of suspect → Austria
- Permit company → German
- Witnesses → Romanian
- Prosecutor → Romanian Environmental Guard

A number of important pre-charging and pre-trial issues needed to be considered in order to progress the case including the need to locate and interview the suspect and witnesses. The suspect and witnesses are spread over four different jurisdictions. The fact that Liechtenstein is not a party to the European Arrest Warrant Framework Decision of 2002 was one difficulty identified. It is of course party to the European Convention on Mutual Legal Assistance on Criminal Matters.

Another difficulty identified was the various different

types of restrictions on the use of Mutual Legal Assistance Treaty (MLAT) evidence. Some countries require double criminality before they will assist any foreign request for prosecution, either pre charge or at trial. The difficulty with environmental crimes is that they are frequently not uniformly categorized as serious offences in different countries. So in the brown bear case, it may be the proposed offence is failure to have the required hunting permit or derogation, or acting outside the terms of the existing permit. Sometimes these types of offences attract only a financial penalty. In some countries this may not even be a criminal offence, but rather an administrative one. As mentioned, in order to obtain the benefit of these international treaties on cross border prosecution there is generally a need for the requesting country and the country where the suspect or witnesses live to prove approximate equivalent criminal statutory provisions. In this case, before Lichtenstein or Austrian surrenders the suspect there must be double criminality of the proposed offence. This means the Romanian authorities must prove that there is an equivalent Lichtenstein or Austrian offence which mirrors the Romanian offence for which they want to prosecute. They also must show that the offence attracts a minimum sentence of either 12 months minimum sentence for the EAW request or four years for the MLAT video link requests.

All of this means that while we may have international legal instruments on our respective statute books, which promise that cross border cooperation is a given, it doesn't actually mean in practice that these cases are easy or straightforward! Sometimes a Prosecutor must really be motivated to do the extra work required in order to get these cases to court in the first place

ENPE website crimes database

We continue to encourage submissions for inclusion on the ENPE crimes database. The database is part of the ENPE website <https://www.environmentalprosecutors.eu/> and is building a collection of case law for all three ENPE working group subject areas (wildlife crime, waste crime & air pollution). The database is of a non-operational character and concerned with legal aspects only. Names of defendants and other identifying information are left out. Because the main function of the database is supporting the ENPE network of prosecutors, access to it is not public, but is subject to authorisation by ENPE. Environmental prosecutors in Europe are invited to request an authorisation - please contact Rob de Rijck or Lars Magnusson on r.de.rijck@om.nl or Lars.Magnusson@aklagare.se. Case law, with identifying details omitted and together with the relevant database keywords and a summary in English, can be submitted via the national ENPE contact points.

Contact

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Please do visit our website: www.environmentalprosecutors.eu

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