

# European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



## ENPE newsletter Brexit special

July 2016

### UK Votes to leave EU

The UK referendum on took place 23 June 2016 on whether the UK should remain within or leave the European Union. The British people voted to leave the European Union. This is a historic and momentous decision. There will be no immediate changes on the ground. A long period of negotiation lies ahead. The UK will remain a member of the EU until certain complex processes and negotiations have taken place. EU laws and policies in the UK will continue to apply until, by law, they cease to have effect.

The Environment Agency is a participant in ENPE and the co-ordinating beneficiary of the LIFE funded project. Currently, our LIFE funding is agreed for the full term of our ENPE programme, and this will be the position until we have instructions otherwise. In that context, we are committed to delivering our actions as planned - delivering our work stream actions in full and completing the preparatory work for future phases as set out in the agreed bid.

### ENPE President Jonathan Robinson

Farewell to ENPE President Jonathan Robinson

ENPE president Jonathan Robinson is leaving the Environment Agency in England and our network, at the end of July, to move to New Zealand where he will take up the post of Deputy Chief Parliamentary Counsel. ENPE will continue to be managed by its Board. Anne Brosnan who is Chief Prosecutor at the Environment Agency will step up to become chair of ENPE until new arrangements are put in place.



The other members of the ENPE Board are :

Lars Magnusson, Sweden – Secretary General

Lorna Dempsey, Ireland – Treasurer

Luc de Mot, Belgium – Vice President

Jean Philipp Rivaud, France – International Vice President

Rob de Rijck, the Netherlands – Vice President

Shaun Robinson, UK – Project Manager

Jonathan says “It’s been a huge privilege and a pleasure to work with colleagues from across Europe, from the European Commission, from Eurojust, and from the judges’ network EUFJE, in setting up ENPE. It has been a fabulous collaboration. With its strong Board and membership I know that ENPE will flourish, to enhance the role prosecutors can play in protecting the European environment. I will miss friends in the network, and wish you all well for the future.”

## EU Environmental Enforcement Networks Conference



On 12 and 13 May, in the magnificent surroundings of the Dom Church in Utrecht, ENPE joined with three other European environment networks to host a conference on environmental enforcement. Collaborating with other networks, representing environmental judges, inspectors and police officers, marks a significant step in ‘completing the chain’ in effective environmental enforcement.

At an extremely interesting and successful conference we were joined by 194 participants from 35 countries across Europe together with a number of representatives from our key partner, the European Commission and Eurojust.

This conference provided a forum to highlight common challenges, share case studies and identify practical solutions. It was also a valuable opportunity to meet other prosecutors and strengthen transnational ties in the fight against environmental crime. We look forward to welcoming as many of you as possible to our next conference, plans for which are already afoot. We are considering the possibility of further joint conferences between the networks. Watch this space for further news!

## **TECUM**

The University of Oxford is undertaking an important new research project, TECUM, looking at law enforcement using satellite technologies. The aim is to assess the value of these technologies in regulatory monitoring programmes connected primarily to fisheries and environmental laws, but also all other legal/monitoring applications for satellite technologies.

By ascertaining what applications of satellite technologies there are across the world, this project should identify where best practice is occurring and where other prosecution agencies can learn from their peers. Lead researcher, Ray Purdy would be extremely grateful to hear from readers in response to the following:

1. Has your Government/Agency used satellite data in regulatory monitoring programmes or individual cases (and if so for what applications)?
2. Have they used any satellite imagery in courts as evidence (and was it successful)?

Please contact Ray at: [ray.purdy@oxford.ac.uk](mailto:ray.purdy@oxford.ac.uk)

## DOTCOM Waste

Readers who were able to attend the Enforcement Networks Conference will have heard the presentation from DOTCOM Waste. This is a new initiative to increase capabilities of authorities to fight cross-border waste crime more cost effectively. It will develop a training toolkit, including educational materials and practical operational tools and will deliver multidisciplinary training sessions involving European, Chinese and West-African practitioners on specific aspects of illegal waste-related activities.



