

European Network of Prosecutors for the Environment

Réseau des Procureurs Européens pour l'environnement



ENPE newsletter - Issue 14

22 December 2020

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 going away, the good news of vaccines being available soon gives us all hope for a safer and more settled 2021.

As 2020 draws to a close we reflect back on a very challenging year, but at the same time acknowledge the good work we have managed to maintain in fighting environmental crime.

With your help, we continue our work and are pleased to have convened a successful General Assembly by Zoom on 25 November 2020. We had 24 EU countries or partners represented at the AGM which was a fabulous turn out and managed to conduct our business in pretty short order. At that meeting we formally appointed Aisling Kelly, a barrister at the Office of the Director of Public Prosecutions in Ireland, to the Board as ENPE Treasurer. We also reported on the good work completed in what was, for everyone, a very unusual year (Minutes are available from our website).

With virtual conferences and seminars now the norm, we have developed presentations and videos using different technologies and were pleased to contribute to a special event at the UN conference on Transnational Organised Crime in Vienna in October. This special session on environmental crime organised by the French delegation was opened by President Macron (see below for the link to the event). We were also represented at the recent EJM training seminar on tackling environmental crimes, as well as the SWiPE project kick off event (more below).

We wish you all a healthy, safe and relaxing Christmas and look forward to more challenges in 2021. There will be a 'new normal' for the EU, one in which the UK is no longer a part, but one in which we at the Environment Agency will continue to support ENPE in the fight against environmental crime. We are putting in hand new, better arrangements going forward and will share more with you in our newsletters in 2021.

Best wishes for a safe and peaceful Christmas,

Anne Brosnan ENPE President and Shaun Robinson Project Manager.



THE LIFE-ENPE Project 2015-2020

The 5-year LIFE-ENPE project reporting is now complete. We look forward to the next phase of ENPE activities with a schedule for 2021 and beyond which is taking more detailed shape. For access to reports on our project deliverables, including the Layman's report which is a useful summary of our activities and outputs, please see: <https://www.environmentalprosecutors.eu/sites/default/files/document/Annex%202017.0%20Deliverable%20LIFE-ENPE%20Laymans%20report.pdf>



We owe a great deal of thanks to our ENPE partners: the EPA (Ireland); REMA (Sweden); Funktioneel Parket (Netherlands); Defra, (England, UK) and EUFJE (the EU Environmental Judges network based in Belgium) together with our colleagues at the Environment Agency (England, UK) for their support and assistance.

We have also valued the input and feedback provided by our ENPE members and wider LIFE-ENPE project stakeholders and are truly appreciative of the time & effort our colleagues have put into the project.

We look forward to a positive review from the EU Life programme and will of course keep you informed of next steps.



LIFE14 GIE/UK/000043

ENPE General Assembly 2020 (virtual meeting)

We were very pleased to welcome 24 of our ENPE Members and Observers to the annual General Assembly on 25 November 2020. This meeting was held remotely using the Zoom platform and was well attended. Anne Brosnan chaired the meeting and gave the President's report. This comprised an overview of all ENPE activities and outputs of 2020. Secretary General, Lars Magnusson, also updated members on the development of the ENPE network over the last 12 months since our General Assembly in The Hague in October 2019, including the addition of four new members from Malta, Morocco, Lithuania and Hungary. We are delighted that the network continues to expand and welcome all our recently joined colleagues.

Another key item on the agenda was the ratification of Ms Aisling Kelly as the new ENPE Treasurer. Aisling is a barrister based at the Office of the Director of Public Prosecution in Dublin, Ireland and has been a Supporting Member of ENPE for a number of years, contributing to the LIFE-ENPE Air Pollution Working Group (WG3). We welcome Aisling onto the ENPE Board.

News from the European Commission

Our colleagues at the European Commission (DG ENV) have informed us that the EU department responsible for policy on justice, consumer rights and gender equality - DG JUST - has recently conducted a review of the operation of the Environmental Crime Directive and has just published a [Roadmap on the revision of the ECD](#). Interested stakeholders are invited to comment or provide feedback, which can be done until 30 December 2020. You are encouraged to contribute. Later in 2021, there will be a more focused public consultation, and we will keep you informed on this consultation as it develops.



