

European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



ENPE newsletter - Issue 17

26 May 2022

Message from ENPE President Anne Brosnan

Dear Colleagues,

This is our first newsletter of 2022, our 17th edition overall, and is issued at a time of significant international uncertainty. The invasion of Ukraine has affected us all, in particular our ENPE members who live and work in that part of the world. We wish them great strength and resilience and they remain in our thoughts at this very difficult time.

We continue to be inspired by the ongoing work of our members and stakeholders in the prosecution of environmental crime, something that continues in the face of all manner of adversity.

The recent European Conference of Prosecutors, in Palermo in May 2022, paid tribute to the sacrifice of Sicilian prosecuting magistrates Giovanni Falcone and Paolo Borsellino who were assassinated by the Mafia 30 years ago for



conducting criminal proceedings against their illegal activities. We honour their commitment to their office and their sacrifice. We are grateful to the Council of Europe for organising this important event and asking ENPE to lead the session on environmental crime. We find that serious and organised crime groups are moving into our area of work and we are committed to doing everything we can to tackle them.

The Bunker Court for Mafia trials in Palermo Sicily is pictured left

Our training activities haven't stopped, with ENPE representatives contributing to many collaborative 'hybrid' (combining 'virtual' and 'face-to-face' presentation) events with

the United Nations Environment Programme (UNEP), Fauna and Flora International (FFI) and INTERPOL, amongst others. These are proving to be both efficient and successful as we all embrace new ways of working. We welcome suggestions from our members as to any other areas where they would value training and support.

We are very pleased to welcome new ENPE members from Romania and Italy as our network continues to grow with our total membership numbers now at 50 organisations and individuals, including Observers.

Looking forward, we are pleased to report that we have entered into a Framework Partnership Agreement with the EU Commission to support ENPE activities. We have secured funding for the next phase of our work and for the maintenance of our secretariat as set out in more detail below. Work is in hand to finalise plans for the next programme of activities for the network. These include the re-convening of several Working Groups, where we would value ENPE member participation. Please see the articles below for more details. The relaxation of travel restrictions in many parts of Europe and the wider world as the Codiv-19 virus subsides means that face-to-face events are back on the agenda, so we hope to see some of you soon.

We invite you all to **Save the Date** for our **AGM on 30 September 2022**, which will be held in conjunction with Eurojust at **The Hague, Netherlands** and will include a celebration of our 10-year anniversary, some liaison with other European and International networks, as well as an opportunity for all our ENPE members to help shape our activities over the next three years.

We hope that you all stay safe and well.

Anne Brosnan ENPE President and Shaun Robinson ENPE Project Manager.

The next phase “ENPE II - Network for Environmental Governance and Information for Prosecutors”

We are delighted to announce that the funding for the next phase of ENPE – “*ENPE II Network for Environmental Governance and Information for Prosecutors*” was recently formally approved by our colleagues at the (EU) Directorate General for Environment (DG ENV).

Our activities will be framed by an over-arching Framework Partnership Agreement (FPA) signed with DG ENV, with funding provided in dedicated streams aligned to specific operational tasks via grants. This means we should be fully funded until the end of 2024 in the first instance. We are very grateful to DG ENV for this ongoing support and look forward to continuing our fruitful relationship with them over the coming years.

As with our LIFE-ENPE project, a key aspect of this second programme of work will be the convening of specialist ENPE Working Groups to develop training and guidance to strengthen the fight against environmental crime. The groups will comprise prosecutors and specialists and be responsible for developing and delivering the training and guidance, in multiple formats, to assist our colleagues across Europe and beyond. Our three broad areas of interest for the working groups to be convened under ENPE II are:

- *Wildlife crime* (general);
- *Waste crime* (including *Illegal Pesticides*); and
- *Pollution*, including discharges to air water and land linked to Climate Change.