Environmental prosecutors and judges are some of the main intended beneficiaries of the project and ENPE hopes to work in close cooperation with DOTCOM Waste to identify training needs, develop and test the training toolkit, disseminate the results of the project and improve communication and information-sharing. DOTCOM Waste will also support and complement the work of ENPE's waste crime working group.

In this context, DOTCOM Waste has developed a questionnaire to help identify needs and good practices for detecting, investigating and prosecuting waste crime and is carrying out interviews with relevant stakeholders. Readers are invited to let DOTCOM Waste know your needs and wishes by filling in the quick questionnaire: [www.dotcomwaste.eu/participate/questionnaire](http://www.dotcomwaste.eu/participate/questionnaire)

Phone interviews can be done in other languages. Please contact: [info@dotcomwaste.eu](mailto:info@dotcomwaste.eu)

To subscribe to DOTCOM Waste's mailing list, visit the project website: [www.dotcomwaste.eu/participate/joinourmailinglist](http://www.dotcomwaste.eu/participate/joinourmailinglist)

## EU-TWIX



EU-TWIX is a database tool to facilitate information exchange on illegal wildlife trade in the EU. The database has been developed to assist national law enforcement agencies, including CITES Management Authorities and prosecutors, in their task of detecting, analysing and monitoring illegal activities related to trade in flora and fauna.

TRAFFIC, the administrator of EU-TWIX, has extended an invitation to any prosecutors interested in illegal wildlife trade to sign up and have access to the EU-TWIX database and email network.

Please contact TRAFFIC via the database website: [www.eutwix.org](http://www.eutwix.org)

Image: Shipment of ivory intercepted at Brussels airport, Belgium Source: Belgian Customs (GAD Zaventem)

## Case Reports

### Swedish Rhino Horn case

A 51 year old man from Stockholm wanted to sell a raw rhino horn that was 80 cm long and weighed 6,62 kilos. He had had the horn in his possession since 1989 having traded for 2 paintings by Salvador Dali.

He had it valued and the valuation indicated it was worth between 10500 to 42278 EUR. After he had looked it up on the internet he knew that it might be worth much more so he and a friend went to the same valuer and got a testimony that now said it was worth 90 000 USD per kilo. They became aware of the need for proper documentation (a certificate) if they wanted to sell it so he and his two partners began to look for potential buyers and examined the possibilities around getting a certificate. The police were notified and the court issued a telephone tapping instruction. After a while the three men were taken into custody.

They were prosecuted for violating Art 8 section 2 of the Council regulation (EC) 338/97 on the protection of species of wild fauna and flora by regulating trade therein. The court of Stockholm found them guilty of offering the rhino horn for sale and sentenced them to 200 hours of community service. If imprisonment had been chosen as punishment it would have been for 8 months.

Photo courtesy of the Swedish Police from the preliminary investigation.



### Belgian (Flanders) Waste Case

In a recent judgment – 13 May 2016 – the Court of Appeal of Gent (Flanders, Belgium) dealt with local crime committed by a repeat offender. The defendant was convicted for several building permit and waste offences that lasted some two years, piling up a ghastly amount of rubbish on his own yard. The Court imposed a prison sentence of eight months, a fine of 12.000 euro and a waste removal order.

In Flanders, some 10% of convictions for environmental offences include a prison sentence, as a rule combined with a fine. Most often, however, the prison sentence serves individual deterrence by being fully or partly conditional. This case stands out by the fully effective character of the prison sentence. The judgment was motivated by reference to the criminal record of the offender. In Europe environmental offences are as a rule punished with fines. Prison sentences remain rather exceptional.

The waste removal order is enforced by a penalty payment: if not executed within three months, a sum of 125 euro will be due per day delay. The possibility for criminal courts to combine punitive sanctions with remedial sanctions is increasingly welcomed in policy debates throughout the EU. This judgment helps us to see that the public prosecutor and the judge also need to consider implementation of such sanctions. The Flemish experience is that penalty payments sanctioning execution delays are effective. Where remedial sanctions are to be considered, the prosecution should include penalty payments in its sanctioning request.