We would also like to share with you an update on relevant DG ENV initiatives. The information was originally prepared for our colleagues at IMPEL but we believe it may be extremely helpful for us at ENPE and for other enforcement networks. It is not an official document but includes a useful overview of relevant developments. This document, together with an accompanying sample of relevant judgements of the CJEU and opinions of the AG in environmental cases for this year, which you may also find useful, is available via our ENPE website here: <https://www.environmentalprosecutors.eu/recent-activities>

ENPE & CMS training on prosecuting IKB crimes shared

Following the joint ENPE and the United Nations Environment Programme Convention for Migratory Species (CMS) workshop held in Segovia, Spain on May 2018, a series of awareness raising and training packs were prepared and published. The awareness raising package was shared in January 2020 and is available via the ENPE website. The training slides have recently been shared with all ENPE members and workshop attendees for onward promulgation

to prosecutors dealing with the Illegal Killing and Taking of Wild Migratory Bird (IKB). We hope that both the awareness raising and training packs are helpful to our members and stakeholders and assist in the fight against these dreadful crimes.

ENPE at the UN Convention on Tackling Organised Crime

ENPE President Anne Brosnan recently presented on behalf of ENPE at the UN Convention on Transnational Organised Crime. This was a side event organised by the French delegation, focussing on how organisations and networks might collaborate more effectively to tackle environmental crime. This high profile event was opened by President Emmanuel Macron and include participants from Interpol, the UN Environment Programme, the Global Judicial Institute on the Environment and the World Customs Organisation. The organisers were very grateful to ENPE for the presentation and provided the following feedback:

“On behalf of my delegation, I would like to deeply thank you for your intervention to our side event on environmental crimes. Thank you so much for sharing your experience and expertise on this matter! Your intervention contributed to raising awareness about those crimes and we really appreciate. Thank you for the time you granted us.”

<https://onu-vienne.delegfrance.org/Evenement-parallele-sur-la-criminalite-environnementale>



EUFJE annual conference 9-10 October 2020 (webinar)



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

The 2020 EUFJE Annual Conference, which this year focussed on Air Pollution Law, took place from *Friday 9 October 2020 to Saturday 10 October 2020* as a virtual event via webinar. Key speakers included Veronica Manfredi,

Director, Quality of Life (Air, water and industrial emissions), DG Environment, European Commission; Alina Novikova, to discuss *The UNECE Convention on Long-range Transboundary Air Pollution* and Martin Adams, Head of Programme, Health & Sustainable Resource use of the European Environment Agency to talk about *Scientific aspects of Air Pollution*. You can find the summary report on Air Pollution Law and the Case Law situation in 16 different countries, together with all the presentations, the national reports and watch both days of the conference here: https://eufje.org/index.php?option=com_content&view=article&id=45&Itemid=235&lang=en

IMPEL General Meeting 2-3 December 2020



Our Colleagues at IMPEL (The European Union Network for the Implementation and Enforcement of Environmental Law) held their Annual General Meeting on 2/3 December

2020 via remote video conference. ENPE was represented by Shaun Robinson who provided a brief update on the ENPE activities and outputs of 2020, as well as a Forward Look to proposals for 2021 and beyond. More details on the meeting and other IMPEL activities are available at the IMPEL website www.impel.eu

LIFE Successful Wildlife Prosecution in Europe (SWiPE) Project

This multi-partner LIFE funded Governance, Information and Environment project started on 01 September 2020 with the kick off meeting held in early November. Drawing on experienced partners from across Central and Eastern Europe, the focus is very much on fighting the illegal trade of wildlife in that part of Europe, including specific species of birds, fish and mammals where illegal trade is prevalent.

ENPE will contribute as part of the External Expert Reference Panel, participating in the organisation and delivery of specialist prosecutors training. Shaun Robinson, ENPE project manager, attended at the kick off meeting, outlining ENPE's capacity and experience in this areas and where our network will add value to this important project. We look forward to a fruitful collaboration and the development of strong working relationships with all project partners and stakeholders to strengthen the fight against these illegal activities in the coming months and years.

Four Networks conference October 2021 – Italy

The Covid-19 pandemic has resulted in the proposed Four Networks conference planned for Italy in September 2020 being postponed now until October 2021. The conference steering group are still very keen for the event to take place on a 'face-to-face' basis, to maximise the opportunities for awareness raising, guidance sharing and networking. With this in mind, by putting the proposed dates back a full calendar year, it is very much hoped that the event will take place in Italy as planned. Please do keep in touch with ENPE and IMPEL for more news and updates in due course.