In order for these groups to be effective and for the outputs to be meaningful, we will need to focus on subjects that our membership agree are high priority. There will be an opportunity for discussion and feedback on this at our AGM on 30 September in The Hague. We would also like to invite volunteers to join the groups and attend three or four meetings per year (mostly ‘hybrid’ type). At the meetings, the groups will draft training documents and guidance, organise training and capacity building events and agree the best ways to promulgate the findings as widely as possible.

We are particularly interested in prosecutors with experience, however limited, in the three subject areas listed above. All travel, accommodation and subsistence costs, where applicable, will be covered.

Please contact shaun.robinson@environment-agency.gov.uk for more details and to express your interest in participation.

Board meeting Scotland House, Brussels 29 April 2022

ENPE President Anne Brosnan chaired our first face-to-face Board meeting for two years at our registered office in Scotland House, Brussels on 29 April 2022.

As is now so often the case, as well as offering face-to-face attendance, the meeting used a virtual platform to provide a 'blended' hybrid meeting which enabled as many of our Board members as possible to participate. It was well received by Board Members and it was very nice to catch up with everyone involved, including our colleagues at Scotland House.

We discussed our financial position and structure. We also welcomed new ENPE supporting members from Italy, Dr Paolo Gubinelli, and Romania, Prof Jurj Remus. The Romanian National Environmental Protection Agency joined as an Observer, as our network continues to expand.

ENPE represented at the Italian Prosecutor General's Office at the Supreme Court's 'European Conference of Prosecutors', 5-6 May 2022, Palermo, Sicily.

This important conference was organised jointly by the Council of Europe, through the Consultative Council of European Prosecutors (CCPE), with the Italian Ministry of Justice and Italian Ministry of Foreign Affairs and International Cooperation, in the framework of the Italian Presidency of the Committee of Ministers of the Council of Europe.

It brought together high-level prosecutors from all Council of Europe member states and observer states to share their perspectives and challenges concerning the independence and accountability of public prosecutors, while taking into account the existing systems rooted in different legal cultures.

The main topic was the independence and accountability of Public Prosecutors. However, Anne Brosnan, ENPE President, chaired a special session entitled **"INVESTIGATING AND PROSECUTING ENVIRONMENTAL CRIMES: OVERCOMING OBSTACLES AND ENSURING AN EFFECTIVE ROLE FOR PROSECUTORS"** held at the Norman Palace, Hall, Palermo in Sicily.



ENPE Board member, Mr. Antonio Vercher Noguera, as CCPE President, gave a presentation on **"THE ROLE OF PROSECUTORS IN THE PROTECTION OF ENVIRONMENT."**

In addition, Mr. Rob de Rijck, ENPE Vice-President and Deputy Federal Prosecutor, the Netherlands, pictured above delivering his presentation, focused on the **TRANS-FRONTIER SHIPMENT OF WASTE.**

Mr. Pasquale Fimiani, Advocate General of the Prosecutor's General Office at the Supreme Court, Italy and the ENPE representative for the Italian Environmental Network of Prosecutors General, provided an intervention relating to obstacles and solutions to enforcement actions including an effective role for prosecutors.



Mr Jean-Philippe Rivaud, ENPE International Vice-President (pictured left) was also in attendance, representing the French environmental prosecution cadre. All ENPE participants agreed that the conference was a success and they were very pleased to have been invited to take part.

ENPE Board Member Dr Antonio Vercher Noguera awarded public service accolade and voted in for second time as President of CCPE

We are very pleased to report that our ENPE Board Member and representative for the State Attorney General's Office of Spain, Dr Antonio Vercher Noguera, has been recognised with an award for his "outstanding professionalism and commitment" in his work in prosecuting environmental crime. Antonio is pictured below receiving the award at the 2022 Squadron event, held in Girona, Northern Spain.



Photos courtesy of A Vercher & twitter @fiscal_es

Antonio has also been voted in for the second consecutive year as President of the Consultative Council for European Prosecutors (CCPE).

