



STATEMENT FROM THE FOUR NETWORKS ON ENVIRONMENTAL CRIME

3RD OCTOBER 2023

The Four Networks, IMPEL- European Union Network for the Implementation and Enforcement of Environmental Law, EUJJE- The European Union Forum of Judges for the Environment, ENPE - European Network of Prosecutors for the Environment, and EnviCrimeNet, are very pleased with the results of the Networks conference that took place on 28-29 September 2023 in Rome. We are immensely grateful to our hosts, the Italian Carabinieri, for the support from the European Commission, and to all the international organisations from more than 45 countries that were Speakers and active Participants in this event. We thank all our delegates for bringing relevant contributions, sharing their knowledge, and presenting solutions and proposals to move forward our goal of strengthening cooperation and environmental enforcement.

This conference builds on the success of the last 4 Networks online event – **Together in the fight against environmental crime** in 2021 as well as the two previous conferences held in person in Oxford in 2017 and Utrecht in 2016.

Environmental crime is the fourth largest criminal activity in the world and we note, at a global level, the progressive worsening of the situation, as recorded in reports from many institutions.

The practitioners who work daily in the fight against environmental crime have, over the years, made major efforts to implement the Environmental Crime Directive in force, Directive 2008/99/EC, but there have been too many obstacles to its practical implementation which have prevented criminal environmental law from being effective. This has in turn led to the work by the EU Commission on the new Environmental Crime Directive (hereafter “ECD”).

We welcome the proposal prepared by the Commission to replace the ECD and highlight the importance of the framework it brings, which will benefit the work of legislators, permit writers, inspectors, police and customs authorities, prosecutors, and judges. The cooperation and feedback between all elements of the environmental compliance chain strengthens our strategies, plans, programs, procedures, and actions. Most of all it increases the probability of successful cases in practice, in the context of environmental crime, together with administrative and civil contraventions.

Other new initiatives from the European Commission to address climate change, and environmental degradation such as the European Green Deal will be immensely important for the well-being and health of citizens and future generations.

In all situations the rule of law needs to be upheld, and conditions established to ensure the proper enforcement of environmental law by practitioners, on a daily basis. This is for us now, more than ever, a crucial challenge.

In this conference we aimed to improve our collaboration and the alignment of our enforcement activities. It is essential that those involved in enforcement have good meaningful contacts



whereby they can strengthen their networks, exchange experience and best practices, discuss case law and align their enforcement activities.

Addressing the main drivers behind the rise of environmental crime – high profit, low detection rates and low risk of punishment/sanctions/reparation costs, with a consequently high chance of not receiving a sanction or requirement to repair the damage caused is key.

We must increase **the probability of detecting and successfully prosecuting illicit actions**.

To be more successful we need to **focus on prevention rather than just reaction**, and thus **legislation, regulation and resources must promote, ensure and support the actions of the relevant authorities** to this end.

The Four Networks selected 5 key topics as crucial to overcoming these obstacles:

1. We need new techniques to prevent and detect environmental offences.

Relying only on physical inspections to detect environmental offences is an impossible goal, due to the disproportionate number of operators whose installations/activities might have an impact on the environment. Using human resources only from authorities needing to inspect targets with adequate frequency is too difficult. No organisation has the staff capacity and time, especially in the current context of many competing and demanding priorities and the wide ranging and technically complex operations.

Authorities retain already large amounts of data arising from permitting and monitoring/reporting activities. Data is also provided by operators who need to demonstrate to the authorities that they are complying with the law in the form of self-monitoring or self-reporting.

We need to actively seek opportunities to improve the use of new techniques such as big data analysis, geo-intelligence (satellites, drones) and artificial intelligence, that will enable authorities to detect and act earlier on potential breaches and respond quickly to any issues, with clearer priority areas and targets.

2. We need administrative and criminal law enforcement to complement each other.

We seek an intensive combined use of strong tools provided by administrative and criminal law working together. Authorities must have all the necessary legal resources to respond quickly to breaches of administrative law by applying administrative sanctions. This may be followed by criminal action, where necessary, leading to effective, proportionate, and dissuasive sanctions.

We need effective and available law which allows us to prevent and deter offending and respond using administrative or criminal processes with a greater range of tools and wider use of orders, namely for revision, suspension or revocation of permits, restoration of compliance and remediation of damage.



We need to have more enforcement responses with low level offending dealt with administratively, but also criminal proceedings available for deliberate and more serious offences. Criminal investigations should also be directed to offences that might have been committed recklessly or negligently.

We must overall uphold the rule of law. In our action to achieve this common goal, we must support our colleagues in Ukraine in their environmental enforcement activity.

3. We need to make environmental crime unprofitable.

We need to disrupt and disincentive noncompliance, by removing the profit that leads to environmental offences. We advocate measures like preventive confiscation of assets; investigating money laundering; preventing “fake” insolvencies or closure; preventing the use of “paper” front companies and prosecution of both natural and legal persons.

These measures will support the investigation of connections between profit and environmental crime, to ensure more successful cases. Ensuring damage remediation and payment of repair costs covering environment, public health, and impact on communities are paid by offenders will also ensure “the level playing field” that operators who comply with the law are not at a disadvantage.

We need to take further preventative measures such as diminishing the amount of waste produced and stopping the transfer of waste to countries with lesser or lighter environmental regulations and enforcement, with cheap costs for operators and high costs to the environment, public health, and society.

4. We need to assess, remediate and compensate for the damage incurred.

Evaluating “damage” at present, both in ECD and Environmental Liability Directive (ELD), gives rise to different interpretations and understandings and provides easy opportunity for arguments in court that such thresholds have not been crossed.

As the law must be implemented individually by each Member State in its domestic legislation, we need to clearly define terms, because any ambiguity may lead to variations in legislation across the EU and maintain the current situation of poor implementation of civil liability and criminal law around environmental offences.

We need to use clear terminology on the assessment of damage, costs and compensation, and on how it will be made, who shall do it, and at which stage of the enforcement chain. Practitioners need a common language and comprehension of environmental problems, combined with a more technical juridical explanation of terms.



We suggest bringing together the enforcement authorities, prosecutors and the judiciary with environmental authorities to set out clearly what is meant by these terms, to support an effective and harmonised application of the law “on the ground” and create a more level playing field between countries and continents.

5. We need to measure enforcement results.

We need to understand whether we are heading in the right direction, truly securing a better environment, health, and economic and social well-being or if we must take action to correct our path.

We must have a good understanding of the impact of various actions, and standardized validated assessment processes and data, to include in the measurement of enforcement results to ensure we are efficient and effective, using better risk analysis systems, for proportionate and prioritization actions.

Measures must not only regard numbers, for example in issuing permits, monitoring of operators’ performance, environmental inspections, prosecutions, and court decisions, but must also assess whether their application is aligned and secures the intended results, meaning the achievement of outcomes objectives and targets.

We need sound empirical evidence, covering features such as the characteristics of the operating environment of operators/activities/installations and their fulfillment of legal obligations; cooperation, collaboration and sharing information; capacity, training and specialisation; quality, credibility and availability of data related to monitoring of operators’ performance and environment, but also permits, inspections, investigations, prosecution, adjudication.

We need to be transparent and accountable to retain public confidence in the enforcement regimes.

Signed:

The Chairs of the 4 Networks

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