### Electronic Waste (WEEE) case - Leeds businessman receives 7 1/2 Year jail sentence over £2.2m recycling fraud

A Leeds waste operator has been jailed for seven and a half years for defrauding the electrical waste recycling industry out of £2.2million. Terence Dugbo, was sentenced on 15 July at Leeds Crown Court following a major Environment Agency investigation and seven-week trial. This is a record sentence for an environmental crime.

Investigating officers discovered that Dugbo had falsified paperwork to falsely claim that his Leeds-based firm TLC Recycling Ltd had collected and recycled more than 19,500 tonnes of household electrical waste during 2011. In reality, Dugbo's company had never handled the amounts of waste described, and he was not entitled to the substantial recycling fees he was paid.

During the trial the court was told that the defendant received the money through government-backed Producer Compliance Schemes – which pay for the recycling electrical goods to offset the production of new equipment.

Seized documents showed that Dugbo's company was claiming money for waste collections from streets and properties that did not exist. Vehicles used to transfer waste were recorded as being in Northern Ireland, England, and Scotland on the same day. Some vehicles did not exist at all, and some documents showed vast weights of waste being collected by vehicles that could not carry such loads: for example, a moped was said to have carried waste 42 times, and on one trip it was said to have carried 991 TVs and 413 fridges between Dugbo's businesses! Weights of individual items were also exaggerated: fax machines were logged as weighing 47kg, and drills 80kg.

Dugbo had previous convictions for fraud and illegally exporting banned hazardous waste to Nigeria. He had denied the charges in this latest case – conspiracy to defraud, acting as a company director while disqualified, and breaching an environmental permitting condition – but was found guilty on all counts by a jury.

Dugbo had been disqualified from acting as a company director until November 2017 due to the bad debts of a previous company. His involvement in TLC Recycling, which has since gone into liquidation, was in breach of this disqualification. Dugbo also breached environmental laws by treating CFC gas cylinders on the TLC site, even though the permit did not allow the treatment of waste containing ozone-depleting substances.

Terence Dugbo's illegal activities defrauded legitimate recycling schemes out of significant amounts of money. He masterminded and fabricated a flow of false paperwork that claimed his business was collecting and recycling vast amounts of waste electrical goods when in fact he wasn't.

This prosecution has been the result of a significant, co-ordinated investigation involving operational, enforcement and legal officers in the Environment Agency, and with help from the Scottish Environment Protection Agency. The length of the sentence handed out by the court demonstrates the seriousness of Dugbo's activities.

In sentencing, Judge Clarke described the fraud as a "sophisticated" crime from a company that was designed to conceal its intentions from everybody involved. He commended the Environment Agency for its conduct of the case, formerly thanking Dr Paul Salter for his investigatory work and contribution to the legal proceedings.

Judge Clarke disqualified Dugbo from acting as a company director for 12 years, as "a risk to the public", and he initiated the Environment Agency's request to begin Proceeds of Crime proceedings against Dugbo for £2.2million.

Contact : Howard McCann, Senior Lawyer, Environment Agency, England

## Forward look topic – ENPE EU Life Working Groups

The ENPE EU Life Project has an over-arching aim which is:

*"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".*

To achieve this, the project has set up four working groups to address non-compliance and improve prosecution of environmental crime in Europe.

The four groups will be Chaired by a member of the ENP Board and are tackling different subjects: Waste Crime; Chemicals Pollution; Wildlife Crime & Judicial training. Comprising between 10-15 specialists from across Europe, they will each produce, as outputs:

- **a written report** on the barriers and solutions to effectively tackling environmental crime (under the specific area prioritised), in particular the issues prosecutors and judges encounter in practice in interpretation, practical application, evidence gathering and damage quantification;
- **presentations** on the group's findings concerning the above; and
- **a suite of training materials** including:
  - presentation slides;
  - case studies; and
  - guidance on minimum standards and best practice.



The groups have started work on assembling their teams and are due to hold their first meetings in Autumn this year (2016). They will run for three years, presenting interim and final findings at the ENPE Annual conferences as they move forward.

**Working Group 1 – Wildlife** will address non-compliance of wildlife laws such as the Habitats Directive (92/43/EEC) and Birds Directive (2009/147/EEC). For more details, including expressions of interest in taking part, please contact the Chair [Lars.Magnusson@Aklagare.se](mailto:Lars.Magnusson@Aklagare.se).