The CCPE is a body reporting to the Committee of Ministers for the of the Council of Europe, and its work is in keeping with the implementation of Recommendation Rec (2000)19 on the Role of Public Prosecution in the Criminal Justice System, with the aim of developing common political and judicial instruments relating to the functioning and professional activities of prosecutors (taken from the CCPE website). It can include providing opinion of other Council of Europe bodies and promotion of the implementation of Rec (2000)19.

The Council's work is very relevant to the wider work of ENPE and our members, and we greatly appreciate Antonio's significant involvement in this important organisation.

News from the European Commission

Making the polluter pay: Commission seeks views on EU environmental liability laws



On May 12, the Commission has launched an [open public consultation](#) as part of the evaluation of the [Environmental Liability Directive \(ELD\)](#), the EU framework to prevent and remedy damage to land, water and biodiversity based on the 'polluter pays' principle. Under the Directive, operators have a legal responsibility to prevent and restore any environmental damage caused by their activities. The public consultation is open for feedback until 4 August 2022. [article from DG ENV website 12 May 2022]

ENPE AGM and ENPE annual awards - the 'Gaia' statuette; 'Save the Date' - 30 September 2022

This year we are excited to confirm that our ENPE Annual General Meeting (AGM) will be held as a hybrid event on **30 September at Eurojust Headquarters in The Hague, Netherlands**. We are grateful to our colleagues at Eurojust for once again hosting an ENPE event at their conference facilities in The Hague, following our successful joint conference in 2019, and we ask that all ENPE members and observers Save the Date, to get as many of you attending as possible.

The AGM will be followed by an informal workshop to (hopefully!) agree on the specific content of our Working Groups, convened to tackle high priority areas of environmental crime. As set out above, we are looking for topics within wildlife crime, waste crime and crimes related to pollution and we will be seeking volunteers to join these groups.

In volunteering to participate in the ENPE working groups, we anticipate being able to assist with all reasonable travel, subsistence and accommodation costs on order for members to attend meetings, workshops and other training events. The time commitment is usually no more than 8-10 days per calendar year.

We announced the inauguration of the annual ENPE “Gaia” awards in our June 2021 newsletter and are pleased to update you on the nomination process. The awards, in the form of the Greek Goddess ‘Gaia’ (the Greek Goddess ‘Mother Earth’), will be made at our event on 30 September after the AGM in The Hague and are in recognition of outstanding contribution to fighting environmental crime. The three categories of award have now been agreed and will comprise:

1) *Overall contribution in the fight against Environmental Crime*, the “main” ENPE Gaia award, where nominees must be ENPE members;

2) *Environmental case of the year* where nominations can include any environmental crime case where ENPE member organisations or individuals, including Observer members, have participated in the prosecution; and

3) *Innovation and/ or excellence in combatting Environmental Crime*, an award which will focus on the work of recently qualified prosecutors who are either ENPE members or associates of ENPE members.

All nominations are made by ENPE members and observers with adjudication to be completed by the Gaia awards judges panel comprising representatives from five ENPE member organisations.

The judging panel, comprising five full member organisation representatives, is being convened at the moment and we invite applications from our membership to sit on this panel. If you are interested in applying, please contact shaun.robinson@environment-agency.gov.uk

Winners will be notified in good time beforehand and we welcome acceptance speeches but, unlike the Oscars, they must be limited to 5 minutes in duration...!!



Italian Constitution amended to include environmental and health protection: A model for Europe [Article from: Lancet Regional Health Europe – Volume 16 May 2022]

On February 8th, the Italian Parliament finally approved the amendment to the Article 9 of the Constitution declaring that “The Republic promotes the development of culture and scientific/technical research, protects environment, biodiversity and ecosystems, also in the interest of future generations; the laws of the State will regulate the forms of animals protection”. In this way, the Parliament has reformulated the previous Article 9 of the Constitution, which generically included the protection of “landscape”. Also, the crucial Article 41, concerning the freedom of economic initiative, was modified as follows: “Private

economic initiative is free. It cannot take place in conflict with social utility or when damaging safety, freedom, human dignity, health and environment. The law provides appropriate programs and controls, so that public and private economic activities can be directed and coordinated for social and environmental purposes.