Interesting Cases

Czech national convicted by Belgian Court for using false documents in court proceedings related to 6 illegally kept Steller's sea eagles

On November 3, 2020, D.F., a Czech national, was convicted in absentia by the Criminal Court of East Flanders, Ghent division, for the use of false documents in civil proceedings concerning 6 Steller's sea eagles.

The 6 Steller's sea eagles were confiscated from H.V.T. He is a bird breeder who has been sentenced to 4 years in prison (2 years suspended) and a fine of 90.000 euro by the Ghent Court of Appeal on 18 March 2016 for illegal trade in protected and endangered birds. An amount of 835.800 euro of illegal gains of the bird trade was confiscated¹.

He was unable to provide valid CITES documents and only 4 of the 6 Steller's sea eagles were ringed. The birds were seized and confiscated and taken to a wildlife rescue centre. H.V.T. was, however, able to present 6 loan documents for breeding purposes.

The defendant D.F. summoned the Belgian State to a civil court in East Flanders to reclaim the birds referring to the 6 loan documents, certificates of origin, import authorizations, to prove her ownership. This civil case is still pending.

The criminal judge in Ghent decided these pieces were false.

Wiretaps, house searches and computer research in a related case revealed that the eagles were bought at the time by the defendant from the Almaty Zoo at the request of H.V.T. He gave her the money for that. His intention from the outset was to sell the birds. The "loan agreements for breeding purposes" were a fraudulent construction to give the possession of the birds by H.V.T an appearance of legality. Over a 13-year period, D.F. never behave like the owner of the birds. H.V.T. did. In another criminal proceeding, he had requested the lifting of the seizure of the birds, without mentioning that D.F. was the actual owner. D.F. was interrogated under a European Investigation Order.

The court sentenced her in absentia to 1 year in prison and a fine of 16.000 euro for using false documents in civil proceedings.

¹ See F. BOUQUELLE & L. LAVRYSEN, EU Action Plan against Wildlife Trafficking – Recent Belgian Criminal Cases, *JEEPL* 17 (2020), p. 179 ("The Birds Laundering Case").

A picture on Facebook of a Norwegian golden eagle ended in a prison sentence of 1 year and 4 months.



On 27 October 2020, the Alingsås District Court sentenced a man in his fifties to one year and four months in prison for gross crime against protected species and smuggling. This is the biggest wildlife crime concerning the sale of animal parts of protected species ever investigated in Sweden. The man's passion for the culture of American Natives set him on a path that ended in 200 ads and sales on Facebook and Messenger of bear claws, eagle feathers,

one python skin, parts of a golden eagle, wolf pelts etc. The National Operations Department (NOA) at the Swedish Police Authority and the Protected Species and Cultural Heritage Unit have investigated the crimes.

– This is the biggest wildlife crime investigation concerning the sale of animal parts of protected species ever conducted in Sweden. The sentence is the result of intensive investigative efforts by the Swedish Police, says Public Prosecutor Christer B. Jarlås.

It all started with the Swedish police receiving a case, via the UK police. The UK police had noticed an ad on Facebook of a man, who was later convicted, holding up a golden eagle from Norway. The picture could be found at places such as the Facebook group "Norwegian Indian & Trapper Association". The picture resulted in a house search conducted at the address in Värnamo, Sweden, where the suspect was registered. The suspect no longer lived there, but many of his belongings were still there and were searched. Nothing was seized.

The suspect was called in for questioning at the police station on Borås, Sweden, along with his public defence counsel Marie Abrahamsson. During the questioning, it emerged that the suspect lodged with his cousin. He also stated that there were objects of his that were assessed as being of interest to the investigation. In parallel to the questioning, a search of premises was carried out with the assistance of local police. Seizures were made of several animal parts belonging to CITES-listed animals. When the police investigators came back from the questioning, a new search was conducted on Patrick Persson's Facebook, and another ad for a python skin was found. In addition, because the documents they needed did not exist, the smuggling of the golden eagle from Norway into Sweden was also investigated.

-New crimes were discovered

When the investigation of the first case was almost completed, the suspect's Facebook account was checked again and 258 new ads containing CITES-listed animal parts were found and a new case was set up. 175 of the ads above remained in the case and in 113 of them objects were found and seized.