**Working Group 2 - Waste** will be focussed on major causes of non-compliance with the Waste Shipment Regulation (1013/2006). For more details, including expressions of interest in taking part, please contact the group's Chair, Rob de Rijck at [r.d.rijck@om.nl](mailto:r.d.rijck@om.nl).

**Working Group 3 – Chemicals** will look at non-compliance with industrial emissions and major industrial hazard laws with focus on the main EU legislation applicable (Seveso III Directive). For more details, including expressions of interest in taking part, please contact the group's Chair, Lorna Dempsey at [L.Dempsey@epa.ie](mailto:L.Dempsey@epa.ie).

**Working Group 4 – Sanctioning, Prosecution & Judicial Practice** will look at ongoing practical issues around enforcement of the Environmental Crime Directive, and how best to tackle these through capacity building and other means. For more details, including expressions of interest in taking part, please contact the Chair, Carole Billiet at [Carole.Billiet@Ugent.be](mailto:Carole.Billiet@Ugent.be)

## Environmental Liability Directive – a complement to criminal-law

The European Commission has recently written to ENPE highlighting the complementary role to criminal enforcement that the Environmental Liability Directive (2004/35/EC) can play.

This Directive establishes a framework to prevent and remedy environmental damage. In April 2016 the Commission published a Report and REFIT evaluation on the Directive (<http://ec.europa.eu/environment/legal/liability/index.htm>).

This Report reveals a mixed picture. Some Member States make frequent use of the Directive. Others hardly use it at all. However, prevention and remediation under the Directive can be mainstream public enforcement tools alongside administrative and criminal law sanctions, in particular for breaches which cause lasting physical harm to the environment.

### More systematic use of prevention and remediation

The Environmental Crime Directive (Directive 2008/99/EC) requires that sanctions are effective, proportionate and dissuasive. Yet, the principles of prevention and that the polluter pays, combined with the substantive nature of many EU environmental laws, mean that sanctions on their own may be insufficient. Immediate action may also be required to stop or prevent harm and it may be necessary to remediate harm that has already occurred.

This context gives the Environmental Liability Directive its importance. Under this Directive – and in contrast to criminal and civil liability, the polluter/operator causing environmental damage must restore the damaged natural resources to their baseline condition before the damage occurred. Thus, the Directive contributes directly to halting the loss of biodiversity and to protecting water and soil quality in Europe.

### Tackling breaches: choosing the right interventions

While liability under the Environmental Liability Directive will not always coincide with administrative and/or criminal law sanctioning, it will often do so. Authorities may want to consider both the Directive and sanctions in relation to the same sets of circumstances. To avoid blind-spots and optimise the use of the different types of enforcement intervention, it makes sense to have a properly co-ordinated approach to all of them.

### Similar practical problems

Challenges to the successful use of the Directive can be similar to those of other types of enforcement intervention (such as insolvency, as highlighted by ongoing work by IMPEL). A shared awareness of these challenges across different types of enforcement is likely to assist in addressing them, and lead to more efficient and effective outcomes.

## Conclusions

The Commission is keen for networks like ENPE to consider the role of prevention and remediation within a broader approach to enforcement and to receive our feedback.

Where appropriate, we aim to consider this aspect to enforcement, alongside our future work plans and welcome contributions to this, or that we can feed back to the Commission on your behalf.

## Contacts

We very much value your input. If you have any items, whether prosecution case updates, lessons learnt, legal developments or anything else likely to be of interest to environmental prosecutors, and which you would like us to disseminate on your behalf, please let us know.

**Shaun Robinson, ENPE secretariat support** [shaun.robinson@environment-agency.gov.uk](mailto:shaun.robinson@environment-agency.gov.uk)

Mob: +44 (0)7771 940690

Tel: +44 (0)203 025 2880

[www.environmentalprosecutors.eu](http://www.environmentalprosecutors.eu)



LIFE14 GIE/UK/000043

ENPE has received funding from the EU LIFE Programme