Link for more details: [https://www.thelancet.com/journals/lanepe/article/PIIS2666-7762\(22\)00060-6/fulltext](https://www.thelancet.com/journals/lanepe/article/PIIS2666-7762(22)00060-6/fulltext)

ENPE outreach

Training & capacity building with partner organisations & projects

Netherlands and Austrian Mission Programme Training Initiative

Rob de Rijck, ENPE Vice-President and a Senior Prosecutor was part of a select group of specialists from prosecuting organisations and academic institutions from Netherlands and Austria delivering training on prosecuting environmental crime as part of their joint 'Mission Programme Training initiative'.

This is a two-year twinning programme which aims to strengthen the enforcement of environmental crime in both countries.

Rob presented at two events - on January 28 (virtual) and on April 25 (live in Vienna) 2022. His session was on environmental criminal law for Austrian judges and prosecutors and Rob focused on the dilemmas and questions in investigating and prosecuting environmental criminal cases.

UNEP Waste Shipment training Africa and South-East Asia

Howard McCann, a senior lawyer specialising in Transfrontier Shipments of Waste (TFS) prosecutions based at the Environment Agency, England, has also been involved in providing training on behalf of ENPE at virtual events for delegates from Africa and Asia. The first event, held in early November, was organised by the United Nations Environment Programme and was to train prosecutors and inspectors tackling these crimes in Rwanda. The second was organised and broadcast from Bangkok under the auspices of the WasteForce project. Both were very well received.

Fauna & Flora International & Defra (UK Government) joint training of Georgian judiciary

For the second successive year, the Environment Agency of England and representatives from the (England and Wales) Crown Prosecution Service (CPS) delivered training on tackling wildlife crime to Georgian judges and prosecutors via a virtual training event organised and hosted by Fauna and Flora

International (FFI) and the UK Government Department for Food and Rural Affairs (DEFRA). The event was a real success focussing on case studies involving the prosecution of those persecuting raptors in England, as well as setting out best practices to follow in environmental and wildlife cases.



Photo courtesy of CPS England and Wales (UK)

ENPE represented at the OPFA conference on the use of drones against illegal waste trafficking.

Drones Against illicit waste trafficking 15 – 17 March 2022, Soave, Italy [P Stark, EA, 24/05/22]



Our colleagues at the Operational Facility for Fighting Illicit Waste Trafficking project (OPFA) project organised a highly successful and well-attended conference focussing on the use of drones in the fight against illegal waste activities in Soave, Italy from 15-17 March 2022.

It was reported at the conference that Organised Crime Groups (OCGs) from across Europe were very active in these illegal activities which provided huge financial gains through avoiding correct regulatory procedures. Furthermore, global factors such

as the China plastic ban and war in Ukraine had exacerbated the situation with a greater need for understanding of economics and influence at UK and European level which drives criminal behaviour. Waste commodity prices, shipping, fuel and rail freight prices will all influence waste crime behaviour as well as debts and financial status of waste producers.



A greater need for standardised data for shipment of waste across Europe to assist with intelligence led mapping and analysis of waste movements for legitimate and illegal crime detection purposes was identified, but there were still compatibility issues between Member States which hamper European-wide working to prevent and disrupt waste crime.

Some solutions put forward included:

- Better tracking systems for waste between countries (European or Worldwide tracking databases would help);
- Interpol “Days of action” across Europe are effective at targeting waste crime and other related illegal activity, (e.g. fraudulent documentation, drugs, weapons, money laundering, people trafficking) and illegal waste movements with better external reporting of days of action and using drones to demonstrate extent of issues as a prevention and disruption tactic;
- Greater checks and standards needed for waste brokers, Europe-wide;.
- Need for greater financial penalties, sentencing powers for waste crime in Europe, prevention and disruption can play its part;
- Some new EU legislation planned – Seizure of profits Directive 2025.
- Regions in Italy have used aeroplane and photogrammetry surveys which have then been analysed using Artificial Intelligence (AI) models to identify illegal waste sites which can then be checked on the ground. AI models have shown great accuracy and identified new or existing target sites to inspect;
- Need for greater private sector engagement (using legitimate waste operators), charities and organisations in help regulators deal with crime in the waste sector;
- More consistent methodologies for inspections at ports/ import/ export borders in relation to waste. Inconsistencies in methodologies and data reporting for waste are enabling crime in the waste sector.
- Drones are being used widely to assist with illegal waste crime investigations, prevention and disruption and using the associated software to map piles and volumetric levels of waste on sites;
- Drones are allowing authorities to assess unsafe buildings used for illegal waste activities, large and extensive waste sites without compromising officer safety.
- Multiple drone flights and hydrogen fuel cells are being used by some European partners providing longer flight time and capability and more accurate reporting;
- Drones can be fitted with specific sensors to detect chemical releases and pollution and reduce risks to investigators.
- Drone images are provide compelling evidence for investigation proceedings.

As with other innovative technologies and techniques, there are shared learning opportunities across Europe with Police forces and authorities having established their own ‘drone teams’ and sharing best practices in this useful tool in the fight against waste crime. Going forward we look forward to hearing more from our OPFA colleagues in this emerging and fast-changing area of operational waste regulation.

Our thanks go to Peter Stark, Enforcement Team Leader, Environment Agency (England) who attended on behalf of ENPE and prepared this article for us. For more information please contact Peter at:

peter.stark@environment-agency.gov.uk

Interesting Cases

Ship-owner sentenced to 6 months in prison for attempted illegal ship scrapping

Gulating Court of Appeal has upheld the conviction of a 56-year-old businessman from Sunnhordland, Norway, who had been sentenced to 6 months in prison for having contributed to the export of the vessel Tide Carrier.

Case details provided by ENPE member OKOKRIM, Norway.

Published 22 March 2022

Updated 28 March 2022

The District Court sentenced the man to 6 months in prison for contributing to export waste in violation of the Pollution Control Act. The Court of Appeal found it proven that the vessel was destined for Gadani, Pakistan, to be scrapped on the beach there, and that the contribution made by the defendant resulted in considerable cost and time savings in the export of the ship.

"This is the first time a Norwegian enterprise or individual has been convicted of involvement with scrapping of obsolete vessels on the beaches of South Asia. Such scrapping, known as beaching, is a major international pollution problem. As a major ship-owning nation, it is important that Norwegian authorities help combat this problem," says Police Prosecutor Maria Bache Dahl.

Waste export is subject to strict regulations, both in Norway and internationally. The aim is to prevent rich countries from sending their waste to poor countries that lack satisfactory systems for handling it. Beaching means running the ship up on a beach under its own power and then dismantling it in the intertidal zone. The method is characterised by unsafe handling of hazardous waste and resulting pollution of soil and water. Beaching is also characterised by unsafe working practices and serious accidents, and exploitation of migrant workers and child labour have been reported.

"The Court of Appeal found that whether the owner sold the ship directly to a scrapper on the beach at Gadani, or to a middleman and thereby contributing to the export and scrapping of the ship, made little difference as regards whether or not the act merited punishment. Selling the vessel to a middleman who has specialised in scrapping is a common method when beaching vessels, and it is worth noting that this may, depending on the circumstances, be punishable in Norway," says Bache Dahl.

The judgment was not unanimous, with two of the judges voting to acquit the ship-owner. The judgment is not yet final and enforceable.

For any questions about the judgment, contact:

Police Prosecutor Maria Bache Dahl +47 905 19 092. kommunikasjon.okokrim@politiet.no
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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

For all queries, please contact Shaun Robinson, ENPE aisbl secretariat and LIFE-ENPE project manager at: shaun.robison@environment-agency.gov.uk Mob:+44 (0)7771 940690

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Co-funded by the
European Union