In September 2017, the suspect was called in for questioning at the police station in Alingsås, along with his public defence counsel. In connection to this, another search was conducted, this time of his car and at his new address. Further seizures of CITES-listed animal parts were made, inside his vehicle as well as at his new home. Following the extraction of data from his mobile phone, two sales of CITES-listed animal parts were revealed and subsequently linked to the suspect's bank account.

-Mutual legal assistance in the United States

In October 2017, a request for mutual legal assistance was sent to the United States, to a US prosecutor, in order to extract data from Facebook and Messenger, via a US court, and in November 2018, a CD record containing the extracted data was received from Facebook and Messenger. On it were found four sales that could be linked to the suspect's bank account in 2015 and 2016.

Experts were brought into the investigation. The birds and mammals section at the Swedish Museum of Natural History along with an independent ornithologist determined the species of the animals shown in the ads including the seizures made in the case of animal parts, claws and feathers. An age determination of the golden eagle and wolf pelts using the Carbon 14-dating technique was made at the Ångström Laboratory in Uppsala University, and an expert from the Swedish Board of Agriculture explained the formal requirements in line with the regulatory framework.

In all three cases, a final interview was conducted in October at the police station in Alingsås. Charges were brought in January 2020. The trial lasted five days in the Alingsås District Court in September 2020. Both the public prosecutor and the police investigators were present during the whole trial. The sentence was handed down on 27 October 2020. The suspect was sentenced to one year and four months' imprisonment for gross crime against protected species and smuggling. Most of the items seized have been forfeited. Deadline for appeal is three weeks from the pronouncement of the judgement.

As always when it comes to wildlife crime, the complex legislation places high demands on the investigative process and the presentation before the court. In this case, there were both A and B-listed species in accordance with the EC convention 338/97. But the judgment is clear and pedagogical and will be a useful tool in these cases in the future, says Christer B. Jarlås.

The investigator was Police Inspector Anna Bergquist, Detective Inspector/temp. app. Head of Unit, Crimes against Protected Species and Crimes against Culture Heritage, NOA/Investigations Section

The Public Prosecutor was Christer B. Jarlås, Senior Public Prosecutor, National Unit for Environment and Working Environment Cases, National Public Prosecution Department

Builder fined £600,000 for destroying bat roost in south London, UK

Court hands Bellway Homes largest ever wildlife crime fine after it admits demolishing site in Woolwich



A soprano pipistrelle bat. Bellway had been told it would need a licence for the work. Photograph: WildPictures/Alamy

PA Media

A building firm that carried out demolition work at a site known to be inhabited by bats has been handed a £600,000 fine, the largest ever issued by a court in the UK for a wildlife crime, according to police.

Bellway, the housebuilders, admitted damaging or destroying a breeding site or resting place in Artillery Place, Greenwich, south-east London, in 2018, where soprano pipistrelle bats had been documented the previous year.

All species of the animal in the UK are protected.

Bellway, which also had to pay costs of £30,000, agreed to make a £20,000 donation to the Bat Conservation Trust, the Metropolitan Police said.

Inspector David Hawtin praised Sgt Simon Henderson and PC Giles Balestrini for their roles in the investigation.

“With the expert assistance of colleagues from specialist units within the Metropolitan Police, the officers constructed evidence to prove that the company had indeed committed an offence by carrying out work at a site where bats were known to inhabit,” he said.

“Bellway Homes has admitted responsibility for this and I hope it reinforces the message that this legislation is there for a reason and should be adhered to.”

At Woolwich Crown Court on Tuesday 8 December, the company pleaded guilty to damaging or destroying a breeding site or resting place of a wild animal of a European protected species between 17 March and 17 August 2018.

The company had been notified in planning documents that it would first need to obtain the appropriate mitigation and a Natural England European protected species licence.

(From The Guardian newspaper, UK 11/12/20)

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.robinson@environment-agency.gov.uk Mob:+44 (0)7771 940690 Tel:+44 (0)203 025 2880;

Shaun is pictured here enjoying a glass of refreshing grape juice (!) on his 50th birthday spent in lockdown in the UK recently. In spite of the limited opportunities for celebration, he had a lovely time at home with plenty of cake and drinks to help him reflect on this important milestone!

Please do visit our website: www.environmentalprosecutors.eu



ENPE has received funding from the EU LIFE Programme

LIFE14 GIE/UK000043